MADISON POLICE DEPARTMENT
POLICY & PROCEDURE REVIEW
AD HOC COMMITTEE

FINAL REPORT

OCTOBER 18, 2019

CITY OF MADISON
WISCONSIN

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The Madison Police Department Policy & Procedure Ad Hoc Committee approved this report on October 18, 2019.

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LETTER FROM THE CO-CHAIRS

We are pleased on behalf of the Madison Police Department Policy & Procedure Review Ad Hoc Committee to submit this report, which summarizes the Committee's recommendations for making our strong police department even stronger. This report is the culmination of the dedicated work by the 12 (initially 15) Committee members, City of Madison staff, the City Attorney's Office staff, representatives of the Madison Police Department (MPD), and engaged community members, who collectively met monthly, then biweekly, and ultimately weekly over nearly four years to complete this comprehensive review of the MPD's policies and procedures.

At the outset, we want to express our gratitude to the MPD, both for its long record of progressive policing, and for the open and accommodating manner in which its members responded to the Committee's inquiries and proceedings. The Department's willingness to engage in a process of self-reflection and to address the question: "Are we who we say we are?" with respect to every aspect of its work is vital to the success of this whole undertaking.

Madison is fortunate to have an effective and often forward-thinking police department, and while we are making recommendations for changes (or in many instances for the continuation or extension of current policies), this Report and the Committee's work should not be interpreted as an indictment of the MPD. Rather, it reflects the recognition that, as the OIR Report identified and our own inquiries revealed, the Police Department does not always live up to its progressive ideals, and that even a Department with many strengths can be made better. And it acknowledges that, in a free and democratic society, citizen engagement with and oversight of policing is essential. This type of involvement is critical in our City during a time when divisions and distrust have emerged between the police and some of Madison's communities, especially minority and low-income communities. It is foundational to building a more cohesive relationship and rapport between all communities and the MPD moving forward.

This Report builds on the thorough and insightful OIR Group report, submitted to the Committee in December 2017, which reviewed the policies, procedures, and practices of the MPD, and provided the Committee with 146 specific recommendations for to make the MPD stronger and more responsive to community concerns. The Committee painstakingly evaluated each one of the OIR's recommendations, alongside additional issues raised by the Common Council President's Work Group, the community-based Community Response Team (CRT), and other individual community members. Along the way, we carefully considered written and oral responses from the MPD, the Madison Professional Police Officers' Association (MPPOA), and the City Attorney's Office. We also listened to and incorporated community input and presentations from relevant organizations and experts. Our final Report adds to the OIR and President's Work Group recommendations, providing a total of 177 specific recommendations, which we now pass on to the Common Council and the Mayor for consideration and, we hope, approval and action.

The Ad Hoc Committee's process has been long and not without expense. We believe our Report has been well worth the time, hours, and expense that have gone into producing it. We note that the very process of commissioning the OIR Report and considering its recommendations has already led to improvements. The MPD, to its credit, has responded with whole-hearted agreement to many of the OIR Report's recommendations and has already taken steps to adopt many of the recommendations to improve the policies, practices, and procedures over the past two years or more.

We want to extend a special note of gratitude to Luis Yudice and Christian Albouras, who preceded us as co-chairs. We are honored to have followed them in this role. They did yeoman's work leading this Committee through its first two years. When they stepped down at the end of 2017, they continued to participate as Committee members (although Christian had to resign when he was elected to the Common Council in 2019). We also are grateful to the entire Madison community for having entrusted us and the Committee members with our important task.

—Keith Findley & Tom Brown
Ad Hoc Committee Co-Chairs

EXECUTIVE SUMMARY

Madison is fortunate to have a Police Department that has served as a cradle of progressive policing initiatives. The Madison Police Department (MPD) has introduced practices such as Community Policing and Problem-Oriented Policing, two distinct but overlapping non-traditional approaches to police work that focus on community engagement and responses to crime and public safety that do not rely primarily on officers responding to calls for service or making arrests. Yet, despite the Department's long-standing and oft-stated commitment to these ideals and to other progressive policies, such as those aimed at diversity and inclusiveness, the Committee has observed areas in which the MPD may have experienced drift from some of these principles over the years. Moreover, a number of serious use-of-force incidents in recent years, as well as conflicts with community members and racial disparities, have created concerns among residents and a breakdown of trust in the MPD in some of Madison's communities. As with any organization, periodic intensive examination and self-reflection is important to ensure continued fidelity to ideals. This report reflects such a moment.

To ensure continued commitment to the MPD's finest ideals, from top to bottom within the Department and in all aspects of its work, the Committee makes 177 specific recommendations in this Report. Many are non-controversial. To its great credit, MPD has readily embraced a significant number of these recommendations and has already begun implementing many of them—even some that it was initially reluctant to accept. Indeed, some of these recommendations acknowledge the excellent work the MPD is doing in some areas by simply encouraging the MPD to keep doing what it is already doing in those areas. But it is also important to note that many of these recommendations call for significant changes, and push MPD outside of its comfort zone. But all are important. And all are included here for two reasons. First, the Committee hopes that the City and the MPD will adopt all of them, recognizing their importance as good practice whether they require a change of course or not. Second, the Committee believes that all of these recommendations can serve as a template for the MPD and the Independent Monitor, an office we urge the City to institute in Recommendation #1, to use on an ongoing basis to assess the MPD's steadfastness in meeting its obligations and living up to its ideals.

The recommendations the Committee makes are extensive and wide-ranging. Thematically, they include efforts to:

- Increase civilian oversight of law enforcement, enhance accountability, and expand Department transparency;
- Improve and in some instances repair damaged community-police relations and trust, especially among communities of color and low-income people;
- Increase sensitivity and seek non-traditional responses to individuals who suffer from emotional disturbances or alcohol and drug abuse, individuals from marginalized communities, and juveniles;
- Minimize the risks of avoidable uses of police force, including deadly force, by: a) instituting greater accountability, b) instituting systems for non-blaming learning from critical incidents, c) tightening standards and training on permissible uses of force, and d) incorporating an emphasis on de-escalation throughout MPD's Standard Operating Procedures (SOPs) and training.

PART I. CIVILIAN OVERSIGHT, PUBLIC ENGAGEMENT, & PUBLIC CONFIDENCE

The last of the recommendations the OIR Group included in its report after its year-long assessment of the MPD was to increase civilian oversight of the police through the creation an Office of an Independent Auditor that would report to a Civilian Review Board [OIR #146].[1] The Committee has made this its first recommendation because it believes this recommendation to be essential to ensuring that all of the other recommendations that follow are implemented, and that the process of community engagement and examination of Department policies and practices continues in the future as challenges, knowledge, and resources evolve. There is no doubt that, without an independent auditor or monitor, the MPD would adopt—indeed it has already adopted—many of the reforms recommended in the following pages. But without the

[1] Throughout this Report, bracketed notations indicate the source of the particular recommendation. "[OIR #146]," for example, means that this recommendation came from the OIR Group and was recommendation #146 in the OIR Report. In some instances, the recommendations are adopted verbatim from the source; in other instances, the recommendation originated from the indicated source, but the Committee modified the initial recommendation. Where the Committee modified the original recommendations, the body of this Report so indicates.

monitor, no entity, and no process, would exist to ensure continued attention to the ongoing implementation and updating of the important recommendations in this Report.

Moreover, civilian oversight of the police is essential for a fundamental philosophical reason. In the interest of public safety and order, the people yield to police the authority to deprive community members of their freedom, coerce compliance with directives, and apply physical force, even deadly force, when needed. In a free and democratic society, the people must have the ability to oversee the manner in which that authority is exercised.

In Madison today, an Independent Monitor and Civilian Review Board is especially timely and important because of the potential it offers for bridging the divides that have emerged in recent years between police and some of Madison's communities, particularly its low-income and minority communities. Building trust between police and all of Madison's communities is one of the great challenges facing the MPD. A formal structure, such as that recommended here, for ongoing civilian oversight of and engagement with the MPD, represents a critical step toward meeting that challenge successfully.

Other communities have attempted civilian oversight through an independent auditor and civilian review board, with notably mixed results. The Committee has examined those other examples and has created a detailed blueprint for an Independent Monitor and Board in Madison designed to overcome the problems that have plagued some other cities' oversight structures and to take advantage of those features that have helped auditors in other cities succeed. In particular, the Committee recommends a strong Independent Monitor and Review Board with rights to full access to MPD records, subpoena power, investigative powers, the authority to make policy recommendations, and the ability to facilitate the presentation of information to the Police and Fire Commission. Of particular importance is the Committee's recommendation that the City pay careful attention to the makeup of the Civilian Review Board to ensure broad diversity not only along typical race and gender lines, but also by requiring a critical mass of individuals with lived experiences of the types most salient to police-community relations, including mental illness, drug and alcohol abuse, poverty, and arrest and incarceration experiences.

- *Recommendation 1* [OIR #146]: The City should enhance its civilian oversight by establishing an independent police monitor's office staffed by an independent monitor and reporting to a civilian police review body.
    - *Note:* The specific details of this recommendation are set forth in the body of this report. The full recommendation was submitted to and accepted by the Common Council prior to the completion of this full report.

To facilitate this civilian oversight, the Committee also recommends six additional specific provisions related specifically to the oversight process.

- *Recommendation 2* [OIR #143]: MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant discipline to determine to what degree the PFC post-disciplinary process is impacting those decisions.
- *Recommendation 3* [OIR #144]: The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints.
- *Recommendation 4* [OIR #145]: When MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, the Independent Monitor should review the complaint and decide whether an outside investigator should be appointed and produce a transparent public document about that decision-making process. If the PFC receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation. In the absence of an Independent Monitor, the decision must be based on an objective evaluation process like just culture to establish an internal decision tree process.
- *Recommendation 5* [OIR #140]: While retaining the ultimate determination on selection of the Chief, the PFC should consider ways to involve the Madison community in the selection process through community panels and interviews.
- *Recommendation 6* [OIR #141]: The city should institute protocols calling for a performance evaluation process that includes members of the community, prioritizing socio-economic diversity among those members, for the Chief of Police at fixed intervals, with the evaluation being a potential basis for a finding of "cause" should the Chief's performance fall significantly below community expectations. This evaluation should not be conducted by the PFC.
- *Recommendation 7* [OIR #142]: The City should consider whether to consult with its state legislative representative to propose amending the PFC statute so that the Chief of Police serves a fixed term, subject to renewal by the PFC.

PART II. MPD AND THE MADISON COMMUNITY

➢ Section 1. Internal Responses to Race and Equity Concerns

Race relations and equity concerns have presented especially pressing challenges for the MPD in recent years. The Committee has adopted a wide-ranging series of recommendations designed to address those challenges. Those recommendations include the following.

- *Recommendation 8* [OIR #2]: MPD should continue its active role in collaborative programs that address systemic inequity, like the "Unpaid Ticket Resolution Days," and set internal goals for accomplishing such events each year and encourage MPD to hold community courts in cooperation with community partners.
    - *Note*: Unpaid Ticket Resolution Days—which offers a pathway for resolving outstanding tickets for those who lack the means to pay them, is an example of a program that can build trust between the community and MPD because it shows MPD's willingness to assist the community and work collaboratively to address issues that lead to systemic inequity.
- *Recommendation 9* [CRT #11]:[2] MPD should encourage officers to use approaches such as verbal warnings, problem-oriented policing methods, dispute mediation, etc., in lieu of arrests or citations, for minor offenses, particularly in communities most impacted by policing (such as communities of color, communities of lower socioeconomic status, etc.)
- *Recommendation 10* [Findley #41]:[3] MPD, in conjunction with the Independent Monitor, is encouraged to evaluate its current training, SOPs, and code of conduct to determine if they can be enhanced to guide discretion and provide additional guidance to officers regarding how they respond when they encounter people driving without a valid license or committing other minor traffic infractions or when to ticket and/or arrest homeless people (for trespassing or obstructing the sidewalk, etc.), or ticket and arrest people for engaging in other low-level offenses that tend to disparately affect low-income people.
- *Recommendation 11* [OIR #3]: MPD should commit to a re-energized Racial Disparity Impact Committee and should provide both incentives for participation and continued organizational support for its efforts and specific initiatives.
- *Recommendation 12* [OIR #4]: Through resources and other forms of messaging, MPD management should enhance its structural and philosophical commitment to the Judgment Under the Radar program as a means of reinforcing its important work.
    - *Note*: The Judgment Under the Radar program is a series of training programs on bias presented by a voluntary working group of officers, dating back to 2011.
- *Recommendation 13* [OIR #5]: Should future presentations by Judgment Under the Radar (or any other group) touching on bias be met with strongly negative reactions, MPD leadership should assess the underpinnings of the behavior.
- *Recommendation 14* [CRT #23]: In addition to CORE, MPD should add a volunteer, incentivized and paid continuous leadership-competency component called a "learning community" with adults and perhaps, older youth, from the public. The members of each learning community should represent a broad cross section of the socio-economic, racial, gender and ability groups that MPD typically interacts with in the community. Look to UW Madison's Leadership Institute to develop learning communities with members of the public who share a range of social identities.
    - *Note*: CORE is the MPD's Community Outreach and Resource Education (CORE) Team, which launched in the summer of 2016. Its stated mission is "to enhance the Madison Police Department's efforts to reduce disproportionate arrests related to racial disparities and improve trust and perception of fairness through procedural justice, community outreach, education and problem solving."
- *Recommendation 15* [OIR #6]: The City should move apace to providing a translation function for its website so that MPD's information (as well as other City information) can be more facilely accessed and used by persons with limited English proficiency.

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[2] The bracketed notation "CRT" denotes those recommendations that were brought to the Committee by the Community Response Team, an ad hoc group of community members with longstanding engagement with police-community relations in Madison.

[3] The bracketed notation "Findley" denotes those recommendations that were brought to the Committee by Committee Co-Chair Keith Findley.

- *Recommendation 16* [OIR #7]: The CORE Team should take advantage of its centralized role in sponsoring and monitoring MPD outreach and should work to provide rigorous analysis of individual initiatives as to their relative impact and effectiveness.
- *Recommendation 17* [OIR #8]: MPD should work to effectively support and incorporate officer-driven outreach efforts within specific communities, such as Amigos en Azul, into its larger community policing strategies.
    - *Note*: Amigos en Azul is a program started in 2004 by a group of MPD officers working in the South District who began planning various ways to provide outreach to Latino youth.
- *Recommendation 18* [OIR #9]: MPD and the City should discuss the most efficacious way to analyze the demographic data regularly being collected on arrests, summons, and use of force.
- *Recommendation 19* [CRT #9]: MPD should seek a collaboration with statisticians from University of Wisconsin-Madison, or highly-qualified statisticians elsewhere who have researched policing and racial bias, to determine if communities of color in Madison are incurring differential policing. Specifically, analysis should be conducted to determine (a) if rates of stops, arrests, and citations by MPD are correlated with neighborhood racial composition after controlling for crime rates, and (b) if the proportion of stops resulting in arrests or citations (hit rates) differs across racial and ethnic groups. If analyses do show differential policing, MPD should consider measures such as reallocation of policing resources across neighborhoods and corrective training.
- *Recommendation 20* [OIR #10]: MPD should consider implementing 21st Century Policing Task Force's recommendation to make all department policies available for public review.

➢ Section 2. MPD & Restorative Justice Initiatives

Restorative justice initiatives seek alternatives to traditional punitive sanctions—typically involving bringing together victims, offenders, and community members to seek ways to repair the harms from crime. Within the last few years, MPD has actively supported Dane County's restorative justice initiatives at both the juvenile and adult level. As the OIR Report noted, "The principle behind this movement is very much in keeping with progressive thought about criminal justice reform and speaks directly to the racial inequity realities that persist in Madison and elsewhere." To date, however, the scale of these restorative justice efforts in Dane County has been relatively small, and there are indications that the programs have been utilized more readily in incidents that have attracted high levels of media attention. The Committee encourages expansion of these restorative justice initiatives.

- *Recommendation 21* [OIR #11]: As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention.

➢ Section 3. MPD & Community Engagement

The OIR Report noted that the MPD "seems to be appreciated and held in high esteem by a significant percentage of Madisonians," and the "MPD deserves credit for the many ways it does indeed reach out to the public." But Madison comprises many and varied "communities," and the experiences and perceptions of those communities are not uniform. Moreover, OIR noted that "MPD's willingness to 'engage' tends to have significant boundaries, particularly when it comes to talking about difficult or controversial matters with its concerned communities." Enhancing community engagement can only make the Department stronger and more effective. And, as the OIR put it, "a commitment to genuine and multi-faceted feedback from all voices in Madison—even overtly critical ones—is central to this task." The recommendations that follow in this section address that challenge.

- *Recommendation 22* [OIR #12]: MPD should continue to constructively engage with its community by increasing its emphasis on participating in community-initiated events.
    - *Note*: OIR noted that MPD did a good job of organizing special events for the community, but that they "heard repeatedly, though, that MPD might benefit from participating in and supporting more events promoted by the community, rather than relying so heavily on initiating police events to which the public is invited."
- *Recommendation 23* [OIR #13]: MPD should conduct town hall and listening sessions after all critical incidents, including officer-involved shootings as follows:

    - In the first few days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern.
    - After the conclusion of the investigation, MPD should provide a public debriefing of the incident highlighting any performance issues that were identified for improvement and reform.
- *Recommendation 24* [OIR #14]: MPD should seek to engage with its community regarding controversial events, including officer conduct that does not reflect its core values or best performance.
- *Recommendation 25* [OIR #15]: MPD is encouraged to relax its uniform requirement permitting personnel to appear out of uniform on duty at appropriate community events.
- *Recommendation 26* [CRT #1]: MPD should take all steps necessary to ensure that any data released to alders or to the public (for example, in annual reports) is fully accurate. All data releases should be accompanied by rigorous definitions and descriptions of methodology, sufficient to enable completely unambiguous interpretation of all data provided. Misleading data practices should be avoided.
- *Recommendation 27* [OIR #1]: In devising a strategic plan, MPD should consider the findings and recommendation in this report to the degree they suggest paths toward further improvement and seek input and assistance in its development from all MPD employees, city stakeholders, and the Madison community.
- *Recommendation 28* [OIR #16]: MPD should devise additional ways to solicit and encourage feedback from all of its communities regarding the performance of the Department.
- *Recommendation 29* [OIR #17]: MPD should devise a feedback loop for its criminal justice partners regarding the performance of its officers and the Department as a whole including the District Attorney, Sheriff, Judges, Public Defenders, Juvenile Justice Administrators, Probation Officers, and Social Workers.
- *Recommendation 30* [OIR #18]: MPD should revise its policy in order to discourage the use of family, friends, or bystanders to serve as translators except when MPD or City resources are not available and the situation is exigent, or when the person initiates contact or volunteers to continue conversation with police either by phone or in person and requests that a family member or friend serve as an interpreter and the person is not the subject of a criminal investigation or interrogation. In cases when civilians are used as translators, the non-availability of other MPD resources should be documented.
    - *Note*: In response to logistical and practicality concerns raised by the MPD, the Committee modified this OIR recommendation to permit interpretation by a family member or friend if requested by a person who "initiates contact or volunteers to continue conversation with police either by phone or in person," but only if the person "is not the subject of a criminal investigation or interrogation."
- *Recommendation 31* [OIR #19]: MPD should devise policy instructing its officers not to request social workers to provide translation services unless there is a pre-existing understanding with the social services agency that they agree to do so.
    - *Note*: Asking social workers to act as interpreters can create conflict of interest problems and pose risks of violating the social workers' professional ethical standards.
- *Recommendation 32* [OIR #20]: MPD should devise ways to incentivize its bilingual officers to assist in providing translation assistance in the field, including consideration of adopting a pay differential.
- *Recommendation 33* [OIR #21]: MPD should audit its officers' use of the City's telephonic translator program to gauge its level of effectiveness for police matters and make suggestions for reform as needed.
- *Recommendation 34* [OIR #22]: MPD should continue to expand its efforts to create local Captain's Advisory Groups.
    - *Note*: With federal grant funding in 2017 for a pilot project, MPD sought out representatives of impacted communities of color to form a neighborhood-based, "grass roots" advisory group in the South District.
- *Recommendation 35* [OIR #23]: MPD should continue to dialogue with City's Rapid Response Team to further develop a productive working relationship, and to assist in the Team's overarching objective of enhancing trust and providing additional services to the community victimized by a major crime.
    - *Note*: The Rapid Response Team is an innovative program designed to use community leaders to reach out to people impacted by gun violence.
- *Recommendation 36* [OIR #24]: MPD should implement the Special Community/Police Task Force Recommendation to conduct random reviews of footage to evaluate officer performance.
- *Recommendation 37* [OIR #25]: MPD should implement the Special Community/Police Task Force Recommendation to train detectives and officers in the use of trauma informed interviewing skills.
- *Recommendation 38* [OIR #26]: MPD should implement the Special Community/Police Task Force Recommendation to explore Scotland's de-escalation methods and the United Kingdom's national decision-making model for police and adapt these concepts productively to its own policing challenges.

- *Recommendation 39* [OIR #27]: MPD should continue to consider and review the Special Community/Police Task Force Recommendations to further integrate them into MPD culture, and to embrace the spirit and underlying rationale with which they were made.
- *Recommendation 40* [Community E-mail #34]:[4] The Mayor and Common Council should further expand the use of a public health approach to curb violent crimes.
- *Recommendation 41* [OIR #28]: MPD should work with the City, County and its members to recognize crime as yet another danger to public health and to develop further strategies for prevention and remediation consistent with the model.
- *Recommendation 42* [CRT #14]: The Madison Metropolitan School District should be encouraged to consider implementing the Becoming a Man program, a cognitive behavioral therapy program for at-risk youth, to improve academic outcomes for at-risk youth and reduce juvenile crime. MMSD should also explore including girls in the program.
- *Recommendation 43* [CRT #12]: The Madison Common Council should pass a resolution asking Dane County to provide access to opioid agonist therapy (treatment utilizing Suboxone and methadone) and Vivitrol (a one-time injection on the day of release) for incarcerated individuals and those under community supervision.
- *Recommendation 44* [OIR #29]: Consistent with this Report, MPD should develop formal mechanisms whereby a broader group of community stakeholders are brought into the selection process for special assignment officers, except for selection of traffic crash specialists or criminal intelligence officers.
    - *Note*: Special assignment officers include, for example, Educational Resource Officers (school officers), mental health officers, and the Community Outreach and Resource Education (CORE) team.
- *Recommendation 45* [OIR #30]: Consistent with this Report, MPD should routinely seek input from community stakeholders and professionals regarding the performance of officers assigned to specialized units.
- *Recommendation 46* [OIR #31]: With input from the community, each specialized MPD unit that has not already done so should devise a mission statement setting out the core objectives of the unit.
- *Recommendation 47* [OIR #32]: With community and City stakeholder input, MPD should devise a media release policy setting out objective parameters regarding when information about arrests of persons will be proactively publicly released.
- *Recommendation 48* [OIR #33]: In publishing information about "shots fired" calls, MPD should include whether the call led to an arrest, revealed corroborating information, or had no further corroboration beyond the initial call.
- *Recommendation 49* [OIR #34]: MPD should consider resource neutral ways to supplement the staffing of their facilities and also explore alternative shifts and hours so that they can be open for public access for longer hours.
- *Recommendation 50* [OIR #35]: MPD should dialogue with the City and the University of Wisconsin Law School to identify ways that law students can be reintegrated into the Department's learning and problem-solving functions.

➢ **Section 4. Community Policing: Philosophy and Practice**

The *OIR Report* noted that "[a] commitment to 'community policing' is a cornerstone of the Department's philosophy—and MPD prides itself on its history of national leadership in this regard." Community policing is a complex approach to policing that cannot be described adequately in just a few words. At its essence, it is an approach that moves some police decision-making from the top of the policing hierarchy and disperses it to the local, neighborhood level, where officers make concerted efforts to engage with their neighborhoods and discrete communities to build trust and work together to identify and solve problems. OIR noted that MPD leadership "continue[s] to preach these principles as cornerstones of the MPD way," but also noted that they observed "instances in which everyday operation practice has drifted or stalled in relation to the original vision." OIR also noted gaps in information gathering that hampered "the ability of MPD itself to know to what extent leadership's 'community policing' exhortations were being implemented in the field…." The recommendations that follow are designed to fortify the MPD's commitment to and implementation of its long-held community policing ideals.

- *Recommendation 51* [OIR #36]: In selecting neighborhood officers, MPD should broaden its selection process to include City stakeholders and representatives of the community.
- *Recommendation 52* [OIR #37]: MPD should ensure an effective transition between the outgoing and newly-assigned neighborhood officers.

[4] The bracketed notation "Community E-mail" denotes those recommendations that the Committee received via e-mail from members of the public with no identified group affiliation.

- *Recommendation 53* [OIR #38]: MPD should collect and document information pertaining to the work of neighborhood officers and other specialized officers either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data.
- *Recommendation 54* [OIR #39]: In order to be able to gain an evidence-based understanding of patrol officers' problem-oriented policing activity, MPD should develop a system to track and report the specific efforts including results, ongoing efforts, and collaboration with community groups.
- *Recommendation 55* [OIR #40]: MPD should develop evaluative metrics consistent with the stated mission of neighborhood officers and prepare at least annual performance evaluations based on those metrics, to be completed in conjunction with the neighborhood as laid out in OIR Recommendation 41 [Committee Recommendation 56 below].
- *Recommendation 56* [OIR #41]: MPD should regularly seek input from City stakeholders and representatives of the community in evaluating the performance of its Neighborhood Officers on at least an annual basis.
- *Recommendation 57* [OIR #42]: MPD should devise ways to consistently publicize the community policing activities of its patrol officers as well as special assignment personnel.
- *Recommendation 58* [OIR #43]: MPD's executive leadership should pursue ways to utilize its neighborhood officers in developing, facilitating, and measuring specific problem-oriented policing projects.
- *Recommendation 59* [OIR #44]: MPD should commit to a newly robust and collaborative engagement with the City's Neighborhood Resource Teams in establishing new goals and performance measures for proactive problem solving.
    - *Note*: The Neighborhood Resource Teams are groups coordinated by the Mayor's Office, which bring together City staff from a range of departments, including MPD, and that are intended to identify and facilitate holistic approaches to quality of life improvements in specific Madison neighborhoods.
- *Recommendation 60* [OIR #45]: With regard to field assignments MPD should find ways to take full advantage of officers identified as practicing problem-oriented policing, such as having them provide modeling opportunities, be involved in training community policing concepts and otherwise effectively export their policing strategies to other officers.
- *Recommendation 61* [OIR #46]: MPD should track and evaluate the substantive work of its Community Policing Teams to ensure consistent application of community policing principles based upon best practices of community policing apart from traditional law enforcement methods.
- *Recommendation 62* [OIR #47]: MPD should collect and document information pertaining to the work of the CPT [Community Policing Team] either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data.

➢ Section 5. MPD's Educational Resource Officers

Educational Resource Officers (EROs) are MPD officers on special assignment, one at each of Madison's four high schools. The presence of these officers in the schools has become controversial recently. The Committee took no position on whether the EROs should stay in the high schools, leaving that decision to the School Board. Rather, the Committee focused its discussions and ensuing recommendations on how best to implement the ERO program, given the apparent decision of the School Board, the City, and the MPD to continue this program (which has existed for more than 20 years), at least for now.

- *Recommendation 63* [OIR #48]: MPD should regularly review the activity of its Educational Resource Officers to determine whether the appropriate balance between prevention, problem-oriented policing, and enforcement is being achieved.
- *Recommendation 64* [OIR #49]: MPD should work with school district administrators to ensure congruity of purpose with regard to mission and responsibility of EROs in the school setting.
- *Recommendation 65* [OIR #50]: In selecting EROs, MPD should broaden its selection process to include faculty, juvenile justice partners, and student leaders.
- *Recommendation 66* [OIR #51]: MPD should regularly seek input from school stakeholders and juvenile justice partners in evaluating the performance of its EROs on at least an annual basis.
- *Recommendation 67* [OIR #52]: MPD should collaborate with the school district in communicating to the public the range of services it provides in the individual high schools.
- *Recommendation 68* [OIR #53]: MPD should closely review arrests and citations issued by EROs to ensure that officers appropriately use their discretion and do not unnecessarily enter juveniles into the criminal justice system.

- *Recommendation 69* [OIR #54]: MPD should develop a Field Training Officer program for its newly assigned EROs in order to foster transfer of skills and orientation of high functioning outgoing officers.
- *Recommendation 70* [OIR #55]: MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues.
- *Recommendation 71* [OIR #56]: The City should dialogue with the Madison Professional Police Officers Association in order to amend the current contractual agreement so that EROs (and other specialized officers who are focused on community policing such as Neighborhood Officers, Mental Health Officers, and Community Policing Teams) who have established effective working relationships in their specific assignments, as determined by input from Department supervisors, the officers themselves, and stakeholders at the respective campuses can remain beyond five years.
- *Recommendation 72* [OIR #57]: MPD should consider moving to a "soft" alternative uniform for EROs, as a means of reinforcing the unique mission of these officers in the school setting.

➢ Section 6. Mental Health Resources and Training

Responding effectively to individuals suffering from mental illness is a particularly challenging part of the work of police officers. The challenges are particularly salient today, given that officer-involved shootings and other critical incidents—the types of incidents that in large part motivated the Common Council to create the Ad Hoc Committee—very often involve individuals in some type of mental health crisis. Some in the community question whether police officers are the appropriate personnel to respond to situations arising from mental health crises, and there is broad agreement that sensitivity is needed for handling such situations. Because police will inevitably be called upon to address disturbances that at their core stem from mental illness, even if other resources are marshaled for addressing these problems, it is important that the Department employ best practices in responding to mental health crises. OIR noted that the MPD has been grappling with these issues for years, and that this has "placed the Department ahead of many other law enforcement agencies in its awareness of the importance of preparing officers to deal with this sensitive population." But more can be done to make MPD's response to these problems even more effective.

- *Recommendation 73* [OIR #58]: The Mental Health Team should develop guidelines or protocols for periodically reviewing mental health safety bulletins and associated alerts to assess whether they should be amended or purged from the system.
    - *Note*: In 2015, the MPD expanded its commitment to its mental health response program by pulling five officers from field duty and designating them full-time Mental Health Officers (MHOs), composing the Department's Mental Health Team. One tool these officers deploy is Mental health safety bulletins—one-page documents that provide useful information about mental-health-related issues to officers on the beat. Those bulletins, however, need to be updated regularly because, as OIR noted, "[a] person who is in crisis today may not be in the same condition two months or a year from now…."
- *Recommendation 74* [OIR #59]: MPD should consider promoting regular communication to the public about the activities of its Mental Health Team by, among other methods, including a sample narrative of the team's activities in the daily crime blog.
- *Recommendation 75* [OIR #60]: MPD should devise methods to fully document the daily activity of MHOs, in part to facilitate a larger internal and external discussion about whether those activities are necessarily or best handled by police officers.
- *Recommendation 76* [OIR #61]: MPD should quickly fill the position of Mental Health Team sergeant and should maintain funding for this position to ensure effective supervision of the team.
- *Recommendation 77* [OIR #62]: MPD should continue to integrate use of force training scenarios with scenarios involving someone in a mental health crisis.
- *Recommendation 78* [OIR #63]: MPD should cross-train patrol tactics and force instructors to also run and debrief mental health crisis scenarios to strengthen the Department's message around the importance of de-escalation in crisis situations, even in those scenarios when officers also need to consider force options.
- *Recommendation 79* [PWG #2]:[5] City of Madison should contract with ProTraining to provide their full training program for all officers.

[5] The bracketed notation "PWG" denotes those recommendations derived from the Report of the Common Council President's Work Group on Police and Community Relations.

- *Note*: ProTraining is a research-informed training approach developed at the University of Alberta that focuses on changing behaviors of officers more than on changing attitudes toward mental illness, and that has been shown to be effective at significantly reducing uses of force in mental health calls.

- *Recommendation 80* [OIR #64]: MPD should amend its SOP on Mental Health Incidents/Crises by breaking it into separate policies that would address separate topics, and would specifically include the tactical principles the Department trains and expects its officers to employ in addressing situations involving individuals in mental health crisis.
- *Recommendation 81* [OIR #65]: MPD should look for innovative ways to fill the critical gaps in its efforts to collect data on mental health contacts with police.
- *Recommendation 82* [OIR #66]: The MPD Mental Health Team should develop a set of clearly-defined performance measures that can be consistently tracked and monitored to provide benchmarks for how the Department and the community define success for the mental health program.
- *Recommendation 83* [OIR #67]: The MPD Mental Health Team should work to integrate its volunteer assistants with Department resources in a way that provides consistency in data gathering and analysis tasks.
- *Recommendation 84* [AHC #64B]:[6] The City of Madison should explore through whatever mechanisms it deems appropriate (be it in partnership with the County, exploration of grants, or other mechanisms) to create a dedicated mental health first responder unit, outside of MPD, modeled off the CAHOOTS program in Eugene and Springfield, Oregon, to respond to known mental health crisis.
    - *Note*: The CAHOOTS (Crisis Assistance Helping Out On the Streets) program in Eugene and Springfield, Oregon, provides an alternative to police response appropriate for a broad range of non-criminal crises, including mental health problems, suicide prevention calls, homelessness, intoxication, disorientation, substance abuse, and dispute resolution.

PART III. RESPONSE TO CRITICAL INCIDENTS

Concerns about critical incidents—for example, the death of an individual in custody, a fatal traffic collision, or an officer-involved shooting—are at the center of the issues that prompted the City to form the Ad Hoc Committee and undertake this exhaustive review of the MPD. Critical incidents are sometimes unavoidable in policing, but they are always undesirable, as they result in serious harm or death to an individual or individuals. In particular, Madison has had a number of high-profile officer-involved shootings and other uses of force that have unsettled many in the community. Those incidents have disproportionately, although not exclusively, involved individuals of color and people in mental health crises. One of the key challenges facing MPD is working to minimize the occurrence of such critical incidents, and when they inevitably occur, figuring out how to respond appropriately to them. The issues raised by critical incidents span a broad range of considerations, from training to standards governing the use of force, to data collection, to processes for holding officers accountable for inappropriate uses of force, and others.

➢ Section 1. Criminal Investigations

One important response whenever a police officer is involved in a critical incident is to examine whether the officer's conduct—conduct which by definition caused physical harm or death to an individual—was lawfully justified or constituted a criminal act. Accountability—ensuring that police exercise force against individuals only in a lawful matter—is a core requirement for policing under the rule of law. To avoid conflicts of interest, state law now requires that all criminal investigations following critical incidents be undertaken by an outside law enforcement agency. The Wisconsin Department of Justice has assigned that responsibility statewide to its Division of Criminal Investigations (DCI). While the City and the MPD cannot control how DCI conducts those criminal investigations, the City and the MPD still have an interest in and ability to ensure that all relevant information—not just that information ultimately collected for DCI's criminal investigation—is obtained and preserved, including for purposes of MPD's subsequent administrative reviews.

- *Recommendation 85* [OIR #68]: MPD should clarify its officer-involved critical incident SOP to ensure that, absent extraordinary circumstances, investigators should obtain a statement from involved and witness officers prior to release from shift. One option for this statement would be a self-administered interview.

[6] The bracketed notation "AHC" denotes that this recommendation originated from the Ad Hoc Committee, prompted by information shared by the CRT.

➢ **Section 2. Video Review Protocols**

- *Recommendation 86* [OIR #69]: MPD should clarify its SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers opportunity to review any recording of the incident.

➢ **Section 3. Interactions with Family Members and Witnesses**

While investigative priorities that follow an officer-involved critical incident are important, handling witnesses and family members with respect for their rights and the trauma they are experiencing is essential to a healthy, humane, and effective relationship between the police and the public. As OIR noted, with potential witnesses and family members, policy should require that authorities "be both clear in communicating options and responsible in deferring to witness preferences."

- *Recommendation 87* [OIR #70]: MPD should review DCI protocols regarding contact with family members after an officer-involved shooting and integrate them into its own officer-involved critical incident protocols.
- *Recommendation 88* [OIR #71]: MPD should consider using a Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting.
    - *Note*: The Rapid Response Team, which the Mayor's Office created in 2017, is built around a group of prominent African American community leaders and is designed to look for specific ways to alleviate root causes of and harms from violent crimes and to cultivate the kinds of cooperation that could facilitation investigations and future prevention.
- *Recommendation 89* [OIR #72]: MPD should develop procedural justice guidelines within its officer-involved critical incident SOP to ensure that officers respond with sensitivity to the emotional and safety needs of witnesses and family members and that, when legally permissible, witnesses and family members are kept advised of the process and procedure related to the incident.

➢ **Section 4. A More Holistic Review Model**

In the past, MPD has relied on the criminal investigation for fact collection after a critical incident. The Committee recommends a much broader, holistic administrative review process, to include examination of tactical decision making prior to the use of deadly force; efficacy of supervision; effectiveness of radio communications; effectiveness and availability of appropriate equipment; whether current policy provided sufficient guidance to involved officers; sufficiency of current training to prepare officers for the circumstances presented; and post-incident decision making and medical assistance. Such robust administrative investigations and analyses not only can help ensure individual accountability, but also allow examination of the root causes of such incidents. The intent is thus to foster institutional learning and, through the insights gained and constant improvement, to minimize the likelihood of such adverse incidents as much as possible.

- *Recommendation 90* [OIR #73 & CRT #13]: MPD should automatically conduct an administrative investigation of all officer-involved shootings and other critical incidents separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers, if necessary. A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights.
- *Recommendation 91* [OIR #74]: If the criminal investigation has not obtained a full account of the observations of the on-scene emergency medical providers, MPD should interview them as part of the administrative investigation.
- *Recommendation 92* [OIR #75 & PWG #12]: MPD should develop a robust review process after a critical incident such as an officer-involved shooting that examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include the development of a corrective remedial plan designed to identify and address any issues identified.
  Furthermore, MPD and the City should work with the Quattrone Center to develop a root cause analysis procedure.
    - *Note*: This recommendation was submitted to and accepted by the Common Council prior to the completion of this full report. It was submitted to the Council as Recommendation 20. It has now been renumbered as Recommendation 92 to fit in the appropriate place in this full Report.

➢ Section 5. Risk Management Initiatives

- *Recommendation 93* [OIR #76]: After a civil judgment or significant settlement involving MPD activity, the Department and its attorneys should convene a meeting intended to holistically review the incident and any insight learned from the litigation process itself, and should devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation.
- *Recommendation 94* [OIR #77]: The City should have regular dialogue with its police liability insurer to examine what risk management initiatives might result in lower premiums or could be funded by the insurer.

➢ Section 6. Prosecution and Conflict of Interest

A District Attorney's job security, and promotional opportunities for Assistant D.A.s, largely hinge on electability and conviction rates. Both require the full cooperation and support of local police. Prosecuting an officer can be contradictory to a D.A.'s self-interest. This conflict of interest runs the risk of compromising justice in officer-involved critical incidents.

- *Recommendation 95* [CRT #26]: The City of Madison should seek an amendment to Wisconsin Statute §175.47(5)(a)-b), requiring that investigators of an officer-involved force incident provide the report to the chief judge of the judicial administrative district, and that judge must appoint a special prosecutor who then must determine whether to prosecute the officer. If the special prosecutor files charges against the officer, the special prosecutor shall be the prosecuting attorney in the case. In the absence of a statutory change, the City of Madison should cite the inherent conflict of interest between the D.A. and law enforcement and request the D.A. allow the courts to appoint a special prosecutor who does not share that same or any other conflict of interest.

PART IV: USE OF FORCE

Closely related to the discussion about critical incidents is assessment of MPD's policies on use of force, given that critical incidents so frequently involve officers applying force. Many of the same considerations that drive the recommendations on critical incidents are relevant to use-of-force issues. With regard specifically to use-of-force incidents, the Committee recommends additional policies and training to ensure adequate reporting and investigation, adequate reviews of incidents involving force—for purposes of both accountability and learning—best practices in its training on use of force, appropriate documentation and data collection regarding uses of force, and appropriate use-of-force standards that clearly circumscribe dangerous uses of force to those circumstances where they are most necessary and effectual. The Committee also recognizes the importance of providing police with appropriate equipment that allows them to respond to hostile situations without need to resort to deadly force. The ultimate focus of all of these recommendations is to recognize preservation of human life as the paramount value in police-civilian encounters, and to strive at all times to protect the safety of civilians and police officers alike.

➢ Section 1. Reporting and Investigating Force

- *Recommendation 96* [OIR #78]: MPD should make clear through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report.
- *Recommendation 97* [OIR #79]: MPD should amend its force reporting protocols so that, for certain categories of force, at minimum those that are recordable incidents, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it.

➢ Section 2. Reviewing Use of Force

- *Recommendation 98* [OIR #80]: MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy, as well as compliance with any other policies implicated such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force.

- *Recommendation 99* [OIR #81]: In evaluating force incidents, MPD should go beyond a determination of whether the use of force met a Constitutional standard or was inconsistent with Department policy, to also identify any tactical or other performance issues, and determine whether additional remedial action—such as discipline, training, or debriefing—is appropriate.
- *Recommendation 100* [OIR #82]: On selected force incidents, MPD should convene a panel to roundtable the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan.
- *Recommendation 101* [OIR #83]: MPD should identify and publicly commend officers who practice de-escalation techniques and problem-oriented policing.

➤ **Section 3. Use of Force Training**

- *Recommendation 102* [OIR #84]: MPD should regularly evaluate its use-of-force training to make sure it continues to be consistent with best practices, maximizes its ability to meet the demands of the Madison community, and is considered by officers to be effective at preparing them for real-life encounters.
- *Recommendation 103* [CRT #10]: MPD should utilize ICAT as part of its training curriculum.
    - *Note*: ICAT (Integrating Communications, Assessment, and Tactics) is an innovative training program developed recently by the Police Executive Research Forum (PERF) to teach best practices for safely defusing situations that involve people behaving erratically and often dangerously (incapacitated by mental illness and/or intoxication), but without a firearm—the people most frequently subject to officer uses of force.
- *Recommendation 104* [OIR #85]: MPD should reevaluate its training regarding the implications of the reactionary gap principle, focusing on principles of officer safety, such as cover and distance to ensure that officer tactics and deployment minimizes the need to use deadly force.
    - *Note*: The reactionary gap principle is based on concepts from biomechanics that indicate that if an officer waits until a firearm is pointed at him or her, the officer will have insufficient time to respond with deadly force before the suspect pointing the gun can fire at the officer. An unintended consequence of teaching such principles is that at least some officers have walked away from the scenario with the unfortunate notion that they are expected to use deadly force whenever they see a gun in a subject's hand.

➤ **Section 4. Data Issues**

- *Recommendation 105* [OIR #86]: MPD should consider when it is appropriate to begin employing documented accountability measures for officers and sergeants who fail to comply with the requirement for entering force incidents into the use of force database.
- *Recommendation 106* [OIR #87]: MPD should further break down published use-of-force data by district and shift to ensure that Department leaders are focused on where and when officers use force most frequently.

➤ **Section 5. Use of Force Policies**

In Graham v. Connor, 490 U.S. 386 (1989), the U.S. Supreme Court established the minimum constitutional standard for assessing whether an officer's use of force complied with the Due Process Clause of the Fourteenth Amendment. Graham sets that general standard, in broad terms, as turning on whether the officer's use of force was "reasonable" under all of the circumstances. Graham sets a constitutional floor, below which no police department may go in authorizing force, but it is not intended to set the optimal administrative standard or best practice. Much more can be done beyond Graham to ensure that force, and particularly deadly force, is used only when no lesser alternatives are available, when (and in a manner in which) the force is most likely to be effective, and when it is consistent with the community's values. The recommendations that follow are designed to express those community values, protect the safety of all members of the community—police and civilians alike—and provide police the detailed guidance and training they need to permit them to make appropriate judgments when encountering dangerous situations or hostile individuals.

- *Recommendation 107* [OIR #88]: MPD should proactively seek input from City stakeholders and the public before completion and implementation of any new policies or changes to its existing policies. MPD will do this through creation of a formalized, tiered process, ranging from working groups for major changes, to notice of interim

implementation, with provision that minor or urgent rules can become effective during the notice period, pending final adoption.

- *Recommendation 108* [CRT #19]: MPD shall ensure, either through policy or training, that when SOPs say shall, it means must or mandatory.
- *Recommendation 109* [PWG #5]: MPD should incorporate the following precautionary principles into its Use of Force SOPs and MPD officers should be trained accordingly:
    - *Necessity*: Deadly force should only be used as a last resort. The necessity to use deadly force arises when all other available means of preventing immediate and grave danger to officers or other persons have failed or would be likely to fail.
    - *Proportionality*: When force is needed, the force used shall be in proportion to the threat posed. Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. 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. Proportional force does not require officers to use the same type or amount of force as the subject. 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.
    - *Reassessment*: Officers shall reassess the situation after each discharge of their firearm.
    - *Totality of officer conduct*: The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force. Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover, or reposition, rather than the immediate use of force.
    - *Immediate threat*: Deadly force is only authorized if the threat is immediate. A threshold of "immediate threat" reflects language in United States Supreme Court decisions. The latest model use of force policy published by the International Association of Chiefs of Police eliminates the term "imminent."
- *Recommendation 110* [OIR #89]: MPD should modify its use of force policies to more clearly instruct officers on the duty to employ tactical alternatives to force, and to make clear the Department's expectation that officers follow tactical principles of officer safety.
- *Recommendation 111* [OIR #90]: MPD should publicize to its officers and its community its commitment and willingness to go beyond the *Graham v. Connor* standards when it further refines its policies relating to the use of force.
- *Recommendation 112* [OIR #91]: MPD should amend its Electronic Control Device Use SOP to limit ECD use to circumstances involving violent or assaultive subjects, or to prevent subjects from harming themselves or others.
- *Recommendation 113* [OIR #92]: MPD should modify its ECD guidelines to prohibit ECD use, outside of exigent circumstances, on women obviously pregnant, elderly individuals, obvious juveniles, individuals on stairwells, rooftops, or other elevated positions, and bicyclists.
- *Recommendation 114* [OIR #93]: MPD should modify its ECD guidelines to require officers to re-assess the threat posed by an individual prior to any successive ECD application, as is the case for any repeated use of force.
- *Recommendation 115* [OIR #94]: MPD should modify its ECD guidelines to preclude officers from deploying more than three ECD applications on an individual, or a prolonged single application lasting longer than five seconds, unless exigent circumstances are present where the higher use of force would be required to gain control of the subject.
- *Recommendation 116* [OIR #95]: MPD should modify its ECD guidelines to preclude multiple officers from simultaneously deploying their ECDs on an individual unless exigent circumstances are present where the higher use of force would be required to gain control of the subject.
- *Recommendation 117* [OIR #96]: MPD should modify its ECD guidelines to require medical clearance of all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel. Medical personnel could conduct this medical screening and removal of darts at the scene, and subjects for whom the screening has found medical conditions, reactions, or injuries, or who are requesting medical attention, should be transported to a medical facility

for evaluation and treatment. City medical personnel who may be tasked with providing clearance should be consulted before guidelines are changed.

- *Recommendation 118* [CRT #4]: MPD should train the Police Executive Research Forum recommendation that an ECW deployment that is not effective does not mean that officers should automatically move to their firearms.
- *Recommendation 119* [OIR #97]: MPD should amend its SOP on Foot Pursuits to fully address the safety concerns associated with chasing a suspect without communicating with dispatch, solo foot pursuits, pursuing in unfamiliar areas or after losing sight of the suspect, and chasing a suspect while not in full patrol uniform and gear.
- *Recommendation 120* [CRT #8]: MPD should modify in the near future its training or SOPs to tighten up discretion that officers have about engaging in foot pursuits and, in considering those revisions, it should consider adopting the recommendations of the CRT about foot pursuits, including:
    - A provision that directs officers to maintain a safe distance, rather than overtaking the suspect, until sufficient cover (e.g. backup officers, etc.) is available to take the suspect into custody. This provision may include a list of techniques to consider (e.g. paralleling the suspect, etc.; see Portland OR policy for an example of such a list).
    - A provision to the effect of "No sworn member shall be criticized for deciding against initiating or discontinuing his/her involvement in or terminating a foot pursuit."
    - A provision specifying safety-enhancing explicit restrictions on engaging/continuing foot pursuit (see Portland OR policy for an example of such a list). Among other restriction, foot pursuit of armed suspects should be prohibited unless, in extreme circumstances, no other alternative strategy is feasible and a delay in the apprehension of the suspect would present a threat of death or serious physical injury to others.
    - A provision directing officers to consider factors related to the suspect's behavior when deciding whether to initiate or continue pursuit (see Portland OR policy for an example).
    - Language requiring the officer to continually assess whether to continue the pursuit.
    - A provision specifying that, whenever possible, the first officer to reach the suspect should not go "hands on" with them, but instead should wait for backup to take that role.
- *Recommendation 121* [OIR #98]: MPD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties.
- *Recommendation 122* [OIR #99 & CRT #17]: MPD should modify its policy prohibiting shooting at moving vehicles to read: "Firearms shall not be discharged at a moving vehicle unless: 1) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or 2) The vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical). To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves in the path of any moving vehicle and, when such positioning is unavoidable, to move out of the vehicle's path as soon as practical."
- *Recommendation 123* [Findley #42]: MPD should develop specific policies, training, and code of conduct standards intended to limit strikes to the body to circumstances where they are truly necessary and provide specific guidance as to what those circumstances might be and in all circumstances ban strikes to the head and strikes to individuals who are non-resisting or in restraints.
- *Recommendation 124* [CRT #18]: All of Fyfe's Principles should be incorporated into MPD's "Response to Persons with Altered State of Mind" SOP.
    - *Note*: James Fyfe, an NYPD officer and professor of criminal justice, published, "Policing the Emotionally Disturbed" (2000), in which he introduced seven key principles for minimizing officer involved shootings of people in an altered mental state. Those principles, in a nutshell, include 1. Officers should keep a safe distance from emotionally disturbed persons (EDPs). 2. Officers should avoid unnecessary displays or threats of force. 3. Officers should avoid confronting EDPs alone, without backup. 4. Only one officer on the scene should be the one who talks to the EDP. 5. The officer who is designated the "talker" should take charge of the scene, and generally no other officers should take unplanned action. 6. The talker should not threaten the EDP, but should make clear that for officers to help the EDP must put down any weapons and go with the police to get help. 7. Officers should take as much time as necessary to talk EDPs into custody, even if this runs into hours or days.
- *Recommendation 125* [OIR #100]: The Use of Force Coordinator and executives assessing force should regularly reevaluate the SOPs governing uses of force in light of the facts and circumstances of the incidents they review, making amendments as necessary.

➢ **Section 6. Use of Force Equipment**

- *Recommendation 126* [CRT #2]: MPD should consider deploying additional protective equipment in squad cars, including but not limited to transparent acrylic personal protection shields and Kevlar stainless steel gloves, and provide training in their use.
- *Recommendation 127* [CRT #3]: MPD should consider acquisition and training in additional well-developed, less-lethal tools, such as newer options for chemical sprays and better/safer kinetic weapons. An example of the former is the Piexon JPX4. An example of the latter is the 40 mm platform with appropriate less-lethal ammunition.

➢ **Section 7. Other Cities or Nations as Fresh Sources of Insight**

- *Recommendation 128* [CRT #6]: MPD should reach out to NYPD administration to gain a detailed understanding of NYPD's schema of "firearms control," to determine if NYPD's approach, or elements of it, could be useful in reducing the frequency of officer involved shootings in Madison. If the answer is affirmative, MPD should consider incorporating this approach.
- *Recommendation 129* [CRT #7]: MPD should reach out to the Police of Finland, particularly the Police University College, and send at least one command officer to Finland, to learn about Finnish Police methods (training, tactics, etc.) that may be useful for reducing the frequency of fatal officer involved shootings.
    - *Note*: Although Finland and the United States both have high rates of violence and high per capita gun ownership, the per capita rate of fatal officer-involved shootings is about one hundred-fold lower than in the U.S., and the rate of injuries to Finnish police officers is also much lower.

PART V: INTERNAL CULTURE AND PROTOCOLS

In its report, OIR noted that, while MPD has a long and impressive history of progressive policing and thoughtful ideals, a recurring question the OIR team heard from both within and outside of the MPD was, "Are we who we say we are?" The ideals *articulated* by MPD continue to embrace those progressive values. But an important question to ask, continually, is whether the Department continues to fully deliver on those ideals in its culture, protocols, and actions. The recommendations that follow are designed to create mechanisms for continually posing that important question, and for ensuring that the MPD's culture and practices live up to its expressed ideals.

➢ **Section 1. MPD Culture**

- *Recommendation 130* [OIR #101]: MPD should engage in regular internal assessments (such as surveys) and other feedback opportunities, to ensure that issues relating to minority status within the Department are not adversely affecting individuals or groups, and to continue seeking potential remedies and reforms when such dynamics arise.
- *Recommendation 131* [OIR #102]: MPD should assess its recruit training programs and patrol deployment strategies with an eye toward supporting and taking positive advantage of the unique perspectives and life experiences of its officers of color.
- *Recommendation 132* [OIR #103]: The Madison Professional Police Officers Association should make efforts to enlist greater participation by officers of color, including in leadership positions.

➢ **Section 2. Seniority Shift Assignments**

- *Recommendation 133* [OIR #104]: The City should work to revise the current agreement with the Madison Professional Police Officers Association (MPPOA) in order to provide MPD more flexibility regarding shift and location assignment of officers.

➢ **Section 3. Performance Evaluations**

- *Recommendation 134* [OIR #105]: MPD should reinstitute an officer performance evaluation system that collects and incentivizes progressive policing activity.

- *Recommendation 135* [OIR #106]: MPD should regularly audit performance evaluations to ensure that supervisors are uniformly documenting officer activity objectively and fairly.

➤ **Section 4. Obtaining Consent to Search**

- *Recommendation 136* [OIR #107]: MPD should collect data on how many times officers request consent to search individuals and places, and on the demographics of those who are subject to such requests and searches. Whenever officers are in range of an operable recording system, they should audio record the entire consent encounter. MPD should amend its SOPs to require, prior to any consent searches, that officers explain to individuals that they have a right to refuse consent. MPD should change its current SOP to require presentation and signature of a consent to search form when audio recording of the encounter is not possible prior to executing a voluntary search.

➤ **Section 5. MPD Sergeants and Representation**

- *Recommendation 137* [OIR #108]: MPD should work with the City and the Madison Professional Police Officers' Association (MPPOA) to consider the feasibility of moving sergeants to the Association of Madison Police Supervisors.

➤ **Section 6. Dispatch Services**

- *Recommendation 138* [OIR #109]: MPD training staff should work with the Dane County Department of Public Safety Communications to establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year.
- *Recommendation 139* [OIR #110]: MPD should work with Dane County 911 center to develop scenario-based interagency training to better integrate the functions of patrol officers and dispatchers, particularly with regard to calls for service involving persons in mental health crises.
- *Recommendation 140* [OIR #111]: When MPD convenes a critical incident review, communications issues involving dispatch should be among the topics reviewed, and in cases where the effectiveness of communications is in issue, managers from the Dane County 911 center should be invited to participate.

➤ **Section 7. Hiring and Training MPD Officers**

- *Recommendation 141*: [OIR #112]: MPD should continue to strive for a diverse recruitment and hiring program, and should regularly assess its criteria and any other hiring process to ensure there is no unnecessary exclusion of persons who otherwise might be excellent officers.
- *Recommendation 142*: [OIR #113]: MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis.
- *Recommendation 143*: [CRT #16]: MPD should examine whether it would be beneficial to include the M-PULSE Inventory as a pre-employment screening instrument.
    - *Note*: Police departments routinely screen recruits with psychological tests, in an attempt to screen out candidates who are likely to engage in problematic behaviors as police officers. A relatively new test designed for those purposes, the Matrix Predictive Uniform Law Enforcement Inventory (M-PULSE) is a self-report, actuarial instrument used to predict law enforcement officer job performance and liability risk, as well as assist law enforcement agencies in selecting qualified candidates. It is the only law-enforcement-officer-screening instrument based on actuarial modeling.
- *Recommendation 144* [OIR #114]: MPD should engage community members at the interview stage of its promotional process.
- *Recommendation 145* [Findley #40]: MPD should provide mentors for promising officers from underrepresented groups to help them prepare for and be motivated to apply for promotions.
- *Recommendation 146* [OIR #115]: MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation.
- *Recommendation 147* [OIR #116]: MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds.

- *Recommendation 148* [OIR #117]: MPD should evaluate whether using Academy class rank for purposes of seniority places outsized importance on such criteria, or whether there are alternatives for determining the "seniority" of students in the same class. MPD should report to the Common Council and to the Independent Monitor at the end of each academy the demographics of each class, including race, ethnicity, gender, and socioeconomic background and a demographic comparison of those who received seniority based on class rank. MPD should work with the Common Council to develop the reporting process.
- *Recommendation 149* [OIR #118]: MPD should regularly solicit the Madison community for topics to be presented at the pre-service Academy or during in-service training.
- *Recommendation 150* [OIR #119]: MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern.
- *Recommendation 151* [OIR #120]: MPD should continue to examine training protocols throughout the country and use that review to continue to improve its well-functioning training.
- *Recommendation 152* [OIR #121]: MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first-level supervisors.

➤ **Section 8. Sexual Assault Response Protocols**

- *Recommendation 153* [Taylor #44]:[7] MPD should comprehensively follow a victim-centered, trauma-informed approach for sexual assault response. MPD should review the Police Executive Research Forum "Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault," and modify its sexual assault response policies, procedures and training where necessary to concord with the Guidebook recommendations. The Committee also recommends 16 specific measures to meet this objective, which are set forth in the body of this Report.

➤ **Section 9. Investigative Protocols**

- *Recommendation 154* [Findley #38]: In the interest of preventing false confessions and enhancing community trust, MPD should adopt a policy, and provide corresponding training to all investigating officers, providing that, apart from the deceit inherent in appropriate undercover operations, interrogating officers should not, except in extraordinary circumstances, and when feasible with the prior approval of supervisory staff, utilize deceit about the material facts of the case during interrogations.
- *Recommendation 155* [Findley #39]: MPD should work, in collaboration with the State Crime Laboratories if possible, to develop policies and procedures for submitting information to the crime laboratories that are designed to minimize context and other cognitive biases in forensic analyses.

➤ **Section 10. Staffing Analysis**

- *Recommendation 156* [CRT #15]: For purposes of assessing staffing levels and needs, and making requests for personnel expenditures to the Common Council, the MPD should find ways to capture and convey data on both patrol and non-patrol officer staffing levels, and to ensure that staffing levels of all categories are not underreported to the Common Council.

➤ **Section 11. Officer Wellness**

- *Recommendation 157* [CRT #24]: MPD should integrate into its staff psychologist/peer support program an annual wellness support program that mandates annual mental wellness assessments with ongoing stress management counseling, restorative support and restoration practices built into police shifts. With all officers participating in this program, it's fundamentally equitable. No single officer's participation will appear out of the ordinary thus protecting them for an invasion of privacy or being ostracized. The annual wellness assessment will not be a fitness for duty evaluation except when a therapist, as part of their ordinary duties, is required to disclose information to protect the public from harm. The City of Madison should provide sufficient funding to support these assessments.

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[7] The bracketed notation "Taylor" denotes those recommendations that came to the Committee from Representative Chris Taylor who represents much of central and east-side Madison in the State Assembly.

- *Recommendation 158* [CRT #25]: MPD should establish a policy to ensure the privacy and confidentiality of all officers as they participate in the mental wellness program.
- *Recommendation 159* [CRT #43]: The City of Madison should advocate for changes in Wisconsin State Statutes to allow law enforcement officers to receive workers' compensation and duty disability for PTSD acquired as a result of the day to day traumas and stresses of police work, as outlined in recently introduced legislation.

PART VI: ACCOUNTABILITY

Accountability is a key ingredient to ensuring fidelity to ideals, and to gaining the trust of the community. Trust has eroded in some of Madison's communities because of a perception that not all of their complaints are heard or reviewed adequately, or because the complaint process appears cumbersome and inaccessible. In addition, OIR noted that MPD sustained only a very small percentage of complaints initiated by the public and MPD's sanctions for proven misconduct were lower than what they were accustomed to seeing at other police departments. Addressing these concerns is an important part of improving police/community relations. Thus, the Committee makes recommendations encouraging some reconsideration of current approaches, more stringent initial assessment of complaints, changes in some elements of investigative practices, options for greater transparency, and a mediation program that could provide better resolution and greater satisfaction in some cases. The Committee also recommends changes in practice for recording audio and video, the creation of a new committee to consider issues related to body-worn cameras, and implementation of a predictive early intervention system, to help identify officers at risk of future adverse incidents, who could benefit from administrative intervention.

➤ **Section 1. Administrative Discipline: Issues of Employee Misconduct**

- *Recommendation 160* [OIR #122]: MPD should provide accessible literature at its stations, encouraging feedback regarding the performance of its officers, including blank complaint and commendation forms.
- *Recommendation 161* [OIR #123]: MPD should remove the 90-day limit from its SOP on investigation of complaints and investigate all complaints that allege a violation of rules.
- *Recommendation 162* [OIR #124]: MPD should codify its current practice to expressly indicate in its SOP that it is committed to investigating anonymous complaints.
- *Recommendation 163* [OIR #125]: MPD's SOPs should be revised so that every complaint alleging a policy violation receives a PSIA number.
    - *Note*: The PSIA is the Department's Professional Standards and Internal Affairs division. It is charged with investigating complaints of wrongdoing or policy violations by officers.
- *Recommendation 164* [OIR #126]: MPD should change its policy so that all interviews of victims, witnesses, or complainants to internal investigations that could result in discipline are recorded unless the situation proves impossible or if a civilian witness declines.
- *Recommendation 165* [OIR #127]: MPD should ensure that violations of integrity are appropriately charged as such in the disciplinary process.
- *Recommendation 166* [OIR #128]: MPD should consider whether there is sufficient accountability in its disciplinary process regarding violation of integrity and force.
- *Recommendation 167* [OIR #129]: MPD should expand its restorative justice disciplinary program to authorize and address courtesy violations or other low-level violations involving police/civilian contacts.
    - *Note*: Restorative justice is a framework applied in situations of wrongdoing as an alternative to retributive punishment. It emphasizes repairing harm—recognizing the needs of the person(s) harmed, the needs of the community in order to heal and restore, and the needs of the person who caused the harm.

➤ **Section 2. Mediation and Other Tools for Public Connection**

- *Recommendation 168* [OIR #130]: MPD and the City should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process.
- *Recommendation 169* [OIR #131]: PSIA should continue to build upon its current practices of post-investigation complainant outreach, including the evaluation of cases for possible informal discussion opportunities with involved parties.

➢ **Section 3. Audits, Reports, and Interventions**

- *Recommendation 170* [OIR #132]: MPD should regularly evaluate serious disciplinary cases to determine whether, pursuant to Department policy, they should be subject to proactive release [to the public].
- *Recommendation 171* [OIR #133]: Rather than rely entirely on the computer to identify early intervention candidates, MPD's Early Intervention System should regularly request first-level supervisors to identify officers who might benefit from the remedial aspects of the [EIS] program.
- *Recommendation 172* [OIR #134]: MPD should press forward toward full implementation of its Early Intervention System.
- *Recommendation 173* [PWG #11]: MPD should continue its work on an early warning system and move in the future towards working with Chicago Data Science for Social Good to enhance the early warning system.
    - *Note*: Because a small number of officers tend to be responsible for most adverse policing events, police departments throughout the country employ early intervention or early warning systems to help them identify at-risk officers. Most such systems, however, use inaccurate prediction rules, to poor effect. Fortunately, a data-driven, properly predictive early intervention system has recently been developed by the University of Chicago Data Science for Social Good Fellowship (DSSG) and the Center for Data Science and Public Policy (DSaPP), as part of the Obama White House Police Data Initiative. This data-driven system has been shown to improve the predictive power over existing early warning systems.
- *Recommendation 174* [CRT #20]: MPD should develop an SOP that provides direction to officers instructing them to manually engage dashcams and audio microphones whenever they can reasonably anticipate an encounter with an individual or group they may temporarily detain or take into custody.
- *Recommendation 175* [CRT #21]: During events that by policy require or recommend the use of recording devices, officers should be required to make a complete uninterrupted audio recording unless a victim or witness refuses to speak while the encounter is being recorded. Records must not be edited and must be real time and continuous. Officers may mute their microphones in situations involving personal conversations or training or mentoring discussions that have no relationship to the events that triggered the activation of the dashcam system.
- *Recommendation 176* [CRT #22]: In any circumstance in which an officer is otherwise required to write a report of the incident, that report must include a statement explaining any decision to mute any portion of the recording or to terminate the recording prior to the conclusion of the incident pursuant to the in-car video SOP.
- *Recommendation 177* [OIR #135, 136, 137, 138, and 139]: At the conclusion of this committee's work, the Common Council should appoint a new committee made up of members of this committee willing to serve and the original body camera committee willing to serve along with a representative from MPD to undertake a study looking into the issues in OIR recommendations 135, 136, 137, 138, and 139.
    - *Note*: The five OIR recommendations that this single Committee recommendation addresses all related to processes for considering, implementing, and continually monitoring and updating any potential City and MPD policy on body-worn cameras. The topic of body-worn cameras has become very controversial in recent years, and new research has emerged recently, so that the issue deserves thorough consideration and evaluation by a new Committee of community members to fully evaluate the research and the competing interests at stake.

GENESIS & MISSION OF THE COMMITTEE

On Saturday, March 7, 2015, Madison, Wisconsin, woke up to a news story that seems now-too-familiar in the United States—an unarmed Black man had been shot and killed by a white police officer. Tony Robinson died on March 6, 2017, after having been shot seven times by a 12-year veteran of the Madison Police Department (MPD). The incident took place a little over half a year after the killing of Michael Brown in Ferguson, Missouri, on August 9, 2014, an event that had pushed police treatment of Black Americans to front-page news across the nation. In Madison, District Attorney Ismael Ozanne declined to prosecute the officer for the shooting of Tony Robinson, and MPD found the shooting to be within policy. Nonetheless, the City's insurer saw sufficient vulnerabilities in the city's case that it subsequently settled a civil rights lawsuit with Tony Robinson's family, in which the family alleged excessive use of force, for $3.35 million.

The shooting brought to a head long-simmering tensions between the MPD and some of Madison's communities, particularly communities of color. Reactions included widespread sadness as well as concern and even outrage. Call for reform mounted when it was reported that the officer in Tony Robinson's case had been responsible for another controversial fatal officer-involved shooting eight years prior, for which he had received an MPD Medal of Valor. Thousands marched in protest. Many, including high school and university students, demanded immediate solutions in Madison to issues, highlighted by the Black Lives Matter movement, of police violence against Black people.

On May 21, 2015, following Tony Robinson's death and the public uproar it generated, the Madison Common Council adopted a resolution to create the Madison Police Department Policy & Procedure Review Ad Hoc Committee, a diverse citizen body consisting of 15 members, whose charge was to conduct a "comprehensive review of [the] Madison Police Department's culture, training, policies and procedures." This review has been regarded as critical to understanding the current strengths of the MPD as well as identifying areas for improvement, particularly in the troubled realms of "racial disparity, implicit bias, use of force, [and] dealing with people with mental health problems or who are under the influence of alcohol or other drugs." The Council also charged the Ad Hoc Committee with exploring MPD policies and practices with respect to "the rights of civilian witnesses, disproportionate contact with youth of color, culturally-related behavioral variations, and other areas."

The racially mediated divide to which Robinson's death drew attention is long-standing in Madison, with its complex history of progressivism and segregation, but has been unacknowledged until recently. The *Race to Equity Report*, released by the Wisconsin Council on Children and Families in 2013, rocked Madison and Dane County citizens from complacency by its finding of the "sheer magnitude of the [racial] disparities … in many of the most fundamental status indicators" in our 94-percent-white county. Among other disparities, the report documented a 10:1 Black:White arrest ratio, which contributes to Dane County's incarcerated population being about 50 percent Black. In addition to having one of the highest racial disparities in arrest and incarceration rates in the country, Dane County is also home to large racially mediated inequities in educational outcomes and attainment, unemployment, and poverty. The *Race to Equity* report called much-needed attention to our tale of two different cities. It fell to the Ad Hoc Committee to take up the exploration of racial disparities at the front end of the criminal justice system.

The concerns that motivated the Council, however, extended beyond race. On November 9, 2012, two years and four months before the shooting of Tony Robinson, police had shot and killed an unarmed white man in Madison. On that night, Paul Heenan returned home intoxicated and mistakenly entered a neighbor's house. The neighbor began to escort him home, but Heenan was confused and resisted. When MPD arrived on the scene, Heenan, drunkenly flailing his arms, approached an officer, and the officer shot and killed him. After an internal investigation and review by the District Attorney, the officer was cleared in the shooting, but soon thereafter was forced to resign for unrelated violations of MPD policy. Mr. Heenan's family sued and the city's insurer settled for $2.3 million. Paul Heenan's death helped spark legislation to require independent outside agencies to investigate police shootings in Wisconsin. A year and a half after the shooting of Paul Heenan, two MPD officers fatally shot a suicidal young woman, Ashley DiPiazza, in her apartment. Again, the District Attorney and MPD cleared the officers, and again, the family of the deceased initiated a civil rights lawsuit, resulting in an adverse jury verdict against the city and, ultimately, a $4.25 million settlement. A commonality in all these cases, reflective of a national pattern, as that a police response to a person in crisis—a response often precipitated by a 9-1-1 call seeking help for a friend or family member—had ended in tragedy.

It was in this context that the Ad Hoc Committee began its work when it held its first meeting on December 8, 2015. During the past three-and-a-half years, the Committee has undertaken to analyze comprehensively the City of Madison's Police Department's procedures and policies and to find ways in which the Department can improve, and the divides between the MPD and its many constituent communities can be bridged.

Committee members represent the many faces of Madison, racially, ethnically, and economically as well as in sexual orientation and gender identity, through the work we perform as part of our larger community, and through our past interactions with the Police. This diversity is deliberate; we bring with us an understanding of the broad differences within Madison as a whole and the ways in which these differences affect how the MPD interacts with and serves different segments of our population.

We commend our city's alders for taking action to address the ways in which the MPD's policies and procedures can and must be changed to resolve concerns about excessive or selective use of force and racially mediated arrest disparities, promote transparency and trust in the work of the Department, and recommit the City and the Department to fundamental principles of community- and problem-oriented policing. We also commend the Council Executive Committee's President's Work Group for the work it has done to provide a forum for discussion of policing and community goals, priorities, and interactions and for exploring policing models in use in other communities. And we commend the Community Response Team—a uniquely active group of concerned community members—for its extraordinary engagement with these issues and the specific recommendations it submitted to the Committee to supplement those formulated by the OIR team. Finally, we commend the MPD and the City Attorney's Office for working with us to come up with an action plan for change that we believe will improve what is already good about the MPD and reform what can be made better. Of course, we thank all of the committed citizen members of the Ad Hoc Committee, who met sometimes twice a month and at times even weekly for the past three-and-a-half-plus years.

The recommendations we put forward in this summary report are not intended to fix things once and for all. The City can and must do much more to address racial disparities within our criminal justice and education systems, housing, workplaces, and other realms of social life. It demands too much of law enforcement to expect police to resolve all of these issues themselves. We believe our city government must invest in measures to address the many issues that confront the police regularly because of a lack of resources locally for mental health treatment and equal economic and educational opportunity for all residents. By investing in root-cause solutions, we can mitigate the need for a police response that arises when other systems have failed. To use an analogy, ERs treat health crises, but a robust health care system and a healthy living environment promote health within a community, driving down ER visits.

This report thus should be viewed as a start, a guide for beginning to create a better, ever-more-forward-looking MPD, one that is responsive to the many smaller communities that make up Madison, including those that have been marginalized by the inequities deeply embedded in our society.

We hope that Madison will use our recommendations as a way of turning the hurt, angry, intense, and thoughtful conversations and testimony of these past few years into action and progress toward valuing all its residents. We present to you—the Common Council, the Mayor, the MPD, and the community at large—a work-in-progress with the heartfelt request that you listen and reflect and keep the conversation ongoing.

COMMITTEE REVIEW PROCESS & ACTIVITIES

The Ad Hoc Committee met for the first time in December 2015. The original 15 civilian members, who were appointed by Mayor Paul Soglin, included representatives from throughout the Madison community with a diversity of perspectives. The chairs of the Committee from its inception in December 2015 to December 2017 were Luis Yudice and Christian Albouras. They were followed by Keith Findley and Tom Brown, who remained cochairs through the completion of this Report.

For the first half year of its work, the Ad Hoc Committee met monthly and heard presentations relating to policing from inside and outside of the Madison Police Department and defined the scope of a formal study to be completed of the Madison Police Department's policies and practices. A full list of individuals and organizations that presented to the Committee over the three-and-one-half years of the Committee's work can be found in the timeline of the Committee's work, Appendix 2 to this Report. In late summer 2016, after a competitive process, the Committee selected the OIR Group of California, a firm that specializes in the outside review of police practices, to complete a comprehensive review of the MPD.

The OIR Group began its work in November 2016. During the course of its work, it met with MPD personnel, public officials connected to City and County government, community activists and leaders, and individual Madison residents. It also reviewed thousands of pages of documents pertaining to MPD operations, including policy manuals, training curricula, sample investigations from MPD's Department of Internal Affairs, case files from officer-involved shootings, documentation of uses of force by officers, and transcripts from civil court hearings.

During this same time, the President's Work Group of the Madison Common Council (formed in 2016) met to "provide a forum for residents, to share information on Madison policies and procedures, to explore police policies and procedures from other communities, and to make short-term policy recommendations while waiting for the results of the MPD Policy and Procedure Review Ad Hoc Committee." Its assignment was to:

- Provide a forum for residents and members of the Common Council to discuss police and community goals, priorities and interactions. Build a deeper understanding of policing for elected officials and members of the public; and,
- Explore models and options from other communities related to policing and other police policies; and,
- Provide a forum for information sharing regarding police training, policies, data and trends including detailed presentations from the Madison Police Department (MPD) related to policing; and,
- Make recommendations to the Common Council on short-term policy, procedure and training while waiting for the results of the MPD Policy and Procedure Review Ad Hoc Committee process.

Beginning its work in September 2016, the President's Work Group reviewed a wide range of subjects relating to community and police relations. Following the direction of the Work Group, the Common Council directed the Ad Hoc Committee to:

1) Investigate additional support for MPD officers interacting with emotionally disturbed persons (EDPs), including types of training and ongoing training strategies to improve interactions (in particular, a detailed analysis of ProTraining, an evidence-based practice proven to reduce overall use of physical force and the use of weapon force in police calls) and hiring social workers to work with officers;
2) Evaluate a set of precautionary use-of-force principles (necessity, proportionality, reassessment, totality of officer conduct, and immediate threat) to determine whether and how they may be addressed in MPD policies, practices and procedures;
3) Provide a review of the feasibility of external oversight of MPD internal investigations;
4) Further explore the IA Pro capabilities for early warning and intervention and speak with the University of Chicago Data Science for Social Good statisticians about collaborating to develop a predictive early warning system to support personnel management.
5) Provide an implementation plan for a root cause analysis process at MPD for examining critical incidents and broader trends to better understand them and avoid adverse outcomes in the future.

(President's Work Group Action Items 2, 5, 10, 11, and 12).

The OIR Group completed its report in December 2017. The final OIR report included an evaluation of MPD's strengths and opportunities for growth and a blueprint for enhancing MPD's commitments to best practices and progressive, responsive law enforcement, in the form of 146 recommendations for change. In January 2018, the Madison Police Department, the Madison Professional Police Officers' Association (MPPOA), and the City Attorney submitted responses to the OIR Report, including comments on its recommendations. In March 2018, the OIR Group delivered a "Supplement to the Final Report," which addressed issues or questions raised by the MPD, MPPOA, and City Attorney. And in November 2018, the MPD submitted an Update to its Response to the OIR Report, "as a progress report to update the community on MPD's work responding to the OIR report."

Beginning in March 2018, the Ad Hoc Committee began meeting once to twice a month to consider each of the OIR recommendations in turn, along with the responses submitted by the MPD, MPPOA, and City Attorney. In early 2019 the Committee increased the frequency of its meetings to up to four times a month in order to facilitate completion of its mammoth undertaking.

In November 2018, the Ad Hoc Committee issued a call inviting community organizations and individuals to submit any additional recommendations they wanted the Committee to consider. In response, the Committee received 46 additional distinct recommendations—28 from the Community Response Team, 5 from Ad Hoc Committee cochair Keith Findley, and 13 from other individual community members.

Throughout the Ad Hoc Committee's process—from its first meetings through its final votes on each individual recommendation—a high-ranking representative of the MPD was present to work with the Committee to help it understand the MPD's positions and concerns and the realities of its work in practice. Initially, Captain Mary Schauf served as the MPD representative, with Captain James Wheeler substituting when necessary. During the process of considering and voting on specific recommendations, Assistant Chief (now Interim Chief) Vic Wahl served as the MPD representative and attended every meeting to provide this assistance. The Committee is deeply indebted to Capt. Schauf, Capt. Wheeler, Chief Wahl, and the entire MPD for their patience, vigilance, and assistance throughout this process.

In addition, a representative from the City Attorney's Office attended each meeting—most often Assistant City Attorney Marci Paulsen, with Assistant City Attorney Lara Mainella substituting during the vendor contracting process. The Committee greatly appreciates the legal advice and assistance they provided. The Committee also wishes to acknowledge support and assistance provided by the Mayor's Office, particularly Deputy Mayor Gloria Reyes, who attended the majority of meetings, and after the change of Mayoral administrations, Deputy Mayor Cameron McClay, who became our liaison with the Mayor's Office. The Committee is also indebted to other city staff who participated in various aspects of its work, and particularly Rachel Rodriguez, and late in the process Nikki Perez, both from the City Clerk's Office, who provided invaluable logistical support as well as Brian Pittelli of the Finance Department who guided us through the Request for Proposal.

Additionally, even after the OIR Group completed its contractual work for the City and submitted its report and supplemental report, OIR team leader Michael Gennaco continued, on a volunteer basis, to attend by telephone from California almost all of the meetings at which the Committee considered OIR-based and community-based recommendations, to provide the Committee with information, insight, and guidance. The Committee is profoundly grateful to Mike Gennaco and the OIR Group for this extraordinary generosity of time and uncompensated commitment to our process and product.

The process that the Committee followed in considering each of the recommendations submitted to the Committee was to consider it in light of the objectives of: 1) achieving maximum transparency, accountability, and community engagement; 2) implementing best practices in policing; 3) minimizing racial disparities and negative impacts on marginalized groups; and 4) minimizing use of force in general, and particularly deadly force.

After educating itself through extensive reading and testimony by relevant experts on each of the topics before it for consideration, and weighing input from the MPD, MPPOA, the City Attorney's Office, and the community, Committee

members engaged in discussion and agreed—usually but not always unanimously—to either adopt each OIR item as suggested or with revisions. For a majority of the recommendations, the MPD was in full agreement with the recommendation. In some cases, when the Committee revised the recommendations, the revisions preserved the OIR consultants' intent, while clarifying its prescriptions. In other cases, the Committee made changes to the recommendations to accommodate legitimate concerns or objections raised by the MPD, MPPOA, or the City Attorney's Office. In a smaller subset of cases, after carefully considering objections from the MPD, MPPOA, or the City Attorney's Office, along with research and input from others, the Ad Hoc Committee chose to adopt or modify a recommendation despite those objections. The Committee similarly reviewed action items from the President's Work Group report and community-submitted proposed recommendations, carefully weighing and evaluating input on each recommendation from the MPD, the City Attorney's Office, community members, and expert sources.

PUBLIC ENGAGEMENT

The Committee developed a public engagement process to provide a forum for the diverse constituencies of the City of Madison and to ensure inclusion of those voices in its consideration of the OIR Report recommendations. An audience of racially, culturally, economically, and linguistically diverse individuals came forward to express their perspectives for meaningful change and growth in the policies and procedures of the MPD. These people expressed the importance of developing MPD policies and practices that reflect their experiences and needs as citizens of Madison. They want solutions to the issues identified in this report that reflect their input and that demonstrate that they belong, are welcomed and that recognize their rights and how they live, work, and enjoy life with their families.

COMMITTEE RECOMMENDATIONS

This section lists specific recommendations to achieve the vision and community safety and equity objectives the Ad Hoc Committee established. Many of these recommendations will provide focus and strategic direction to the MPD. Others relate to topics that aren't effectively addressed in such a plan but are important to achieving the desired future for the area. This section also recommends a planning area that will be the focus of the special area plan. To facilitate action on these recommendations, an implementation matrix is included that identifies suggested next steps, the agencies primarily responsible for each, supporting commissions, general timeframe, and other notes.

In this section, "OIR Report #" refers to the recommendation as listed in the OIR Report; "CRT #" refers to a recommendation generated by the Citizen's Response Team; "PWG #" refers to a recommendation derived from the President's Work Group; "Community E-mail #" refers to a recommendation drawn from an email submitted to the Committee via email; "Findley #" refers to a recommendation proposed by Committee Co-chair Keith Findley; "Community E-mail #" refers to a recommendation received from a community-member at large; "Taylor #" refers to a recommendation from State Representative Chris Taylor; and "AHC #" refers to a recommendation originating from the Ad Hoc Committee itself.

PART I: Civilian Oversight, Public Engagement & Public Confidence

Recommendation #1:

The City should enhance its civilian oversight by establishing an independent police monitor's office staffed by an independent monitor and reporting to a civilian police review body. [OIR Report #146]

> *"Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."*
> —Recommendation 2.8 President's Task Force on 21st Century Policing – 2015

Discussion: In its final recommendation, Recommendation #146, on page 245 of its report, the OIR Group recommended: "Madison should enhance its civilian oversight by establishing an independent police auditor's office reporting to a civilian police review body." The MPD did not oppose this recommendation, and the Madison Ad Hoc Committee wholeheartedly agrees with it. Indeed, the Committee believes that creating an independent monitor and civilian review body is so critical, both in its own right and to ensure successful implementation of all of the other recommendations the Committee is making, that we have moved this up as our first recommendation, and we pulled it out and forwarded it separately to the Common Council and Mayor prior to completion of the full report so that the City could consider including it in the upcoming budget. The Council voted to accept this recommendation, and the Mayor included funds to create the Office of the Independent Monitor in her budget proposal.

The Ad Hoc Committee believes that civilian oversight is critical to ensuring the vigilance and attentiveness necessary to ensure that the MPD is the progressive department that it says it is, and moreover, that it is making continuous progress toward achieving: 1) its own ideals and the expectations of itself and the requirements its own rules and procedures impose; 2) the requirements imposed on it by the Common Council and Mayor, pursuant to this report; and 3) the mandates emanating from the President's Work Group, as well as other initiatives-to-come.

MPD has, admirably, responded to the OIR Report by agreeing to make changes in accordance with many, but notably not all, of the OIR Group's recommendations, including a number that the Ad Hoc Committee strongly endorses. There is no doubt that community policing is a cornerstone of the Department's philosophy, but as the OIR Group noted, there is what may be described as a tension between the MPD's long history of endorsing and espousing progressive policing ideals and some of its less-than-community-oriented policies and practices. A recurring theme the OIR Group encountered—both from those within the MPD and from Madison citizens—is the question: Is the MPD really what it once was and what it says it is? Does it uphold its own ideals and best practices?

We thus recommend the creation of an independent monitor overseen by a Civilian Review Board as our first recommendation. Our reasons for this are three:

- We have observed that some of Madison's many diverse communities perceive Madison's police department as insular and unresponsive to their needs, and, therefore, fail to invest their trust in its officers.
    - Formalized civilian oversight is the most direct way the City can confront this challenge, ensure that the MPD is responsive to the needs and concerns of all segments of the community, and thereby build trust.
- It is our belief that, in a free and democratic society, the policing function must be controlled directly by the people themselves as much as possible.
    - To the extent that the community yields some of its freedoms to the authority of a police force in the interest of public safety and harmony, it must have tools to directly oversee the exercise of that police authority; the community must have a strong voice in deciding how it wants to be policed.
- We see almost all of our other recommendations as contingent or dependent on the establishment of a civilian police review body.
    - In order to keep the process and the promise of reform ongoing, it is essential that the MPD continue to receive input from those outside the Department, including the public it serves and to which it is ultimately responsible.

A variety of models exist for civilian oversight mechanisms. OIR Group recommended a monitor-type oversight mechanism and we concur. A monitor has the capacity to examine policies, patterns, and practices, and can be effective at promoting long-term systemic changes.

The monitor's office must be strong and have sufficient authority and the cooperation of the MPD to permit the monitor to engage in thorough investigations and develop meaningful prescriptions. Importantly, the monitor must be sufficiently independent of the MPD to ensure that its office does not become subject to administrative "capture," as happens so often when agencies are monitored by people with whom they are too closely aligned. Civilian oversight mechanisms have been set up in many cities, but most lack key features required to be highly effective. There is a broad expert consensus on organizational elements that are crucial for success in civilian oversight agencies and we have incorporated these into our recommendation. These elements include full independence, adequate jurisdiction, adequate authority (including capacity to conduct independent investigations), unfettered access to records and personnel, full cooperation from police and other city partners, access to independent legal counsel, adequate resources, public reporting and transparency, and community outreach and involvement.

The composition of the civilian oversight board is crucial to its success. A civilian oversight board must truly represent the community in all its diversity, including differences along divides of race, ethnicity, gender, sexual orientation, geographic region within the City, socioeconomic status, and prior experience with the MPD, including those with lived experiences with arrest, criminal conviction, homelessness, substance abuse, and mental health problems. Though civilian oversight boards can provide accountability, relatively few existing boards are considered effective. As the Chicago Police Accountability Task Force report noted, "real and lasting change is possible only when the people most affected by policing have a voice." Reviews have found that in judging misconduct, civilian oversight boards are often even more deferential to officers than police internal affairs departments, and this appears to be a function of board composition. Civilians who volunteer to serve on oversight boards often have an affiliation with police. Moreover, research shows that education, income, and age are negatively related to reported experience with police mistreatment and positively predict favorability toward police, such that conventional criteria for appointment to city committees inherently create unrepresentative oversight boards. Meanwhile, civilian oversight boards with greater socioeconomic diversity, such as the Syracuse Citizen Review Board, appear to provide greater police accountability. The ACLU has recommended that a majority of board members should be nominated by a designated set of community-based organizations with appropriate characteristics, as implemented for example in Newark, NJ, and we strongly endorse this recommendation. The appointment criteria we specify should ensure a board with sufficient representation of communities most impacted, increasing the likelihood that the board would provide true accountability, and successfully build

trust. It is also critical that the board be provided with access to extensive training, to help ensure sound decision making and credibility.

We recognize that this recommendation will require fiscal outlays. We firmly believe this oversight is well worth the cost, given that it is the most effective way we can see to build true trust in and accountability between the community and the MPD, and to ensure that our recommendations do not become just another report that gathers dust on a shelf. We cannot estimate the total cost of creating a monitor's office at this time because we do not know yet how much the monitor and civilian board will be called upon to undertake investigations and other actions as a part of oversight. We suggest that, at a minimum, the City begin by hiring a highly qualified individual to serve as monitor and provide staff support, an office physically apart from the MPD, and operating expenses for the monitor. With time and experience, the monitor and the City can then gauge what is needed to fully implement the responsibilities of this new position and office.

We thus recommend that the Common Council adopt an ordinance to be signed by the Mayor enacting the following:

Independent Monitor and Civilian Oversight Board

The ordinance to create an independent monitor and civilian oversight board, which the Ad Hoc Committee advocates, includes the following elements:

I. Independent Monitor

A. **Duties of the Independent Monitor:**
   1. **Actively and on an ongoing basis monitor the MPD's compliance with its own SOPs, governing laws, and lawful orders from the Common Council, including compliance with or progress toward meeting any recommendations or directives emanating from the work of the Ad Hoc Committee to Review the MPD's Policies and Procedures and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement (that is, to ensure that the MPD is who it says it is).**
   2. **Actively monitor MPD audits of Department programs and activities, police officer use-of-force incidents, and MPD investigations of personnel (referring cases back for additional investigation when necessary and recommending findings) and, in its discretion and within the Monitor's staffing and funding capabilities, undertake independent investigations of personnel, in response to external or internally generated complaints of misconduct; make recommendations to the Chief of Police regarding administrative action, including possible discipline, for such personnel; refer appropriate cases to the Police and Fire Commission for disciplinary action; and appoint counsel to provide representation to aggrieved individuals in presenting and litigating complaints against the MPD and its personnel with the PFC, to the extent the Monitor concludes that those complaints have arguable merit.**
   3. **When a complaint is filed with the MPD against the Chief of Police or high-ranking MPD command staff, determine whether the complaint warrants appointment of an outside investigator to conduct an independent investigation, and if so, make that appointment.**
   4. **Make recommendations regarding policy issues, and address any other issues of concern to the community, the members of the Civilian Oversight Board created pursuant to the Ad Hoc Committee's recommendations (described below), the Chief of Police, other MPD personnel, the Mayor or the Common Council.**
   5. **Provide input to the Civilian Oversight Board for its annual review of the Chief of Police.**
   6. **Monitor any other internal investigation of possible misconduct or undertake an independent investigation of possible misconduct by personnel when requested to do so by the Civilian Oversight Board, the Mayor, or the Common Council.**
   7. **Provide a process for receiving and investigating complaints from community members about the Madison Police Department, the Chief of Police, or any personnel.**
   8. **Submit an annual public report to the Mayor and Common Council by a date certain (e.g., March 15), setting forth the work of the Monitor's office during the prior calendar year; identifying trends regarding complaints, investigations, and discipline of police department personnel, including, but without identifying specific persons, information regarding personnel who were the subject of multiple complaints, complainants who filed multiple complaints, and issues that were raised by multiple complaints; and making recommendations regarding the sufficiency of investigations and the appropriateness of disciplinary actions, if any, and changes**

to policies, rules, and training. Provide other pattern and practice analysis as needed. The annual public report shall also include assessment of the police department's progress in complying with its own SOPs, governing laws, and lawful orders from the Mayor or Common Council, including compliance with or progress toward meeting any recommendations or directives emanating from the work of the Ad Hoc Committee to Review the MPD's Policies and Procedures and the OIR Report, to the extent they are adopted and approved by the Common Council, as well as the MPD's own stated goals and mission statement (that is, to ensure that the MPD is who it says it is).

9. **In addition to submitting the annual report, the Monitor's Office shall maintain an ongoing status report, which shall be available to the public and which shall include, among other things, patterns relating to complaints and recommendations regarding the sufficiency of investigations, determinations as to whether department rules and policies have been violated, and the appropriateness of disciplinary sanctions, if any.**
10. **Engage in community outreach. This could include talking with the community about police policies, procedures or training, gathering input from a range of community members and groups, reaching out to special underserved/marginalized communities, and publicizing processes for handling complaints.**
11. **Provide staffing for the Civilian Oversight Board.**

B. The Independent Monitor should be a person with extensive knowledge of civilian oversight of policing and "best practices" in policing, but who has never been employed by the MPD. It would be desirable that the person have sufficient background in civil rights and equity.

C. The Independent Monitor shall be independent of the MPD line of command, but shall be entitled to full cooperation from the MPD, including access to all records, policies, SOP's, data, and other information needed to perform the duties outlined here. To the extent permitted by law, the Monitor should also have subpoena power to compel testimony from witnesses and production of relevant documents.

D. The Monitor, its staff, the Board, and all consultants and experts hired by the monitor shall treat all documents and information regarding specific investigations or officers as confidential except to the extent needed to carry out their duties, including the transparency and reporting responsibilities of the Monitor's Office.

E. The Office of the Independent Monitor should have authority and funding to retain and use independent legal counsel.

F. The Independent Monitor should be provided adequate resources (funding and staffing) to be effective.

II. Civilian Oversight Board

A. The work of the Independent Monitor shall be undertaken in consultation and collaboration with a Civilian Oversight Board, whose members shall be appointed by the Mayor and the Common Council in a manner that ensures diversity and inclusion of Madison's various communities, including but not limited to representatives of the African American, Asian, Latino, Native American and LGBTQ communities as well as a diversity of ages, socioeconomic status, work experiences, gender, geographic residence, and organizations in the fields of mental health, youth advocacy and AODA, and including individuals with arrest or conviction records. A majority of the members of the board shall be nominated by a designated set of community-based organizations that have an interest in civil rights, immigrant rights, disability rights/mental health, racial equity, and social justice, and that also have an interest in the safety of the city. Organizations with budgets under $1 million shall be given priority in making these nominations. Additionally, 25-40% of the Board shall be composed of members with lived experience with homelessness, mental health, substance abuse and/or arrest or conviction records. The composition of the Board shall be run through the City's Racial Equity and Social Justice Initiative process to ensure equity and inclusion.

B. The functions of the board should include the following:

1. **Provide input to the Mayor and Common Council to assist them in assessing the effectiveness of the Monitor's Office;**
2. **With input from the Independent Monitor, conduct an annual review of the Chief of Police to assess her or his performance in office, and submit a report to the designated City Officials responsible for completing the annual performance review of the Chief as recommended by the Ad Hoc Committee, including recommendations as to whether the Chief has satisfactorily performed his or her duties or whether the Chief has failed to perform satisfactorily, thereby constituting "cause" for referral to the PFC with a recommendation for dismissal.**
3. **Make policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations; and the complaint process;**

4. **Address any other issues of concern to the community, members of the board, the monitor, the Chief of Police, the Mayor, or the Common Council;**
5. **Furnish an annual public report to the Mayor and Common Council regarding the board's assessment of the work of the monitor's office; the board's activities during the preceding year; concerns expressed by community members; the board's assessment of the police investigative and disciplinary processes; recommendations for ways that police department can improve its relationships with the community; and recommendations for changes to police department policies, rules, hiring, training, and the complaint process.**

C. **In order to determine whether the Monitor's Office is effectively performing its duties and to make recommendations to the Chief of Police and Monitor's Office regarding investigations, determinations as to whether department rules or policies have been violated, and the appropriateness of disciplinary sanctions, if any, the Board should receive regular reports from the Monitor's office and should be allowed to review pertinent portions of the personnel files of personnel and PSIA files, including statements of personnel.**

D. **The members of the Board should engage in ongoing training to build expertise. The Board should have access to whatever training it needs, with sufficient funding provided.**

E. **The City should ensure socioeconomic standing is not a barrier to serving on the Board. This may be achieved by providing childcare, providing stipends, alternating meeting times, etc.**

Recommendation #2:

MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant discipline to determine to what degree the PFC post-disciplinary process is impacting those decisions. [OIR Report #143]

Discussion: The PFC hearing process imposes a significant burden in disciplinary cases. If the Chief notifies an officer of his intent to implement a suspension, demotion, or termination, the officer can request a full hearing before the PFC, where the Chief (as complainant) must prove his or her case through presentation of evidence, after which the PFC can affirm, modify, or reverse the disciplinary decision. This burdensome process provides a strong potential incentive for MPD to compromise serious discipline. One indication that this might be occurring is that no MPD-imposed disciplinary cases have been heard before the PFC in at least six years. Moreover, OIR notes a potential pattern of disciplinary leniency on the part of MPD, and finds that when MPD does impose a sanction of suspension, in the majority of cases all or most of the suspension days are held "in abeyance," such that the officer is not actually suspended so long as they do not commit future transgressions. OIR notes that, "In our experience in working with numerous police agencies, we have yet to encounter one like MPD where years have passed and no officer has challenged a disciplinary determination. It would be akin to a criminal justice system in which every defendant pleaded guilty. In policing it is difficult enough to remain firm in disciplining officers; if there is also strong reticence in participating in the post-disciplinary processes, the likely result is reduced accountability for officers." MPD disagrees with OIR's contention that it "settles" suspension cases (reaching agreements with officers) or that discipline has been compromised by the burdensome PFC post-disciplinary process. Nonetheless, the Committee adopted this OIR recommendation (#143) as drafted by OIR because we agree with OIR's position that the "structural incentives and their potential influence merit ongoing attention…. [I]t will be noteworthy and important to gain the auditor's perspective on this issue after his or her having had an opportunity to dig into individual cases and evaluate trend lines." This is an empirical question on which the auditor would be best placed to make a determination.

Recommendation #3:

The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints. [OIR Report #144]

Discussion: One structural impediment to the current PFC hearing structure is the makeup of the PFC itself. Commissioners are appointed by the Mayor and often have additional full-time responsibilities. Thus, there can be scheduling challenges to hearing any particular case. One ameliorative measure that has been used in Madison in the past (though not recently) and for which the PFC has promulgated rules is to have the responsibility to conduct the hearing assigned to a hearing examiner. This approach is routinely used in some other Wisconsin cities. A hearing examiner can conduct both initial and evidentiary hearings, more efficiently hear the case, and prepare a comprehensive report for the PFC, including recommendations on outcome. All hearings are videotaped, with transcripts prepared. Case law in Wisconsin has approved this approach as long as the ultimate decision remains with the PFC. The Committee believes that this could facilitate PFC processing of complaints and MPD has stated

that it "supports the use of hearing examiners when appropriate."

Recommendation #4:

When MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, the Independent Monitor should review the complaint and decide whether an outside investigator should be appointed and produce a transparent public document about that decision-making process. If the PFC receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation. In the absence of an Independent Monitor, the decision must be based on an objective evaluation process like just culture to establish an internal decision tree process. [OIR Report #145]

Discussion: As OIR noted, "When a complaint is lodged against the Chief or high-ranking command staff of a police agency, it presents questions regarding how an investigation can be effectively and fairly conducted. Obviously, there are challenges for any such investigation to be undertaken objectively by the agency itself." Due to the inherent conflicts of interest, in many municipalities, such a complaint is regularly assigned to an outside investigator.

The original OIR recommendation stated: "When the PFC [Police & Fire Commission] or MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation." The Committee recognizes that some complaints might be frivolous or trivial, and do not require outside investigation.

But for a complaint submitted to MPD, inherent conflicts of interest would affect not just the capacity of the Department to conduct an unbiased investigation, but also its capacity to make an unbiased decision on whether an outside investigation was warranted. Command officers would have an inherent conflict of interest about whether to appoint an outside investigator to investigate themselves or one of their colleagues (i.e., it would be asking the people against whom the complaint has been lodged to decide whether it's frivolous enough to not warrant an outside investigation).

Fortunately, the existence of an Independent Monitor could resolve this issue. The Independent Monitor could review the complaint and make a decision on whether an outside investigator should be appointed, and publicly document the decision-making process in a transparent fashion. In the absence of an Independent Monitor, the Committee believes that it would be necessary to build an objective evaluation process for making this decision – an institutional mechanism that would remove bias with a structured algorithmic analysis, so the decision was not just a personal opinion. Potentially, a decision tree process could incorporate factors such as whether the complaint alleged violation of a law or departmental policy (i.e., was alleging misconduct), whether it involved a potentially intentional or reckless act, whether an attorney of ordinary competence would recognize it as so lacking in merit that there is no substantial possibility that it would be sustained, etc.

A complaint could also be brought to the PFC. One major weakness of the current PFC process is that it provides no real mechanism to investigate the facts of a case prior to proceeding to hearing. Moreover, the complainant does not have appointed counsel whereas the officer is always represented by counsel, creating a difficult, asymmetric situation. As OIR noted: "The current mechanism provides no formal discovery process akin to civil litigation through which facts could be developed…. Instead of requiring a complainant to proceed to a hearing conducted by the PFC itself, as was recently undertaken, PFC could refer any such future complaint to an outside independent investigator. That way, facts could be collected efficiently and objectively, and PFC and the complainant could rely on the facts developed during the investigation resulting in a streamlined hearing process. There is precedent for such a process in Madison; in the 1960's a complaint made by the [Madison Professional] Police [Officers] Association against the Chief was referred out for an independent investigation." As Mike Gennaco of OIR further explained: "I do think there is an advantage to telegraphing to the PFC that when there is an allegation against the Chief, it shouldn't necessarily be processed by the complainant, which is what has happened the most recent couple times that there have been complaints against the Chief. The citizen who makes a complaint has either had to hire counsel or find counsel to go forward and there wasn't any outside investigator collecting the facts." Using outside investigations should enable fairer and better-informed adjudication by the PFC. (Note also that this recommendation works in tandem with the Committee's Recommendation #1 to improve the PFC process. Recommendation #1 urges the City to create the office of the Independent Monitor with authority to appoint counsel for individuals who have brought potentially meritorious complaints to the PFC.)

The Ad Hoc Committee thus adopted a modified version of the original OIR recommendation. The MPD representative present for the Committee's deliberations expressed no opposition to this recommendation. MPD did note that, currently, it elects on occasion to request that an outside agency perform an investigation or review of a complaint, deciding this on a case-by-case basis.

Recommendation #5:

While retaining the ultimate determination on selecting the chief, the PFC should consider ways to involve the Madison community in the selection process through community panels and interviews. [OIR Report #140]

Discussion: President Obama's Task Force on 21st Century Policing recommends that law enforcement agencies establish civilian oversight mechanisms within their communities. Increasing community involvement is an important way to increase trust and reduce alienation and misunderstanding between the community and law enforcement.

There are several methods communities can use to promote community involvement, and one of those ways is to involve community members in the selection of the Chief of Police. Other recommendations in this report address other methods, such as the establishment of an independent monitor and a civilian review board, and community input into formulation of Departmental policy. Community input into such decisions is one of the defining characteristics of true community policing. For example, as Lincoln, NE, Public Safety Director Tom Casady notes:

> Ultimately, citizens should be involved in major decisions that a police department makes. For example, election of a police chief, major promotions, important policy questions and oversight of the police. That's what we practice here in Lincoln and I think that's what distinguishes us from other cities that claim to be practicing community policing.

The Madison Police and Fire Commission (PFC) is a five-person board whose members are appointed by the Mayor. Pursuant to state law, the PFC is responsible for selecting a Chief of Police when a vacancy occurs. The PFC controls the application process, which traditionally has involved interviews between the PFC members and candidates. Currently, there is little community input or effort to engage the community in the selection process. While the PFC is appointed to represent the community, the perspectives of PFC members may not fully represent the perspectives and knowledge of community members. Members of communities most impacted by policing are likely to be underrepresented in PFC appointments. Moreover, Chiefs exercise a great deal of power and autonomy, and the law requires a finding of cause to remove a Chief from office. The practical effect of the law is that a Chief can serve as long as s/he wants even if the community decides a Chief is not serving its best interests. Thus, an absence of community input during the selection process is problematic.

In selecting a new Chief, OIR suggests that the PFC should find a range of ways to solicit input from the broader Madison community. For example, the interview process can provide one opportunity for meaningful public input and engagement. As OIR notes, "A number of jurisdictions have recently included a public component to the Chief selection process in which community panels are provided the opportunity to ask questions and engage with the final set of candidates."

MPD takes no position on this recommendation. The PFC does not oppose this recommendation. The Ad Hoc Committee strongly endorses this OIR recommendation.

Recommendation #6:

The City should institute protocols calling for a performance evaluation process that includes members of the community, prioritizing socio-economic diversity among those members, for the chief of police at fixed intervals, with the evaluation being a potential basis for a finding of "cause," should the chief's performance fall significantly below community expectations. This evaluation should not be conducted by the PFC. [OIR Report #141]

Discussion: Once selected, a Madison Chief of Police can serve indefinitely, and can only be removed by the Police and Fire Commission "for cause." This system is unique to Wisconsin – in most U.S. jurisdictions, police chiefs serve at the pleasure of city elected officials or a city administrator, and often serve limited terms. Though the system found in Wisconsin was instituted as an anticorruption measure and can insulate chiefs from political pressure, it can also result in a lack of accountability and a limited ability to replace a chief who has ceased to be effective or responsive to the community's needs. In addition, there are no assessment tools currently in place to evaluate the performance of the Chief.

OIR suggested that one mechanism to rectify this accountability deficit was to set up a system to formally evaluate the Chief at fixed intervals, with a finding of sufficiently poor performance potentially leading to removal. OIR envisioned a process in which:

> After a fixed period the PFC would solicit input from its community and then prepare a performance evaluation considering what the Chief indicated she or he intended to accomplish during the application interview, assessing the degree to which those objectives were achieved, identifying additional accomplishments and highlighting any performance concerns. The evaluation would provide three options; if the Chief's performance met or exceeded expectations, she or he would be encouraged to continue; if the PFC believed that performance needed to improve; the Chief could be placed on a performance improvement plan, or if the performance was so below expectations that the Chief had lost confidence in the community, it would constitute "cause" under the statute and form a basis for removal.

OIR recognized that the PFC might not be a fully suitable body for conducting the evaluation, and that another body might be more appropriate. As one possible alternative, it suggested that the evaluation might be conducted by the Mayor, then submitted to the Common Council. If the evaluation found substandard performance or a sustained inability of the Chief to improve on achieving certain metrics, it could then be forwarded to the PFC, potentially resulting in removal if the evaluation results provided a finding of "cause."

While the City Attorney's Office did not object to creating an evaluation process, it did express concern about using this as a potential basis for removal, stating: "The City Attorney does not, however, agree that there should or could be a finding of 'cause' if someone believes the Chief's performance has fallen significantly below community expectations…. It would not be considered 'cause' under the statute if someone believes the Chief's performance falls significantly below community expectations. 'Community expectations' is a vague undefinable term and to subject the chief to removal from office for this reason would not be permissible under the statute."

The City Attorney, however, did not cite any authority for this conclusion, and the Committee does not believe that there is any reason to read the statutes as prohibiting a finding of "cause" when a chief is seriously underperforming. The Committee notes that the standard for removing a Chief of Police in the statutes is deliberately broad and vague, requiring only the PFC's judgment about what constitutes "cause." [8] By contrast, the sole process that the statutes provide for removal of a subordinate officers is a disciplinary action for violation of a "rule or order" and such discipline requires that a "just cause" standard be met (Wis. Stat. § 62.13(5) "Disciplinary actions against subordinates"), as opposed to merely a "cause" standard.

Unlike the "cause" standard applicable to the Chief, the "just cause" standard for subordinates is very specific and well-defined; the statutes provide a specific list of standards applicable for determining "just cause" in disciplinary actions against subordinates. [9] When a Chief specifically stands accused of violating a rule or order, these "just cause" standards also apply to

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[8] Under Wisconsin Statute § 62.13(3), the "chief of police … shall hold their offices during good behavior, subject to suspension or removal by the board [PFC] for cause."

[9] Under Wis. Stat. § 62.13(5)(em), that list includes:

> (em) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:
>
> 1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
> 2. Whether the rule or order that the subordinate allegedly violated is reasonable.
> 3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
> 4. Whether the effort described under subd. 3. was fair and objective.
> 5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
> 6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

the Chief (i.e., in a disciplinary action), [10] but it appears that a PFC may choose to remove a Chief for other valid "cause" (e.g., issues of competence, general non-performance, and the like, that don't specifically involve violation of a rule or order). In addition, the Committee notes that, even if the more-demanding "just cause" standard were construed to apply to any termination of a Chief, the Committee's recommendation on this issue would remain important because, after a poor evaluation, the Mayor could specify orders that codify a performance evaluation plan for the Chief, where violation of those orders could constitute a basis for removal under even the "just cause" disciplinary process.

Moreover, as OIR noted in reply:

> The City Attorney's response suggests that there could never be a time when a Chief's performance in relation to community expectations could itself suffice to constitute "cause." We respectfully disagree. A reasonable interpretation of the statute would suggest that extremely poor performance and unresponsiveness to the community at some point could and should constitute "cause." The repeated use of the term "someone" in the City Attorney's response suggests a misreading of the recommendation. We certainly do not suggest that a single person's dissatisfaction with a Chief's performance could constitute cause for removal.

The PFC provided input to the Ad Hoc Committee via Committee Co-Chair Keith Findley, who was serving on the PFC at the time. The PFC was comfortable with the idea of having the Chief evaluated, but indicated that it should not be the body performing the evaluation, because it had a role, as a quasi-judicial body, of adjudicating disputes and complaints against the Chief. Thus, the PFC felt there would be a conflict of interest if it were simultaneously reviewing the Chief (effectively acting in a supervisory role) and adjudicating the Chief's appeals of the decisions. Thus, the evaluation should be done by someone other than the PFC.

In light of the input from the PFC, the Committee modified the recommendation to specify that the body that would perform the evaluations should consist of members of the community. A Committee member pointed out that the evaluating body should be constituted with "an eye toward using a racial and gender inclusion lens." Committee member Sean Saiz then noted: "I was thinking socio-economic lines, because I mean, one of the things that I find on certain committees is you will get racial diversity, but you don't get a lot of socio-economic diversity, at least not on the city committees that I've been on. You get a certain strata, usually middle class or above, once in a while, someone who is not in their class, but I think that's really important, right? Because those are the people that are most affected by the things that the police do." The Committee concurred and integrated prioritization of socio-economic diversity into the language of the recommendation. In a subsequent meeting, the Committee formulated and passed Recommendation 1 [OIR #146]. In that recommendation, the Committee specified that conducting these performance evaluations should be one of the duties of the Civilian Oversight Board (see Recommendation 1 provision II.B.5). In addition, the Committee included very specific recommendations for the composition of the Civilian Oversight Board, to ensure a board that would be truly effective and representative of the community, and particularly the segments of the community most affected by policing.

The Committee believes that this recommendation provides a mechanism, compatible with the statutory framework for police department oversight in Wisconsin, that can help ensure that police chiefs remain accountable and responsive to Madison community needs.

Recommendation #7:

The City should consult with its state legislative representative to propose amending the PFC statute so that the chief of police serves a fixed term, subject to renewal by the PFC. [OIR Report #142]

Discussion: Under Wisconsin statute, a police chief, once selected by a PFC, can serve for life and can only be removed for "cause." This system is unique to Wisconsin. Though it can buffer a chief from the vicissitudes of politics, it can also leave a chief unaccountable and is generally viewed as a historical anachronism, inconsistent with best practices. The threshold

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7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

[10] Wis. Stat. § 62.13(5) also specifies that the process governing disciplinary actions for violation of a rule or order "shall apply to disciplinary actions against the chiefs where applicable."

required for "cause" can result in a chief continuing to serve indefinitely regardless of effectiveness, performance, or community wishes. The Committee recommends that Madison consider seeking an amendment in the statute to have the Chief serve a fixed term of years, consistent with practices in most U.S. municipalities. Such a modification would buffer police leadership for a fixed period of time, but unlike the current situation, provide for milestones at which point the Chief, consistent with virtually all public executives in the country, could be subject to meaningful review. Since this recommendation was not directed to MPD, MPD took no position on it. The City Attorney agrees with considering this recommendation.

PART II: MPD & the Madison Community

➢ SECTION 1. Internal Responses to Race and Equity Concerns

Recommendation #8:

MPD should continue its active role in collaborative programs that address systemic inequity, like the "Unpaid Ticket Resolution Days," and set internal goals for accomplishing such events each year and encourage MPD to hold community courts in cooperation with community partners. [OIR Report #2]

Discussion: A variety of collaborative programs have the capacity to reduce and ameliorate systemic inequities. Some of these involve citations for municipal ordinance violations, where the penalty is a forfeiture, the amount of which varies depending on the offense.

Some citations require the alleged offender to appear in court. The City of Madison Municipal Court handles about 26,000 cases per year, including traffic, parking, first offense drunk driving, disorderly conduct, trespassing, and other low-level, nonviolent offenses. Court is held at the City-County Building in downtown Madison from 8 a.m. – 4:30 p.m. on weekdays. Given the Court's hours of operation, this means a person may have to take time off work; find and pay for parking; or take the bus, which can be time-consuming and include one or more transfers.

In addition, while the forfeitures imposed for violating a municipal ordinance can be an annoyance and inconvenience for some members of the community, they can be financially devastating for others. Even a $25 parking ticket can bust the budget of someone making minimum wage, especially given the high cost of living in Madison. Most forfeitures are much more than $25, often as much as several hundred dollars. And, the failure to pay a forfeiture can lead to further penalties. For example, a person who does not pay a forfeiture can have their vehicle registration suspended, thus subjecting them to additional forfeitures if they keep driving. In addition, an arrest warrant can potentially be issued for failure to pay or failure to appear in court. To the extent that socio-economic status correlates along racial lines in Madison, the practical effect of the traditional court system response to these low-level law violations is to perpetuate Madison's racial disparity problem.

MPD has worked with its community and system partners to address these systemic inequities. Examples include:

- A program whereby youths aged 12-16 who receive a municipal citation are eligible to participate in a restorative justice program so they will not have to pay a forfeiture or have an arrest record if they successfully complete the program.
- Other Municipal Court diversion programs, such as a "homeless court."
- Addressing the collateral consequences of a retail theft citation by urging retailers to forego the civil recovery if the offender enrolls in a diversion program.
- MPD taking its own photographs of individuals cited for minor offenses, to avoid incarcerating individuals who lack identification but who are otherwise eligible for in-field citation and release.
- Developing a Spanish-language enhancement of the second-notice paperwork for parking citations.
- Participating in "Unpaid Ticket Resolution Days." These were events held on two Sundays during the spring of 2016, at locations out in the community (rather than at the City-County Building). People with unpaid forfeitures for municipal ordinance violations had the opportunity to meet with the City Attorney's Office and negotiate a reduced payment plan or otherwise reach an agreement to resolve the matter.

The Ad Hoc Committee recognizes collaborative efforts like those described above can build trust between the community and MPD because it shows MPD's willingness to assist the community and work collaboratively to address issues that lead to systemic inequity.

The City Attorney's Office and MPD expressed concern about specifically repeating "Unpaid Ticket Resolution" days on a regular basis, noting that only 39% of participants actually paid the reduced fines and/or completed the community service hours (assigned in lieu of the forfeiture), and arguing that it could undercut the deterrent effect of citations by circumventing the usual process. However, Committee members noted that in terms of community engagement and trust-building by MPD, this initiative would appear to have been very beneficial; and that a success rate of less than 50% for ticket resolution should not be deemed a failure. In addition, committee members noted that involving advocates from community organizations (such as Centro Hispano), who engage with ticketed individuals and the court process, could greatly increase accountability for community service hours. Committee members also believed that the process itself—requiring the individual to come in and negotiate a resolution—would itself continue to provide significant deterrent effect for traffic violations.

Therefore, the Ad Hoc Committee recommends MPD continue its role in all these types of programs and encourages it to pursue other non-traditional responses to low-level law violations. An example of a non-traditional response that could benefit the community and reduce the justice system's disparate impact is holding municipal court in neighborhoods, making it more accessible to community members. Efforts by both MPD and community partners to make people aware of this opportunity would enhance its impact. The Committee therefore adopted OIR recommendation 2 with the additional language, "and encourage MPD to hold community courts in cooperation with community partners."

Recommendation #9:

MPD should encourage officers to use approaches such as verbal warnings, problem-oriented policing methods, dispute mediation, etc., in lieu of arrests or citations, for minor offenses, particularly in communities most impacted by policing (such as communities of color, communities of lower socioeconomic status, etc.). [CRT #11]

Discussion: Communities of color, and particularly adolescents and young adults in those communities, often report being overpoliced for minor infractions. Extensive use of arrests and citations for minor offenses corrodes trust and lessens cooperation with police. Moreover, it is now well established that among juveniles, for all but the most serious crimes, formal criminal processing leads to worse outcomes than diversion or simply doing nothing.

The work of Los Angeles civil rights attorney Connie Rice illustrates an alternative. LAPD put Rice in charge of 50 officers patrolling high-crime housing projects, implementing the Community Safety Partnership Program. In a Wisconsin Public Radio interview discussing the reforms she instituted in Los Angeles, Rice said: "I told these cops that you are not in the arrest business. You are a specialized unit that is in the trust-building business…. I said, in fact, if you make any arrests for minor infractions, including drug infractions that don't harm anybody else and involve no violence, you're going to get dinged for that. You're going to get demerits for that. I'm not interested in you dragging in black teenagers for selling a little bit of marijuana. I don't care who's getting high. And I said I don't care if they're doing small things. You are not to focus on that. That is not what we're about, because that destroys trust. When you throw people on the ground and slap handcuffs on them for selling a couple of hand-rolled cigarettes, like Mr. [Eric] Garner [who died after NYPD used choke holds and put him face down], that just totally destroys trust in the police." This initiative was very successful. Arrests fell 50%, cooperation with police rose, and crime rates fell sharply (with a 90% reduction in violent crime and a 66% reduction in property crime).

MPD states that it "is committed to these principles. The department has been the driving force behind a number of initiatives (such as the Community Restorative Court) to address racial disparities in the criminal justice system, and will continue to pursue these goals."

Recommendation #10:

MPD, in conjunction with the Independent Monitor, is encouraged to evaluate its current training, SOPs, and code of conduct to determine if they can be enhanced to guide discretion and provide additional guidance to officers regarding how they respond when they encounter people driving without a valid license or committing other minor traffic infractions or when to ticket and/or arrest homeless people (for trespassing or obstructing the sidewalk, etc.), or ticket and arrest people for engaging in other low-level offenses that tend to disparately affect low-income people. [Findley #41]

Discussion: How to respond to low-level offenses is one of the decision points that confronts patrol officers on a routine basis and that requires the exercise of a high degree of discretion. It is also is a contact point that disproportionately affects low-income people and marginalized groups (e.g., undocumented immigrants driving without a license). Stops and sanctions for low-level offenses can produce adverse psychological and societal impacts, and erode trust in the police. The MPD already encourages officers to seek resolutions to such situations short of arrest or ticketing. But without formalized guidance on how to respond to such situations, discretion can be exercised in uneven ways, often resulting in unintended disparities along lines of race, income level, mental health status, and personality. Formalizing the policies for responding to such low-level incidents—infractions for which arrest or ticketing can often be counter-productive by making it more difficult for the affected individual to comply with the law—can help ensure that optimal responses are employed in each case and reduce unwarranted disparities in arrest and ticketing rates.

The original recommendation proposal was modified by the Committee to include participation of the Independent Monitor. It was also modified to replace the clause, "when police should stop people driving without a valid license" with the clause, "how they respond when they encounter people driving without a valid license," given one committee member's questions about the legal limits of officer discretion (such as whether it can extend to not even stopping known unlicensed drivers without creating liability risk, etc.).

Recommendation #11:

MPD should commit to a reenergized Racial Disparity Impact Committee and should provide both incentives for participation and continued organizational support for its efforts and specific initiatives. [OIR Report #3]

Discussion: MPD informs the Committee that it "is committed to the goals of the Racial Disparity Impact Committee [RDIC]," and is in the process of reorganizing the group to make it more effective. The Department's efforts at creative engagement with issues of inequity, including the RDIC's effective collaboration with partners in the justice system and the local community, can be challenging to sustain, dependent as they are on personal initiative and volunteerism, and given that the impacts can be hard to measure. Some of the individual members of the group are unclear about the program's future and at the time of OIR review it was on a hiatus of sorts, in recognition of some lost momentum, while the Department reassesses its structure. We would like to see the Department continue to harness the creativity, sensitivity, and enthusiasm that the RDIC has brought to this important subject.

Recommendation #12:

Through resources and other forms of messaging, MPD management should enhance its structural and philosophical commitment to the Judgment Under the Radar program as a means of reinforcing its important work. [OIR Report #4]

Discussion: MPD administrators, and groups of officers within the MPD, have long recognized that the topic of bias is a fraught but critical one for peace officers that speaks to the very intentions and culpability of the police themselves. Studies in unconscious, unintentional, or "implicit" bias seek to promote first a recognition and acknowledgement of the reality and implications of bias. Its remedies remain central to the evolving state of police-community relations. MPD, while a healthy and progressive agency in numerous ways, is not immune from pitfalls of bias. OIR notes that, beginning nearly ten years ago, "a cadre of officers – several of whom had personal insight into issues of societal bias – worked to create a training program that they could bring to their colleagues." According to OIR, "most prominently, the result has been the 'Judgment Under the Radar' series of related presentations that date back to 2011 and continue being developed today," with the most recent presentation in 2015. This grassroots, volunteer effort by officers, however, is perhaps unequal to the subject's importance and complexity. While the MPD informed the Committee that "MPD leadership has been strongly supportive of the 'Judgment Under the Radar' effort," there is room for more structural support from the Department and more ways to promote

involvement and engagement among officers. We encourage MPD to find concrete ways to bolster the Judgment Under the Radar program and to maximize its internal and external impacts.

Recommendation #13:

Should future presentations by Judgment Under the Radar (or any other group) touching on bias be met with strongly negative reactions, MPD leadership should assess the underpinnings of the behavior. [OIR Report #5]

Discussion: MPD concurs with this recommendation, noting that it "routinely seeks input/feedback on all training that employees attend, both internal and external. Adjustments in training occur as a result." This can be challenging to implement at full depth. OIR notes that "we heard repeated references to the backlash against the 2015 training block that Judgment Under the Radar offered the Department. Not only did the subject matter seem to generate significant disagreement, but the reactions of fellow officers, and the harshness of the subsequent critiques, made a strong and disappointing impression on team members and their supporters." MPD, however, suggests that it believes a negative response that the 2015 Judgment Under the Radar training received was directed more to the teaching style of the program than "to the overall principle of the training." The Committee urges the MPD to fully explore any negative responses to all bias-related training to determine and address its underpinnings, to ensure that it does not represent resistance to de-biasing efforts, and where necessary, to take remedial action.

Recommendation #14:

In addition to CORE, MPD should add a volunteer, incentivized and paid continuous leadership-competency component called a "learning community" with adults and perhaps, older youth, from the public. The members of each learning community should represent a broad cross section of the socio-economic, racial, gender and ability groups that MPD typically interacts with in the community. Look to UW-Madison's Leadership Institute[11] to develop learning communities with members of the public who share a range of social identities. [CRT #23]

Discussion: Learning about the impact of bias in police work in community with people most impacted by police work closes a critical gap in MPD's anti-bias education and community outreach programs. Long-term learning practices that involve officers in a broad array of lived experience, namely the experience of a diverse range of community members, may be the surest way to connect an ethical center to the training logic of policing. The Leadership Institute's use of dialogue-based learning, in a non-self-selected community with people from a diverse array of lived experience, reduces the likelihood of group-think and motivated reasoning that is resistant to challenging the status quo. MPD implementation of such learning communities would make focused community outreach and disparity reduction efforts through programs like CORE more likely to succeed because of the shared understandings developed outside of more traditional police/community dynamics.

UW's Leadership Institute Learning Communities have been offering dialogue-based professional development to members of the University of Wisconsin and wider Madison community since 1998. Since the program's inception, over a thousand participants have engaged in a 9-month-long opportunity to explore their own social conditioning through dialogue in community, their personal stories within larger historical contexts and systems of oppression, and tools and practices to build inclusive spaces (including the value of dialogue, the sharing of personal stories, engaging in conflict through giving and receiving feedback, and a heightened awareness of self and others within group dynamics). The Leadership Institute program provides a learning space for sustained exposure to divergent identities, experiences, and viewpoints, serves to develop cultural fluency and culturally responsive practices, and allows participants to develop their personal leadership capacities to interact more effectively across multiple perspectives and social identities.

While MPD has supported internal efforts to explore the impact of implicit bias with their *Judgement Under the Radar* series since 2011 and committed to at least two separate formal in-service training blocks, most recently in 2015, the department registered significant negative feedback to the material in those training sessions. This argues for a change of approach, or at least a complementary approach—one that broadens the experience of exploring these topics beyond the membership of MPD itself.

MPD agrees, indicating that it "is not opposed to exploring the Leadership Institute as another opportunity for engagement."

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[11] Learning Communities for Institutional Change and Excellence. (2019) University of Wisconsin – Madison. Website: https://lcice.wisc.edu/learning-communities/the-leadership-institute-li/

The Leadership Institute program offers the potential for the change of approach that might make MPD's attempts to implement diversity training more effective. According to a research article entitled, "Why Diversity Programs Fail," in Harvard Business Review's July 2016 issue,[12] typical diversity training does not work for the following reasons:

1. It is forced
2. it is short-term
3. It is impersonal
4. It is used as a threat

The Leadership Institute Learning Communities, by contrast, are:

1. Volunteer programs within community
2. Long-term (9 months minimum)
3. Intimate and personal
4. Contractually anonymous

The Leadership Institute program incorporates both affinity group meetings with 10-12 participants, occurring weekly, and periodic large group meetings for all participants, who might hear a guest speaker, watch a video, or participate in an experiential activity. A recent web posting by the UW-Madison Division of Diversity Equity and Educational Achievement notes:

> When UW-Madison began seeking educational ways to improve workplace, classroom and interpersonal relations across campus 20 years ago, it quickly became apparent that a one-time workshop or checklist wouldn't work, said Seema Kapani, a chief architect of the Leadership Institute and its learning communities. It takes at least a year to effectively change the dynamics of human interaction for the long term, she said. Why? Human attitudes and interactions are extremely complicated, she explained, especially those requiring self-reflection, empathy and acceptance…. Discovering and unlearning unconscious and pervasive misperceptions, assumptions, reactions and biases learned throughout our lives is a lifelong process, Kapani said. That learning process requires sustained dialog and interactions.[13]

As evidenced by the program framework as well as by testimonials from graduates,[14] in critical ways, the Leadership Institute Learning Community takes a very different approach from that of conventional, often relatively ineffective, short-term diversity trainings. The Ad Hoc Committee endorses the concept of implementing such learning communities for MPD.

Recommendation #15:

The City should move apace to providing a translation function for its website so that MPD's information (as well as other City information) can be more facilely accessed and used by persons with limited English proficiency. [OIR Report #6]

Discussion: MPD concurs with this recommendation, asserting that it "strongly supports full accessibility to all of MPD's services, including the MPD website." MPD's Community Outreach and Resource Education (CORE) Team has sought to increase accessibility and has highlighted the importance of MPD website translation. The Common Council passed a 2016 resolution barring automated translation, and thus such a mechanism cannot be used, but plans for website translation are included in the Madison's Department of Civil Rights draft Language Access Plan. Meanwhile, the Department is moving forward with identifying critical documents for translation, translating them, and posting them on the MPD website. The

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[12] Dobbins, F. & Kalev, A. (2016, July-Aug). Why Diversity Programs Fail. Harvard Business Review. Retrieved from https://hbr.org/2016/07/why-diversity-programs-fail

[13] *Leadership Institute celebrates its 20th anniversary*. (2019) University of Wisconsin-Madison Division of Diversity Equity and Educational Achievement. Retrieved from https://diversity.wisc.edu/learning-communities-for-institutional-change-excellence-lcice-celebrates-its-20th-anniversary/

[14] Learning Institute Testimonial - Hao Yuan https://www.youtube.com/watch?time_continue=79&v=PmExfp85Zmc; Learning Institute Testimonial - Hannah Eldrige https://www.youtube.com/watch?v=GdfBGkfYHuo; Learning Institute Testimonial - Bradley Thomas https://www.youtube.com/watch?time_continue=183&v=MRbRmF7HNnY

Committee believes that attention to this task remains important, given that effective public communication needs to be a priority, and this includes relationship-building and improved connections with all segments of the Madison population.

Recommendation #16:

The CORE Team should take advantage of its centralized role in sponsoring and monitoring MPD outreach, and should work to provide rigorous analysis of individual initiatives as to their relative impact and effectiveness. [OIR Report #7]

Discussion: By virtue of its role and attendant resource dedication, MPD's Community Outreach and Resource Education (CORE) team has become an MPD "clearing house" and facilitator for a variety of community outreach events in which it seeks to involve as many Department members as possible. It serves as a resource for the individual districts in a variety of ways. Importantly, the CORE Team has also taken on the task of tracking community outreach activities MPD-wide and keeps a database that can assist in measuring the resource dedication and initial results. It is important to document non-traditional and proactive engagement that helps advance the Department's law enforcement philosophy. While the CORE Team's initial efforts understandably have been directed at simply collecting all the different activities into one place, their ultimate goal should be to find more advanced ways of acquiring data that could help with analysis and evaluation. In its Response to the OIR Report, MPD agrees that the CORE Team should have increased responsibility for oversight, but also notes that quantifying and evaluating community outreach efforts is difficult, and that MPD has limited capacity for complex social science analysis without additional resources. In its supplementary report, OIR advises, "[F]or further technical assistance on measuring community policing efforts, we urge as a first step that the Department consult with Professor Herman Goldstein, a pioneer of community policing, on ways to devise effective metrics. We also refer the Department to Professor Geoffrey P. Alpert's article 'Effective Community Policing Performance Measures' and recommend talking with him about his subsequent work identifying community policing performance measures." In its updated response to the OIR report, MPD states that the CORE Team "has started analyzing long-term effectiveness of outreach efforts through the use of pre- and post-engagement surveys with participants and staff," and that it is "continuing to explore sources of external support for assistance in data collection and analysis."

Recommendation #17:

MPD should work to effectively support and incorporate officer-driven outreach efforts within specific communities, such as Amigos en Azul, into its larger community policing strategies. [OIR Report #8]

Discussion: OIR notes that, as important and positive as the CORE Team has been, smaller individual initiatives have also been a strong asset for the Department. One of these, which began in 2004, is an officer-initiated effort to provide outreach to Latino youth. MPD reports that it "strongly supports officer-driven community outreach efforts (like Amigos en Azul)." The CORE Team has teamed successfully with Amigos en Azul and other groups. But that support may not be sufficient; MPD should continue to evaluate whether other resources can be devoted to ensuring that Amigos en Azul's track record of commitment can be used to their fullest advantage without disturbing the spirit of volunteerism and caring that has fueled their efforts for over a decade. While programs naturally continue to evolve in response to changing needs, the positive energy that has characterized Amigos en Azul should continue to receive support within the MPD organizational plan. MPD notes in its Response to the OIR Report that this may require additional resources.

Recommendation #18:

MPD and the City should discuss the most efficacious way to analyze the demographic data regularly being collected on arrests, summons, and use of force. [OIR Report #9]

Discussion: President Obama's Task Force on 21st Century Policing highlighted the importance of internal collection and promulgation of demographic data regarding police activity. OIR noted that, to its credit, consistent with this recommendation, MPD began placing data about stops, summonses, arrests, reported crime, personnel, and use of force, with demographic breakdowns, on its website in 2016. In addition, except for use of force data, MPD's annual report publishes aggregate data broken down by demographics for the previous year. However, OIR noted that they were not aware of any proactive internal or external analysis of the data. The availability of the data presents an opportunity to learn whether any of the initiatives launched countywide or by MPD specifically has impacted disparity in any specific way. Moreover, because the data now collected and disseminated by MPD is so granular, statistical analysis could be undertaken to, for example, compare discretionary arrests to other types of arrests to see if there are significant differences in disparate impact or whether the

margin holds true across all types of arrests. Regular and ongoing analysis of this data to gain further insight is an important next step that the Department should pursue. MPD notes in its Response to the OIR Report that it supports this concept, but that expanding these efforts may take additional resources. It also notes that the City has already taken steps to acquire some of these additional resources, as the City was awarded a technical assistance grant in 2017 from the National League of Cities to complete an analysis of arrest data.

Recommendation #19:

MPD should seek a collaboration with statisticians from University of Wisconsin-Madison, or highly-qualified statisticians elsewhere who have researched policing and racial bias, to determine if communities of color in Madison are incurring differential policing. Specifically, analysis should be conducted to determine (a) if rates of stops, arrests, and citations by MPD are correlated with neighborhood racial composition after controlling for crime rates, and (b) if the proportion of stops resulting in arrests or citations (hit rates) differs across racial and ethnic groups. If analyses do show differential policing, MPD should consider measures such as reallocation of policing resources across neighborhoods and corrective training. [CRT #9]

Discussion: Dane County and Madison have among the highest racial disparities in arrest rates in the nation. As a 2015 Wisconsin State Journal article noted, "A black person in Madison is over 10 times more likely than a white person to be arrested, according to data analyzed by the State Journal that showed African Americans — who make up about 7 percent of the city's population — account for 45 percent of arrests." In addition, the ratio of black people to white people arrested has been steadily increasing over the last several years.

Various potential factors may be contributing to this disparity. But studies of such disparities elsewhere in the U.S. have found differential policing to be one important factor. This can include overpolicing of neighborhoods with a high proportion of residents of color (e.g., greater allocation of patrols to such neighborhoods, etc.) — a pattern that is evident even after other relevant variables are controlled for. It can also include a higher likelihood that, all else equal, police will stop, conduct searches, etc., with individuals who are non-white.

Appropriate analyses for differential policing have not been conducted in Madison to objectively determine the extent to which this is an issue here. Solving a problem such as the racial disparity in arrest rates in Madison requires understanding all the causes. MPD stated of this recommendation that it "supports using data to help guide operations, and is not opposed to this concept. Ideally, the City would provide funding for this effort to ensure quality and commitment on the part of research partners." Properly conducting such analyses requires a high level of expertise in statistics. Fortuitously, UW-Madison has one of the top statistics departments in the nation.

Recommendation #20:

MPD should consider implementing the 21st Century Policing Task Force's Action Item to make all department policies available for public review. [OIR Report #10]

Discussion: President Obama's Task Force on 21st Century Policing, composed of some of the best minds in modern policing, including major city chiefs, recommended that police departments make all policies public:

> 1.3.1 Action Item: To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.

As the Task Force stated in its report, this is important for public oversight and transparency:

> The task force recommendations, each with action items, are organized around six main topic areas or "pillars:" Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness....
>
> Pillar Two: Policy and Oversight

> Pillar two emphasizes that if police are to carry out their responsibilities according to established policies, those policies must reflect community values. Law enforcement agencies should collaborate with community members, especially in communities and neighborhoods disproportionately affected by crime, to develop policies and strategies for deploying resources that aim to reduce crime by improving relationships, increasing community engagement, and fostering cooperation.... All policies and aggregate data should be made publicly available to ensure transparency.

The Police Executive Research Forum has made the same recommendation, as has the U.S. Department of Justice (DOJ). For example, in its Ferguson report, the DOJ urged the city to "make available online and regularly update a complete set of police policies." The police departments of many major cities—including Los Angeles, Philadelphia, Minneapolis, Seattle, Portland, San Francisco, Phoenix, New Orleans, and others—make *all* their policies publicly available on their websites.

The OIR report noted:

> While most of MPD's policies are available to the public, some of the Department's tactical policies have been kept from public purview. The apparent rationale is that providing such information might compromise MPD's safety or tactical position if potentially dangerous individuals became aware of the policies that guide Department members on how to respond to barricaded suspects or other challenges in the field. With respect for the concern, we are aware of other agencies that have regularly publicized such policies, and not aware of any situations in which the concern articulated by MPD has been realized. MPD should revisit the potential risk versus the public's interest in full transparency in light of the Task Force's recommendation that *all* Department policies be made available for public review.

MPD responded that posting certain of its policies could jeopardize officer and community safety. It specified eight policies that were not made publicly available (specifically the SOPs: Active Shooter Incidents, Barricaded Person Incidents, Bomb Threats, Dignitary Protection, Handling of Confidential Informants, Hostage Situation Incidents, Life Threat Emergency at Facility Public Windows, and Robberies in Progress and Silent Robbery Alarms). MPD stated that it "will review these to determine if any should be posted (fully or redacted) to the website." It subsequently posted the Dignitary Protection and Life Threat Emergency at Facility Public Windows SOPs in full, and later posted heavily redacted versions of five of the remaining six SOPs (with the Handling of Confidential Informants SOP remaining fully nonpublic). Assistant Chief Vic Wahl told the Committee that putting the remaining policy information in the public domain "runs the risk of someone knowing what our tactics would be in preparing specifically to counter them," and in the case of the Confidential Informants SOP, could jeopardize the safety of an informant, if someone were to somehow use the policy information (which specifies the process and prerequisites MPD uses) to try to guess the identity of the informant.

Michael Gennaco of OIR and community members informed the Committee that many cities make their analogous SOPs fully public (including confidential informant policies, hostage situation policies, barricaded person policies, etc.). Gennaco noted: "I am aware of no negative fallout as a result of publishing these policies. The public has a right to know the internal rules of its police, particularly in these important areas. Our views in support of our initial recommendation hold." Secret policies are not subject to meaningful public oversight or public input. Gennaco also pointed out that keeping *any* policies secret makes public accountability impossible: "[If] a person who believes that there may have been a violation of the informant policy wants to make a complaint, how would she or he even know what the policy was? Whether or not it's a legitimate complaint on the part of the complainant? ... So that's the problem with confidential rules that nobody knows about except the police." For example, if MPD officers violated MPD policy on handling of confidential informants, the informant would have no way of knowing it and filing a complaint. Moreover, until 2014, MPD made its policies on these matters public, though the policies have been substantially rewritten since that time.

Gennaco also noted that, to the extent that any of the SOPs contained any tactical information that legitimately required secrecy in order to protect officer safety, the MPD might reconsider whether that information belonged in an SOP at all: "The purpose of an SOP is to provide guidance to officers about what the rules are in regard to performance, and it also provides a barometer for when those rules are violated, for accountability, right? So I suspect that the issues for the SOPs in contention are not likely to be barometers that will result in violations of policy and disciplinary action." He questioned whether some of the information the Department was concerned about even belonged in an SOP, and suggested that it might be more appropriate to put certain information in a procedural handbook for investigators, or something analogous, allowing the department to be able to represent that all SOP provisions have been made public.

The Committee decided to review MPDs confidential policies in closed session with Assistant Chief Vic Wahl, to make a fully informed decision on this recommendation and properly evaluate potential risk. The Committee delineated three options for the possible course of action it could take: 1. The Committee could reject the recommendation, so that MPD could continue to withhold from its website the currently confidential SOP information. 2. The Committee could amend the OIR recommendation to state that everything should go on the website, but that MPD could redact, in a publicly visible and understandable way, only those very specific items that are tactically sensitive (where there is a need to protect legitimate tactical objectives) and that could affect officer safety or effectiveness of police responses to these types of critical incidents. But that redactions should be kept to a minimum and that these redaction decisions would be subject to review by the Council. 3. The Committee could adopt the original recommendation in full, requiring MPD to make all SOP information publicly available in full on the website. The Committee noted that, under this option, whatever MPD's policies were at the time that this recommendation went into effect would be what was to be made public, but that MPD could amend the policies, through their ordinary channels, to whatever extent they wanted, before the recommendation went into effect.

After having carefully reviewed the confidential SOPs in question, and having considered all the factors articulated above, the Ad Hoc Committee decided upon the third option – that the OIR recommendation should be adopted in full, such that all MPD SOPs should be made fully publicly available. The Committee believes that this is important for transparency and true public oversight of MPD, and it is consistent with the recommendations of the nation's top policing experts. The Committee also notes that this recommendation will permit the MPD the flexibility to rewrite its SOPs, prior to posting them on its web site, to remove any purely tactical guidelines which legitimately deserve secrecy and which are not relevant to the rules about performance that might subject an officer to a citizen complaint or department discipline.

➢ SECTION 2. MPD & Restorative Justice Initiatives

Recommendation #21:

As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention. [OIR Report #11]

Discussion: Restorative Justice programs provide a valuable process through which individuals can be diverted from the criminal justice system. The OIR report stated that "one of the more impressive features of recent MPD efforts in the area of community relations and innovation has been its active support of, and participation in, the various restorative justice initiatives in both the Dane County and Madison Municipal Court systems." As part of their review, OIR spoke to MPD members involved in the process, as well as community stakeholders involved in the collaboration and found that all were consistent in their enthusiasm for the program and praise of MPD's leadership in this area.

OIR further noted: "The principle behind this movement (restorative justice) is very much in keeping with progressive thought about criminal justice reform, and speaks directly to the racial inequity realities that persist in Madison and elsewhere …. [R]estorative justice recognizes that alternatives to traditional punitive sanctions are both more meaningful—for offenders and their victims alike—and less limiting of people's potential for positive development. Both of these benefits are important, especially in the context of the younger individuals that the program serves. While not applicable in the same ways to more serious offenses, restorative programs have yielded impressive results in constructively addressing misdemeanor violations…."

OIR's recommendation recognizes both the program's initial success, and the need to ensure that individuals who are involved in incidents without a high media profile have access to the program. OIR described two high-profile incidents in which two females in their teens were arrested by MPD and referred to the Community Restorative Court (CRC). The arrests garnered a great deal of attention and were widely publicized. The first case revolved around the amount of force used by officers when taking a young woman into custody. The second case involved the arrest of a promising student at school after a fight in the cafeteria, which resulted in serious charges against the student. Per OIR, under the current standard eligibility requirements neither of these youths would have qualified for the CRC. However, the program provides the District Attorney the discretion to accept persons who might not otherwise be qualified to be accepted into the program, and he exercised that discretion in these cases. OIR considered both of these decisions to be very appropriate but noted that media attention and public scrutiny contributed to an outcome not available to many other similarly situated individuals. OIR argued that youth involved in similar

incidents that may not have received the same level of notoriety should be afforded the same access to the program. This recommendation urges MPD to work with its partners to ensure equitable access to the program.

In its written response to the OIR Report MPD stated that "the Community Restorative Court's growth has been intentionally slow to provide time for a thoughtful analysis as capacity increases." Additionally, MPD noted that at the time it provided its response there had been over 100 cases completed by the CRC, with the majority of those cases referred by MPD. MPD informed the Committee that all of the CRC participating agencies, including MPD, are committed to equitable access to the CRC and that they are open to accepting cases that fall outside of the regular program selection criteria. MPD Assistant Chief Vic Wahl noted that the Restorative Justice Court expansion efforts have been focused on geographic area rather than incident type, with the initial goal of expanding the program County-wide prior to consideration of expanding the types of cases referred. Assistant Chief Wahl stated that the MPD has no opposition to expanding the Restorative Justice Court, provided adequate resources are made available for the expansion. He further stated that "MPD is not in disagreement with this recommendation."

➢ SECTION 3. MPD & Community Engagement

Recommendation #22:

MPD should continue to constructively engage with its community by increasing its emphasis on participating in community-initiated events. [OIR Report #12]

Discussion: The Department has repeatedly stated its deep commitment to community outreach and effective collaboration. Recently retired Chief Michael Koval himself was notably dedicated and energetic about representing the Department and actively participating in the life of the city. In our view, a commitment to genuine and multi-faceted feedback from all voices in Madison, even overtly critical ones, is central to this task. Community policing initiatives are premised on the dual notions of relationship-building and grassroots feedback from individual neighborhoods. A potential flaw in MPD's current model of engagement is the extent to which it is dictated by the Department. MPD might benefit from participating in and supporting more events promoted by the community.

Recommendation #23:

MPD should conduct town halls and listening sessions after all critical incidents, including officer-involved shootings as follows:

- **In the first few days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern, and**
- **After the conclusion of the investigation, MPD should provide a public debriefing of the incident highlighting any performance issues that were identified for improvement and reform.** [OIR Report #13]

Discussion: This recommendation is adopted from OIR Recommendation #13, and the full rationale is set forth in the OIR Report at pages 47-50. The MPD responded that it "supports these concepts," but cautioned that, because state law provides that an outside agency must conduct initial criminal investigations into officer-involved shootings, it might be constrained in its ability to release information from that agency, and that, therefore, "a public meeting or listening session at that time seems likely to create more community frustration or questions, as MPD is not able to release any facts about the incident at that time." At pages 3-4 of the OIR Group's Supplemental Report, OIR squarely addressed these concerns, and the Ad Hoc Committee adopted this recommendation specifically by incorporating that OIR clarification.

OIR also noted that the United States Department of Justice Community Relations Service has for years effectively brokered such listening sessions when a controversial police event has occurred, and police departments of other municipalities routinely convene such meetings after every critical incident, to the appreciation of their public.

The Ad Hoc Committee acknowledges MPD's constraints in releasing information gathered by an outside agency leading the criminal investigation and its adherence to the state law mandate that it remain a spectator during the early stages of an investigation. However, full recognition of these realities still allows town halls to be convened to:

- Show empathy to the injured or the decedent's family and friends and the residents of the neighborhood in which

the incident occurred;
- Explain the investigative and review process; and
- Listen to any upset, frustration, or concern.

We do not believe that MPD's inability to release investigative facts about an incident will create more community frustration or questions; this has not been the experience of other police agencies that regularly convene town halls in the wake of difficult circumstances or that of the Department of Justice's Community Relations Service in the wake of officer-involved shootings. We believe that creating an opportunity for communities to be heard provides a way for loss, frustration, and concern to be publicly aired, especially if MPD and other City officials are there to empathize and hear from them in a non-challenging forum.

Recommendation #24:

MPD should seek to engage with its community regarding controversial events, including officer conduct that does not reflect its core values or best performance. [OIR Report #14]

Discussion: MPD informed the Committee that it agrees with this concept. The Committee is encouraged by this response, hopes that the MPD will expand its efforts at community engagement beyond even the current commitment level, and believes this would have a beneficial impact. As OIR noted, "[A] commitment to genuine and multi-faceted feedback from all voices in Madison—even overtly critical ones—is central to this task…." OIR also reported, however, that they

> were … told that MPD's willingness to 'engage' tends to have significant boundaries, particularly when it comes to talking about difficult or controversial matters with its concerned communities….
>
> When controversial incidents arise, 'community listening sessions' are not typically organized to provide an outlet for resident's concerns or to offer such information and insight as is available. Nor does the Department avail itself of opportunities to reach out when investigations are complete, and to give an accounting of its internal adjustments while gauging public sentiment. …
>
> … Meeting on level ground with residents and potential critics—especially when the Department has not performed at its highest level—is undoubtedly a difficult thing. But the ability to acknowledge shortcomings, provide useful and even sensitive information, and listen openly to the negative feelings of those who feel outrage or disappointment, is also a potential source of connection and increased trust. Nor should frustration with Department's harshest critics preclude or impede outreach with other concerned segments of the public; in fact, it is the responsibility of law enforcement leadership to continue to engage with all, no matter how fierce the criticism may be.

Recommendation #25:

MPD is encouraged to relax its uniform requirement permitting personnel to appear out of uniform on duty at appropriate community events. [OIR Report #15]

Discussion: Interacting with the public, both in law enforcement and non-law enforcement contexts, is a critical component of police work. Positive interactions build trust between the community and police and lead to more effective policing and safer communities. While most law enforcement officers wear standard, recognizable uniforms while on duty, there are occasions when more casual attire, or a "soft" uniform is appropriate. For events such as neighborhood meetings or other events that are non-law enforcement in nature, it may be appropriate for officers to appear in more casual attire.

MPD is open to relaxing its uniform requirement, but it notes that whenever officers are in the community, they must be prepared to take police action and need access to equipment that is part of the standard uniform. The Ad Hoc Committee recognizes this concern as legitimate, but also believes that when it comes to more congenial settings, MPD should try to engage the community on its terms, and that includes allowing law enforcement officers to appear out of uniform if the organizer(s) request and the context is appropriate, such as when neighborhood officers attend community meetings. For some residents, an officer wearing a uniform creates unnecessary barriers and inhibits their ability to engage positively with MPD. Wearing a standard, full uniform in certain settings can create confusion over the officer's role—whether s/he is attending as part of the community or as part of an enforcement role. Furthermore, in other jurisdictions that allow it, many

officers feel more comfortable wearing a "soft" uniform and think the more casual attire helps them better engage with and relate to their community.

Given these considerations, the Committee modified the OIR recommendation, which read, "MPD should relax its uniform requirement permitting personal to appear out of uniform on duty at appropriate community events," to "encourage" the relaxing of the uniform requirement, so as to give the MPD more discretion and the ability to address the needs of both the community and MPD.

Recommendation #26:

MPD should take all steps necessary to ensure that any data released to alders or to the public (for example, in annual reports) is fully accurate. All data releases should be accompanied by rigorous definitions and descriptions of methodology, sufficient to enable completely unambiguous interpretation of all data provided. Misleading data practices should be avoided. [CRT #1]

Discussion: For elected officials and the public to draw valid conclusions, it is critical that all data releases be unambiguous and free of errors. In existing MPD data releases, terms are sometimes not adequately defined and methodology not explicitly stated. In the absence of this information, it is not possible to correctly understand the data (i.e. since multiple different interpretations are possible). Moreover, it is important that graphics not distort data (e.g., via truncation of axes). The representation of numbers, as physically measured on the surface of the graphic itself, should be directly proportional to the quantities represented.

MPD noted that it is committed to locating, producing and releasing data that is accurate and meaningful to the public, and that previous questions about data releases (format, description, etc.) have resulted in adjusted practices.

Recommendation #27:

In devising a strategic plan, MPD should consider the findings and recommendation in this report to the degree they suggest paths toward further improvement and seek input and assistance in its development from all MPD employees, city stakeholders, and the Madison community. [OIR Report #1]

Discussion: MPD fully agrees with this recommendation, noting that it "has previously engaged in strategic planning processes, and found each of them to be extremely beneficial in guiding the department. When the OIR Group started its work, the department was in the early stages of a formal strategic planning process (City Purchasing had already received several responses to an RFP). At the request of several Common Council members, that effort was suspended pending completion of the OIR project." As the MPD re-engages this process, it plans to "include extensive involvement and input from employees and the community," as it has in the past, as well as now the "information contained in the OIR report." OIR notes: "Consistent with a key recommendation of President Obama's Task Force on 21st Century Policing, MPD personnel assigned to the project should conduct extensive and varied outreach. The goal is to ensure that all Madisonians are able to readily contribute their perspective on what they hope the Madison Police Department will look like in future years and can assist in developing aspirational goals. In short, because MPD belongs to all of its communities, it is critical for the Department to seek the input of all as it formalizes a vision for the future."

Recommendation #28:

MPD should devise additional ways to solicit and encourage feedback from all of its communities regarding the performance of the Department. [OIR Report #16]

Discussion: MPD indicates that it "is in full agreement with this recommendation and has been exploring ways to more directly receive feedback on individual officers and the department." MPD's current use of surveys provides some useful feedback, but the results are not inclusive. Response rates from some districts and communities, such as Black and other minority residents, are low. There are a variety of new approaches for obtaining feedback and data on performance that agencies around the country are using and that could prove useful in Madison, such as "text messaging-based" approaches and short surveys sent electronically to individuals whose contact information is in a police report (reporting parties, witnesses, victims, and even arrestees). MPD notes that formalizing such plans—such as by surveying all individuals who have encountered MPD officers—will require additional funding.

Recommendation #29:

MPD should devise a feedback loop for its criminal justice partners regarding the performance of its officers and the Department as a whole, including the District Attorney, Sheriff, Judges, Public Defenders, Juvenile Justice Administrators, Probation Officers, and Social Workers. [OIR Report #17]

Discussion: Obtaining feedback from stakeholders serves several important functions. It can be used to improve service provision; it helps agencies determine how well they are serving their constituents and partners; it shows that agencies value the opinions of those they serve and with whom they work; and it can provide data for future decision-making about programs, policies, and practices. Toward these ends, it is important for agencies to establish a formal process for obtaining feedback, thus institutionalizing the process so it is not dependent on or subject to personalities or changes in leadership, as can happen with informal processes.

MPD has a history of seeking community input, but it has not regularly or formally solicited feedback from its criminal justice system partners—prosecutors, jail supervisors, judges, public defenders, juvenile justice administrators, probation officers, and social workers. These partners can have significant insight into the workings of MPD as an organization and into the performance of individual officers. MPD notes that formalizing a feedback process would be a challenging, time-consuming effort. However, a formalized process does not have to be complicated or challenging. OIR correctly notes that a simple email to all criminal justice partners asking just a few questions about MPD's performance and/or that of individual officers could be done with minimal effort. Also, just because something may be somewhat burdensome is not sufficient reason to not do it. Formalizing a process that includes regularly soliciting feedback is good organizational practice and will provide MPD with valuable information about its officers, its organization, and the community it serves that it can use to improve how it operates and improve its relationships with its criminal justice partners.

In its November 2018 updated response to the OIR report, MPD noted that it had recently created a survey to obtain annual feedback from the District Attorney's Office and expected to move forward with the survey before the end of 2018. MPD also stated that it would give further consideration to expanding the process for other partner agencies. It also noted that it had created surveys to solicit feedback on neighborhood officers and EROs and anticipated moving forward with those surveys in early 2019. The Ad Hoc Committee recognizes the importance of feedback from all partners and recommends MPD create a formalized method to solicit feedback from all partners, not just the District Attorney's Office.

Recommendation #30:

MPD should revise its policy in order to discourage the use of family, friends, or bystanders to serve as translators except when MPD or City resources are not available and the situation is exigent, or when the person initiates contact or volunteers to continue conversation with police either by phone or in person and requests that a family member or friend serve as an interpreter and the person is not the subject of a criminal investigation or interrogation. In cases when civilians are used as translators, the non-availability of other MPD resources should be documented. [OIR Report #18]

Discussion: Individuals who are not proficient in English can face significant barriers in accessing police services or responding to police investigations. MPD's Standard Operating Procedure states a preference for utilizing MPD personnel to provide necessary interpretation services. However, OIR noted that, both per policy and current practice, MPD officers sometimes utilize family members or bystanders to interpret.

Utilizing family members, friends or bystanders as interpreters presents inherent challenges to the investigative process and the accuracy of information gathered. Utilizing family, friends or bystanders can result in breaches of confidentiality, conflicts of interest, and in some cases inadequate interpretation. While MPD acknowledges these problems, current MPD policy allows for the use of family, friends or bystanders to provide interpretation for informal, non-confrontational contexts when other MPD resources are not available. OIR notes, however, that the current SOP language, "Informal, non-confrontational contexts," is not defined, thereby allowing for a good deal of ambiguity that could undermine the effectiveness of an investigation.

OIR and the Ad Hoc Committee recognize that MPD faces challenges in providing adequate, timely, and accessible interpreter services. Among those challenges is the reality that some MPD officers who have some bilingual skills are hesitant to provide translation services, and that the level of language proficiency among officers varies greatly, which further complicates the

ability of MPD to identify personnel who are qualified to serve as interpreters. MPD is currently waiting on a study of the operating costs to the Department related to testing officers for the purpose of creating a list of authorized/qualified MPD officers who can serve as interpreters. Furthermore, providing interpretation is a skill that goes beyond language proficiency, so language proficiency in and of itself may not guarantee that an individual is adept at providing interpreter services.

Interpretation, as a service, is an internationally recognized profession. For example, The International Medical Interpreters Association has a Code of Ethics, as does the Registry of Interpreters for the Deaf and the National Association of Judiciary Interpreters & Translators, and the International Association of Professional Translators and Interpreters. The Wisconsin Court System also has a Code of Ethics for court interpreters and translators. These codes exist to protect individuals and ensure a level of proficiency, professionalism, confidentiality, impartiality, and accountability that cannot be guaranteed when utilizing family, friends or bystanders as interpreters.

As the Committee considered these recommendations, we also sought input from the City Department of Civil Rights, professionals in the area of interpreter services, and community members. The Committee learned that the City's telephonic translator service, which is available to MPD, is not particularly helpful to officers as they engage with civilians, especially when they are in the field. MPD reports that it has been working with the Madison Department of Civil Rights to ensure that MPD Standard Operating Procedures are in alignment with the citywide plan to be put in place by the Department of Civil Rights. According to City staff and the Assistant City Attorney assigned to the Ad Hoc Committee, the policy being drafted by the Madison Department of Civil Rights is still in process and will perhaps require several years to be fully approved and implemented. Even after implementation, each City department will create its own policies in alignment with the City policy.

MPD informed the Committee that it is committed to providing quality services to individuals with limited English proficiency and that, in addition to maintaining and distributing a list of officers with bilingual capabilities, MPD provided department-wide training in 2017 on language and interpretation topics. These are laudable steps by the Department to improve its services. However, the Department is still utilizing family, friends, and bystanders in some situations, and the steps outlined above do not address this practice directly or clearly outline the circumstances under which that practice is permissible.

The primary concern expressed by MPD during discussion of this recommendation was that officers need some flexibility in their informal contacts with the community or in situations where someone calls the police and asks them to allow a family member or friend to translate. Recognizing this concern, the Committee amended the recommendation to permit interpretation by a family member or friend if that is requested by a person who "initiates contact or volunteers to continue conversation with police either by phone or in person," but only if the person "is not the subject of a criminal investigation or interrogation." The Committee recognized that informal interpretation by family or friends should not be permitted in a confrontational situation, where someone is being accused or investigated as a suspect (note, moreover, that someone waiving their right to a real interpreter in such circumstances may not understand the ramifications). The Committee retained the original OIR recommendation provision requiring the officer to document "the non-availability of other MPD resources" in any situation in which family, friends, or bystanders are used to interpret because of exigent circumstances. The amended recommendation reflects the concerns raised by OIR and community members, as well as those of MPD. Feedback from MPD on the amended language was that they believed the amended recommendation to be reasonable and workable.

Recommendation #31:

MPD should devise policy instructing its officers not to request social workers to provide translation services unless there is a pre-existing understanding with the social services agency that they agree to do so. [OIR Report #19]

Discussion: The role of social workers is to provide responsive, confidential support to the individual with whom they are working. Social workers are not trained to be interpreters and it is not their role to serve as interpreters for their clients. In OIR interviews with bilingual social service staff, social service staff routinely expressed their discomfort at being asked by MPD to provide interpreter services. Asking social service staff to serve as interpreters can be problematic for several reasons. First, there are issues related to confidentiality. Second, putting a social worker in the role of an interpreter may create a conflict of interest should the focus of the police interview shift to viewing the individual as a suspect rather than a witness. Licensed social workers and professional counselors are required to adhere to a strict code of ethics related to conflicts of interest. Licensed human service staff who provide interpreter services may find themselves in violation of their professional ethics code and carry professional censure or revocation of licensing, thereby impacting their employment. Additionally, asking a

social worker or social service staff person to serve as an interpreter takes the focus off the social worker's prescribed role and function—that of supporting the client—as they are now asked to serve, at least in a sense, as a *de facto* MPD officer.

While the Committee and OIR recognize the challenges faced by MPD in terms of accessing bilingual resources, the lack of resources does not mitigate the issues and potential problems raised by social services staff. As written, this recommendation does not prohibit MPD from meeting with and negotiating with social service agencies about the provision of interpreter services. However, it does require that those conversations take place ahead of time and provides that the agency has the right either to agree or decline to permit its staff to serve as interpreters. MPD noted that they already have agreements with several social service agencies and that they can work with Dane County Human Services to identify additional agencies with whom such an agreement might be beneficial.

Recommendation #32:

MPD should devise ways to incentivize its bilingual officers to assist in providing translation assistance in the field, including consideration of adopting a pay differential. [OIR report #20]

Discussion: Currently, MPD officers with some bilingual skills are reluctant to provide translation services. The current policy notes that the creation of a list of authorized/qualified MPD officers as interpreters awaits a study of the operating cost of testing officers. We encourage MPD to consider implementing a small pay differential for officers with language proficiency skills so that they can be incentivized to contribute their language skills to public/police encounters. MPD notes in its Response to the OIR Report that the City's Language Access Plan will govern this arrangement, while the City Attorney's Office notes this arrangement would be subject to collective bargaining, and the Madison Professional Police Officers Association (MPPOA) says it supports it.

Recommendation #33:

MPD should audit its officers' use of the City's telephonic translator program to gauge its level of effectiveness for police matters and make suggestions for reform as needed. [OIR Report #21]

Discussion: OIR notes: "[W]hile the City has a telephonic translator service that is available to MPD, we have been informed that the service is not particularly helpful in dealing with police/civilian encounters, particularly in the field. It would be beneficial for MPD to collect more data on the use (or non-use) of the service so that it might be reimagined and improved upon." MPD stated in its Response to the OIR Report that it will work on this in conjunction with the Department of Civil Rights.

Recommendation #34:

MPD should continue to expand its efforts to create local Captain's Advisory Groups. [OIR Report #22]

Discussion: One way for the Department to cultivate constructive relationships and garner helpful input is through community advisory groups. Recently, pursuant to a federal grant awarded in 2017, MPD sought out representatives of impacted communities of color to form a neighborhood-based, "grass roots" Captain's Advisory Group in the South District. The funding allowed MPD to work with three community partners (Centro Hispano, Nehemiah Center for Urban Leadership Development, and the Bayview Foundation) to this end, in a pilot program. The philosophy behind this group is to confer with individuals outside the Department who have knowledge, ideas, and peer credibility that are unique and potentially invaluable as an asset to the district, and to defer to their knowledge. Ideally the still-new program will continue to develop and will aid the Department in identifying priorities and strategies for best meeting the public safety needs of area residents. MPD notes that a robust and inclusive process may require additional funding. More recently, in its November 2018 update, MPD noted that "all districts other than Midtown have implemented groups similar to the Captain's Advisory Group piloted by the South District. The exact format and membership varies somewhat, in order to meet the particular needs of the individual district."

Recommendation #35:

MPD should continue to dialogue with the City's Rapid Response Team to further develop a productive working relationship, and to assist in the Team's overarching objective of enhancing trust and providing additional services to the community victimized by a major crime. [OIR Report #23]

Discussion: The "Rapid Response Team" was developed by the Mayor's Office in an effort to better understand and more effectively address retaliatory or interrelated shootings in the City by looking for ways to alleviate root causes and harms, and to cultivate the kind of cooperation that could help with investigation and future prevention. This has proven a very promising approach and has continued to evolve. At its core, the initial idea was to draw on the credibility and personal insight of a group of prominent leaders and organizers from the African American community who were becoming directly involved in the immediate response to violent crimes in the streets. The City identified effective contributors to the Team, with MPD participating and also working directly with the Focused Interruption Coalition on relationship building and protocol development. Positive individual experiences showed the program's potential and, per the MPD updated response to the OIR report, initial meetings identified the following needs:

- Identify and work with individuals and families who are at risk for future violence or those who have been involved in violence through multi-disciplinary teams that can offer services and assistance in an effort to interrupt violence and retaliation.
- Funding requests to support a peer support violence interruption program that included direct funding requests for emergency needs. This program would consist of peer support and resources for those impacted by the violence.

In 2018, the Rapid Response Team evolved into the Community Safety Intervention Team (CSIT) and worked on developing a cohesive multi-agency response to critical incidents. MPD notes, the resulting "Community Incident Response Protocol is in use and continues to be refined in partnership with MPD, FIC [Focused Interruption Coalition], MMSD [Madison Metropolitan School District], UW Health, DA Crime Response, Joining Forces for Families, Public Health Madison and Dane County, DCHS's [Dane County Human Services] Neighborhood Intervention Program and the Mayor's office. In 2019, the Community Safety Intervention Team will shift focus from violence response to violence prevention." The City deserves credit for its effort to devise a more holistic response to major crimes, as does the MPD for working with the initiative. The program shows that such collaborations can assist with crime solving and prevention, while enhancing community trust and providing meaningful assistance to the victims of crime.

Recommendation #36:

MPD should implement the Special Community/Police Task Force Recommendation to conduct random reviews of footage to evaluate officer performance. [OIR Report #24]

Discussion: As part of its recommendations regarding the use of cameras, the Dane County Community/Police Task Force[15] recommended that Dane County law enforcement agencies with dashboard/squad car cameras should conduct random reviews of footage to evaluate officer performance. OIR concurred, noting that "[t]he video footage provided by dash cam videos provides a resource whereby MPD could assess field activity about which it would not otherwise be aware." MPD does conduct some systemic audits, but it does not regularly conduct random reviews of its dash videos to assess field activity. MPD indicated that the concept of random reviews of footage is "supported by MPD, though implementing it in a meaningful way will require additional supervisory staffing." The Committee is pleased that MPD and OIR concur on the recommendation and recommends that the City provide such funding as is required to implement it.

[15] In 2014 a group of community leaders and police agencies formed what was named the NAACP/United Way Law Enforcement and Leaders of Color Collaboration Special Community/ Police Task Force, and in 2015 the Task Force developed a number of recommendations for reform.

Recommendation #37:

MPD should implement the Special Community/Police Task Force recommendation to train detectives and officers in the use of trauma-informed interviewing skills. [OIR Report #25]

Discussion: In 2014, in the wake of the Michael Brown shooting in Ferguson, Missouri, a group of Dane County community leaders formed the Special Community/Police Task Force to look at improving relationships between communities of color and law enforcement. The task force issued a report in 2015 that recommended specific areas for reform. While MPD has implemented many of the recommendations from that report, one recommendation that MPD has not implemented is training its officers and detectives in the use of trauma-informed interviewing skills.

Trauma is extreme stress that overwhelms a person's ability to cope. It can be an event, a series of events, or set of circumstances that harms a person's physical or emotional well-being. Trauma-informed care is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives.

The International Association of Chiefs of Police has developed a trauma-informed interviewing skills training for sexual assault investigations. The intent of the training is to "better equip law enforcement to understand the complexities of sexual assault through training centered on the neurological impact of trauma, the influence of societal myths and stereotypes, understanding perpetrator behavior, and conducting effective investigations." The philosophy behind developing trauma-informed interviewing skills is consistent with the recent emphasis on the need to conduct sensitive investigations in a way that minimizes any additional trauma to the victim that the investigation itself could unintentionally cause.

During the fall 2017 in-service training, all MPD officers received a block of training on trauma informed care, but it did not include how to conduct a trauma-informed interview. Instead, it introduced the officers to general trauma-informed care principles, such as the widespread impact of trauma, how trauma affects individuals, and what officers can do to avoid retraumatization.

Given the widespread occurrence of trauma and its long-term consequences, trauma-informed interviewing is a critical skill for officers to have. Other agencies, including the University of Wisconsin Police Department, have trained officers in the use of trauma-informed interviewing skills.

MPD notes that all detectives received trauma-informed interview training in the fall of 2018. However, the Ad Hoc Committee recognizes how important trauma-informed interviewing skills are to effective police work and recommends MPD and the City treat this as a high priority training and commit the resources necessary to ensure *all MPD officers* receive this critical training.

Recommendation #38:

MPD should implement the Special Community/Police Task Force Recommendation to explore Scotland's de-escalation methods and the United Kingdom's national decision-making model for police, and adapt these concepts productively to its own policing challenges. [OIR Report #26]

Discussion: OIR noted that, recently, in the United States there has been growing "interest in examining methods police use in other countries for de-escalating potential conflict, and in considering alternative frameworks through which police officers could view each call for service." In particular, OIR noted growing interest in how Scottish police—who are generally unarmed—are able to respond to potentially dangerous individuals "without having deadly force options immediately at hand," and in a relatively new National Decision Model, deployed in the United Kingdom. The UK model is a risk-assessment framework that trains officers to think about every police/civilian encounter as a series of stages:

- Identify Situation and Gather Information
- Assess Threats and Risks of the Situation
- Consider Powers, Policies, and other Obligations
- Identify Options and Consider Possible Contingencies
- Take Action (and Review what happened)

Under this model, officers are trained to ask themselves: "What should the public expect from me?" and are taught to always be guided by consideration "of the Policing Mission Values, Risk, and Protecting Human Rights." MPD responded with a general receptiveness to learning from these models, noting that "training staff can review the Scotland and United Kingdom models and evaluate whether any individual aspects should be incorporated into MPD training." MPD added, however, that "[i]t is neither appropriate nor practical to consider full implementation of the models…. As the [OIR] report notes, police in the United Kingdom face a reality much different from those in the U.S. ..." While adaptation may be necessary, considering the differences between a place like Scotland and urban America, especially with regard to the proliferation of civilian-owned firearms, it is also worth noting that the U.K. National Decision Model provides a very general framework, which may be applicable across a wide range of circumstances. Many U.S. police officials are now concluding that this model, and other such international models for public safety, can provide a valuable source of new thinking. The Ad Hoc Committee is gratified that the MPD is open to reviewing these models and learning from them.

Recommendation #39:

MPD should continue to consider and review the Special Community/Police Task Force Recommendations to further integrate them into MPD culture, and to embrace the spirit and underlying rationale with which they were made. [OIR Report #27]

Discussion: OIR noted the impressive membership of the NAACP/United Way Law Enforcement and Leaders of Color Collaboration Special Community/ Police Task Force and the thoughtfulness, research, and work that went into this initiative. OIR further noted that MPD exhibited an encouraging start in implementation of the Task Force recommendations, but that some had yet to be fully implemented. Toward that end, MPD is in full agreement with this recommendation, noting that "the department fully participated in the Special Community/Police Task Force process and Report. Many of the key recommendations in the report are things that MPD has been doing for years and will continue to do."

Recommendation #40:

The Mayor and Common Council should further expand the use of a public health approach to curb violent crimes. [Community E-mail #34]

Discussion: This recommendation came to the Committee *via* email from a community member, and it strikes us as an important reminder about the limitations of relying solely on police to solve the problem of violence in our community. While the charge to this Committee—and hence the bulk of this report—has been to address the strengths and weaknesses of the MPD, it must always be kept in mind that police are but one part of the solution to violent crime. It is essential that the City not focus so much on the police that it overlooks other aspects of the problem and the solution.

Violent crime is a public health issue. Violence can be prevented, and its impact reduced by public health approaches, just as public health efforts have prevented and reduced infectious diseases, nutritional deficiencies, pregnancy-related complications, and workplace injuries. Violence can be encouraged or discouraged by contextual social, biological, and environmental factors. Moreover, as first recognized by epidemiologists, violence has many of the properties of a contagious disease—including person-to-person transmission across social networks.[16] Rather than seeing violence as a side-effect of moral characteristics (bad guys doing bad things), a public health lens reframes violence as a preventable disease, which can be cured with the help of the community.

A public health approach is interdisciplinary and science-based. The body of evidence for the efficacy of such an approach in preventing violence is extensive and growing. The basic methodology involves understanding the problem through data collection and analysis, designing interventions and policies to tackle the problem using multiple services, monitoring and evaluating the impact of interventions, and modifying practice to scale up and use the strategies found to be most successful.

This provides a set of approaches separate from and complementary to policing. An extensive body of research has found that, in American cities, expansion of police force size has minimal effects on violent crime rates, though innovative policing

[16] Green, B., Thibaut, H., & Papachristos, A.V. (2017). Modeling contagion through social networks to explain and predict gunshot violence in Chicago, 2006 to 2014. *JAMA Internal Medicine 177*(3), 326-333.

strategies (e.g., increased use of problem-oriented policing) can have a beneficial impact.[17] Meanwhile, research shows that investment in efficacious public health approaches can achieve a large reduction in violent crime.[18]

For example, Cure Violence, a Chicago-based NGO, uses a public health perspective to help cities around the world reduce their gun violence levels, using the methods and strategies of disease control. Under this model, a city responds to outbreaks of violent behavior with three common epidemic-control methods: interrupting transmission, containing the risk, and changing community norms. It has been proven successful through rigorous, independent, scientific evaluations, showing large statistically significant reductions in violence where implemented.

Advance Peace is another such program. Advance Peace grew out of the Richmond, CA, Office of Neighborhood Safety program. Richmond experienced a 76% reduction in homicides after implementation of this program,[19] and the reduction appears largely attributable to the program. The approach identifies the individuals and groups at the very highest risk of gun violence in a city and engages those individuals, offering positive developmental support (e.g. setting life goals, providing a stipend and transformative travel experiences, etc.) and working to shift norms.

As noted in "What Works to Prevent Urban Violence Among Proven Risk Young Men? The Safe and Successful Youth Initiative Evidence and Implementation Review," there are two common features of the most effective such programs: "1. Using street outreach workers. 2. Providing positive development supports to high-risk persons."[20]

A somewhat different type of model is that implemented by the Urban Peace/Advancement Project in high crime Los Angeles neighborhoods. This has been referred to as an asset-based, multi-sector approach to crime and public safety, and has proven very successful. As the "Vision Plan for a Safe and Healthy Watts" notes:

> When working with communities that have been historically isolated, agencies often use a needs-based approach that focuses on the problems and needs of the community and assumes public or private sector agencies will provide services to an area. When trying to achieve transformational changes, this approach is often ineffective as it treats the community as a client rather than a partner.
>
> In contrast, an asset-based approach honors and mobilizes individual and community talents, skills, and assets; and promotes community-driven development rather than development driven by external agencies. Gang-entrenched neighborhoods, in particular, require special community expertise from stakeholders experiencing or witnessing the day-to-day violence. This asset-based approach fosters authentic partnerships by identifying and nurturing community strengths in ways that directly enhance public safety and health efforts.
>
> Multi-sector collaboration is vital; without the support and buy-in of residents and organizations working in the area, policy and program efforts – no matter how remarkable – are ultimately unsustainable. Authentic engagement of diverse disciplines, sectors, and resident perspectives ensures the development of solutions that honor and nurture existing community assets and leadership. Successful implementation of violence reduction and prevention strategies centers on real community input and lasting engagement, community's ownership over the solutions, and intentional capacity building of community residents and stakeholders to sustain collaboration and momentum. [21]

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[17] Bayley, D.H. (1994). *Police for the Future*. New York: Oxford University Press; Lee, Y.J., Eck, J.E., & Corsaro, N. (2016). Conclusions from the history of research into the effects of police force size on crime—1968 through 2013: A historical systematic review. *Journal of Experimental Criminology 12*(3), 431451.
[18] See publications linked at cureviolence.org.
[19] Seidel J. (2016, December 17). Program taps unusual weapon to stop killings: Respect. *Detroit Free Press*. Retrieved from freep.com.
[20] Campie, P.E., Petrosino, A., Pace, J., Fronius, T., Guckenburg, S. Wiatrowski, & Ward, S. (2013). *What Works to Prevent Urban Violence Among Proven Risk Young Men? The Safe and Successful Youth Initiative Evidence and Implementation Review*. Massachusetts Executive Office of Health and Human Services. Boston, MA.
[21] Watts Regional School Safety Collaborative. (2015, March). *Vision Plan for a Safe and Healthy Watts*. Urban Peace (a program of Advancement Project). Retrieved from publichealth.lacounty.gov.

The resultant Comprehensive Violence Reduction Strategy in Los Angeles links all the elements of violence reduction with community development, cultural transformation, multi-jurisdictional coordination, and accountability. Some of the components of this program include training and deployment of violence interrupters/gang interventionists (similar to Cure Violence), an initiative to provide alternative activities and jobs for youth in parks during peak hours of gang activity, and a specialized neighborhood-oriented policing program (that actively discourages citations and arrests for minor offenses, while building relationships and trust through provision of services unrelated to law enforcement). Where implemented, this program appears to have resulted in up to a 90% reduction in violent crime.[22]

In this context, it is important to recognize that violence is regulated through informal sources of social control arising from residents and organizations internal to communities. Local nonprofit groups that focus on reducing violence and building stronger communities (e.g., community nonprofits that respond to violence by cleaning streets, building playgrounds, mentoring children and employing young men) have a real effect on crime rates. Research indicates that every 10 additional such organizations in a city with 100,000 residents reduce the rate of violent crime by 6% and the homicide rate by 9%.[23]

The Sottish Violence Reduction Unit (SVRU) represents another successful similar program, using a multi-sector public health approach, with heavy reliance on community members and organizations— including mentors, workers in hospital emergency departments, employment programs, school programs, programs to reduce adverse childhood experiences, etc. The SVRU defines its work as "a public health approach which treats violence as a disease. We seek to diagnose and analyze the root causes of violence in Scotland, then develop and evaluate solutions which can be scaled-up across the country."[24]

A number of other more specific approaches also warrant mention. The National Network of Hospital-Based Violence-Intervention Programs supports prevention work in hospitals and trauma centers (e.g., helping prevent cascades of retaliatory shootings). Summer jobs programs, such as the Boston Summer Youth Employment Program, have been shown to reduce crime among youth, with persistent effects long after the end of the program and declines particularly pronounced among youth of color.[25] Mentoring and positive supportive relationships with adults, such as that provided by My Brother's Keeper Alliance (an initiative providing mentoring to high-risk boys of color), is correlated with reduced gun violence. Likewise, the school-based Becoming A Man program, which includes mentoring and cognitive behavior therapy, has been shown to produce large reductions in criminal arrests among participants[26] (see Recommendation #42 [CRT #14]). More aggressive lead remediation/childhood intervention efforts can also be of substantial benefit for crime and public safety—childhood lead exposure is a well-established causal factor for violent crime in adults, and existing evidence indicates that childhood lead exposure may be a major driver of overall crime rates.[27]

In Madison, multiple initiatives are underway. A holistic violence interruption approach, including peer support counseling, has been implemented by the Focused Interruption Coalition. Meanwhile, the Northside Madison Safe and Thriving Community plan has provided a further blueprint for a multi-sector public health approach to prevent and interrupt youth violence. Public Health Madison & Dane County has been working on violence prevention initiatives and in 2018 selected a violence prevention coordinator. The Madison-area Out-of-School Time program has been set up to connect children and teens with high-quality programs and mentoring during their out-of-school time. And a 2016 report from Alders Maurice Cheeks and Matt Phair has advocated implementation of additional approaches.

There is an increasing consensus among Madison elected officials regarding the value and importance of such a public health/violence interruption approach. Madison could benefit from further funding and cultivating such programs, drawing on

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[22] Monroe-Kane, C. (Host). (2014, December 21). Interview with Connie Rice. *To the Best of Our Knowledge*. Wisconsin Public Radio. archive.ttbook.org/book/reforming-lapd.
[23] Sharkey, P., Torrats-Espinosa, G., & Takyar, D. (2017). Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime. *American Sociological Review 82*(6), 1214-1240.
[24] *About the Violence Reduction Unit*. Retrieved from actiononviolence.org/about-us.
[25] Modestino, A.S. (2017, December). *How can summer jobs reduce crime among youth? An evaluation of the Boston summer youth employment program*. Brookings Metropolitan Policy Program. Retrieved from brookings.edu.
[26] Heller, S.B., Shah, A.K., Guryan, J., Ludwig, J., Mullainathan, S., & Pollack, H.A. (2017, February). Thinking, fast and slow? Some field experiments to reduce crime and dropout in Chicago. *The Quarterly Journal of Economics 132*(1), 1–54.
[27] Drum K. (2018, February 1). An Updated Lead-Crime Roundup for 2018. *Mother Jones*. Retrieved from motherjones.com.

models with established success. Another of the Ad Hoc Committee's recommendations is similar, advocating expansion of public health approaches, but is directed to MPD (Recommendation #41; OIR Report #28). The current recommendation takes a wider, holistic perspective and is directed to the Mayor and Common Council, since many public health programs that should be considered for implementation or expansion would be separate from the police department.

Recommendation #41:

MPD should continue to work with the City, County and its members to recognize crime as yet another danger to public health and to develop further strategies of prevention and remediation consistent with the model. [OIR Report #28]

Discussion: Recently, City leadership has begun to embrace a growing philosophical construct that views crime as being akin to disease as a danger to the public's health. This paradigm suggests a response to crime that goes beyond the traditional responses of detection and enforcement to include prevention and remediation. To its credit, MPD leadership has long advocated a broader role for policing beyond the traditional model. It has also expressed support for partnering with Madison's social services networks and has already initiated relationships with them. MPD's involvement in these endeavors places it at the forefront of contemporary responses to an increasingly challenging crisis. However, there is further room for MPD leadership to ensure that the broader messaging from above in support of its collaborative approach to public health is consistently playing out in the field.

MPD agrees with this recommendation, noting that "the department has long recognized that an effective response to community problems must be comprehensive, and must include more than just a traditional criminal justice focused approach. Recognizing crime and violence as a danger to public health has long been a focus for MPD." The Ad Hoc Committee wishes to commend MPD for its progressive perspective on this topic, and for its work in helping to create programs such as the Madison Addiction Recovery Initiative. This recommendation is primarily directed to MPD. For a closely related item directed to the Mayor and Common Council, please see Recommendation #40 (Community E-mail #34).

Recommendation #42:

The Madison Metropolitan School District should be encouraged to consider implementing the Becoming a Man program, a cognitive behavioral therapy program for at-risk youth, to improve academic outcomes for at-risk youth and reduce juvenile crime. MMSD should also explore including girls in the program. [CRT #14]

Discussion: The Becoming A Man (BAM) program is a school-based program for at-risk youth that reduces rates of criminal behavior and school dropout. It provides mentoring and peer-support, and specifically utilizes cognitive behavior therapy to change decision making, teaching elements such as reduction of automaticity (thinking before acting), positive anger expression, and visionary goal-setting. Its efficacy in reducing crime and improving academic outcomes is well established, meeting the evidentiary gold standard (the randomized controlled trials supporting its efficacy were the largest ever conducted with urban youth populations). Moreover, its effect size is large — among program participants, total arrests were reduced by 28-35% and violent-crime arrests by 45-50%. In addition, there is evidence of a treatment dosage effect (i.e. benefits appears to increase as duration of program involvement increases). The cost of BAM in its initial Chicago trials was $1,100 per student. Depending on how one monetizes crime cost, the calculated societal benefit: cost ratio from crime reduction alone (not counting improved educational outcomes) was up to 30:1. The Ad Hoc Committee amended the CRT proposal to state that MMSD should also explore providing this service to girls.

Recommendation #43:

The Madison Common Council should pass a resolution asking Dane County to provide access to opioid agonist therapy (treatment utilizing Suboxone and methadone) and Vivitrol (a one-time injection on the day of release) for incarcerated individuals and those under community supervision. [CRT #12]

Discussion: Madison and Dane County have not been spared the opioid crisis and associated mortality. Efficacious responses are required. Opioid agonist therapy, using Suboxone or methadone, has been shown to greatly reduce mortality among opioid addicts. Among medical professionals, it is universally recognized as first-line therapy for opioid addiction, given its high efficacy and low cost. US Department of Veterans Affairs guidelines currently recommend medication-assisted therapy (MAT) using either Suboxone or methadone rather than depot intramuscular naltrexone (Vivitrol), oral naltrexone, or abstinence-based treatment. College of Obstetricians and Gynecologists guidelines specify Suboxone as the treatment of choice for

opioid-dependent women in pregnancy. Moreover, the consensus among addiction experts is that multiple MAT drugs (i.e. Suboxone, methadone, Vivitrol) should be made available and chosen according to physician judgment and patient need.

Yet, inconsistent with medical consensus, incarcerated individuals in the Dane County Jail are not allowed access to opioid agonist therapy. Any opioid addict stably receiving opioid agonist therapy is forced to go through withdrawal upon entering the Dane County Jail, inflicting unnecessary pain and distress. Moreover, this practice jeopardizes long-term wellbeing – released inmates who have been forced to withdraw from opioid agonist therapy are at greatly elevated risk of an opioid overdose when re-entering the community, given loss of tolerance. Upon leaving the Dane County Jail, addicts are offered a one-time shot of Vivitrol. But Vivitrol must be given as monthly injections and is far more expensive than Suboxone or methadone treatment, with Vivitrol's expense and related insurance coverage issues contributing to a high rate of discontinuation of the treatment among released inmates.

An increasing number of jails and prisons are providing opioid agonist therapy (e.g. see "Jail-Based MAT: Promising Practices, Guidelines and Resources" from the National Commission on Correctional Health Care and the National Sheriff's Association). Moreover, courts, including the U.S. Court of Appeals for the First Circuit, are starting to mandate access to opioid agonist therapy for incarcerated individuals (both on the basis of the Americans with Disabilities Act and on the basis of the prohibition against cruel and unusual punishment in the Eighth Amendment to the U.S. Constitution).

The Committee recognizes that the MPD does not control the Dane County Jail, and therefore this recommendation is not directed at the MPD. But because this recommendation has a significant impact on policing and the way the criminal justice system treats drug-addicted individuals in Madison, the Committee is including this recommendation in this Report. The Committee amended the original CRT recommendation on this matter, which merely stated, "The City of Madison should advocate access" to specify a concrete form of advocacy (i.e., that the City of Madison should pass a resolution requesting opioid agonist therapy access). The Committee also amended the CRT recommendation to include mention of Vivitrol as one of the three treatment options that should be provided (i.e., in addition to Suboxone and methadone).

Recommendation #44:

Consistent with this Report, MPD should develop formal mechanisms whereby a broader group of community stakeholders are brought into the selection process for special assignment officers, except for selection of traffic crash specialists or criminal intelligence officers. [OIR Report #29]

Discussion: Engaging the community on how and by whom it wants to be policed is essential to building trust between the community and police. Involving stakeholders in the selection process for special assignments is an important way to obtain community support and is concordant with the first principles of community policing.

MPD has several specialized units and roles, including community policing teams, neighborhood officers, educational resource officers (EROs), mental health officers, and the Community Outreach and Resource Education (CORE) team. These are considered "closed" positions, meaning officers are selected through a competitive process and not via seniority. The current selection process often involves some form of outside stakeholder input. For example, school district administrators are involved in the selection process for EROs, and Journey Mental Health crisis workers are involved in the mental health officer selection process. While it is important to have the viewpoints of people with subject matter expertise in the specialized areas, it is also important to have input from other stakeholders who can provide community input and insight.

MPD supports involving community members but cites the inappropriateness or infeasibility of community involvement with a few specialized positions (e.g., traffic crash specialists and criminal intelligence officers) and the lack of public interest in participation as two potential challenges to formalizing a process for more broad-based input. The Ad Hoc Committee recognizes that for the traffic crash specialists and criminal intelligence officers, broader community input is not practicable. The Committee therefore amended the OIR recommendation to explicitly exclude the selection of traffic crash specialists and criminal intelligence officers. However, it is appropriate for other special assignments that focus on community policing concepts, such as neighborhood officers and EROs, to name two. MPD's primary objection for these positions seems to be a concern that the public may not be interested in participating in the process.

The Committee believes that the MPD's concern that it will not find interested community members willing to participate in the process is not a sufficient reason for not reaching out to engage community members, since such a process has never been

tried in Madison (and has been successful elsewhere). Given the interest in community/police relations in Madison (one example is the formation of the Special Community/Police Task Force referenced in OIR Recommendation 25), the Ad Hoc Committee finds it reasonable to think that community members will participate if offered the opportunity. Furthermore, if MPD cannot identify community members to participate in the process, that indicates a greater need to cultivate interest among community members to be involved in the process.

The Madison Professional Police Officers Association (MPPOA) states that it has "a long history of agreement with the idea behind this recommendation." In addition, MPD's November 19, 2018, updated response to the OIR Report references the MPPOA contract, under which "a civilian (preferably from within the department)" is included on the interview panel for specialized assignments. The Ad Hoc Committee encourages MPD to embrace this recommendation in full, bringing a broad group of community stakeholders (truly representative of the community) into the selection process.

Recommendation #45:

Consistent with this Report, MPD should routinely seek input from community stakeholders and professionals regarding the performance of officers assigned to specialized units. [OIR Report #30]

Discussion: Receiving feedback in a systemic, formalized manner from community stakeholders and professionals who have contact with and/or are being served by the officer on the officer's performance is extremely important so MPD can know how effectively the officer is performing his/her job duties; commend exemplary performance; identify, address, and remediate problematic conduct; and serve as one measure through which to determine whether to retain the specialized officer in the assignment. For example, feedback on the performance of a neighborhood officer should be solicited from the council member whose district is being served and residents of the neighborhood. Or, for mental health officers, service providers and other professionals who have regular contact with the officers should be asked for input.

MPD expresses concern that if officers receive no feedback, they may be evaluated adversely by MPD. But as OIR notes, "our recommendation neither suggests not expects such a consequence." MPD also expresses concern that this may be an onerous task and require contacting "thousands of people." But the feedback process does not have to be complicated. It can be as simple as sending a short email to the appropriate stakeholders requesting feedback.

In its November 2018 update, MPD noted that it had created surveys to solicit feedback on neighborhood officers and EROs and anticipated moving forward with those surveys by early 2019. It is silent on how it intends to solicit feedback on the performance of officers in other specialized units. The Ad Hoc Committee recommends MPD gather feedback on the performance of all officers with special assignments.

Recommendation #46:

With input from the community, each specialized MPD unit that has not already done so should devise a mission statement setting out the core objectives of the unit. [OIR Report #31]

Discussion: While some teams, such as the Mental Health Team, have already developed mission statements, and the Department emphasizes mission and core values in a number of other ways, it would be useful to do so across the board. Taking a step back to identify overarching goals for these units would be helpful to internally develop congruency of mission, as well as providing an encapsulation of those goals to the Madison community. It could also help foster further embrace of problem-oriented policing practices. Units that are intended to have a special relationship with the community should reach out to their public for input on the mission statement.

MPD agrees that devising mission statements for each unit is important, and notes that "[m]ost units/teams already have an existing mission statement or similar articulation of the unit goals…." Where lacking, MPD agrees "to explore this concept further" and to post any additional specialized unit/assignment mission statements on the web.

Recommendation #47:

With community and City stakeholder input, MPD should devise a media release policy setting out objective parameters regarding when information about arrests of persons will be proactively publicly released. [OIR Report #32}

Discussion: Another form of police and community interactions, and one with implications for public trust and confidence, is the Department's media engagement strategy. One facet of this involves release of information on arrestees. Police agencies have the ability to publicize an arrest and provide basic information to the media and others about the identity of the arrestee and charges that form the basis of the arrest. OIR noted that MPD had no written policy or guidelines governing when to proactively release information about an arrest. It proactively publicized only a small percentage of arrests and it made its decisions on a case-by-case basis. This had occasionally subjected the Department to criticism and allegations of bias (for example, when it chose not to publicize the arrest of an off-duty MPD officer). OIR noted that developing a policy on media release of arrest information would provide notice to the Madison community regarding when arrests would be publicized and would better ensure a consistent approach internally. Moreover, since this policy would have a direct public interest component to it, MPD would be well-served to solicit public input as the policy is devised.

MPD indicated that, while it had a process for releasing information from the public information officer or shift officer-in-charge, and while it had sought to be consistent in what is released and when the release occur, it nonetheless agreed that some additional language in its News Media Release SOP would improve consistency. In its November 2018 updated response, MPD stated that the change had occurred with input from local media members/stakeholders. The updated SOP specifies that likely "heightened public interest" would be the criterion for deciding whether arrest information should be released.

Recommendation #48:

In publishing information about "shots fired" calls, MPD should include whether the call led to an arrest, revealed corroborating information, or had no further corroboration beyond the initial call. [OIR Report #33]

Discussion: Making information easily accessible to the community and ensuring the accuracy of that information is important to building community trust and policing effectively. This is especially important with "shots fired" calls. Many community members view these incidents as threats to themselves and indications that their community is not safe. Therefore, it is important that information about shots fired be reported in a timely and accurate manner.

By way of background, MPD has focused on publicizing reports of shots fired for the past few years. It includes them in the Chief's daily blog entries, and they are the first item reported in the Chief's quarterly updates to the Common Council. Sometimes these calls have no corroboration—the caller thought a shot was fired but there is no physical evidence. While it is important that people promptly report potential gunfire, and these calls should remain a priority for MPD, it is as important that the public know the results of these calls.

MPD's initial response to the OIR report (January 31, 2018) stated that uncorroborated reports of shots fired were not included in the data released by the Department, but records of the Chief's blog showed they were. MPD implemented a new SOP effective January 25, 2018, that provided guidance to officers on which incidents would be treated as confirmed shots fired and how to respond and investigate. It is worth noting that to treat a report as "confirmed," MPD requires only that a single complainant who reports hearing shots is contacted and deemed "credible."

The blog now includes a resolution of shots fired calls, providing information on whether the report resulted in an arrest, whether there was corroboration (e.g., shell casings, bullet strikes), or whether there was no corroboration. Including this information in the daily blog is a good practice and provides the public a more accurate picture of these types of events. It might be helpful to provide more information about corroboration for the shots fired numbers published in the Chief's quarterly updates.

Recommendation #49:

MPD should consider resource neutral ways to supplement the staffing of their facilities and also explore alternative shifts and hours so that they can be open for public access for longer hours. [OIR Report #34]

Discussion: Having an accessible presence in a community is critical to effective policing. An obvious indicator of a law enforcement agency's community presence is the district stations. OIR notes that, given the size of the department, the hours the MPD district stations are open to the public are very limited.

MPD district stations are open to the public on weekdays from 8 a.m. - 4 p.m. This creates obvious barriers for community members who may want to contact the police. A person working traditional hours would be unable to visit a facility to talk with a station commander without taking time off work. Madison residents can submit non-emergency issues/requests for information online and if a person wanted to report a crime or make a complaint, they could call MPD and an officer would be sent to the residence. However, some people prefer to go to the station to talk with MPD rather than have an officer show up at their home. The current hours of operation do not allow for this and limit the public's access to MPD.

MPD recognizes the drawbacks of the limited hours and fully supports expanded hours, but it questions whether it has the resources to do so. The Ad Hoc Committee recognizes that MPD has limited resources so it cannot keep all facilities open 24/7. However, an effective police force is one that is open and readily accessible to the community, so it would benefit MPD and the community if the facilities' hours were more conducive to public access. There are resource-neutral alternatives that would provide the public with greater access to MPD's facilities and services. For example, the lobby could be staffed with volunteers or cadets from the Explorer program. Also, alternative schedules could be used. For example, the stations could be open from 10 a.m. - 7 p.m. one or two days a week or some other non-traditional hours to enable greater public access and enhance MPD's ability to serve the community. The Ad Hoc Committee thus adopted this OIR recommendation, adding the phrase, "and also explore alternative shifts and hours," since this mechanism could potentially increase accessibility without increasing staffing requirements.

Recommendation #50:

MPD should dialogue with the City and with the University of Wisconsin Law School to identify ways that law students can be reintegrated into the Department's learning and problem-solving functions. [OIR Report #35]

Discussion: MPD informed the Committee that it "certainly supports a positive and productive relationship with the UW Law School and the academic community in general," and that it "supports any efforts to strengthen connections with the UW Law School or academic community in general." Indeed, the Department and the Law School have a long history of collaboration and engagement. Unfortunately, the programs that inserted law students into MPD's culture diminished after 2013, when UW law professor Mike Scott, who directed the Center for Problem-Oriented Policing (a U.S. Department of Justice-funded project) left for Arizona State University. While MPD has since that time regularly reached out to other graduate disciplines for research and training and regularly brings on undergraduate interns, MPD and the law school are less dynamically engaged. Moreover, the Committee believes there exist unrealized opportunities to maximize the potential contributions of academic luminaries such as Professor Goldstein or past MPD leadership to further advance or provide a historical perspective on challenges of problem-oriented policing as they arise. MPD is centered in an academic criminal justice community that was the cradle of progressive policing principles, yet it is not currently capitalizing on its connection to these legends of policing or to the enthusiasm and energy of law students. We encourage MPD, the City, and the Law School to find ways to re-energize the collaborations that have existed in the past, and we are encouraged that both the MPD and the Law School have expressed a strong desire to do so.

➢ SECTION 4. Community Policing: Philosophy & Practice

Recommendation #51:

In selecting neighborhood officers, MPD should broaden its selection process to include City stakeholders and representatives of the community. [OIR Report #36]

Discussion: MPD reports that it "is committed to this concept." MPD, to its credit, has long taught and espoused a commitment to principles of community policing and problem-oriented policing. Effective Neighborhood Officers are key to

the success of these policing strategies. OIR notes that, according to the community feedback it received, the most important attribute of a Neighborhood Officer is the ability to gain and retain trust. If the Neighborhood Officers are seen as strictly another enforcement arm of MPD, some community members will be unwilling to engage. The selection process for a Neighborhood Officer is significant. The current process is a competitive one and involves some limited community representation (though the particulars seem to vary). Under the Madison Professional Police Officers Association contract, "a civilian (preferably from within the department)" is included on the interview panel. In order to develop immediate "buy-in" from both the neighborhood and the officer applicant, MPD should enlist the assistance of additional elected and informal representatives of the community to provide input.

Recommendation #52:

MPD should ensure an effective transition between the outgoing and newly-assigned neighborhood officers. [OIR Report #37]

Discussion: OIR encouraged MPD to create a transition period so that incoming Neighborhood Officers could observe and model their work after high functioning Neighborhood Officers. In its response, MPD agreed with the importance of an effective transition process, noting that new Neighborhood Officers already "engage in robust cross training with the outgoing officer." However, the MPD also noted, "We recognize that the transition process could be formalized and will move forward with doing so." In its November 2018 updated response, MPD stated that: "The department recently finalized the transition/cross-training process for both the ERO and NPO positions. While newly assigned educational resource officers (EROs), neighborhood resource officers (NROs) and neighborhood police officers (NPOs) have always gone through cross training, the process is now formalized. Newly selected officers moving into these positions will now have lists of required assignments to complete and topics to review during the transition process. These include discussion topics, introductory meetings, etc. Officers will also have be [sic] required to spend time working with the outgoing officer as part of the transition."

Recommendation #53:

MPD should collect and document information pertaining to the work of neighborhood officers and other specialized officers either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data. [OIR Report #38]

Discussion: MPD has created several specialized units to perform community- and problem-oriented policing, an approach to policing that seeks to be proactive in identifying issues that matter to the community and finding ways to address them systemically and comprehensively, rather than on a reactive, case-by-case basis. These specialized units include neighborhood officers, educational resource officers, mental health officers, community policing teams, and the Community Outreach and Resource Education (CORE) team.

While the intent behind the specialized units is laudable, other than anecdotal stories there is little documented evidence to know how well specialized officers are performing the problem-solving functions of their job. For example, because they are not handling calls for service, regularly making arrests, and issuing citations, neighborhood officers are freed from much of the traditional report writing of patrol (and their activities are mostly not captured on the computer-aided dispatch system). They also do not keep daily logs of their activities. The result is that there is little contemporaneous documentation with which to gauge their activities and learn how effective they are in performing their job duties.

One way to measure whether the specialized officers are performing their jobs as intended is to have officers keep documentation that would help MPD assess the degree to which the objectives of problem-oriented policing are being carried out. For example, a brief, daily activity log completed at the end of a shift would provide some documentation from which to make assessments. OIR recommends implementation of such daily activity logs. OIR further points out that MPD currently has no formal evaluation process for its police officers, and notes that daily activity logs and input from the community could provide the backbone of an evaluative process for specialized officers. Meanwhile, MPD's position is that keeping daily activity logs is an ineffective and inefficient way to capture the officers' work. Madison Professional Police Officers Association (MPPOA) agrees with MPD's position but it recognizes that supervision alone will not provide the measurable data that is being sought by this recommendation.

MPD Neighborhood Officers did use activity logs when community policing was first initiated. OIR states that it knows of a number of agencies that use daily activity logs, and it provides an example from the Burbank Police Department, noting, "Burbank PD has indicated that the logs are helpful, not unduly burdensome, provide important data to its command staff, and are used to better know and guide what its officers are doing on a day-to-day basis." As another option possibly worth exploring, OIR references computerized platforms, such as one from Benchmark Analytics, advertised as designed to map the spectrum of on-duty actions of officers to "paint a full picture of an officer's patterns, skills, and abilities."

Capturing data is necessary so MPD can determine if the specialized officers are fulfilling the expectations of the job. If MPD truly believes it is critical for these officers to be engaged in community-based policing, and it does not want officers to keep daily activity logs, it needs to devise an alternative data collection method to learn whether the officers are doing so. Without information on daily activities, MPD has no way of assessing program effectiveness, addressing problems, or recognizing quality work. A more concerted effort to capture and report community policing efforts, including problem solving, incidents of de-escalation, and the daily work of its specialized units will provide a more robust and complete record of the work that is being done by MPD and provide additional data points with which to better assess important questions about resource allocation. Committee members noted that a mere checklist would be insufficient – this would not capture the data needed to properly understand the nature and quality of an officer's problem-oriented policing activities. MPD argued for the importance of a system that could track and code officer activities in a way that would have meaningful use.

The Ad Hoc Committee's position is that capturing the relevant data is of utmost importance, but the Committee is flexible about the exact means of doing so. The original OIR recommendation stated, "MPD should have its Neighborhood Officers (and all specialized officers) prepare daily activity logs of their performance." The Committee amended the OIR recommendation to give MPD flexibility in how it collects the data, so long as the data is truly comparable, recommending, "MPD should collect and document information pertaining to the work of neighborhood officers and other specialized officers *either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data."*

Recommendation #54:

In order to be able to gain an evidence-based understanding of patrol officers' problem-oriented policing activity, MPD should develop a system to track and report the specific efforts including results, ongoing efforts, and collaboration with community groups. [OIR Report #39]

Discussion: MPD expects that at least 50% of an officer's time should be devoted to engaging in problem-oriented policing and has used this expectation to request additional resources for staffing from the Common Council. Most traditional law enforcement work performed by patrol officers is documented and tracked through the 911 Center's computer-aided dispatch (CAD) system. In addition, patrol officers write reports, make arrests, and issue citations, thus providing another source for capturing the traditional law enforcement functions of the patrol officers. However, patrol officers do not keep daily activity logs. While incident categories have been created in the CAD to better track patrol officers' community-oriented policing activities, as opposed to traditional enforcement activities, there is not enough data to determine the amount and effectiveness of the patrol officers' activities non-traditional law enforcement activities.

In response to requests from the Common Council, MPD began publishing a departmental daily activity log that focuses largely on MPD's response to calls for service and observed criminal activity. What is not included in this departmental daily log is police activity such as problem solving, incidents of de-escalation, and other community-based policing initiatives. As OIR notes, "[A] more concerted effort to capture and report out 'community policing' efforts – by patrol officers or others – and the daily work of its special assignment units will provide a more robust and complete record of the work that is being done by MPD." Capturing more data on community policing efforts, including problem solving, will reinforce to patrol officers that MPD values a community policing orientation thereby incentivizing them to maintain a community policing orientation as they perform their duties. It will also allow MPD to determine which officers are meeting the 50% expectation, establish remediation programs for those who are not, assess the quality of officers' problem-oriented policing efforts, and make this information available to the public. Moreover, the data could be mined for superior, creative responses to problems. OIR recommends instituting daily activity logs for patrol officers to capture this data. MPD argues that maintaining a daily activity log would be onerous for officers, though OIR notes in reply: "In its response, MPD suggests that it might take eight minutes of an officer's day to complete such logs. In our view, for an officer to spend eight minutes documenting and reflecting on her/his activity during the shift has significant value and is not a wasted use of time."

The Ad Hoc Committee discussed the question of data collection at length. Committee members noted the importance of instituting some form of narrative tracking log for patrol officers engaged in problem-oriented activities. A system such as CAD that merely captures categories of activities (e.g., foot patrol) is insufficient. Some type of narrative log is needed that captures the heart of what happened – from the start of the problem to resolution – including steps taken in responding to a problem, analysis of the problem, individuals or entities engaged with, trials attempted, what worked, what didn't work, etc. Such a log would not necessarily have to be daily. Indeed, responses to some problems may play out (and require narrative tracking) over protracted periods. But when officers are engaged in activities responding to a problem, they need a log around the activities that captures their approach. In addition, it is worth noting that logging at long time intervals may lead to pertinent information being forgotten.

Given all of these considerations, the Committee amended the OIR recommendation (that MPD should institute daily activity logs for patrol officers) to instead state: "In order to be able to gain an evidenced-based understanding of patrol officers' problem-oriented policing activity, MPD should develop a system to track and report the specific efforts including results, ongoing efforts, and collaboration with community groups." The exact details of the approach are thus left to MPD to develop, providing the Department with flexibility, though the approach should fully capture the types of information discussed.

Recommendation #55:

MPD should develop evaluative metrics consistent with the stated mission of neighborhood officers and prepare at least annual performance evaluations based on those metrics, to be completed in conjunction with the neighborhood as laid out in OIR Recommendation #41. [OIR Report #40]

Discussion: As noted in Recommendation #53 [OIR Report #38], other than anecdotal stories about neighborhood officers, there is little documented evidence on the extent to which they are performing their problem-solving duties and how well they are performing them. Moreover, MPD has no formal evaluation process for its neighborhood officers. The neighborhood officers complete an annual report on their assigned neighborhoods that addresses neighborhood wellness and the need for MPD intervention, but that report is not designed to measure individual officer performance. These annual reports may be valuable for some purposes, but they do not address the crux of this recommendation.

The intent of this recommendation is for MPD to develop metrics regarding its expectations for a high-functioning neighborhood officer. Annual performance evaluations should be conducted using the metrics. The purpose is for each neighborhood officer to understand the department's expectations and the fields of activity under which their performance will be evaluated. In addition to the officers being informed of those expectations, the neighborhood would also be aware of them and could contribute ideas for inclusion and refinement. The documentation of the officer's daily activities (through a daily activity log or other method—see Recommendation #53 [OIR Report #38]) and input from the community [OIR Report #41] should be used as part of the evaluation process. The metrics need to be "homegrown" and developed in consultation with the neighborhood, because each neighborhood has different interests and challenges. The Ad Hoc Committee recognizes the uniqueness of each of Madison's neighborhoods and the importance of neighborhoods partnering with MPD in determining exactly what measurements they want performance to be evaluated on, and in providing direct input to the evaluations, so it added "to be completed in conjunction with the neighborhood as laid out in OIR Recommendation 41" to the original OIR recommendation.

MPD is supportive of this recommendation as it relates to evaluating individual officers. Though Assistant Chief Vic Wahl noted that care needs to be taken in choosing metrics – for example, increased trust in a neighborhood officer may lead to an increase in service calls because people are more comfortable contacting the officer, and the increase in service calls should not be taken as an indication of poor performance. Metrics based on relationships created with the community or community services (outside of traditional law enforcement) provided by an officer could potentially provide more appropriate bases for evaluation.

Recommendation #56:

MPD should regularly seek input from City stakeholders and representatives of the community in evaluating the performance of its Neighborhood Officers on at least an annual basis. [OIR Report #41]

Discussion: The Neighborhood Officer program in Madison dates to the 1980s. Each patrol district has two to four neighborhood officers who work full-time in their assigned neighborhoods. Rather than responding to calls for service, neighborhood officers take a proactive approach to find long-term solutions to problems in their neighborhoods. The program is based on the idea that neighborhoods and their needs are unique, and the relationships a dedicated officer can build with the neighborhood residents promote trust and constructive interventions. Under this model of policing, the individual officer plays a vital role in the effectiveness of the program. Not all officers are equally well-equipped for the unique responsibilities of the neighborhood positions. These responsibilities include rapport building, the skilled and judicious exercise of discretion, and a clear and focused understanding of the unique "mission" that community policing entails. Officers in these positions have a high level of autonomy. The nature of the position requires an officer to engage the community without being seen as just another "MPD cop" who has been inserted into the neighborhood to watch for any criminal activity and arrest residents for minor law violations.

The program results have varied over the years. Some officers are a trusted part of the community, and they regularly engage with residents, community leaders, and elected representatives. Others do not. Given the nature of the program, it is critical that MPD develop a systemic, formalized way to receive regular feedback from City stakeholders and representatives of the community who have contact with and/or are being served by a neighborhood officer on the officer's performance, so MPD can know how effectively the officer is performing his/her job duties; commend exemplary performance; identify, address, and remediate problematic conduct; and have information that could serve as one measure through which to determine whether to retain the neighborhood officer in the assignment.

The feedback process does not have to be complicated. It can be as simple as sending a short email to the appropriate stakeholders requesting feedback. For example, feedback on the performance of a neighborhood officer could be solicited from the council member whose district is being served and the residents of the neighborhood via a short email requesting input on the officer's performance.

MPD noted in its November 2018 updated response to the OIR report that it had created a survey to solicit feedback on neighborhood officers that it anticipated moving forward with in early 2019. The Ad Hoc Committee recommends that MPD gather feedback on the performance of neighborhood officers on at least an annual basis.

Recommendation #57:

MPD should devise ways to consistently publicize the community policing activities of its patrol officers as well as special assignment personnel. [OIR Report #42]

Discussion: MPD reported that it "recognizes the importance of publicizing this type of activity," and noted that it has made various "efforts to do this." Consistent with OIR's recommendation, however, MPD noted that, "[i]ideally, MPD would be able to improve the quantity and depth of information released publicly, particularly through social media." The Committee agrees that a more concerted effort to capture and report out "community policing" efforts by patrol officers or others and the daily work of its special assignment units will provide a more robust and complete record of the work that is being done by MPD, and enhance public confidence in the MPD. The practice would have the added advantage of reinforcing to patrol officers that MPD values this dimension of their work, thereby incentivizing them to maintain a community policing orientation as they perform their duties. And for specialized officer assignments, this reporting would respond to understandable public interest about the nexus between those duties and enhanced public safety. Finally, the collection and reporting of this information could provide additional data points with which to better assess important questions about resource allocation. MPD noted, however, in its initial response, that "[a]dditional staffing is required for significant improvement, however, through either an additional public information officer (PIO) or social media coordinator (or both)." In its November 2018 update, MPD noted that the title of the Crime Prevention officer position had been changed to the MPD Crime Prevention/Social Media Director, and the job responsibilities had been concordantly changed to include a part-time focus on utilizing social media to share MPD's community policing efforts. The Committee agrees that additional resources could facilitate such efforts, but also encourages the MPD to continue to look for ways to increase or prioritize its publicizing of such activities if additional resources are not forthcoming.

Recommendation #58:

MPD's executive leadership should pursue ways to utilize its neighborhood officers in developing, facilitating, and measuring specific problem-oriented policing projects. [OIR Report #43]

Discussion: Problem-oriented policing—which was pioneered by Madison's own Professor Herman Goldstein at the UW Law School—has long been a hallmark of Madison's progressive approach to policing. Neighborhood officers, from their vantage point as liaisons to the community and on-the-scene problem-solvers, can and must play a key role in implementing this philosophy. The commitment to problem-oriented policing faces the inherent challenges, however, of major investments of time and energy, with a payoff that can be hard to measure or even recognize. Despite these challenges, the Committee believes that ensuring ongoing engagement through the neighborhood officers is critical. Rigorous research has clearly demonstrated the often-superior efficacy of problem-oriented policing approaches in ameliorating crime and disorder problems. The MPD agrees, noting that "MPD is committed to the problem-solving process …" and "MPD leadership encourages and fosters problem-solving by neighborhood officers," and "will continue to explore ways" to improve tracking and documenting these efforts.

Recommendation #59:

MPD should commit to a newly robust and collaborative engagement with the City of Madison's Neighborhood Resource Teams in establishing new goals and performance measures for proactive problem solving. [OIR Report #44]

Discussion: One additional avenue worth exploring in this regard is heightened coordination with the City's broader Neighborhood Resource Teams. These groups are coordinated by the Mayor's Office and bring together City staff from a range of departments (including MPD). They are intended to identify and facilitate holistic approaches to quality of life improvements in specific Madison neighborhoods. It is a multi-disciplinary concept that very much aligns with the problem-oriented-policing philosophy. Our sense is that the concept, while sound, could benefit from some reconsideration of roles and some renewed enthusiasm from across the range of City services. MPD noted that its "involvement and participation in the teams has been consistently robust … [over the years], and will continue to be in the future."

Recommendation 60:

With regard to field assignments MPD should find ways to take full advantage of officers identified as practicing problem-oriented policing, such as having them provide modeling opportunities, be involved in training community policing concepts and otherwise effectively export their policing strategies to other officers. [OIR Report #45]

Discussion: MPD responded that it "is committed to this concept, and to the idea of having top performers share their developed expertise with others." OIR noted that MPD has pushed hard to increase MPD officer numbers, in part so that each officer has the time and ability to handle calls for service patiently and holistically but has little infrastructure to track whether the performance of individual officers is consistent with messaging from the top. The Committee encourages the MPD to continue and expand problem-oriented policing efforts, by identifying officers who are best performing community policing, and then designating those officers as mentors; they should teach community policing concepts at the Academy, serve as models during field training of new officers, and otherwise be used to incubate these norms throughout the Department. These ambassadors of problem-oriented policing are the most effective front-line presence to growing these ideals within the organization.

Recommendation #61:

MPD should track and evaluate the substantive work of its Community Policing Teams to ensure consistent application of community policing principles based upon best practices of community policing apart from traditional law enforcement methods. [OIR Report #46]

Discussion: Community policing is an approach to policing that seeks to be proactive in identifying issues that matter to the community and in finding ways to address them systemically, comprehensively, and with a focus on prevention rather than on a reactive, case-by-case basis. It goes beyond simply maintaining order to an effort to use resources productively and thoughtfully, working in partnership with the community and service providers to develop a multi-faceted approach to enhance public safety. A key aspect is having the same officer patrol the same neighborhood on a permanent basis, seeking to

talk to and build relationships with all members of the community. MPD prides itself on its commitment to community policing, and in various ways, it operates according to those principles. However, as OIR notes, "MPD's pride in its longstanding commitment to community policing exists alongside recent signs of drift from those principles and their benefits."

One area where MPD might not consistently be applying community policing principles is in the work of MPD's Community Policing Teams (CPTs). CPTs are being used, to a large extent, for targeted enforcement activities, such as warrant service, traffic abatement, drug enforcement, and prostitution enforcement, "none of which could be construed as community policing in even the broadest sense," in the view of OIR. At least some veteran MPD officers agree with this critique, and view CPTs as having largely drifted from a community policing mission, to instead functioning predominantly as directed enforcement/drug interdiction teams. As Mike Gennaco of OIR explained: "The Community Policing Team was a group in search of a name.... It's a cadre of officers that are not responding to calls for service, but the philosophy that MPD devised ... was to give discretion to the Captains of each of the districts on how to use them. So in the South [District] they have been used primarily for community policing, nontraditional activities, and are very engaged in that. In other districts not so much. So the Captain may decide we're getting a lot of issues with regard to traffic abatement, so I'm going to use my CPT team to do that. Or we have a number of warrants that need to be served…. [W]e'll have our officers spend a couple days doing that. That's not what [UW Emeritus] Professor Goldstein [an internationally renowned scholar on community- and problem-oriented policing] would consider community policing." Professor Goldstein made a related point when he presented to the Committee. After describing some very effective/creative problem-oriented policing efforts, he noted: "The downside is we do these things and then the pressures build up and they say we want more people on traffic control, we want more people serving warrants, we want more people doing some of the traditional things that are not very productive, and that draws away from these efforts."

MPD disagreed with OIR's contention that such activities do not constitute community policing, stating, "Most of the work performed by the CPTs is in direct response to community complaints/concerns." OIR stated in reply, "MPD asserts in its response that drug and traffic enforcement constitutes community policing. They do not. MPD's belief that they do suggests a fundamental misconception of community policing philosophy…. The Department's Community Policing teams should be dedicated to 'community policing' in the classic sense, or their names should be changed to reflect the work they are assigned to do." That the enforcement is in response to resident complaints is not a sufficient criterion to define an activity as community policing.

Moreover, trust-building is a key component of community policing, while extensive traditional enforcement activities against lower-level offenses can erode trust in the police and contribute to fear and resistance by more marginalized sectors of the community. As sociologist Alex Vitale noted, "In his book 'Citizens, Cops and Power: Recognizing the Limits of Community,' Steve Herbert shows that those who actively participate in community affairs do not usually represent the full diversity of views and experiences in urban neighborhoods, especially those that are racially divided. Community meetings tend to be dominated by longtime residents, homeowners, business owners and landlords. The views of renters, youths, homeless people, immigrants and the most socially marginalized are rarely heard. As a result, the problems identified … tend to focus on quality of life concerns, involving low-level disorderly behavior, rather than serious crime. This emphasis on minor offenses can easily facilitate an increase in the destructive broken-windows-style policing that has led to the criminalization of millions of mostly black and brown people." In general, more privileged members of the community may be more likely to contact police with enforcement concerns. But even if some members of a community want MPD to focus predominantly on enforcement activities at the relative expense of addressing broader, more systemic issues, MPD needs to ensure that it considers the interests and views of all community members.

In its deliberations on this recommendation, the Ad Hoc Committee integrated all of these considerations. The Committee believes that community- and problem-oriented policing practices have great value and should be implemented by CPTs in full. The Committee thus modified the original OIR recommendation (which stated "MPD should evaluate the substantive work of its individual Community Policing Teams, and consider changing the name of the team(s) as needed to better reflect their work") to instead recommend that MPD track and evaluate the work of the CPTs "to ensure consistent application of community policing principles based upon best practices of community policing apart from traditional law enforcement methods."

Recommendation #62:

MPD should collect and document information pertaining to the work of the CPT either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data. [OIR Report #47]

Discussion: OIR recommended that MPD have its Community Policing Team (CPT) officers prepare daily activity logs, to obtain a better record of what these officers are spending their time doing. OIR noted that such documentation could be used both for performance evaluation of individual officers and to gain a more comprehensive understanding of what CPT officers are doing in the various districts. OIR noted that there was inadequate documentation of how specialized officers, including CPTs, were performing the problem-solving functions of their job. Moreover, in the case of CPTs, it is critical to gather such data to track and evaluate the work of CPTs in order to ensure fidelity to their stated community policing mission and application of best practices of community policing (see Recommendation #61 [OIR Report #46]).

MPD's position was that daily activity logs might be cumbersome and not provide data that could be aggregated in a useful fashion (while OIR argued that such logs need not be overly burdensome). However, MPD was in support of getting a better picture of officer activity. Assistant Chief Vic Wahl apprised the Committee of the activity tracking practices that had been in use: "the individual [CPT] teams are collecting data, typically on a weekly basis, compiling it for the team. So not through the mechanism of a formalized paper daily log form that they fill out, but the sergeants will typically compile summaries of their activities. And then, in addition to that, we have some of our other data sources that we can extract CPT activities from like CAD data…. CPTs do have not logs but they have databases that they enter data into to capture and track some of their activities…. [T]here's a number of topics and categories of activity that we track."

The Ad Hoc Committee agrees with OIR on the need to much better document CPT activities and on the importance of narrative-form information for documenting problem-oriented policing activities (data that cannot be adequately captured by a system that only tracks general types of activities). In response to MPD concerns and consistent with Recommendation #53 [OIR Report #38], the Committee amended this recommendation to allow MPD to capture this data "either through daily logs or through such other data collection methods that the department deems appropriate that generate comparable data." See also discussion of related issues in Recommendation #54 [OIR Report #39].

In its November 2018 updated reply to the OIR report, MPD noted: "The department has modified/improved the logs used to track community policing team activities. Community Policing Teams have started to use these logs as a pilot, and after several months the department will evaluate them. In addition, we are exploring additional incident types/codes that can be used to improve tracking of all officer work through the CAD [Computer Aided Dispatch system]."

➢ SECTION 5. MPD's Educational Resource Officers

Recommendation #63:

MPD should regularly review the activity of its Educational Resource Officers to determine whether the appropriate balance between prevention, problem-oriented policing, and enforcement is being achieved. [OIR Report #48]

Discussion: It is incumbent upon MPD to continue to assess whether the EROs are striking the desired balance among prevention, problem-oriented policing, and enforcement. Because the ERO does not work out of a station but in an environment not regularly frequented by MPD supervision, it is incumbent upon the Department to regularly seek input from school stakeholders and juvenile justice partners on the performance of the EROs.

One step in this direction is the current plan to expand on the annual reporting information provided by the District, which to date has provided only arrest and citation compiled from the different campuses. This is obviously relevant information, and useful in terms of identifying trends and developing potential remedial responses. However, to the extent that it does not capture or reflect some of the central aspects of EROs' proactive policing in the schools' environment, MPD and the District should prioritize the preparation of a more holistic portrayal in each year's report. Such a step would have a few potential benefits. Not only might it add constructively to interested parties' objective understanding of the ERO dynamic, but it could also have a positive influence on the philosophy and mindset of the officers and administrators themselves. MPD did not object to this recommendation, noting instead that "[t]he department recognizes the importance of regularly reviewing ERO activity and will continue to do so.

Recommendation #64:

MPD should work with school district administrators to ensure congruity of purpose with regard to mission and responsibility of EROs in the school setting. [OIR Report #49]

Discussion: EROs should serve as a form of "neighborhood officer" in the best traditions of problem-oriented policing: developing constructive relationships, identifying potential issues, creating unique informal restorative justice programs within the school environment, and offering a resource that can help deter and prevent problems before they arise. Efforts should be made to "standardize" the role of the officer to promote core levels of congruity of the EROs' performance with their mission and consistency from site to site and officer to officer. It seems clear that the principal or assistant principal in a given location can have an outsized influence on how the program works, and the extent to which EROs focus their energies on traditional enforcement or more progressive and proactive interactions. Currently the school district provides relevant in-service training at the outset of every academic year, and some school police officers have worked with school administrators to develop a matrix of responses to common types of incident with the purpose of framing uniform expectations across school sites. We encourage efforts at a "district-wide" initiative in Madison to develop training programs and feedback loops that promote clear expectations and consistency in execution of the ERO program. MPD did not oppose this recommendation, noting, "We support a shared understanding of the ERO role and consistency across the four high schools, and will continue to work with MMSD in furtherance of these objectives."

Recommendation #65:

In selecting EROs, MPD should broaden its selection process to include faculty, juvenile justice partners, and student leaders. [OIR Report #50]

Discussion: With only one officer at each school location, whether the ERO program is living up to its potential as a constructive, student-centered element in the school environment depends largely on the officer's approach and ability to establish rapport on the job. To ensure the selection of the best possible EROs, there should be a protocol that blends input from the officers, Department executives, and site administrators. Additional stakeholders beyond school administrators could be included in the selection process, such as faculty, student leaders, and persons responsible for managing the County's juvenile justice programs. These individuals all have significant involvement in and knowledge about the work of EROs and may offer interesting insights to the selection process. MPD responded: "We are willing to explore ways to expand participation [in the selection process for EROs] in conjunction with MMSD. However, formal changes to the selection process are a subject for bargaining."

Recommendation #66:

MPD should regularly seek input from school stakeholders and juvenile justice partners in evaluating the performance of its EROs on at least an annual basis. [OIR Report #51]

Discussion: Educational Resource Officers (EROs) are MPD officers stationed at East High School, LaFollette High School, Memorial High School, and West High School. As with the neighborhood officers, the individual ERO is crucial to the success and effectiveness of the program in achieving its potential as a constructive, student-centered element in the school environment. Because there is only one officer in each high school, the officer's approach to the job and ability to establish a connection with students and school personnel significantly impacts the functioning of the program.

In recent years there has been much debate about the presence of police officers in Madison's high schools and whether the public safety benefits of having EROs are outweighed by the sometimes problematic and disproportional patterns of enforcement, particularly for students of color. While the contract was recently renewed, the matter continues to be divisive and subject to community-wide discussion. Because the ERO is working in an environment not regularly frequented by MPD supervision, it is incumbent upon MPD to regularly seek input, in a systematic manner, from school stakeholders and juvenile justice partners on the performance of the EROs. Currently, MPD does not do this; for example, there are juvenile justice partners who have regular contact with EROs that have never been asked by MPD for feedback on the ERO's performance.

The feedback process does not have to be complicated. It just needs to be formal and proactive. It can be as simple as sending a short email to school stakeholders and juvenile justice partners on an annual basis requesting feedback, such as, "How do you think our Education Resource Officer is doing? Are there suggestions you might have to improve our program?"

In its November 2018 updated response to the OIR report, MPD noted that it had created a survey to solicit feedback on EROs that it anticipated moving forward with in early 2019. The Ad Hoc Committee recommends that MPD gather feedback on the performance of EROs on at least an annual basis.

Recommendation #67:

MPD should collaborate with the school district in better communicating to the public the range of services it provides in the individual high schools. [OIR report #52]

Discussion: OIR noted that MPD's internal working group consisting of MPD personnel (including the current roster of EROs) and an equal number of school district officials (including representatives from each high school campus), which has been meeting since 2017, has proved a useful forum for addressing ERO-related issues. While the working group has proved to be a useful forum for discussing issues on a regular basis for, among other things, "projecting the desired accessibility and positive presence of EROs," OIR suggested that "[m]ore steps in the area of public outreach … could also be advantageous." OIR noted that "[o]ne step in this direction is the current plan to expand on the annual reporting information provided by the District, which to date has provided only arrest and citation compiled from the different campuses." Such a step might add to an objective understanding of the ERO dynamic and have a positive influence on the philosophy and mindset of the officers and administrators themselves. The MPD, in its initial Response, noted that EROs already make their annual reports available to the public, but that it also supports "exploring other ways to share ERO activities with the public." In its updated Response, MPD stated that it would begin providing one comprehensive report on ERO activity at all four high schools (rather than continuing the historical practice of having each ERO complete an individual report).

Recommendation #68:

MPD should closely review arrest and citations issued by EROs to ensure that officers appropriately use their discretion and do not unnecessarily enter juveniles into the criminal justice system. [OIR report #53]

Discussion: Common agreement should be reached by MPD, site administrators, district officials, and additional stakeholders to determine how best EROs should exercise their discretion in dealing with high school students regarding arrest, citation, and charging decisions and to recognize that high school incidents that can be handled outside of the criminal justice system should be. Review of arrests and citations issued by EROs is essential for ensuring that ERO discretion is being exercised in a manner consistent with the Department's and the School District's ideals. MPD reported that it "is committed to this…" and that "department commanders do review ERO enforcement activity (through weekly data entry, annual reports, etc.) to monitor this issue." In its updated Response, MPD noted that it had performed an analysis of arrest and citation data in 2018. The Committee notes that, as police and school officials go about setting standards and determining policy for ERO use of discretion in arrest, citation, and charging decisions, it will be important to consider existing empirical research, such as a Campbell Systematic Review of randomized trials, which found that formal criminal system processing of juveniles does not control crime, and actually increases delinquency across all measures, compared to diversion or simple release.[28]

Recommendation #69:

MPD should develop a Field Training Officer program for its newly assigned EROs in order to foster transfer of skills and orientation of high functioning outgoing officers. [OIR Report #54]

Discussion: In an effort to mitigate the inevitable gaps between one officer's performance and another's, OIR recommended developing training programs and feedback loops that would promote clear expectations and consistency in execution of the

[28] Petrosino, A., Turpin–Petrosino, C., and Guckenburg, S. (2010). Formal System Processing of Juveniles: Effects on Delinquency. *Campbell Systematic Reviews*.

ERO role. OIR noted,

> Our understanding is that newly assigned officers have the chance to attend an external 40-hour training program that is specific to the role, and that the school district provides relevant in-service training at the outset of every academic year. However, while some informal "cross-training" and comparing of notes undoubtedly occurs between departing officers and their successors, it might be advisable for the Department to consider formalizing a short-term "field training" regimen that would help preserve and perpetuate position effectiveness. Providing a newly assigned ERO some time to shadow an ERO who has a track record of functioning well in the schools would provide an opportunity for the incoming officer to observe and model his or her approach accordingly.

The Ad Hoc Committee endorses this recommendation. MPD stated in its initial Response to the OIR Report that it already did much of this but recognized that "this process could be formalized somewhat and will move forward with doing so." In its November 2018 updated Response, MPD stated that it had finalized a formalized transition/cross training process and that "[n]ewly selected officers moving into these positions will now have lists of required assignments to complete and topics to review during the transition process. These include discussion topics, introductory meetings, etc. Officers will also have be [sic] required to spend time working with the outgoing officer as part of the transition." The Committee commends MPD for implementing this recommendation.

Recommendation #70:

MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues. [OIR Report #55]

Discussion: Consistent with other recommendations made by OIR and the Ad Hoc Committee to ensure appropriate responses to individuals with behavioral and emotional issues, the Committee agrees with OIR that specialized training for its EROs in this area is important. There is no dispute about this recommendation. In its initial Response, MPD stated that "MPD fully supports this type of training for EROs. MPD has a limited budget for external specialized training, and the ability to send EROs to this type of training is largely dependent on the availability of funding." In its November 2018 updated Response, MPD stated, "All MPD EROs attended trainings in 2018 responsive to this recommendation. These trainings include adolescent mental health training, trauma informed practices and non-violent crisis intervention training."

Recommendation #71:

The City should dialogue with the Madison Professional Police Officers Association in order to amend the current contractual agreement so that EROs (and other specialized officers who are focused on community policing such as Neighborhood Officers, Mental Health Officers, and Community Policing Teams) who have established effective working relationships in their specific assignments, as determined by input from Department supervisors, the officers themselves, and stakeholders at the respective campuses can remain beyond five years. [OIR Report #56]

Discussion: Educational Resource Officers (EROs) vary greatly in their approach and capacity to carry out their unique and sensitive roles, with variation in rapport-building abilities, cultural competence, problem-solving skills and creativity, initiative-taking, and judicious use of discretion. EROs also vary in citation or arrest rates and, thus, potential contribution to the school to prison pipeline. For a school, some are a much better fit than others. In such roles, the unique attributes of an individual officer and the working relationships they have established can be of utmost importance. As OIR noted, "the importance of these officers' roles militates in favor of MPD being able to select and retain the best officers for these positions for the longest time it wishes." Similar considerations apply as well to other specialized units such as Neighborhood Officers and Mental Health Officers.

In response to this recommendation, MPD and the Madison Professional Police Officers Association (MPPOA) noted that potential high performers might never have the opportunity to show what they can do if current high performers are retained in their positions – that without term limits, they would miss out on talent. However, OIR noted:

> We understand – and discuss elsewhere – the pros and cons of the current rotational system for community based specialized units, recognizing that it provides an opportunity for more patrol officers to have a different experience, but finding that interest outweighed by the interest in retaining proven officers who

> have performed well. We also recognize the restrictions on MPD discretion that flow from the current labor agreement with the officers' association and that providing such flexibility will need to be negotiated in future contracts. However, because the demands of the ERO position are so unique, and the role of officers in the schools is a matter of such community sensitivity, it seems worth the necessary effort to extend the service of especially effective officers. This could be the function of a protocol that blends input from the officers, Department executives, and site administrators and allows for a tenure that could be mutually agreed upon.

OIR further pointed out:

> Unlike other specialized assignments where officer tenure is limited to four or five years, Training Team personnel can remain in their positions as long as "mutually beneficial." We recommend … that this "mutually beneficial" flexibility be adopted with regard to Neighborhood Officers, Mental Health Officers, Educational Resource Officers, and other special assignments.

MPPOA indicated that they "see the logic of both sides of the issue" and "are open to continuing to dialogue with the Department on this issue." It is also worth noting that the Madison Metropolitan School District Education Resource Officer Ad Hoc Committee made an identical recommendation to that of OIR: "We recommend that the mandate for EROs to be replaced every 3-5 years be eliminated." There was strong support on that committee for continued retention of EROs who are a good fit.

The MPD Policy & Procedure Review Ad Hoc Committee agrees with OIR that term limits should be removed for EROs and other specialized officers who are focused on community policing. Officers are not interchangeable in these roles and some officers have proven themselves to have exceptional abilities in such a capacity, such that their retention would assure continuation of the highest quality of service. It is not optimal management practice to term out one's most skilled employees in such a professional task. Moreover, for the highest-performing officers, knowledge and skills in these roles can continue to grow (and the number and depth of community relationships, and the degree of trust in the officer, can continue to expand) over much longer time frames. Overall, it would be in the best interest of the community for MPD, where appropriate, to be able to retain officers in such roles beyond the current five-year limit.

Recommendation #72:

MPD should consider moving to a soft alternative uniform for EROs as a means of reinforcing the unique mission of these officers in the school setting. [OIR Report #57]

Discussion: As the OIR report noted, "the presence of uniformed officers [the Educational Resource Officers, or "EROs"] on campus was inherently unsettling for some students, whose personal or cultural backgrounds did not mesh with notions of the police as a reassuring, supportive influence." Mike Gennaco of OIR explained to the Committee that the impetus for this recommendation was that in their outreach, OIR had heard repeatedly from MMSD students, and particularly students of color, that coming to school and seeing a uniformed police officer every day was off-putting and uncomfortable, and that the presence of a gun in what was supposed to be a learning environment was off-putting. OIR believes that use of "soft" uniforms could help ameliorate this discomfort and help project accessibility and a positive presence for EROs.

In response to this recommendation, MPD stated: "It is important to note that EROs have routinely found themselves in the midst of significant disturbances and confrontations while in the schools. The 'soft' uniform can adversely impact the EROs ability to respond effectively or be identified as an officer while doing so. The department will maintain the current practice of utilizing the standard MPD uniform for EROs, while allowing for a 'soft' uniform to be approved for specific assignments." Assistant Chief Vic Wahl informed the Committee that this year's school resource officer contract codified that "SROs, at their discretion and approval of command staff, may occasionally wear a 'soft' uniform or plain clothes uniform," reflecting a general practice that MPD had now adopted for all specialized officers.

MPD and OIR clarified for the Committee that officers in "soft" uniform would continue to carry a firearm (though it may be concealed). Mike Gennaco also noted that "[i]t's a 'consider' recommendation. We're not insisting that every day a school resource officer can't wear their uniform anymore…. The recommendation is really to provide more flexibility for school

resource officers to come dressed in different ways, so the students get to see them in different ways." MPD could use its professional judgement on how much to soften the uniform.

Various community members argued that merely changing the style of uniform – a change in image – did not address the root of the issue (i.e., potential harm associated with policing in schools and the school to prison pipeline), and a former MMSD Board member noted that what she had often heard from students in meetings is that "it's actually the presence of the gun and the ability to shoot and kill students that's the concern"—a factor that would remain unchanged with the shift in uniform. The Committee recognizes that such a change in uniform is merely symbolic, but appreciates its potential benefit and agrees with OIR that MPD should consider having EROs move toward use of "soft" uniforms insofar as feasible.

➢ SECTION 6. Mental Health Resources & Training

Recommendation #73:

The Mental Health Team should develop guidelines or protocols for periodically reviewing mental health safety bulletins and associated alerts to assess whether they should be amended or purged from the system. [OIR Report #58]

Discussion: MPD generates one-page mental health safety bulletins, which appear on an officer's in-car computer when they run the subject's name in the system. An alert may also be placed in the system used by the 911 Center, so that dispatchers may notify officers of mental health concerns associated with an address they're responding to. The mental health safety bulletins capture vital information about people who have had prior interactions with police, and include trauma history, mental health diagnosis, suicide attempts, history of worrisome interactions with police, and potential hooks, triggers, and guidance for negotiations. When Mental Health Officers create these bulletins, they enter an alert into the Department's records management system, and also upload the document into the associated file. The alerts require an expiration date, and OIR noted that this is routinely set at one year, but that the document itself remains in the system indefinitely.

OIR noted that the bulletins are a valuable tool, but need to be regularly reviewed and either amended or purged from the system. A person in crisis now may not be in the same condition months or a year from now, and someone currently in recovery would not want or need to be treated as though they were in crisis. Outdated mental health concerns conveyed in a bulletin can lead to officers taking actions that are no longer appropriate and can cause unnecessary stigmatization of individuals. OIR further noted that Mental Health Officers were aware of concerns about the duration of the notifications, but that there were no set guidelines to address these issues.

MPD expressed agreement with the crux of this recommendation but noted that the bulletins are considered public records under Wisconsin law and thus cannot be purged until a set number of years has elapsed, pursuant to the City's records retention schedule. MPD further stated that the expiration date for alerts is generally set at one to five years, that after an alert expires "the actual document remains in existence, but is not stored in a manner that line officers will see it or be alerted to its existence," and that the Mental Health Team would review the process to ensure that the alert expirations are set appropriately. In its November 2018 updated response, MPD stated: "The Mental Health Unit has completed migrating these documents to an internal database that makes managing and updating information much easier. In addition, the unit is in the process of reviewing all existing bulletins to ensure they are updated and that those that are not current are stored in an area not readily available to field officers. This balances our legal requirement to retain these documents as public records with the privacy interests of those noted in the bulletins. Moving forward the process will include automatic periodic reviews of bulletins and alerts." The Committee agrees that MPD should periodically review and amend these documents and minimize availability of outdated information. It appreciates that MPD is enacting changes in protocols to address this issue.

Recommendation #74:

MPD should consider promoting regular communication to the public about the activities of its Mental Health Team by, among other methods, including a sample narrative of the team's activities in the daily crime blog. [OIR Report #59]

Discussion: The Mental Health Team publishes an annual report of its activities that has in past years communicated valuable information about the team's activities and accomplishments. Because the work of the MHOs is consistent with MPD leadership's stated goals of shifting resources to problem-oriented policing, a sample of the daily activities of the MHOs should be featured in the Department's blog. This outlet and other media outlets could report some of the team's success stories and

keep the Madison community better apprised of what the MHO program is and what officers and crisis workers are actually doing in the field. MPD stated in its Response to the OIR Report that it "fully support[s] the concept of communicating the team's good work to the public."

Recommendation #75:

MPD should devise methods to fully document the daily activity of MHOs, in part to facilitate a larger internal and external discussion about whether those activities are necessarily or best handled by police officers. [OIR Report #60]

Discussion: To address the debate about whether the responsibilities performed by Mental Health Officers (MHOs) are best performed by a sworn police officer or a social worker and to make the case for the value of MHOs to the Madison community, it is critical that MPD do more in documenting their day-to-day activities. An improved documentation and communication effort to clear up misconceptions about what MHOs do and don't do could also help the Department identify new ways to efficiently and cooperatively interact with the City and County's mental health services infrastructure to improve the Department's response to people with mental health concerns. Different forms of documentation may be of value for capturing different types of information – for example, as noted elsewhere in this report (e.g., Recommendation #54 [OIR #39]), capturing the nature and logic of problem-solving activities may require narrative-form tools.

MPD agreed with this recommendation, asserting that it "is committed to reasonable efforts to capture data and demonstrate the work done by non-patrol personnel. We will continue to explore practical ways to do this." In its November 2018 updated Response, MPD stated, "The Mental Health Unit has implemented a process to capture daily activity. The process tracks nineteen distinct categories of activity, noting actual work hours for eight categories. Development of the process and types of activity to capture was created with the assistance of staff from the University of Wisconsin…. [D]iscussions about appropriate roles and missions will be informed by this data."

Recommendation #76:

MPD should quickly fill the position of Mental Health Team sergeant and should maintain funding for this position to ensure effective supervision of the team. [OIR Report #61]

Discussion: When MPD began its Mental Health Officer (MHO) program, it applied for a grant to fund a sergeant to supervise the MHOs, as well as a crisis worker and a researcher. MPD did not receive the grant, but Journey provided funding for a crisis worker, and the University of Wisconsin supported the research effort. Given that MPD did not initially find funding for a sergeant, for the initial years of the program's existence, the five MHOs reported directly to a Captain. OIR noted that "[t]his is far from ideal. The Captain has a long list of other responsibilities and cannot meaningfully supervise the day-to-day activities of these officers." OIR noted, however, that, just prior to completion of the OIR Report, funding had been allocated that would permit a sergeant to be assigned to the Mental Health Team, and that interviews for the position were ongoing. In its updated Response, MPD indicated that the position had been filled and is now built into MPD's authorized staffing. The Committee notes the importance of this position for effective supervision of the Mental Health Team.

Recommendation #77:

MPD should continue to integrate use of force training scenarios with scenarios involving someone in a mental health crisis. [OIR Report #62]

Discussion: OIR noted that the MPD has "solid" training on what it calls "specialized police response"—mental health-related training, including training on responding to individuals in mental health crisis (corresponding to what other departments call crisis intervention training). OIR was impressed that MPD provides more hours of training on these issues (100 hours in its seven-month Academy, as opposed to the standard 40 hours of crisis intervention training) and integrates the training broadly throughout its Academy curriculum, rather than breaking it off as a separate block. OIR noted that MPD's approach increases learning potential, as it weaves themes relating to mental and emotional health in a way that more truly mimics real life policing by not broadcasting to officers in advance of scenario-based training whether they will be encountering an individual in mental health crisis or whether the scenario will require use of force. As OIR noted, "Students confront scenarios with a potential use of force component that may or may not involve a mentally ill, intoxicated, or emotionally disturbed person, requiring use of force decision-making skills that more closely reflect real world calls." The Committee joins OIR in recognizing the valuable features of MPD's training on these matters, and concurs with OIR's conclusion that, "[g]iven the potentially high

stakes in incidents involving individuals in mental health crisis, MPD should regularly evaluate its training regarding its specialized mental health response to make sure it continues to be consistent with best practices and maximizes its ability to meet the demands of the Madison community." In its Response to this recommendation, MPD stated it "is committed to providing this type of realistic training and will continue to do so."

Recommendation #78:

MPD should cross-train patrol tactics and force instructors to also run and debrief mental health crisis scenarios to strengthen the Department's message about the importance of de-escalation in crisis situations, even in those scenarios when officers also need to consider force options. [OIR Report #63]

Discussion: Cross-training debriefings of this sort would strengthen the Department's message about the importance of de-escalation in crisis situations by reinforcing in patrol tactics and force trainers the value of crisis communications skills, even in those situations when officers also need to consider force options. It would also help avoid the predictability of having students enter a training scenario, seeing a certain set of instructors, and immediately thinking of it as being (or not being) a "mental health scenario." In its Response to the OIR Report MPD stated that it has "made efforts to implement this structure already."

Recommendation #79:

City of Madison should contract with ProTraining to provide their full training program for all officers. [PWG #2]

Discussion: Police frequently come into contact with individuals with psychiatric disorders. These interactions can often prove challenging for officers, and sometimes can end in tragedy. Virtually all recent officer-involved shootings in Madison (12 of the last 13) have involved a person with a mental health issue or an intoxicated person. Outcomes can potentially be improved by training officers how best to interact with such individuals, and MPD currently provides officers with "specialized police response" training, which incorporates the equivalent of Crisis Intervention Team (CIT) training. However, existing CIT training, though valuable, has limited evidence of efficacy in changing the behavior of officers. Existing studies of CIT training show no reduction, following training, in use of force or frequency of injuries during encounters with people with mental illness. Nonetheless, despite the general lack of evidence of efficacy of CIT training in reducing use of force rates, it may help with diversions, attitudes, and other outcomes.

One alternative, which could supplement or be integrated with existing MPD programming for working with people with mental illness or substance abuse issues, is a research-informed training approach developed at the University of Alberta by Yasmeen Krameddine and Peter Silverstone. Following implementation in Edmonton (the initial test site), this training approach produced a significant reduction in overall use of force in mental health calls. In cases involving individuals with mental illness, a 41% decrease in physical use-of-force and a 26% decrease in weapons force was recorded following the training (though other initiatives were introduced in the Edmonton Police Services during this timeframe, so the training might not solely be responsible for the reduction in use of force with the mentally ill). In addition, following the training, there was a 41% increase in the recognition of mental health issues as a reason for a call, and an approximately 10% improvement in supervisor ratings concerning officer communication, de-escalation, and empathy with the public. This training is now furnished to law enforcement agencies by Yasmeen Krameddine (an employee of Yardstick, Inc.) as "ProTraining—Effective Mental Health Training for Police and Security Professionals," with a website at https://966.yssecure.com.

This is a scenario-based training approach and has some similarities with CIT training, but there are key differences as well. The training is specifically focused on changing behaviors of officers and much less on attitudes toward mental illness. Rather than teaching to increase knowledge of the signs and symptoms of each type of mental illness, the training centers on the behaviors that are seen most frequently in police mental health interactions, teaching a step-by-step "how to" interact when subjects display certain behaviors and emotional states. The philosophy is that to change behavior of officers, the training must focus on behavior (as opposed to the common assumption that if attitudes toward mental illness are made more positive, then behavior will change accordingly). The amount of role-play time per trainee is also greater than conventional CIT training, and the training uses professional actors, particularly actors with lived experience with mental illness (who can accurately speak to how individuals with mental illness feel when officers interact with them). In addition, the approach is designed to utilize refresher training every three years (under the principle that training must be repeated to optimize effects on skills and memory retention), whereas conventional CIT training approaches do not generally make use of refresher trainings. Finally, the training was created with the help of an International Advisory Board of police officers, police educators,

mental health professionals, academic researchers, adult educators, eLearning experts and individuals with lived experiences of mental illness from seven countries (whereas CIT training materials are typically created by police departments, often in collaboration with organizations like National Alliance on Mental Illness (NAMI) or Journey Mental Health, and not based on evidence-based research).

A few examples of the tactics taught include: asking for a name to create a bond of trust, using sincere and nonjudgmental tones, using open-ended questions and not leading questions, being patient and waiting for a response, using nonthreatening body language, using nondominant body and facial expressions, head nodding and eye contact, intensive listening to be able to recognize and label emotions of others, listening to people and recognizing their viewpoint, preventative non-escalation techniques (e.g., explaining what you're going to do before you do it), what sorts of words to avoid, how to deflect insults, and how to apologize if a situation is escalated.

Action Item 2 of the report of the President's Work Group stated: "The Common Council directs the Ad Hoc Committee to investigate other possible supports for MPD officers interacting with EDPs [Emotionally Disturbed Persons]. EDPs include individuals whose behavior is altered as a result of intoxication caused by drugs or alcohol. The President's Work Group would encourage further exploration into the types of training and ongoing training strategies that will improve interactions with EDPs. In particular, the President's Work Group would recommend a detailed analysis of ProTraining which is an evidence-based practice proven to reduce overall use of physical force and the use of weapon force in police calls. The President's Work Group would recommend the Ad Hoc Committee undertake an evaluation of the feasibility of hiring social workers to work with officers to support interactions with EDPs."

The Ad Hoc Committee hosted a presentation by Yasmeen Krameddine, and also obtained proposals on pricing for training of MPD. The full training would utilize six scenarios (with 12 actors and 6 community mental health professionals) to train 400 officers, training over 11 days (36 officers/day) for a cost of $79,220. Moreover, MPD informed the Committee that the ProTraining model is not inconsistent with current MPD training and that it is open to implementing this training, if the City of Madison were to provide the requisite funding.

After careful review of this topic, the Ad Hoc Committee recommends that the City of Madison contract to obtain the full training program for all officers. The cost of this training is small relative to the human and financial costs of an officer-involved shooting. The Committee believes that all MPD officers should be trained directly by ProTraining, at least initially, rather than using a train the trainers approach. Direct training by ProTraining – learning directly from the professionals – would ensure fidelity. All officers would thus receive the same quality of training and message content, for the most effective outcome, rather than having information passed down and possibly lost in interpretation. MPD trainers could simultaneously be trained, to allow for in-house supplemental training (e.g., for new officers) and refresher training in the future.

The intent would be for this training to be provided in addition to existing MPD mental health and de-escalation training. There is much to commend in existing MPD mental health training, including the practice of integrating use of force and mental health crisis training scenarios.

In relation to this recommendation, see also the Ad Hoc Committee recommendation that Madison implement a mobile crisis response unit based on the CAHOOTS model (Recommendation #84, AHC #64B).

Recommendation #80:

MPD should amend its SOP on Mental Health Incidents/Crises by breaking it into separate policies that would address separate topics, and would specifically include the tactical principles the Department trains and expects its officers to employ in addressing situations involving individuals in mental health crisis. [OIR Report #64]

Discussion: When it conducted its review of MPD policy on mental health incident/crises, OIR found that:

1) MPD only had a single SOP covering all mental-health-related matters. OIR noted, "The SOP is five pages long and covers a range of topics, including guidelines for response to various situations, emergency detention procedures, description of the Mental Health Liaison/Officer program, and dealing with dementia patients at assisted living facilities. This range of subjects leads to an overly long policy in which some important concepts may be overshadowed. The Department should consider breaking up the SOP, with separate policies addressing the

particulars of emergency detention criteria and procedures, other specialized responses (i.e., dementia patients), and response guidelines."

2) OIR further noted that the existing SOP "does not specifically address tactics or procedures for handling crisis situations particular to individuals who officers believe may have mental health issues. A policy outlining guidelines for response to mental health crises should include specific reference to the principles the Department expects officers to employ in these situations, consistent with the training they receive."

3) In addition, OIR advised that MPD should eliminate the term "abnormal behavior" from its policy, given the potential that this term could promote bias and stigma.

Subsequently, MPD addressed some, though not all, of these issues. In response to Council orders contained in the President's Work Group report, MPD issued an SOP on Response to Persons with Altered State of Mind. In its supplementary report, OIR noted that this SOP "does address the tactical response issues OIR found lacking in the Mental Health Incidents/Crises SOP. OIR suggests that cross referencing that SOP may be useful for officers and the public." MPD also altered its SOPs to remove the term "abnormal behavior."

However, MPD argued that breaking its Mental Health Incidents/Crisis SOP into separate documents seemed unnecessary and that using only a single SOP seemed logical and would facilitate officers finding relevant policy material. OIR noted in response that, though it did not find MPD's approach unreasonable or improper, it continued to find the SOP somewhat confusing in its scope and believed that separate policies on the criteria and processes for Emergency Detentions, and the roles of Mental Health Officers and Mental Health Liaison Officers may make it easier for officers to more easily find the appropriate SOP.

We agree with the OIR recommendation in full and have adopted it without revision. In its organization and scope, the current Mental Health Incidents/Crisis SOP does appear somewhat confusing. On balance, we agree with OIR's judgment that separating the material into distinct SOPs could facilitate access. We commend the steps MPD has already taken in addressing the issues raised in this recommendation, especially the creation of the stand-alone Response to Persons with Altered State of Mind SOP, providing necessary clarity and guidance on tactical issues.

Recommendation #81:

MPD should look for innovative ways to fill the critical gaps in its efforts to collect data on mental health contacts with police. [OIR Report #65]

Discussion: OIR explained the importance of this recommendation by noting that "[d]ata collection and analysis are important functions across many different facets of a law enforcement agency. But the issues can be complex, and the ability to draw meaningful conclusions is often limited by the quality of the data input into a given system, as well as limitations of the management system itself. For example, MPD estimates that ten percent of its mental health contacts result in arrest. But that is mostly an educated guess, because the Department's Law Enforcement Records Management System (LERMS) only tracks calls that generate a report, and many mental health related incidents are cleared informally, without a report." OIR also observed that "[d]ata issues are particularly important to a program like the MHO team – a relatively new program whose resources have been diverted from other tasks and whose value and success may consequently be called into question." Working with a Ph.D. candidate in sociology at UW, the MPD attempted to gather information on its Mental Health Team, but the "efficacy of the sociologist's research was limited by the quality and reliability of the available data." MPD indicated in its Response to the OIR Report that it "appreciates the utility of quality data and is committed to using data for evaluative and decision-making purposes," and that it "will continue to evaluate data points relevant to mental health issues and ways to collect and capture them." In its updated Response, MPD stated that it was continuing "innovative data collection and analysis practices," and it noted several studies that were being performed.

Recommendation #82:

The MPD Mental Health Team should develop a set of clearly defined performance measures that can be consistently tracked and monitored to provide benchmarks for how the Department and community define success for the mental health program. [OIR Report #66]

Discussion: Just as contracted agencies providing mental health services track outcomes to satisfy contract requirements, tracking and monitoring performance measures for interactions between MPD and people with mental illness can provide MPD and community stakeholders with data to determine program success (i.e., if interactions are having successful outcomes). If unsuccessful, the data could provide feedback to adjust the methods for interactions. Such performance measures could be created and reviewed jointly by MPD and stakeholders on a regular basis. Examples of potential performance measures include: 1) frequency with which individuals generate police reports (before and after Mental Health Team contact), 2) frequency of hospitalizations (before and after Mental Health Team contact), 3) proportion of Mental Health Officer (MHO) interactions in which recordable force was used, 4) a metric of how individual's families rated MHO contacts, and 5) proportion of interactions in which a MHO arranged connection with services for an individual. MPD responded to this recommendation by noting that "the issue of mental health crises in our community goes far beyond something that the police can remedy" and that "progress on the overall issue requires effort from other stakeholders." While the Committee agrees with that assessment, the Committee also believes that, to the extent that the MPD Mental Health Team engages this problem, performance measures are important.

Recommendation #83:

The MPD Mental Health Team should work to integrate its volunteer assistants with Department resources in a way that provides consistency in data gathering and analysis tasks. [OIR Report #67]

Discussion: Academic volunteers can be extremely useful in a research context, but typically don't provide the reliability and consistency of paid staff. OIR noted that a UW sociologist undertook a significant project analyzing data captured by MPD and the Mental Health Team, and that the project was useful but short-lived. OIR noted that, subsequently, at the time of its review, "the Mental Health Team had recently begun working with a volunteer statistician. So far, his work has focused on the resources dedicated to emergency detentions and has not followed on the work of the UW sociologist. It is a testament to MPD's role in the broader Madison community that it has been able to secure pro bono help with its data gathering and analysis tasks, and the team should be credited with recognizing the need for these services and finding innovative ways to meet the need in a budget-neutral way. But relying on volunteers does not provide an ideal level of consistency across these important tasks." In such a context, volunteer involvement will often prove short-term, and approaches, areas of focus, and data collection methodologies will vary. Data collected over time by different volunteers may not be comparable. Interest may wane, and data and analyses may get lost. It is therefore incumbent on the institution utilizing volunteers to provide systems and resources that organize the volunteer efforts to ensure consistency, maintain continuity, retain intellectual work product in a useful fashion, and allow the volunteers' efforts to build upon one another. For long-term consistency, the institution, rather than the volunteers, may need to be responsible for certain functions, such as collection of core data. In response to this recommendation, MPD stated it "supports collecting and analyzing data to assist the Mental Health Team's work and has already taken steps to improve front-end data collection," and that the Mental Health Team "continues to seek further community partnerships as appropriate to improve analysis capabilities."

Recommendation #84:

The City of Madison should explore through whatever mechanisms it deems appropriate (be it in partnership with the County, exploration of grants, or other mechanisms) to create a dedicated mental health first responder unit, outside of MPD, modeled off the CAHOOTS program in Eugene and Springfield, Oregon, to respond to known mental health crisis. [AHC #64B]

Discussion: For a person in a mental health crisis, dispatching police officers may not provide the most optimal response. Moreover, officers often view mental health calls as fraught, since police are not specialized mental health care workers and the subjects may act unpredictably.

In Eugene and Springfield, OR, the CAHOOTS (Crisis Assistance Helping Out On the Streets) program provides an alternative to police response appropriate for a broad range of non-criminal crises, including mental health problems, suicide prevention calls, homelessness, intoxication, disorientation, substance abuse, and dispute resolution. This 24/7 mobile crisis intervention service is wired into the 911 system and responds to most calls without police. Each team consists of a medic (either a nurse or an EMT) and a crisis worker (who has at least several years' experience in the mental health field). The response vehicles are vans, suitable for transportation of subjects.

Implementation of a program like CAHOOTS would provide a more appropriate professional response in many cases than dispatch of an MPD officer. The responders in this program have more expertise in dealing with people with mental health issues, allowing more skilled handling and better quality of care while reducing the risk of escalation. This approach also helps avoid criminalization of mental health crises. Moreover, the cost is far less than that of dispatching sworn law enforcement officers. An officer could always be dispatched if, upon triage, the mental health responders concluded that protective custody was needed (such that officers would only be needed for a fraction of the current calls of this sort).

The current annual operating budget for CAHOOTS in Eugene and Springfield is $1.6 million, with about $800,000 each coming from Eugene and Lane County. CAHOOTS handles about 17% of Eugene police calls, or about 23,000 calls for service annually in Eugene alone, at a fraction of the cost of police response (for comparison, the Eugene Police Department has a $58 million annual budget).

In Eugene and Springfield, the CAHOOTS program is considered a resounding success and its usage continues to expand. Moreover, the program has found appeal across the political spectrum—with progressives lauding it as providing a more compassionate, humane means of response and conservatives lauding the cost savings. Multiple additional cities are now taking initial steps to implement such a service, including Oakland, CA, Olympia, WA, Portland, OR, Denver, CO, New York, NY, Indianapolis, IN, and Roseburg, OR. These cities are obtaining strategic guidance and training from CAHOOTS to replicate the success of the program in their own communities.

A similar program—a mental health ambulance staffed by two mental health nurses and a paramedic — has been implemented in Stockholm, Sweden, starting in 2015. According to Fredrik Bengtsson, head of Mental Health Emergency Services at Sabbatsberg Hospital, "It has been considered a huge success by police, nurses, healthcare officials, as well as by the patients."

MPD is open to such a program in Madison. The concept is recognized as having real merit, potentially removing burden from MPD. An OIR survey of MPD officers revealed that officers feel they are currently frequently being dispatched to calls where law enforcement officers are not needed and can't provide the most suitable response (driving up MPD staffing requirements at considerable expense).

PART III: RESPONSE TO CRITICAL INCIDENTS

➢ SECTION 1. Criminal Investigations

Recommendation #85:

MPD should clarify its officer-involved critical incident SOP to ensure that, absent extraordinary circumstances, investigators should obtain a statement from involved and witness officers prior to release from shift. One option for this statement would be a self-administered interview. [OIR Report #68]

Discussion: Currently, MPD officers involved in critical incidents are not interviewed for 24-72 hours. No other witness or participant in an incident subject to investigation (a criminal incident, an officer-involved-shooting, or any other type of investigation), however, is granted such a protected period, and doing so is inconsistent with best investigation practices. There is no good reason—from either an investigative perspective or a community trust and perception perspective—to single out officers who have participated in or witnessed incidents subject to investigation for special protection.

For officer-involved fatalities, Department of Criminal Investigation guidelines specify that "[o]fficers may be allowed to go home to sleep and wait 24-72 hours after the incident to give a formal statement." For non-fatal critical incident

investigations, which may be conducted by MPD, the Department policy states that interviews "should be delayed to allow the involved officer time to overcome the initial stress of the incident." In the immediate aftermath of a shooting, MPD only obtains a cursory "public safety statement," which elicits a few facts (identifying the crime scene, identifying anyone injured, pointing out witnesses, etc.) to have a basic idea of what took place. This statement is not designed to obtain critical "state of mind" evidence about why the officer decided to use deadly force, but simply to obtain some minimal information to stabilize the situation. At an indeterminate time thereafter (ranging from hours to days) a walkthrough of the scene may take place with the officer (to remind the officer of what the scene looks like and set them up for the formal statement), but there is no detailed interview associated with this and the officer's responses are not collected in any formal way.

As OIR notes: "By permitting this delay, investigators forfeit the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it." This is highly problematic for several reasons. As OIR points out, "the investigative protocols allow the involved officers' versions to be subject to contamination and recall issues as a result of the passage of time or the inevitable exposure to other accounts of the incident from media sources, legal representatives, or fellow officers. This is especially true in today's highly-charged environment of pervasive social media coverage of fatal officer-involved shootings. In addition, any leads or further investigative guidance that might be derived from the involved officers' version of events are hindered and perhaps lost because of the several-day delay." Thus, information that may be critical to a proper MPD internal investigation of the shooting will be lost or distorted.

Requiring an officer statement before end of shift is the emerging standard among progressive policing agencies. This has also been the position of the U.S. Department of Justice, and provisions to this effect are found in Justice Department settlements regarding the police departments of Los Angeles, Seattle, New Orleans, Albuquerque, Portland, Chicago, Baltimore, and others. And interviewing immediately concords with general police investigative practices. As Michael Gennaco of OIR noted, "I have yet to receive a satisfactory explanation why other criminal investigations do not … delay getting statements from victims, witnesses, and subjects until they have had an opportunity to rest…. There is nothing preventing investigators from saying 'OK everyone, we will all get better evidence, if we all sleep on this for a couple days and reconvene at that time to take your statements.' The ludicrousness of such a statement ever being said by a detective shows how silly this alternative paradigm is."

In no other types of investigations do police delay interviewing victims, witnesses, or subjects, and this is for good reason. Memory of an event decays with time. It is well-established that the rate of memory loss is greatest right after an event and then slows, beginning to level off around the second day at a dramatically reduced level of accuracy.[29] Detailed information is lost most quickly (e.g., verbatim recollection of conversations) and information retained over time becomes increasingly thematic. In addition, it is well established that misinformation that people are exposed to after an event can contaminate their memories of the event, causing people to misremember everything from small details to something as large as a barn that wasn't there at all.[30] Studies show that misinformation effects increase as the delay between the witnessed event and the interview increases (i.e., the weaker the memory, the easier it is to alter).[31] Moreover, more time between memory encoding and retrieval increases the likelihood of being exposed to misinformation. In addition, studies show that intervening sleep increases susceptibility to this effect of misinformation on memory of an event.[32] In addition, it is well-established that a

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[29] Deffenbacher, K.A., Bornstein, B.H., McGorty, E.K. and Penrod, S.D. (2008) Forgetting the Once-Seen Face: Estimating the Strength of an Eyewitness's Memory Representation. Journal of Experimental Psychology: Applied, 14, 139-150; Campos, L. & Alonso-Quecuty, M.L. (2006) Remembering a criminal conversation: Beyond eyewitness testimony. Memory 14(1), 27–36.
[30] Frenda, S.F., Nichols, R.M., & Loftus, E.F. (2011). Current Issues and Advances in Misinformation Research. Current Directions in Psychological Science. 20, 20-23; Loftus, E.F. (2005) Planting misinformation in the human mind: A 30-year investigation of the malleability of memory. Learning and Memory, 12, 361-366; Lacy, J.W. & Stark, C.E.L. (2013) The Neuroscience of Memory: Implications for the Courtroom. Nature Reviews Neuroscience. 14(9), 649–658.
[31] Loftus, E. F., Miller, D. G., & Burns, H. J. (1978). Semantic integration of verbal information into a visual memory. Journal of Experimental Psychology: Human Learning and Memory, 4, 19–31.
[32] Calvillo, D.P., Parong, J.A., Peralta, B., Ocampo, D., & Van Gundy, R. (2016) Sleep Increases Susceptibility to the Misinformation Effect. Applied Cognitive Psychology. 30, 1061–1067; Payne, J. D., Schacter, D. L., Propper, R. E., Huang, L. W., Wamsley, E. J., Tucker, M. A., Walker, M. P., & Stickgold, R. (2009). The role of sleep in false memory formation. Neurobiology of Learning and Memory. 92, 327–334.

detailed interview shortly after an event can help preserve memories, aiding long-term retention, and inoculating against decay and the influence of post-event information.[33]

A number of other cognitive processes contribute to distortions in memory when interviews are delayed. As Radley Balko notes in a Washington Post column summarizing some of the relevant research:

> Research into cognitive bias has given us lots of other reasons to interview police officers as soon as possible. For example, we know that most people tend to remember controversial events in ways that make themselves look as good as possible, a phenomenon known as self-serving bias or egocentric bias. There's also a concept called fading affect bias, which causes us to forget memories that bring negative emotions and retain memories that invoke positive ones. One study estimated that this particular bias can take effect in as quickly as 12 hours. Which means that in a close-call shooting, the further we get from the event itself, the more likely the police are to recall only those details that justify the shooting. Researchers have found another bias called mood-state dependent retrieval, which posits that we're more likely to remember things in more detail when we're in a similar mood as we were when the event in question occurred. This means that waiting until the officers' adrenaline subsides and their blood pressure drops may inhibit their ability to recall a shooting accurately. And then there's memory conformity, which describes how if allowed to consult with one another, multiple witnesses to the same event will begin to influence how each witness remembers the event individually. This is why it's a bad idea to let police officers consult with one another after a shooting. (And again, it's a concept that police departments seem to understand pretty well when interviewing eyewitnesses to shootings not involving cops.)[34]

Those who favor a delay for officers argue that memory will be improved after 24-72 hours, and point to the potentially stressed state of the officer immediately after the incident (MPD, for example, asserted that one or two intervening sleep cycles could improve memory, since the officer would be well-rested). And stress can impair recall[35] (decreasing the accuracy of retrieved memories), such that there could be some degree of trade-off between inaccuracy due to initial stress versus that due to memory decay over time. However, there is no good evidence that a long de-stressing period will improve accuracy compared to an immediate report. The bulk of scientific opinion appears to favor conducting immediate interviews.[36] It is unlikely that officers would remain completely isolated from any outside, biasing information in the days between a critical incident and a delayed interview, potentially making the interview less valuable, reliable, and informative than it would have been initially. In addition, many involved officers report a lack of sleep in the days immediately after a critical incident – and such sleep deprivation would likewise impair recall. Importantly, three empirical studies with police officers conducted using stressful live-fire training simulations showed that officers were most accurate when recalling an event immediately, as opposed to when there was a delay before reporting.[37] Furthermore, all three studies demonstrated that initial questioning

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[33] Eisenkraemer, R.E., Jaeger, A., & Stein, L. M. (2013). A systematic review of the testing effect in learning. Paidéia (Ribeirão Preto), 23, 397–406; Wang, E., Paterson, H., & Kemp, R. (2014) The effects of immediate recall on eyewitness accuracy and susceptibility to misinformation. Psychology, Crime, and Law. 20(7), 619-634; Gabbert, F., Hope, L., Fishes, R.P., & Jamieson, K. (2012) Protecting Against Misleading Post-event Information with a Self-Administered Interview. Applied Cognitive Psychology. 26, 568-575.

[34] Balko, R. (2018, July 31) Study: 'Cooling-off periods' don't help cops remember officer-involved shootings. Washington Post. Retrieved from https://www.washingtonpost.com/news/the-watch/wp/2018/07/31/study-cooling-off-periods-dont-help-cops-remember-officer-involved-shootings

[35] Kuhlmann, S., Piel, M., & Wolf, O. T. (2005). Impaired memory retrieval after psychosocial stress in healthy young men. Journal of Neuroscience. 25, 2977–2982.

[36] Walker, S. (2015) Police Union Contract "Waiting Periods" for Misconduct Investigations: Not Supported by Scientific Evidence. Retrieved from https://samuelwalker.net/wp-content/uploads/2015/06/48HourSciencepdf.pdf ; Grady, R.H., Butler, B.J., & Loftus, E.F. (2016) What Should Happen After An Officer-Involved Shooting? Journal of Applied Research in Memory and Cognition. 5, 246–251.

[37] Porter, L.E., Ready, J., & Alpert, G.P. (2019) Officer-involved shootings: testing the effect of question timing on memory accuracy for stressful events. 15(1), 1-28; Alpert, G. P., Rivera, J., & Lott, L. (2012). Working toward the truth in officer-involved shootings. FBI Law Enforcement Bulletin, 81(5), 1–7; Beehr, T. A., Ivanitskaya, L., Glaser, K., Erofeev, D., & Canali, K. (2004). Working in a violent environment: The accuracy of police officers' reports about shooting incidents. Journal of Occupational and Organizational Psychology, 77, 217–235.

leads to remembering more about an event when tested again in the future. Though the ecological validity of such an approach will always be somewhat imperfect (i.e., while the officers tested in such studies exhibit heightened anxiety and reduced confidence in their cognitive abilities, the simulated events in the studies would not be as stressful as an actual critical incident).

MPD and the City Attorney's Office noted that, if involved officers were only allowed until the end of shift to provide a voluntary statement, some officers would choose not to, and a compelled statement would be required. An officer can be compelled to provide a statement during an Internal Affairs investigation (*Garrity v. New Jersey*, 385 U.S. 493 (1967)). However, this compelled statement cannot be used for prosecution of a criminal case, given the Fifth Amendment right against self-incrimination (and any evidence derived from that immunized statement could not be used in criminal prosecution of the officer). MPD expressed the concern that, if officers were required to give a compelled statement, they may then refuse to give a subsequent voluntary statement to DCI, adversely affected the criminal investigation.

However, Michael Gennaco of OIR noted that this is largely an imagined problem, as opposed to one that actually occurs in practice: "As three examples, the Los Angeles Sheriff's Department, the Burbank Police Department and the Portland Police Bureau all obtain statements from officers involved in shootings prior to the completion of their shift, with virtually all officers from those Departments agreeing to provide voluntary statements." Gennaco also argued that even in those cases where an officer was compelled to provide a statement for the internal investigation, they would be unlikely to refuse to provide a voluntary statement to DCI. He noted, "[T]here is an interest in most officers involved in shooting to provide a voluntary statement in order for the prosecutor to have his or her version of what happened…. [T]hose other reasons would override the mere fact that a compelled statement was taken by the end of shift that the prosecutor is never going to be able to see." OIR also pointed out that the statement for the internal investigation might actually, in reality, be of greater importance than that for the criminal investigation: "MPD suggests that the most important investigation in an officer-involved shooting is the criminal investigation. The practical reality is that the high bar of proof needed by the prosecutor, and the national paucity of successful criminal prosecutions in these cases, suggest that the administrative process is as or more impactful in ensuring officer accountability and reducing the likelihood of further deadly force incidents…. [S]ince there are so few criminal prosecutions of police officers, the administrative statement (and subsequent review) is vastly more important for purposes of accountability, reform, training, and remediation." Gennaco added, "I really think the most important goal is for the agency have a pure statement that's not going to be adulterated, not going to be contaminated by outside information, of what the officer was thinking, what the officer did, what the officer observed with regard to the incident for purposes of administrative process. And if you send the officer home and you wait for days, you're never going to get that pure state of mind."

Gennaco also pointed out the potential problem of coaching: "Once the officer goes home, there is nothing preventing her or his legal counsel from gathering all involved officers and discussing the event together or for the counsel to have discussions with all involved seriatim and then having a series of 'coaching' sessions with the officers based on this external and group information." And Gennaco further noted, "The public perception (if not reality) is that the waiting period is designed to literally give an officer a break and breeds mistrust among those communities most negatively impacted by traditional policing activities." Similarly, Radley Balko of the Washington Post notes, "'Cooling-off periods' also give corrupt cops ample opportunity to consult with one another, consult with attorneys and consult with corrupt internal affairs investigators to reconstruct shootings to exonerate themselves. No, not all cops do this. But we've documented plenty of examples of it here at The Watch."[38]

In order to better understand issues related to memory and witness interviews, so as to adequately evaluate this recommendation, the Committee hosted a presentation by Dr. Ronald P. Fisher of Florida International University. Dr. Fisher is an expert on witness recollection, has worked extensively with law enforcement, and was chosen in part because of his relative neutrality on the underlying question. Dr. Fisher discussed factors that can affect the amount and accuracy of information that can be elicited in witness interviews (including degradation of memory with time and impairment by stress). He also noted that stress can interfere not only with memory retrieval, but also with metacognition (including the ability to evaluate one's answer—knowing what one knows versus where one is guessing). He also theorized that, if you entice people to guess initially, which may happen if you debrief police officers, particularly using closed questions, while they are highly

[38] Balko, R. (2018, July 31) Study: 'Cooling-off periods' don't help cops remember officer-involved shootings. Washington Post. Retrieved from https://www.washingtonpost.com/news/the-watch/wp/2018/07/31/study-cooling-off-periods-dont-help-cops-remember-officer-involved-shootings

stressed, that may encourage them to retain in their memories some of the confabulated information (guesses) that they were enticed to provide in the initial interview. Fisher also discussed a methodology that he and colleagues had developed, called the cognitive interview,[39] which is increasingly being used for crime scene interviews. Multiple studies have shown that the cognitive interview approach can allow an interviewer to obtain substantially more information while still maintaining reasonable accuracy.[40] The technique seeks to have the respondent feel in control of the conversation, is completely process-oriented, and uses a set of mnemonics (techniques such as mental reinstatement of context) to elicit as much detailed memory as possible, while avoiding leading or closed questions. A closely related tool, based on the core principles of the cognitive interview, is the self-administered interview.[41] The self-administered interview comprises a booklet containing instructions and questions designed to facilitate the recall and reporting of the witnessed event, using mnemonics and guiding the witness through different stages of the event. Responses are provided in written form and include graphical representations. Like the cognitive interview, studies have found it to elicit much more information (and valid information) than standard interviews or free recall. Both the cognitive interview and the self-administered interview, if administered shortly after an event, have been shown to 'preserve' memory, and thus substantially reduce forgetting and protect against the negative consequences of post-event misinformation.[42] Moreover, given the nature of these tools, they would minimize enticement to guess.

After carefully considering and weighing all the many factors discussed above, the Committee found itself in agreement with the OIR recommendation that, absent extraordinary circumstances, MPD investigators should obtain a statement from involved and witness officers prior to release from shift. In addition, the Committee has chosen to recommend that the self-administered interview be considered as a possible tool for obtaining the officer statements, since it could potentially elicit more detailed recollection while minimizing the risk of contaminating memory with confabulations. The Committee believes that an interview before end of shift should, on balance, provide a more accurate account than an interview 24-72 hours later. A more accurate account of the incident is crucial for making proper administrative determinations of whether policies were violated and to properly understand incidents, in order to enact measures to reduce the risk of additional such incidents in the future. Moreover, an interview before end of shift would minimize the opportunity for coaching and should engender greater trust among community members.

➢ SECTION 2. Video Review Protocols

Recommendation #86:

MPD should clarify its SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers the opportunity to review any recording of the incident. [OIR Report #69]

Discussion: Policing activities are increasingly being captured in recordings, including on dashcam video, cellphone recordings, surveillance cameras, etc. For critical incident investigations, it is now established best practice that involved and witness officers should not be permitted to view recordings prior to being interviewed. Cognitive science research has clearly shown that an individual's memory of what happened will be suggestively influenced and altered by viewing video footage. Once an officer views a video, what had been two independent lines of evidence – the officer's eyewitness memory and the recorded footage – are no longer two independent lines of evidence, since the eyewitness memory of the officer has been tainted by

[39] Fisher, R.P., & Geiselman, R.E. (1992). Memory-enhancing techniques for investigative interviewing: The cognitive interview. Springfield, IL: Charles C. Thomas.

[40] Köhnken, G., Milne, R., Memon, A., & Bull, R. (1999). The cognitive interview: A meta-analysis. Psychology, Crime and Law. 5(1-2), 3-27; Memon, A., Meissner, C. A., & Fraser, J. (2010). The cognitive interview: A meta-analytic review and study space analysis of the past 25 years. Psychology, Public Policy, and Law, 16, 340-372.

[41] Gabbert, F., Hope, L., & Fisher, R.P. (2009) Protecting Eyewitness Evidence: Examining the Efficacy of a Self-Administered Interview Tool. Law and Human Behavior. 33, 298-307

[42] Gabbert, F., Hope, L., & Fisher, R.P. (2009) Protecting Eyewitness Evidence: Examining the Efficacy of a Self-Administered Interview Tool. Law and Human Behavior. 33, 298-307; Gabbert, F., Hope, L., Fishes, R.P., & Jamieson, K. (2012) Protecting Against Misleading Post-event Information with a Self-Administered Interview. Applied Cognitive Psychology. 26, 568-575; Memon, A., Zaragoza, M., Clifford, B. R., & Kidd, L. (2010). Inoculation or antidote? The effects of cognitive interview timing on false memory for forcibly fabricated events. Law and Human Behavior, 34, 105–117.

viewing the recording. Importantly, for a critical incident, the officer's perception of an incident goes to the fundamental "state of mind" question, which is crucial for determining whether officers' actions met the objective reasonableness standard. In key ways, the officer's perception of what occurred is as important as what actually occurred, since this perception is likely to have governed the officer's behavior. It is thus important to preserve the officer's perception of the event and not taint his memory by letting him or her view the recorded footage. In addition, as the ACLU has noted, "If an officer is inclined to lie or distort the truth to justify a shooting, showing an officer the video evidence before taking his or her statement allows the officer to lie more effectively, and in ways that the video evidence won't contradict.… [I]f the officer watches the video and discovers that certain elements that put them in a poor light happened not to have been captured—or that there's a moment when the subject wasn't in frame that the officer can say he reached for his waistband—then the officer will feel at liberty to shade and color their account of events, if not to lie outright."[43]

As OIR discussed in its report, Wisconsin Department of Criminal Investigation (DCI) protocols for investigation of officer-involved deaths are consistent with recognized investigative best practices: "For critical incident investigations, the DCI protocol is for investigators to interview involved and witness officers prior to the officers viewing any type of video of the incident. DCI agents complete a formal detailed interview, and then give officers an opportunity to watch any video, after which officers may make any additional statements before the agents conclude the interview."[44]

In contrast, current MPD policy states:

> If audio and/or visual records are available, and are relevant to the involved officer's point of reference of the incident, the involved officer(s) may be allowed to review the recordings prior to or during their formal statement.
>
> a. Generally, the formal statement should begin with the involved officer providing a statement based on his or her recollection of the incident. Relevant video/audio may then be reviewed (in the presence of a member of the OICI team) prior to the completion of the formal statement.
> b. Deviation from this guideline is at the discretion of the OICI commander.

As OIR noted, "The first sentence of MPD's current policy is unclear and potentially conflicts with the second sentence. If the first sentence is deleted from current policy and the second sentence is rephrased to be more definitive – by deleting 'Generally' and changing 'should' to 'shall' – MPD's policy would be consistent with the DCI protocol and in line with best investigative practices. Finally, the policy should not give the OICI commander authority to deviate from the policy."

In its response, MPD stated that "MPD's view is largely in alignment with that of OIR," and that, "in 2017 MPD modified the department SOP on this topic, to what seems like the best approach: officers involved in an OICI will be asked to provide an initial statement without viewing video, have an opportunity to view video (if any exists) and then the interview will continue to allow for additional discussion (with the benefit of having viewed the video)." MPD's response, however, did not acknowledge the ambiguity that OIR had pointed out in its SOP. Furthermore, it only referred to officers providing an "initial statement" prior to their review of video/audio recordings, rather than clearly indicating, consistent with best practices and DCI protocol, that a complete detailed formal interview should be conducted with officers before giving them access to recordings. Furthermore, MPD made it clear that it intended to retain the "OICI commander" exception, arguing that an involved officer might only be willing to provide a statement if first allowed to review recordings. Meanwhile, the City Attorney's Office stated disagreement with this OIR recommendation, under the apparent misimpression that the recommendation was for MPD to seek to direct DCI on its protocol for OICI investigations (asserting, "under State law, MPD does not control the investigation and has no authority to direct DCI….").

In reply, OIR pointed out:

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[43] Stanley, J. & Bibring, P. (2015) *Should Officers Be Permitted to View Body Camera Footage Before Writing Their Reports?* ACLU. Retrieved from https://www.aclu.org/blog/free-future/should-officers-be-permitted-view-body-camera-footage-writing-their-reports

[44] Wisconsin Department of Criminal Investigation. (2017) *General Investigative Guidelines for Officer-Involved Death Investigations.* Retrieved from https://www.policefoundation.org/wp-content/uploads/2017/05/Investigative-Guidelines-for-Officer-Involved-Death-Investigations.pdf

In its response, MPD expresses support and advances the sound investigative and evidentiary rationale for a process we endorse whereby an officer provides a pure statement, has an opportunity to review any video, and then can supplement the statement based on recollection refreshed by viewing the video. However, MPD expresses intent on keeping the "OICI Commander" exception that would allow an officer the opportunity to view the video upon the officer's demand if he/she then agrees to provide a voluntary statement. Again, as with the officer waiting period, MPD values the importance of obtaining voluntary statements so highly that it is willing to discard sound investigative and evidentiary principles to entice an officer to provide them. MPD has struck the wrong calculus in this regard. We urge the Department to reconsider the recommendation. As for the City Attorney's response, it misses the point of the recommendation. Our recommendation does not speak to directing or influencing DCI's protocol for an officer-involved investigation. It is a recommendation designed to eliminate an exception to MPD's current protocol that is apt to swallow the rule.

Because DCI now conducts the criminal investigation in an MPD officer-involved death case, their protocols (prohibiting video access prior to interview) would govern the criminal investigation interview in such a case. Furthermore, MPD SOP language regarding investigation of officer-involved deaths does note: "Unless exigent circumstances related to an on-going threat require it, involved officers shall not watch video related to the incident until their formal interview with the outside agency lead investigator, or upon receiving approval from the lead outside agency investigator." The change in policy recommended by OIR would thus appear to predominantly affect MPD investigations of critical incidents that were not officer-involved deaths (i.e., "other officer-involved critical incident" cases "where significant injury likely to cause death occurs or when an officer intentionally discharges his/her firearm at another person"), but also could affect some MPD internal officer-involved death investigations. For officer-involved deaths, MPD's SOP would govern MPD internal investigation interviews, and the change in policy regarding access to recordings would make a substantive difference in a restricted set of circumstances where the involved officer had not yet viewed the recording – for example, if the officer being interviewed for the internal investigation had refused an initial voluntary interview with DCI, or if additional video footage became available after the initial DCI interview, but prior to the MPD internal investigation interview. It is worth noting that MPD can compel an interview for its internal investigation and is not reliant merely on voluntary statements in this context.

Having considered all the factors articulated above, the Ad Hoc Committee believes that the MPD SOP should be amended to align with best practices and to concord in full with OIR's recommendations.

➢ SECTION 3. Interactions with Family Members & Witnesses

Recommendation #87:

MPD should review DCI protocols regarding contact with family members after an officer-involved shooting and integrate them into its own officer-involved critical incident protocols. [OIR Report #70]

Discussion: OIR noted that MPD's "officer-involved shooting protocols provide little guidance to its personnel regarding contact with the family." This lack of protocols has proved a problem in some situations. For example, OIR noted incidents involving delays in family members' access to critically injured individuals who have been transported to the hospital. The District Attorney's Office has a Crime Response Program that has social workers available around the clock to help coordinate outreach efforts for victims of crimes. While there had been no MPD policy requiring notification following a critical incident, MPD historically and to its credit had involved the Crime Response Program in its initial response. In contrast to the MPD protocol at the time of the OIR review, however, the protocol developed recently by the Division of Criminal Investigations (DCI) at the Wisconsin Department of Justice specifically included notifying the DA's office, as well as establishing rapport, providing notification of services, and providing required documents regarding victim rights to family members, maintaining communication with family members throughout the investigative process, etc. This recommendation seeks to align MPD policy with the better practice set forth in the DCI protocol. MPD indicated in its Response to the OIR Report that it agrees with this recommendation, and in its Supplemental Response it reported that "[t]his change has been made" in its SOP.

Recommendation #88:

MPD should consider using a Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting. [OIR Report #71]

Discussion: As discussed elsewhere in this Report, in 2017, the Mayor's Office developed s an innovative Rapid Response Team to look for specific ways to alleviate root causes of and harms from violent crimes, and to cultivate the kinds of cooperation that could facilitation investigations and future prevention. The Rapid Response Team was built around a group of prominent leaders and organizers from the African American community. As OIR explained, "At its core, the idea was to draw on the neighborhood credibility and personal insight of team members, and thereby promote connections and strategies for constructively addressing each situation as needed." Given the promise of this innovative experiment in engaging the community, OIR recommended that the City and MPD consider using the Rapid Response Team in interacting with family members after an officer-involved shooting. MPD responded that it is willing to explore this option, if the Rapid Response Team is willing to expand its mission in this way.

Recommendation #89:

MPD should develop procedural justice guidelines within its officer-involved critical incident SOP to ensure that officers respond with sensitivity to the emotional and safety needs of witnesses and family members, and that, when legally permissible, witnesses and family members are kept advised of the process and procedure related to the incident.
[OIR Report #72]

Discussion: This recommendation was adopted as a modification of OIR Recommendation #72, which stated: "MPD should create guidelines within its officer-involved critical incident SOP to address the concerns of witnesses to the incident." The MPD responded that it was unaware of any need for an SOP addressing the concerns of witnesses to officer-involved critical incidents, since it has received no complaints about how witnesses to an officer-involved shooting have been handled. However, OIR noted, "In our review, we did hear from community stakeholders about how some of the witnesses were treated in at least one recent officer-involved shooting. Moreover, we are aware of other jurisdictions in which agencies have compounded community tensions after officer-involved shootings by transporting witnesses to the station without clear guidance on whether the witnesses are 'voluntarily' agreeing to participate. Some of this upset has even transferred to the civil liability arena, resulting in liability to the jurisdiction for providing insufficient guidance to handling detectives and officers." The Committee also heard complaints from witnesses and family members in two recent officer-involved critical incidents, concerning MPD treatment of themselves and other witnesses.

As a further example of the concerns that motivated this recommendation, the OIR Group noted that "MPD's lack of established protocols in this area has proved to be a detriment in some situations. We heard of incidents where there were delays in family members' access to critically injured individuals who have been transported to the hospital. The inherent tensions and emotions of these situations are clearly challenging, highlighting the importance of clear written guidelines. Law enforcement should do its best to be sensitive in these highly charged scenarios and try to accommodate families' reasonable requests for access."

The Committee was convinced that, because such critical incidents can be devastating for witnesses and family members, it is essential that the MPD do all it can to attend to those needs. The Committee therefore adopted this recommendation, but expanded it to clarify the kinds of concerns that the SOP should address. The Committee also specifically included the concept of "procedural justice," a set of four policing principles (treating people with dignity and respect, giving citizens "voice" during encounters, being neutral in decision making, and conveying trustworthy motives) advocated in progressive policing and emphasized in the recommendations of President Obama's Task Force on 21st Century Policing.

In any officer-involved critical incident, the MPD's response to traumatized family members and witnesses is often its first and most important interaction with the community, which can set the tone for future communications and understandings about the event. Careful attention, in a written SOP, is an important step toward ensuring that interaction is managed appropriately and sensitively.

➢ SECTION 4. A More Holistic Review Model

Recommendation #90:

MPD should automatically conduct an administrative investigation of all officer-involved shootings and other critical incidents separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers, if necessary. A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights. [OIR Report #73, CRT #13]

Discussion: Under state law, after a critical incident, the initial investigation into the lawfulness of police conduct must be conducted by an independent agency, and the State DOJ has determined that its Division of Criminal Investigations (DCI) has that responsibility. The DCI investigation, and its component interviews, are narrowly focused on determining whether the officer involved violated minimum constitutional due process standards, and hence violated the criminal law (the DCI thereby provides information for a determination by a district attorney regarding criminal prosecution). This investigation and its interviews are tightly focused on the moment the officer took the action involving deadly force and the reasons for it. This investigative effort is not geared toward gathering evidence relevant to broader questions of whether departmental policy was violated, or assessments of tactical decision-making prior to the use of deadly force or post-incident conduct such as provision of medical care.

Many police agencies routinely conduct thorough follow-up interviews, in which questions of planning, tactical decision-making, supervisory decisions, communication, equipment, and post-shooting conduct are carefully explored. Such a comprehensive fact set is required both for determinations of individual accountability and to learn from incidents, with a goal of Departmental improvement (e.g., so as to avert such incidents in the future).

But as OIR notes, in MPD's case:

> per the relevant SOP, MPD's Professional Standards and Internal Affairs Unit is responsible for conducting an "internal investigation to ensure compliance with the MPD Policy, Procedures, Regulations, Work Rules, and Training and Standards." In the relevant case files we studied, the PSIA review usually relied entirely on the criminal investigation's collection of facts, summarized those facts, and rendered findings that were limited to the question of whether the use of deadly force was within policy. Contrary to its stated policy, MPD's current administrative process does not usually consist of an "investigation," but instead a repackaging of the facts collected by the criminal investigators …. [T]he Department generally relies on the interviews conducted by the criminal detectives in making its administrative determinations. This resultant gaps [sic] in evidence may end up being even more pronounced now that DCI has assumed investigative responsibilities for fatal shootings: MPD no longer has any ability to influence the breadth of the initial interviews.

In response, OIR noted, "In the hundreds of detective and administrative interviews we have reviewed, there has consistently been additional, relevant, and often critical information that emerges from the administrative interview." As Mike Gennaco of OIR told the Committee, "In my experience, I have not yet seen an interview conducted by a detective that couldn't be or shouldn't have been embellished to get into tactical issues and other decision making, that the district attorney is not going to be interested in."

The Ad Hoc Committee strongly agrees with the OIR recommendation, that administrative investigations should automatically be conducted and that these should include re-interview of involved and witness officers. Given MPD's concerns, however, the Committee has modified the OIR recommendation, appending the words "if necessary" so that re-interviews will not be required in cases where they would be of no value, but also including a stringent definition of "necessary" (a provision proposed by the CRT and strongly endorsed by Mike Gennaco of OIR) to avoid the recommendation being undermined. Specifically, "A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights."

Recommendation #91:

If the criminal investigation has not obtained a full account of the observations of the on-scene emergency medical providers, MPD should interview them as part of the administrative investigation. [OIR Report #74]

Discussion: As we have noted, under state law, criminal investigations following deadly force incidents are conducted by the Division of Criminal Investigations (DCI) of the State Department of Justice. Because those investigations are focused only on whether the involved officer committed a criminal act, the interviews conducted in that process are generally narrow in focus. Accordingly, many police agencies routinely conduct extensive follow-up interviews when conducting the administrative (as opposed to criminal) investigations relating to the use of deadly force. Administrative review tends to be broader than criminal investigation because, as OIR noted, administrative review includes inquiry into broader issues of compliance with Department policies and procedures related to issues such as "planning, tactical decision-making, supervisory decisions, communication, equipment, and post-shooting conduct." Moreover, administrative reviews more broadly permit "a review process with an overarching objective of ongoing, Department-wide improvement." Thus, the MPD needs to elicit additional types of information in interviews. MPD's current practice, however, is not to routinely re-interview involved and witness officers, or other pertinent parties, but generally to rely on the interviews conducted by the criminal detectives in making administrative determinations. The resultant gaps in evidence may end up being even more pronounced now that DCI has assumed investigative responsibilities for fatal shootings: MPD no longer has any ability to influence the breadth of the initial interviews. It is therefore incumbent on MPD to adopt officer-involved shooting protocols that will ensure that all involved and witness officers are interviewed administratively. Additionally, there may be other witnesses MPD will need to interview to answer important questions about the event as a whole. An assessment of medical care's timeliness after the use of deadly force is now standard in progressive police agencies' administrative review. In order to make this assessment, investigators often need to interview emergency medical providers and obtain related records, tasks not typically completed by criminal investigators. MPD concurred with this recommendation, stating: "If this—or any other—information is not addressed in the DCI investigation PS&IA will conduct additional interviews or follow-up as needed."

Recommendation #92:

MPD should develop a robust review process after a critical incident such as an officer-involved shooting that examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include the development of a corrective remedial plan designed to identify and address any issues identified. [OIR Report #75]

Furthermore, MPD and the City should work with the Quattrone Center to develop a root cause analysis procedure. [PWG #12]

Discussion:

Comprehensive Internal Review and Root-Cause Analysis of Critical Incidents

"Critical incidents such as officer-involved shootings provide an opportunity for learning and improvement well beyond the determination of whether the use of deadly force was within policy."
OIR Report – 2017

Incidents involving serious use-of-force, especially those resulting in injury or death, are always undesirable. They are, however, rarely but occasionally unavoidable. Police cannot be blamed in every such instance, since sometimes officers are truly required by circumstances to resort to force, even deadly force. Nonetheless, such incidents are always unwanted events that should be minimized as much as possible while permitting police to perform their important public safety duties.

Currently, the institutional mechanisms for reviewing such incidents include internal and external investigations to determine if the officers involved complied with the law and MPD policies. These reviews are undertaken to determine if someone should be held accountable for wrongdoing, either by way of discipline or criminal prosecution. These reviews are of course essential, and must continue, as is addressed in other recommendations in this final Report.

But to truly improve policing and work toward minimizing such undesirable incidents, more is needed. Analysis of critical incidents must be robust and holistic, and systems must exist for fostering institutional learning from such incidents. OIR has recommended that MPD conduct comprehensive internal reviews of critical incidents and we endorse this recommendation.

Holistic critical incident review meetings can begin convening relatively soon after an incident, utilizing roundtables of command staff and departmental subject matter experts to examine issues including tactical decision-making, communications, supervision, equipment, training concerns, department policies, and individual accountability.

In addition, a key component of comprehensive reviews should be non-blaming inquiries into root causes of problematic incidents. Only through such a non-blaming, learning-focused process can the MPD fully explore ways to minimize use-of-force incidents as much as possible. People function within systems designed by organizations, and redesigning systems can reduce the risk of adverse events. The purpose of root-cause analysis is not to assign blame but to enable complex organizations to identify opportunities for improvement. The Common Council's President's Work Group embraced this approach to learning about systemic error, and directed the Ad Hoc Committee to devise a plan for implementing a root-cause-analysis (President's Work Group Report action item 12).

Models for such learning-focused, non-blaming, root-cause analyses exist widely in medicine, industry, and other areas of government. Perhaps most notably, the National Traffic Safety Board (NTSB) offers an example of the potential for improving public safety in a highly complex system. Additionally, many hospitals have adopted such processes following unexpected or catastrophic patient outcomes, as part of what has become known as the creation of a "just culture" in medicine. A "just culture" can be defined as "a culture that recognizes that competent professionals make mistakes and acknowledges that even competent professionals will develop unhealthy norms (shortcuts, 'routine rule violations'), but has zero tolerance for reckless behavior." [Agency for Healthcare Research & Quality Glossary]

Creating such root cause analysis processes can be complicated, but fortunately, Madison has the opportunity to take part as a model site for technical assistance from the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School, under a grant from the U.S. Department of Justice.

The Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School is a nonpartisan, national research and policy hub producing and disseminating research designed to prevent errors in the criminal justice system. In 2017, the Quattrone Center was awarded a federal Bureau of Justice Assistance grant to provide technical assistance to 20-25 demonstration sites around the country on sentinel events reviews. As explained in the federal grant RFP, this "is an effort led by the National Institute of Justice—the U.S. Department of Justice's research, development, and evaluation agency—to explore whether an all-stakeholder, forward-looking, non-blaming review of unanticipated events that signal an underlying system weakness in criminal justice can be used to understand areas of system risk and weaknesses, reduce the occurrence of these outcomes, increase safety, and augment the criminal justice system's ability to fulfill its mission." This includes officer-involved shootings.

The federal grant solicitation explains the role of the Quattrone Center as a technical assistance provider in this way:

> The TA Provider will assist in the establishment and facilitation of these multi-stakeholder review panels, and provide ad hoc support for such processes as interviews of relevant parties and negotiation of information-sharing agreements. In addition, the provider will complete a process evaluation to identify promising practices and common challenges to implementation. The TA Provider will be instrumental in establishing and facilitating the reviews at the local level, building on this work to identify promising practices and shared challenges across sites. This effort will build on several years of program development and inquiry at NIJ, including the completion of three pilot efforts in 2014.

Pursuant to that Technical Assistance grant, the Quattrone Center is now considering which jurisdictions to work with to develop these demonstration sites.

The Quattrone Center staff have explained the theoretical basis for their technical assistance in "just culture reviews" in this way:

> Event reviews go by various names, but whether called root cause analyses or sentinel event reviews, their philosophy is the same: When a system generates undesirable events, all stakeholders should come together to review those events in a nonpunitive manner, understand the true underlying causes of *why* events unfolded as they did, and determine how they could have been avoided.
>
> Such insights become the basis for recommendations for system change to prevent the next error. These investigations, epitomized in other industries through structures like the National Transportation Safety Board or hospital morbidity and mortality reviews, have fostered significant innovations such as child safety seats and surgical checklists that have saved thousands of lives.…
>
> The question asked in disciplinary hearings or litigation is whether the officer's actions were legally justifiable or permissible under law enforcement policy. This retrospective approach does not reach the question of whether the incident could have been avoided, and how to prevent future incidents. Nor does it address the reality that most shootings, even when legally justified, decrease police legitimacy and fracture the relationship between officers and the communities they are supposed to serve.

The Quattrone Center further notes:

> A "just culture" balances blame-free event reviews with the need for professionals to be personally accountable for adherence to reasonable standards of professional conduct. Typically, this involves the creation of a separate disciplinary process in the event that the root cause analysis uncovers evidence of intentional or reckless wrongdoing by any individual…. In order to preserve the integrity of the root cause analysis as a blame-free event review, it is important that any disciplinary process be additional to, and separate from, the root cause analysis. The individual in charge of making determinations about disciplinary action should be informed by, but not report to or be directly involved with the root cause analysis itself.

Finally, the Quattrone Center explains its role as technical assistance provider in this way:

> An independent facilitator would assemble a review team with subject matter experts, such as former detectives, psychologists or ballistics experts, and include community and police department representatives not directly involved in the incident. They would conduct interviews and review documentary evidence, working together to identify contributing factors and root causes of the event and developing policy recommendations aimed to prevent future, similar incidents. For example, an event review of a shooting of a mentally ill individual might result in recommendations to develop specific police protocols for interaction with people believed to be mentally ill, or create law enforcement response systems that include communication or collaboration with mental health professionals. Importantly, the event review would be firewalled from the disciplinary or legal process, to allow those who participate to do so candidly.
>
> In analyzing police shootings, reviews can focus on the use of force and immediately preceding events. But they can also look at the incident response, and how later actions may have compounded the reaction to the initial event.

John Hollway, Executive Director of the Quattrone Center, attended an Ad Hoc Committee meeting in Madison and expressed interest in working with the MPD and the City of Madison, as soon as possible, if several key stake-holders, including the MPD, City government, and perhaps community groups or other stake-holders, will commit to the process. We note that the MPD does not oppose this recommendation, and indeed, in its response to the OIR Report, wrote:

> The department has had some preliminary discussions with the Quattrone Center on this subject. The Quattrone Center, affiliated with the University of Pennsylvania Law School, focuses on preventing errors in the criminal justice system. One aspect of their work involves root cause analysis (or "just culture" review) with agencies. In 2019, the department will further explore the parameters of how a post-critical incident review process might look and whether it is feasible to work with The Quattrone Center moving forward.

Litigation concerns should not be a bar to implementation. As OIR notes:

> There are legal protections available when a law enforcement agency rigorously self-examines and uses that process to improve. And even if there were some public access and litigation concerns, those should of course take a back seat to any initiative that reduces the likelihood of further deadly force incidents and increases officer safety through critical self-scrutiny.

The Committee strongly recommends taking advantage of this opportunity by committing itself and the MPD, as soon as possible, to work with the Quattrone Center to establish Madison as a demonstration site for technical assistance under the federal Bureau of Justice Assistance grant for creating a root-cause analysis and "just culture" process for learning from critical incidents. For the purpose of increasing the safety of both the public and officers, the Committee recommends that the Common Council direct City personnel to submit a request promptly for assistance from the Quattrone Center.

➢ SECTION 5. Risk Management Initiatives

Recommendation #93:

After a civil judgment or significant settlement involving MPD activity, the Department and its attorneys should convene a meeting intended to holistically review the incident and any insight learned from the litigation process itself, and should devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation. [OIR Report #76]

Discussion: Cases of adverse civil judgements or settlements, and information uncovered during litigation, can be treated as opportunities for learning, improvement, and risk mitigation. As OIR noted, "When the litigation results in an adverse judgment or large settlement, one common reaction in law enforcement is to cite external factors – evidentiary rulings, jury instructions, makeup of the jurors, quality of the advocacy – in explaining the adverse result. The better response, in our view, is for any substantial payout to trigger additional internal review of the case and use it as an opportunity to readdress officer performance, training, policy, supervision, or other factors – including perhaps the quality of any previous internal investigation – that may have contributed to the outcome. Agency executives, city risk managers, and their lawyers need to step back from their role as advocates in order to identify individual performance or systems issues that may have weakened the jurisdiction's litigation position."

There are parallels between this recommendation and Recommendation #92 [OIR Report #75, President's Work Group #12]. Attorneys assigned to represent the City could be solicited to help identify facts that supported the plaintiffs' case and that resulted in a decision to settle or an adverse jury verdict. Moreover, as OIR notes, "Ideally, after the litigation was over agency officials might even reach out to opposing counsel to learn ways in which the agency could improve its training, policy, and officer performance from that unique perspective. An advocate who has dedicated months to identifying weaknesses in the agency's response could provide valuable insight into how to avoid similar liability in the future." Indeed, for recent settlements regarding MPD officer-involved shootings, Committee members have learned that plaintiffs' attorneys have multiple well-informed, viable suggestions for improvement (some of which correspond to recommendations this Committee is making). Information uncovered in an objective and introspective review could be used to identify aspects of the incident and subsequent investigation that resulted in liability, to devise ways to remediate these issues, and to formulate a corrective action plan. OIR also noted, "Further, the Department and its attorneys should find appropriate ways to share the insights gained from their review with the public so that the community is aware of constructive steps the Department has taken in response to the result of the significant litigation payout."

MPD stated that is supports this concept. The City Attorney's response was more resistant, arguing that just because a case was settled doesn't mean that a corrective action plan is needed and stating that it "will not be convening a public meeting to discuss the specifics of any case." OIR noted in response, "In our long history of reviewing adverse judgments and significant settlements, virtually all of them provide a forum for improving performance, training, guidance and the handling of the litigation itself. And of course, developing a remedial plan is not an admission of 'fault or wrongdoing,' but a sign that an organization can and wants to get better. In the same way that we urge MPD to be reflective and self-critical, we urge the Office of the City Attorney to adopt a similar posture, at least as to police-involved litigation. The City Attorney states that the Office will not be convening a public meeting to discuss the litigation and cites all of the reasons it cannot be transparent, yet our recommendation does not ask it to. Progressive City Attorney offices in other jurisdictions have found ways to honor their confidentiality duties but still be proactive in devising public corrective action plans that assist the law enforcement agency in its interest in improvement."

The Committee believes that such reviews would be very useful, and that development of public corrective action plans could both help mitigate risk of further adverse incidents and help build public trust in MPD.

Recommendation #94:

The City should have regular dialogue with its police liability insurer to examine what risk management initiatives might result in lower premiums or could be funded by the insurer. [OIR Report #77]

Discussion: The nature of police work makes it a potential high liability target. There have been multiple large recent payout awards in Madison in the aftermath of officer-involved shootings. Because the insurance company pays the bulk of any such awards, a growing trend among companies who provide liability insurance for cities and counties is to promote risk liability programs designed to improve systems in law enforcement. The idea is that proactive systems improvement will reduce future risk of liability. Forward-thinking insurance companies see the value in proactive systemic review and reform. The Wisconsin Municipal Mutual Insurance Company, which insures the City of Madison, has a proactive loss control program (that, for example, recently audited jails of jurisdictions covered by the insurer). Following the lead of other jurisdictions, City representatives should have regular talks with its insurance company to see to what degree it is amenable to funding independent reviews or audits or reducing premiums in response to risk management initiatives. In its response to the OIR Report, MPD asserted unhesitatingly, "MPD supports this." Additionally, the City Attorney responded that "[t]he City currently meets regularly with its liability insurer."

➢ SECTION 6. Prosecution & Conflict of Interest

Recommendation #95:

The City of Madison should seek an amendment to Wisconsin Statute §175.47(5)(a-b), requiring that investigators of an officer-involved force incident provide the report to the chief judge of the judicial administrative district, and that judge must appoint a special prosecutor who then must determine whether to prosecute the officer. If the special prosecutor files charges against the officer, the special prosecutor shall be the prosecuting attorney in the case. In the absence of a statutory change, the City of Madison should cite the inherent conflict of interest between the D.A. and law enforcement and request the D.A. allow the courts to appoint a special prosecutor who does not share that same or any other conflict of interest. [CRT #26]

Discussion: In *Offutt v. United States*, 348 U.S. 11 (1954), Supreme Court Justice Felix Frankfurter coined the now famous maxim: "justice must satisfy the appearance of justice." The essence of this is the stress the court places on the almost sacrosanct need for the judicial process to be in fact and in appearance free from conflicts of interest; it is a bedrock principle of constitutional, statutory and common law conflict rulings.[45] Importantly, the standard applies with equal force to prosecutors as to judges. The fact that prosecutors and police are deeply entangled, at both a daily and larger systemic and political level, should give pause to anyone concerned about the appearance of justice when prosecutors pursue cases against police.

For instance, prosecutors rely on the police in cases against civilian defendants in terms of arrests, evidence collection, and testimony.[46] They trust their investigations when establishing the quality of the evidence and depend on them to be truthful and cooperative on the stand. When it comes time to prosecute this same ally, the prosecutor must switch from working closely with the police as trusted partners to pursuing them with the same zeal as they would a civilian defendant. Often, the relationships between prosecutors and the police may be friendly and personal, or least collegial in larger jurisdictions.

Furthermore, job security and promotional opportunities largely hinge on conviction rates for assistant District Attorneys (ADAs), and pursuing the primary source of information related to successful prosecutions would be deeply contradictory to

[45] Levine, K. (2016) Who Shouldn't Prosecute the Police. *Iowa Law Review*. 101, 1447. Retrieved from https://ilr.law.uiowa.edu/print/volume-101-issue-6/who-shouldnt-prosecute-the-police/.
[46] Ibid.

an ADA's self-interest—the essence of any conflict of interest.[47] Prosecutors are absolutely reliant on police to achieve convictions and must maintain a smooth working relationship. A prosecutor who advocates prosecution of the police will, in many cases, run afoul of law enforcement's good graces, which may impact conviction rates and therefore career advancement.

Elected District Attorneys (DAs), who are subject to intense pressure from police unions, and their line attorneys who must rely on law enforcement for the success of every case they try, have a clear conflict of interest when deciding whether to bring charges and lead cases against police-defendants. Pressure from police unions to refrain from legal action against officers can be visible and intense, and the pressure is intensified when an officer is charged. Under such circumstances, DAs must contend with the real possibility—or a real apprehension—that they will not be reelected. DAs who prosecute officers responsible for officer-involved fatalities may be subject to police noncooperation and retaliation, as evident, for example, in cases such as those of Marilyn Mosby in Maryland[48] and Kari Brandenburg in New Mexico.[49] Conversely, DAs who act to weaken accountability in such cases may reap a reward of police union electoral assistance.[50]

In addition, DAs will have difficulty determining their own conflicts in police cases.[51] The Supreme Court and scholars agree that it is very difficult for any legal actors facing a potential conflict to determine how much it will impact their judgment. Though it is almost impossible to imagine a scenario where a local DA will not have an inherent conflict when asked to charge police suspects, both political pressure and cognitive biases make it extremely difficult for a DA to recognize the conflict and recuse their office. DAs are often elected with the support of local law enforcement and law enforcement unions, may feel gratitude and loyalty toward those who supported their election, and will also experience immense reliance on, if not obligation to, police for the successful resolution of the vast majority of their cases. Moreover, they will be subject to several cognitive biases identified in behavioral economics research – including the "self as moral" bias (in which people consistently consider themselves more ethical and objective than their average peer), the "self as competent" bias, and the "self as deserving" bias.[52] Though these cognitive biases can strongly influence decisions and result in what has been termed "bounded ethicality" in conflict determinations,[53] people reviewing their own conflict, blind to the biases' existence, will tend to believe that they acted ethically and with objectivity, even in the face of evidence to the contrary. (Note that, in this regard, pointing out that prosecutors are subject to these biases is not an indictment of their character or motives, but rather merely an observation that they, like all human beings, are subject to these cognitive distortions, even if they try to avoid them; these biases exist not because prosecutors are uniquely flawed, but because they are human.)

Moreover, DAs' conflicts in such cases will generally not face legal scrutiny. Conflicts involving judges or attorney are typically scrutinized when raised by defendants, but a prosecutor has no specific client and a police officer benefitting from leniency would not raise the issue of conflict. Thus, DAs have little incentive to cede power over police prosecutions. External actions, such as statutory changes and external institutional requests for recusal, are required.

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[47] Ibid

[48] Stolberg, S.G. & Bidgood, J. (2016, July 28) Prosecutors Say Baltimore Police Mishandled Freddie Gray Case. *New York Times*. Retrieved from https://www.nytimes.com/2016/07/29/us/freddie-gray-baltimore.html?_r=0 ; Frisch, M. (2018, May 7) *Freddie Gray Prosecutor Immune From Civil Liability*.
Retrieved from https://lawprofessors.typepad.com/legal_profession/2018/05/immunity-prevents-a-lawsuit-against-the-baltimore-city-states-attorney-for-the-prosecutions-in-the-death-of-freddie-gray-acc.html ; Rector, K. (2016, June 29) Activist law professor calls for Mosby disbarment over prosecution in Freddie Gray case. *Baltimore Sun*. Retrieved from https://www.baltimoresun.com/news/crime/bs-md-ci-mosby-attorney-grievance-20160629-story.html

[49] Samaha, A. (2016, August 2) Law and Order. *Buzzfeed News*. Retrieved from https://www.buzzfeed.com/albertsamaha/how-an-albuquerque-da-took-on-her-own-police-department-and.

[50] Swaine, J., Laughland, O., Lartey, J., and McCarthy, C. (2015, Dec. 31) Ties that Bind. *The Guardian*. Retrieved from https://www.theguardian.com/us-news/2015/dec/31/ties-that-bind-conflicts-of-interest-police-killings

[51] Levine, K. (2016) Who Shouldn't Prosecute the Police. *Iowa Law Review*. 101, 1447. Retrieved from https://ilr.law.uiowa.edu/print/volume-101-issue-6/who-shouldnt-prosecute-the-police/.

[52] Eldred, T.W. (2009) The Psychology of Conflicts of Interest in Criminal Cases. *University of Kansas Law Review.* 58, 43-88. Retrieved from https://pdfs.semanticscholar.org/77a0/2070ac2c015f7c84f2778b0d5b58585a55c4.pdf

[53] Ibid.

In Wisconsin, a bill corresponding to the specifications of the first two sentences of this recommendation, AB 155, was introduced by Representative Chris Taylor in 2017.[54] New Jersey and Connecticut have laws on the books requiring special prosecutors for officer-involved fatalities, and New York State has implemented such a requirement by Executive Order. Within the last few years, bills to require state-level or other special prosecutors for officer-involved fatalities have been introduced in over a dozen states. A national poll showed that a solid majority of voters believe that outside special prosecutors are needed in police-involved deaths (61% overall – 76%, 56%, and 48% of, respectively, Democrats, independents, and Republicans).[55]

Meanwhile, Wisconsin Statute §978.045(1r)(bm) permits a judge to appoint a special prosecutor at the request of a DA if the DA determines that a conflict of interest exists, as specified in the last sentence of the recommendation. Though conflict-of-interest law would appear to require that DAs recuse themselves when prosecuting the police (given a clear structural and unwaivable conflict of interest), [56] a DA is unlikely to declare a conflict-of-interest in the absence of an institutional request (e.g., from the City of Madison).

The Committee adopted this proposed recommendation with a minor amendment – replacing "Madison" with "the City of Madison," to clarify the entity responsible for taking action. The Committee believes that, because of the intrinsic and unavoidable conflicts of interest that exist between police and prosecutors when it comes to prosecuting police, the City of Madison should strongly advocate for a change to Wisconsin state law to allow for the establishment of an independent special prosecutor in the case of officer-involved force incidents. Due to their virtually limitless power to decide who to prosecute and their reluctance to give up that power, especially in cases where police are the defendants, DAs should be removed from the decision matrix. Absent a law change, the City of Madison should request that the DA remove the taint of conflict by allowing the courts to appoint an independent special prosecutor to handle cases involving police use of force.

PART IV: USE OF FORCE

➢ SECTION 1. Reporting & Investigating Force

Recommendation #96:

MPD should make clear through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report. [OIR Report #78]

Discussion: Current MPD policy on use of non-deadly force requires any officer using force to document the use of force in a case report. The case report documents all of the officer's activities with respect to a given call, including all of the circumstances surrounding a subject's arrest and any evidence gathered in support of potential charges. A field supervisor is then required to review the use of force for compliance with MPD procedures. MPD policies require an additional reporting step for a subset of force incidents deemed "recordable force" (defined as: takedowns, active countermeasures, OC spray, impact weapons, hobble restraints, less lethal projectiles, Taser deployments, K9 apprehensions, and use of deadly force) as opposed to merely "reportable force" (i.e., all the types of force that must be documented in the case report—a broader category which also includes pain compliance techniques, escort holds, handcuffing, etc.). "Recordable force" in general corresponds to more serious types of force use, and for recordable force instances, the supervisor must enter corresponding data for inclusion in the MPD use-of-force database. The Department's Use of Force Coordinator then conducts further review of recordable force, including the identification of trends or training issues.

Though OIR expressed some reservations about the MPD practice of using a single case report document for the dual purposes of documenting both use of force and the legal basis for prosecution of an individual, they praised the exceptional quality of MPD case reports. OIR noted that "[t]he level of detail in their descriptions of the circumstances justifying the force, their

[54] State of Wisconsin 2017 Assembly Bill 155. Retrieved from https://docs.legis.wisconsin.gov/2017/related/proposals/ab155.pdf
[55] Kamisar, B. (2015, Jan. 19) Majority in survey backs special prosecutors in police shootings. The Hill. Retrieved from https://thehill.com/blogs/blog-briefing-room/229937-majority-in-survey-backs-special-prosecutors-in-police-shootings
[56] Levine, K. (2016) Who Shouldn't Prosecute the Police. *Iowa Law Review*. 101, 1447. Retrieved from https://ilr.law.uiowa.edu/print/volume-101-issue-6/who-shouldnt-prosecute-the-police/

account of the type and manner of force used, and the organizational structure of their reports demonstrates a commitment to excellent report writing." That said, OIR further stated that for MPD there is generally a disconnect between the quality of the officers' report and the thoroughness of the investigation that follows. As OIR noted: "The person on whom force was used is not generally interviewed regarding the force. There is no documentation by officers who witnessed the force but who otherwise have no cause to write a supplemental report, and officers generally do not seek out or interview civilian witnesses about the force. If there is dash cam, surveillance, or other video available it may be collected and attached to the report, though there is no policy requiring this."

OIR found that one important piece necessary for "a full and accurate accounting of force generally was missing from many MPD reports: officers who witness force are not required by policy to report what they saw. In many cases we reviewed, officers who witnessed but did not use force documented their observations on a supplemental report. However, officers generally only wrote these supplemental reports when they had some reason apart from witnessed force to do so, such as participating in the booking of evidence or performing a drug test."

In general, MPD did not express opposition to this recommendation requiring reporting/documentation by witnessing officers. MPD noted that it already does require officers to intercede and report when they observe excessive force. MPD also expressed some concern with redundancy in requiring witnessing officers to report use of force, particularly for lower levels of force (such as handcuffing of compliant suspects, escort holds, etc.). MPD further stated that it is willing to review whether additional SOP language or training is needed on this matter.

OIR's Mike Gennaco noted that OIR's concern was that instances of reportable force not fall through the cracks, remaining unreported. There are times in which an officer's self-interest might get in the way of the reporting requirements. If an officer chooses not to report their own use of force, under current MPD policy, that could result in no record at all of the use of force. Moreover, MPD does not use body cameras, which could capture such information if it were omitted from case reports. In addition, the current policy, which requires witnessing officers to only report excessive force, is insufficient to ensure that use of force is documented. A witnessing officer might misjudge the appropriateness of the force being applied and therefore fail to recognize and report excessive force, or the officer might feel the force used by another officer was excessive, but nonetheless not feel comfortable reporting it. Both of these problems would be resolved if there were a standard requiring officers to create a record any time reportable force is being used. Complaints from civilians also cannot be relied on to capture use of force information because there are many reasons why a civilian upon whom force has been used may choose not to file a complaint, including fear of retaliation, lack of understanding of the complaint process, or lack of resources or time to file a complaint. Mike Gennaco noted that this recommendation is not intended to enlarge the set of types of force that must be reported, but only to ensure that if an officer who employs force is required to report it, witnessing officers must also report it. Gennaco further indicated that it is particularly important to ensure that witnessing officers be required to report instances of recordable force—a subset of reportable force that generally corresponds to higher levels of force.

The Committee agreed with OIR that this recommendation increases accountability and transparency related to the use of force and that it does not appreciably add to the reporting requirements of officers on a scene. Moreover, given that one of the Committee's primary objectives is to find ways to mend the distrust that exists between MPD and some Madison communities, particularly regarding use of force, adoption of this recommendation would have the virtue of impressing upon each officer and the community that every use of force is seen as a serious event and that MPD is committed to treating it that way.

Recommendation #97:

MPD should amend its force reporting protocols so that, for certain categories of force, at minimum those that are recordable incidents, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it. [OIR Report #79]

Discussion: In its report, OIR noted that many law enforcements agencies in the United States have adopted a more robust paradigm for the investigation of use of force incidents than the MPD. Those agencies prepare a separate investigation package requiring minimal standards of investigation. These standards would require that a field officer do the following:

- Interview individuals on whom force was used;
- Interview civilian witnesses to the force and the events leading up to it;

- Ensure that all officers who participated in or witnessed the force incident have prepared thorough reports with an account of what they did or saw;
- Obtain medical records of any injuries or treatments to either the person on whom force was used or the involved officer(s);
- Secure photographs documenting any injuries, or the absence of injuries;
- Search, retrieve, and attach any video or audio recordings of the incident;
- Identify and attempt to resolve evidentiary discrepancies through additional investigation where possible.

Adopting such an investigative model would allow supervisors who are responsible for reviewing the use of force to engage in a more meaningful and accurate review of the entire incident.

In its response to this recommendation, MPD noted that "the PS&IA [Police Standards and Internal Affairs] unit investigates any time there is a citizen complaint. Some other use of force incidents may also be subject to internal investigation or administrative review. Every use of force incident is reviewed by the Use of Force Coordinator and summarized for the Chiefs on a regular basis. But requiring more full-fledged investigations or reviews of all use-of-force incidents would be a significant drain on limited supervisor resources. MPD does recognize, however, that certain use-of-force incidents might benefit from additional front-end work by a patrol sergeant. The department will explore additional SOP language or training to address this."

In discussion of this recommendation and MPD response, Ad Hoc Committee members noted that there are many reasons why a civilian may not report a use-of-force incident in which they were the target of the force. The process can be arduous, and it requires time, which can also mean a certain level of privilege that the target of the use of force may not have. Members of vulnerable populations may be hesitant to subject themselves to possible harassment should they file a complaint. As a result, there are likely incidents in which use of force is not thoroughly investigated because there is no "citizen complaint." The integrity of the force-review protocols should not be reliant on outside individuals and whether or not they decide to file a formal complaint.

In response to MPD's concern that requiring a full-fledged review of all use-of-force incidents would be a drain on Department resources, the Committee modified the recommendation to include "at minimum those that are recordable incidents" (where "recordable" force includes takedowns, active countermeasures, OC spray, impact weapons, hobble restraints, less lethal projectiles, Taser deployments, K9 apprehensions, and use of deadly force). Furthermore, in discussion, Mike Gennaco of OIR noted that the recommendation intentionally left the phrase "certain categories" undefined, allowing MPD to determine the trip wires for the kinds of cases that would be subject to this more thorough investigation. Gennaco noted that police departments might define the category as cases in which the use of force results in observable injury or a complaint of significant pain, or by the use of certain types of instruments like Tasers, batons, etc. MPD staff expressed general support for the modified recommendation and stated that the Department was already working on SOP language to address it.

The Committee believes that the revised recommendation strikes the right balance between acknowledging MPD resource constraints and protection of the overall health, well-being, and civil rights of the residents of the City of Madison.

On November 16, 2018, MPD implemented a modified SOP under which a field supervisor should immediately respond to the scene and conduct investigation in cases of 1. less lethal impact projectile deployment, 2. K9 bite, 3. impact weapon use, or 4. injury to subject consistent with substantial bodily harm. This is substantially narrower than the minimum of "recordable" instances recommended by the Committee (since it does not include Taser use, OC spray, active countermeasures, takedowns, etc.), and the criterion that injury rise to the level of substantial bodily harm appears quite restrictive. The modified MPD SOP further states that:

> The responding field supervisor should ensure that initial information is obtained and preserved to thoroughly document the incident. This should include the following:
>
> - Interviewing the subject (supervisor responsibility) if appropriate
> - Ensuring that photographs of subject and scene are taken
> - Ensuring that civilian witnesses are identified and interviewed
> - Ensuring that any video/photo evidence is identified and preserved

This includes most, but not all, of the investigative standards recommended by OIR. The Committee commends the steps MPD has taken toward implementation of this recommendation, and encourages expansion to, at a minimum, all instances of recordable force, and explicit inclusion of all investigatory standards suggested by OIR.

➢ SECTION 2. Reviewing Use of Force

Recommendation #98:

MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy as well as compliance with any other policies implicated, such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force. [OIR Report #80]

Discussion: MPD's introduction of the Use of Force Coordinator position and creation of the use-of-force database in 2016 were significant steps toward implementation of a robust and comprehensive review and analysis of use-of-force incidents by its officers. However, currently all of the review and analysis undertaken by the MPD Use of Force Coordinator is informal. MPD requires no documented review process that concludes whether a use-of-force is within policy, and it does not ensure that supervisors and executives within the MPD are reviewing and examining each use-of-force incident in a meaningful way in order to identify performance issues – both exemplary and otherwise. Such a review process would also help identify other concerns about tactics, training, equipment, supervision, or compliance with the MPD de-escalation policy.

In addition to implementation of previous recommendations calling for a more robust investigative process, OIR noted that MPD should modify its policies and protocols to require a more exacting review of use-of-force incidents. OIR recommended that first-level supervisors should prepare a thoughtful narrative explaining their preliminary conclusion about whether the use-of-force was consistent with MPD policy. In addition to that baseline conclusion, supervisors responsible for reviewing the incident should know the answers to a number of questions before concluding whether the force was within policy, and in order to determine whether alternative strategies could have been used short of force. OIR noted that these questions include:

- What were the officer's words, gestures or actions prior to, during and after the time he or she used force?
- Was there any relevant prior "interaction" or "relationship" between the officers using force and the person against whom force was subsequently used?
- What was the physical or mental condition of the person against whom force was used?
- Was there a reasonable opportunity to safely de-escalate the incident in order to lessen the likelihood of the need to use force or to reduce the level of force necessary? If so, did the officer using force attempt to do so? If not, what was the reason?
- Was there a reasonable opportunity to safely use tactical options such as increasing time and distance, using cover and concealment, using or creating barriers, calling and waiting for additional personnel, etc. which might have lessened the likelihood of the need to use force or reduce the level of force necessary? If so, did the officer attempt to do so? If not, what was the reason?
- What was the underlying offense, infraction, or conduct that precipitated the initial contact and subsequent use of force?
- Was the force reasonable when compared to the threat posed and all other surrounding circumstances?
- Was there a reasonable opportunity to safely use a weapon, device, instrumentality, or force technique that might lessen the force needed to overcome the threat posed? If so, did the officer attempt to do so? If not, what was the reason?
- Once the use of force commenced, was it reasonably decreased or stopped as the level of resistance, /threat/harm decreased or stopped?
- Was there any evidence indicating that the force used by the officer was motivated in whole or in part by any improper purposes such as, but not limited to, punishment, retaliation, discrimination, bias, improper coercion, infliction of unnecessary pain, harassment, ridicule, abuse or any other improper reason?
- Did involved and witness officers notify a supervisor of the force incident in a timely way?

- Did involved and witness officers promptly write reports that thoroughly answered all relevant questions about the incident?
- Did the involved or witness officers have access to any video of the incident prior to writing their reports?
- Were the officers' written reports consistent with each other, and with any video of the incident? If not, account for and/or explain these inconsistencies.
- Were the officers' written reports consistent with witness interviews? If not, account for and/or explain these inconsistencies.
- Was the person against whom force was used provided prompt medical assessment and care?
- What was the nature and extent of any injuries to the person against whom force was used?
- What was the nature and extent of any injuries sustained by the involved officer(s)?
- Were the injuries noted and/or documented by medical providers consistent with the level of force reported?

OIR stated, "Prompting supervisors asked with reviewing force at all levels to answer these questions allows the Department to scrutinize the incident through different prisms, with an eye toward maintaining accountability while ensuring that every incident is seen as a learning opportunity. The Use of Force Coordinator's weekly meetings with the Chief may regularly address these questions, but any remedial measures coming out of these discussions are not documented as part of the force review, making it difficult to demonstrate that command staff is attentive to force incidents for the purposes of transparency and from a risk management and civil litigation perspective."

MPD noted in its response that "[t]he MPD use-of-force coordinator … reviews every use-of-force incident…. Requiring a narrative document reviewing each incident is not feasible, without additional staffing for this position. However, MPD recognizes that some standardization would be beneficial, and steps will be taken to fine-tune this process." But, in its supplementary report, OIR noted, "While MPD does indicate it is willing to 'fine tune' this process, our position is that a more substantive change should be a priority."

The Committee was informed by MPD Captain Mary Schauf that MPD was generally in agreement with this recommendation. But MPD had concerns about the time that would be required of field supervisors. MPD also felt that there was no need to provide an analytical narrative and documentation for a review decision if the use-of-force was judged to be consistent with policy. In addition, MPD argued that the use-of-force coordinator was the most appropriate party to perform any reviews, since they would have more expertise on use-of-force and would have all relevant report documents available to them, but that, without additional staffing, writing statements to document all decisions on cases of recordable force would be too time consuming for the use-of-force coordinator.

In response to these concerns, Michael Gennaco further clarified OIR's position: Such a review should be one of the responsibilities of first-level supervisors, and the field supervisor's assessment could consist of a concise statement – a few sentences providing an analysis that the use of force was within or outside agency policy. This should not overburden the field supervisor – given the relative infrequency of use of force, "this isn't going to be something like a sergeant having to make a decision on whether or not force was within policy four or five times a shift." Moreover, a supervisor should have basic knowledge of the Supreme Court's decision in *Graham v. Connor*, which established the constitutional use-of-force standard, and MPD use-of-force policy, at least sufficient to be able to understand whether or not an officer using force faced a threat sufficient to justify the force. While there is some potential benefit to having the use-of-force coordinator perform the reviews, if there is only that one level of review, it could overburden the coordinator. The burden and responsibility for a review at first blush should be shared by the supervisor in the field. Moreover, the use-of-force coordinator would have the opportunity and ability to override a decision that's not based on fact and to kick it back to the sergeant for further work, and that could improve the performance of the sergeant on a forward-going basis.

Committee members also noted that requiring an analytical narrative from the field supervisor provides a redundant filter – essentially double checking, where the field supervisor could flag a critical detail that the use-of-force coordinator might otherwise miss. Moreover, requiring field supervisors to provide a report would let MPD know if they actually know the standard, or if, instead, they might not be enforcing the standard incorrectly and require additional training.

During the discussion of this recommendation, Michael Gennaco noted that "[w]e've worked with close to 200 agencies now, and MPD is the first one we've ever encountered where a supervisor isn't required to make a finding as to whether or not

force, by one of the officers that she or he supervises was within or outside of policy, with a couple of sentences explaining the basis for his recommendation or her recommendation…. It really was, of all the things we looked at, one of the most shocking deficits we found MPD to have compared to other agencies its size across the Country." Gennaco further stated, "In America, force is the third rail in policing right now. It is an awesome responsibility we give our officers authority to use. It just needs to be very carefully reviewed. If that means shuffling away some other responsibilities or increasing some resources, here or there, I get it. But, you know, force is key here. And I think our community is really interested in ensuring that whenever force is used, it is carefully and thoroughly vetted and documented."

Given all the above consideration, the Ad Hoc Committee endorses this OIR recommendation and believes that it should be implemented in full.

Recommendation #99:

In evaluating force incidents, MPD should go beyond a determination of whether the use of force met a Constitutional standard or was inconsistent with Department policy, to also identify any tactical or other performance issues, and determine whether additional remedial action—such as discipline, training, or debriefing—is appropriate. [OIR Report #81]

Discussion: Identifying ways in which tactics, supervision, and post-incident handling might be improved, and developing an action plan in which remedial measures are identified and personnel are assigned to implement them, is key to minimizing use of force and avoiding adverse outcomes. Doing so would be in keeping with MPD's motto of "constant improvement" and, over time, would enhance community trust. An instance of use of force may be Constitutional or within policy, but avoidable with better tactics, and evaluation of force incidents can provide opportunities for Departmental learning and growth. This recommendation is closely aligned with other of the Committee's recommendations that propose more rigorous and holistic review of use of force, and particularly with Recommendation #100 [OIR #82] which advises that, on selected force incidents, MPD should convene a panel to roundtable the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan.

In its response to this recommendation, MPD stated that this is currently part of the review completed by the MPD Use-of-Force Coordinator. Subsequently, MPD amended its SOP to address this recommendation. The policy on Use-of-Force Coordinator reviews now specifies that, in addition to determining if the use of force instance was within policy, the review will assess:

- The quality of officer reports
- Appropriateness of officer tactics and decision-making
- Equipment related issues (availability, effectiveness, function, etc.)
- Training needs or deficiencies
- Use of cover, concealment, distance and other de-escalation strategies

The SOP also states: "Suggestions for system improvements will be forwarded to the appropriate MPD commander. The Use of Force Coordinator will work with the involved officer's command staff to provide any needed coaching or training." The Committee commends MPD for making these changes.

Recommendation #100:

On selected force incidents, MPD should convene a panel to roundtable the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan. [OIR Report #82]

Discussion: OIR recommended, and the Committee agrees, that, in addition to undertaking a rigorous paper review of every use of force, some kinds of significant force incidents should be directed to a panel of command staff for review. While MPD is best positioned to determine the precise nature of this "review panel," and the precise types of cases it should review, OIR recommended that the process should contain a few key components, including:

1) MPD should clearly define which categories of incidents will be reviewed;
2) "the review should be automatic and non-discretionary so that officers understand the scrutiny to be routine and not the result of any initial judgment that the force was problematic";

3) the panel should review the reports prior to the meeting and the supervisor responsible for conducting the investigation should present the evidence for discussion by the panel;
4) "the panel should consider all aspects of the force incident to identify ways in which the tactics, supervision, and post-incident handling might be improved"; and
5) "the panel should critique and review the thoroughness and objectivity of the force investigation and, if need be, return the investigation for necessary follow up." More specifics on these elements can be found in the OIR Report at pages 132-33.

MPD responded that it supports this recommendation in principle, but that implementing it in practice will be challenging. MPD indicated that it planned to explore this and other recommendations regarding review of critical incidents further internally and in conjunction with the City Attorney's Office. As OIR noted in its reply concerning this recommendation and OIR recommendation #75, "anxiety about whether information developed during this process may be subject to litigants or the general public should not be used to defeat it or compromise its robustness and critical underpinnings. There are legal protections available when a law enforcement agency rigorously self-examines and uses that process to improve.[57] And even if there were some public access and litigation concerns, those should of course take a back seat to any initiative that reduces the likelihood of further ... incidents and increases officer safety through critical self-scrutiny." Moreover, as noted in the context of a discussion of criminal justice sentinel event reviews, "cost-benefit analysis might reveal that reductions in potential future liability more than compensate for the 'risks' of transparency."[58]

Recommendation #101:

MPD should identify and publicly commend officers who practice de-escalation techniques and problem-oriented policing. [OIR Report #83]

Discussion: The Department puts emphasis on officers documenting their efforts to deescalate situations to avoid a use of force, and this provides opportunities. OIR noted:

> First,… MPD should continue its efforts to educate and build good will surrounding its officers' positive outcomes. Second, the Department can use officers' reports to positively reinforce conflict resolution skills and affirm officers who have the capability and temperament to handle difficult situations without resorting to force. MPD should recognize those officers in regular performance evaluations and through "commendable restraint" citations. The Department should also promote those deputies as peer role models and draft them for training and briefing assignments, to reinforce the value the Department places on their acumen, skill, and approach to their work. The Department also should publicly showcase the work of such officers. At its annual awards ceremony.… MPD should strive to identify and commend officers who practice de-escalation or who employ problem-solving techniques to effectively address conflict without (or with minimal) force. In the past, the Medal of Valor has been awarded officers who faced life-threatening situations and used deadly force. There is a belief held by some in the community and within the Department that officers who are in situations where deadly force would be justified but who successfully defuse the crisis without firing a weapon will be criticized internally, An effective counter to that belief would be to award the Medal of Valor to a courageous officer who held his or her fire and effectively de-escalated a situation.

MPD stated that it "is committed to this practice. We regularly release summaries of incidents where officers successfully de-escalated a situation or avoided the use of deadly force.… MPD also has a long history of recognizing this type of work—as well as problem-oriented policing efforts—at the annual awards ceremony." The Committee fully endorses this recommendation and encourages MPD to redouble and deepen its efforts to consistently recognize, utilize, showcase, and publicly award such officers.

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[57] Jones, J. (2016) Behind the Shield? Law Enforcement Agencies and the Self-Critical Analysis Privilege, *Washington and Lee Law Review*. 60(4), 1609-1652..
[58] Doyle, J. M. (2014). Learning from error in the criminal justice system: Sentinel event reviews. *Mending Justice: Sentinel Event Reviews* (NCJ 247141), 3-19.

➢ SECTION 3. Use of Force Training

Recommendation #102:

MPD should regularly evaluate its use-of-force training to make sure it continues to be consistent with best practices, maximizes its ability to meet the demands of the Madison community, and is considered by officers to be effective at preparing them for real-life encounters. [OIR Report #84]

Discussion: In order to best serve its officers and the public, a law enforcement agency needs to continually evaluate the effectiveness of its own training programs and then look to the practices of others for guidance. In this regard, OIR noted that, for de-escalation training, MPD's training staff laudably looked outside MPD and sent a trainer to observe Seattle's de-escalation training, which had been vetted by the U.S. Department of Justice and the federal monitor overseeing that city's consent decree. The resulting MPD in-service de-escalation training was modeled on the Seattle training, with special emphasis on MPD-specific issues.

OIR noted that the most vital part of use of force training is the students' opportunity to practice their skills in highly realistic encounters. For example, officers who do not experience in training what it is like to have someone actually resist or fight them, or who have not experienced it often enough, may, when they encounter real resistance from an actual suspect, panic, resort to untrained control methods, or apply a level of force that could be deemed excessive. The training curriculum must also provide students with the opportunity to practice decision making around when and what type of force to use. OIR further noted that the ultimate measure of a training's effectiveness is how well its central premises sink into officers' mindsets, and that this can be difficult to judge. But, for example, the fact that MPD officers' case reports have moved toward describing de-escalation efforts utilized prior to a use of force is some indication that officers believe de-escalation training they receive has a meaningful impact on their work. However, the results of OIR's internal survey of officers suggest that many officers do not believe that the de-escalation strategies they learn in training have applicability in real-life encounters. More than two-fifths of officers who responded did not believe that their training assisted in using lower levels of force (though the large majority agreed that MPD's trainers were effective in communicating core de-escalation principles). OIR noted that these results are worthy of further analysis and ongoing assessment.

The Committee fully concurs with this recommendation. MPD states that it is committed to this concept and noted that, in addition to the trainer sent to Seattle, other MPD subject matter experts have traveled to discuss contemporary views on use-of-force, including to a national symposium on police use-of-force sponsored by the Police Executive Research Foundation in Washington, D.C. and to Integrating Communications Assessment and Tactics training in New Orleans.

Recommendation #103:

MPD should utilize ICAT as part of its training curriculum. [CRT #10]

Discussion: Almost all MPD officer involved shootings involve people in an altered mental state, incapacitated by mental illness and/or intoxication. Moreover, most MPD officer involved shootings involve people without firearms. The Police Executive Research Forum (PERF) recently developed the innovative Integrating Communications, Assessment, and Tactics, or ICAT, training program, using best practices to safely defuse exactly these types of situations. If provided to all MPD officers, ICAT training has high potential to save lives.

ICAT fills a critical gap in training police officers in how to respond to volatile situations in which subjects are behaving erratically and often dangerously but do not possess a firearm. ICAT provides an integrated de-escalation strategy and emphasizes preservation of life. It includes lessons in the key areas of decision-making, crisis recognition and response, tactical communications and negotiations, and operational safety tactics. ICAT integrates these skills and provides opportunities to practice them through video case studies and realistic and challenging scenario-based training. Examples of some of the approaches taught include tactical repositioning (not drawing a line in the sand), tactical mambo (team ebb and flow), containment of subjects (e.g. using rope to tie off doors), avoiding unwinnable situations, communication tactics with people in crisis, etc. MPD notes that some of its personnel have attended ICAT training and have found it consistent with current MPD training, and that MPD is "not opposed to formally incorporating ICAT into future MPD training, though there would be a significant cost (money and staff time) to do so."

Recommendation #104:

MPD should reevaluate its training regarding the implications of the reactionary gap principle, focusing on principles of officer safety such as cover and distance to ensure that officer tactics and deployment minimizes the need to use deadly force.

Discussion: OIR noted:

> It is critical that law enforcement is willing to reevaluate its training precepts following a critical incident and to engage with officers regarding lessons learned from the incident. One such precept that came to our attention during the course of our study is the reactionary gap principle. The reactionary gap principle has to do with concepts from biomechanics that provide insight on how quickly a police officer can react to a perceived threat. The findings of various studies indicate that if an officer waits until a firearm is pointed at him or her, the officer will have insufficient time to respond with deadly force before the suspect pointing the gun can fire at the officer…. The way the principle is presented in training can have significant implications for the way officers perceive and respond to threats…. [O]fficers may be encouraged inadvertently to use deadly force more frequently in order to overcome the reactionary gap principal. If that is the take-away from training on reactionary gap, however, the instruction has fallen short…. Understanding the principle and the limitations on officers' ability to respond to a firearm threat, a more comprehensive and officer safety-based training curriculum will emphasize the importance of maintaining or increasing distance and seeking cover when confronting an armed or suspected armed individual…. While the [MPD] Academy teaches the core tenets of time and distance, cover and concealment throughout its months-long training, it may not adequately link these concepts to the scenario designed to teach the action/reaction principle. As a result, at least some officers have walked away from the scenario with the unfortunate notion that they are expected to use deadly force whenever they see a gun in a subject's hand. The Department should reevaluate its scenario training on this point to ensure that students take away the important message about officer safety – when addressing a subject who is known or believed to have a gun, it is incumbent on the officer to maintain or create distance and seek cover or concealment whenever possible.

The Committee concurs with this recommendation and views it as essential to avoiding unnecessary critical incidents. MPD stated in its response to the OIR Report that it "regularly reviews and evaluates training provided to officers at both the pre-service and in-service levels. We will continue to do this, and the ongoing review will include examination of the reactionary gap principle."

➢ SECTION 4. Data Issues

Recommendation #105:

MPD should consider when it is appropriate to begin employing documented accountability measures for officers and sergeants who fail to comply with the requirement for entering force incidents into the use of force database.
[OIR Report #86]

Discussion: Over the past decade, MPD's approach to tracking use of force has greatly advanced. OIR noted,

> In June 2016, MPD introduced a new software system that allows for far more comprehensive data collection and a range of statistical reports and analytical tools that was a significant upgrade for the Department. Officers route their incident reports to their sergeants, who are required to enter the details of the incident into the database. All of these are routed to the Use of Force Coordinator, who ensures that data is entered properly, and cross-checks against the Departments records management system to confirm that all uses of force are being appropriately counted. The Use of Force Coordinator continues to audit case reports to ensure that officers and sergeants are appropriately entering uses of force into the force…. He continues to find some errors in the way in which people record force and, more notably, to find some uses of force that are reported in the general case report, but not recorded in the database. He corrects these errors, and informally counsels those who fail to properly document the force. These omissions are understandable, given the relative newness of the recording requirement, and the number of errors has

been steadily diminishing over time. At some point, however, the Department needs to elevate its response beyond informal counseling to documented counseling to ensure that officers and sergeants treat the recording requirement with appropriate seriousness.

The Committee agrees with this recommendation. In its updated response to the OIR report, MPD stated, "This change has been made. The MPD use of force coordinator regularly audits entries into the use of force database, and occasionally finds incidents that have been appropriately reported but have not been entered into the use of force database. A process has been established to address these occurrences in a manner consistent with other MPD audit processes. The use of force database is also now included in MPD's SOP on System Audits."

Recommendation #106:

MPD should further break down published use-of-force data by district and shift to ensure that Department leaders are focused on where and when officers use force most frequently. [OIR Report #87]

Discussion: The Department posts its force data on its website and updates it every quarter. OIR noted that the quality of the data on MPD use of force was quite good. At the time of the OIR review, the published data included total number of force incidents, and then broken down by type of force, officer demographics (race and sex), "citizen" demographics, and then further by officer-to-citizen categorization. The published numbers also included data on whether alcohol or drugs were a factor. However, OIR advised, "We recommend a few additions to these regularly published numbers to help the Department identify any trends in force usage. First, it would be helpful for Department managers to see where and when across the city force is used most frequently. Breaking the force numbers down by district and shift would allow analysts to identify any problem areas if they arise and as they develop. The data could be synced with crime data in a way that would help broaden the Department's understanding of the aggregate data." The Committee concurs with this recommendation. MPD also agreed with this recommendation and stated in its updated response, "This change has been made. District and shift information is shared internally and is included in the use of force data that MPD provides to the public on a quarterly basis…. MPD's use of force coordinator presents an overview of department force applications to the Chief and Assistant Chiefs every two weeks; this includes district and shift information."

➢ SECTION 5. Use of Force Policies

Recommendation #107:

MPD should proactively seek input from City stakeholders and the public before completion and implementation of any new policies or changes to its existing policies. MPD will do this through creation of a formalized, tiered process, ranging from working groups for major changes, to notice of interim implementation, with provision that minor or urgent rules can become effective during the notice period, pending final adoption. [OIR Report #88]

Discussion: Police departments have been likened to a type of administrative agency, whose rulemaking power constitutes a form of law-making. In a democracy, it is critical that that law-making process be open and subject to input from the community. For that reason, federal agencies, for example, are subject to public "notice and comment" requirements before they can adopt administrative rules. Because MPD policies have the effect of determining how the community will be policed—that is, prescribing the rules of conduct for police officers and the community members they encounter—it is equally important that the community have notice of, and an opportunity to provide input, when changes to those official policies are being contemplated.

This recommendation is consistent with recommendations of President Obama's Task Force on 21st Century Policing (e.g., action item 1.5.1: "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures"). As OIR noted, "Providing an opportunity for the Madison community to weigh in will help MPD build legitimacy, community support and acceptance of its practices, and will result in a more transparent process and a final product improved by virtue of the fact that it addresses the public's concerns."

The original recommendation submitted by OIR on this included only the first sentence of the recommendation set forth above, requiring proactive efforts to secure community input before making changes to any SOPs. The MPD responded that, while it is open to exploring options for expanding the opportunities for input into significant SOP changes, many SOPs

undergo regular revision, and some of those revisions are minor or technical. Therefore, the MPD cautioned that "[r]equiring an extensive public comment and input process for each minor SOP change would be cumbersome and delay needed updates." In light of this and other considerations, the Committee added the second sentence to this recommendation ("MPD will do this through creation of a formalized, tiered process, ranging from working groups for major changes, to notice of interim implementation, with provision that minor or urgent rules can become effective during the notice period, pending final adoption"). Mechanisms should be implemented to utilize working groups for robust community input into any major SOP changes, and to have at least a period of notice and public comment for minor changes (providing an opportunity for the community to weigh in and offer any suggestions). This amended recommendation provides the flexibility MPD needs to make changes to SOPs without delays, and to make minor revisions in ways that are not unduly cumbersome, but still provide an opportunity for community notice and input at some point in the process. The Committee felt comfortable allowing this flexibility in part because the new Independent Monitor recommended by the Committee will be well positioned to monitor the MPD's rule-making process to ensure that adequate opportunities for community notice and input are being provided, and that more streamlined processes (e.g., interim implementation during the notice period) are being utilized only where appropriate. Moreover, methods of communication other than the internet should be provided, to ensure inclusivity. In addition, as OIR notes, "[w]hen the Independent Police auditor position is created, MPD should provide him or her any potential policies early in the drafting process for input."

On August 29, 2019, the Chief announced on his blog: "MPD's Code of Conduct and SOPs are viewable on the MPD website: https://www.cityofmadison.com/police/chief/standardoperatingprocedures.cfm, and we have added a link for members of the public to provide input/feedback on existing SOPs. We also will begin posting drafts of SOP changes to this page, with a similar mechanism to provide input/feedback. Draft SOPs will be posted for review for about 10 days, and we will consider other mechanisms for getting public input (like public meetings, etc.) on a case-by-case basis (depending on the SOP being changed, public interest in the subject, etc.)." Elsewhere, MPD indicated that the expanded District Advisory Groups could provide another mechanism for obtaining such input. The Ad Hoc Committee commends MPD for proceeding with implementation of this recommendation.

Recommendation #108:

MPD shall ensure, either through policy or training, that when SOPs say shall, it means must or mandatory. [CRT #19]

Discussion: At many points, MPD SOPs use the word "shall." However, "shall" is becoming an increasingly ambiguous term. Wisconsin courts have long held that, "[g]enerally, in construing statutes, 'may' is construed as permissive and 'shall' is construed as mandatory …."[59] But Wisconsin courts have recognized that this is not always so, adding that this "general" rule applies "unless a different construction is demanded by the statute in order to carry out the clear intent of the legislature."[60] Increasingly, legal and writing authorities are recognizing the inherently ambiguous nature of the term. As the Advisory Committee on Rules of Court for the Judicial Council of Virginia notes, "[T]he overwhelming majority of commentators and legal scholars recommend that Rules drafters avoid uses of shall."[61]

A Federal Aviation Administration memo explains the ambiguity cogently:

> What's the only word that means mandatory? Here's what law and policy say about "shall, will, may and must." We call "must" and "must not" words of obligation. "Must" is the only word that imposes a legal obligation on your readers to tell them something is mandatory. Also, "must not" are the only words you can use to say something is prohibited. Who says so and why? Nearly every jurisdiction has held that the word "shall" is confusing because it can also mean "may, will or must." Legal reference books like the Federal Rules of Civil Procedure no longer use the word "shall." Even the Supreme Court ruled that when the word "shall" appears in statutes, it means "may" [Cairo and Fulton Railroad Company v. Hecht (1877): "the word 'shall,' when used in statutes, is to be construed as 'may,' unless a contrary intention is manifest"]. Bryan Garner, the legal writing scholar and editor of Black's Law Dictionary wrote that "In most legal instruments, shall violates the presumption of consistency … which is why shall is among the most

[59] City of Wauwatosa v. Milwaukee County, 22 Wis. 2d 184, 191, 125 N.W.2d 386 389 (1963).
[60] *Id*.
[61] Advisory Committee on Rules of Court, Judicial Council of Virginia (2019) *Memorandum*. Retrieved from http://www.courts.state.va.us/courts/scv/call_for_comment/draft_shall_rules_revisions.pdf

> heavily litigated words in the English language."… Until recently, law schools taught attorneys that "shall" means "must." That's why many attorneys and executives think "shall" means "must." It's not their fault. The Federal Plain Writing Act and the Federal Plain Language Guidelines only appeared in 2010.[62]

The CRT proposed that "shall" be changed to "must" in section 2 of the In-Car Video System SOP, to impose a clear obligation on officers to record the types of events enumerated in the SOP (traffic stops, emergency vehicle operations, etc.). MPD noted in response: "The word 'shall' is used in numerous places within MPD's Code of Conduct and Standard Operating Procedures, and in City of Madison Administrative Procedure Memoranda (APM). In all circumstances where it is used it communicates a mandatory, required task or function. This understanding is shared by all relevant parties, including the Madison Professional Police Officers Association (MPPOA) and the Police and Fire Commission (PFC). Officers have been sanctioned many times for violating SOPs based on the understanding that 'shall' creates an obligation or required duty; this includes the In-Car Video SOP."

Since the word "shall" is used frequently throughout MPD policy, MPD did not favor substitution of "must." However, the Ad Hoc Committee believes that it is important that the intended meaning of "shall" in MPD policy be rendered fully unambiguous in an explicit manner (rather than merely relying on implicit understanding and convention), to eliminate the possibility of misinterpretation by officers or uncertainty if the term were litigated. The Committee thus recommends that MPD ensure, through policy or training, that the term "shall" in MPD policy means must or mandatory. MPD is amenable to this recommendation.

Recommendation #109:

MPD should incorporate the following precautionary principles into its Use of Force SOPs and MPD officers should be trained accordingly:
• *Necessity*: Deadly force should only be used as a last resort. The necessity to use deadly force arises when all other available means of preventing immediate and grave danger to officers or other persons have failed or would be likely to fail.
• *Proportionality*: When force is needed, the force used shall be in proportion to the threat posed. Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. 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. Proportional force does not require officers to use the same type or amount of force as the subject. 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.
• *Reassessment*: Officers shall reassess the situation after each discharge of their firearm.
• *Totality of officer conduct*: The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force. Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.
• *Immediate threat*: Deadly force is only authorized if the threat is immediate. A threshold of "immediate threat" reflects language in United States Supreme Court decisions. The latest model use of force policy published by the International Association of Chiefs of Police eliminates the term "imminent." [PWG #5]

Discussion: This recommendation derives from the Final Report of the Common Council President's Work Group on Police and Community Relations. That report noted, "On December 13, 2016, State Representative Chris Taylor presented her research regarding best practices from other communities and her planned legislative proposals to change use of force policies across WI. She highlighted several principles found in policies and procedures from other communities that she deemed important

[62] Federal Aviation Administration (2013) *What's the only word that means mandatory? Here's what law and policy say about "shall, will, may and must."* Retrieved from https://www.faa.gov/about/initiatives/plain_language/articles/mandatory/

for Wisconsin communities." Action Item 5 of that report, which was adopted by the Common Council, specified, "The Common Council directs the Ad Hoc Committee to evaluate the precautionary principles detailed above [i.e., the five principles specified here] and determine whether and how they may be addressed in MPD policies, practices and procedures." Representative Taylor also gave a presentation to the Ad Hoc Committee on these precautionary use-of-force principles, found in other cities' policies, and shared with the Committee a detailed Law Enforcement Use of Force memo prepared by her office, providing legal background, best practices, and excerpts from use-of-force policies from cities across the U.S.
The Constitutional standard for use-of-force in the U.S. is set by the Supreme Court case *Graham v. Connor.* It requires that use of force be "objectively reasonable," and provides a minimum standard (essentially a floor – where violation of that basic standard breeches Constitutionally protected rights). But *Graham*, by itself, is vague and largely indeterminate. Many police departments have elected to provide more detailed guidelines, such as those articulated here, to reduce harm to civilians and officers. Controversial officer-involved fatalities prompted the creation of the Ad Hoc Committee and the Committee believes that such guidelines are crucial for reducing the risk of further adverse incidents.

A. Necessity

Simply stated, the necessity standard does not permit deadly force if non-deadly or less deadly alternatives are available and adequate to meet the threat. Deadly force should only be authorized after all other possible means have been exhausted.

For example, U.S. Department of Justice policy on use-of-force, for federal officers, states:

> [T]he touchstone of the Department's policy regarding the use of deadly force is necessity. Use of deadly force must be objectively reasonable under all the circumstances known to the officer at the time…. The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect, or the public in unreasonable danger of death or serious physical injury before using deadly force…. If force lesser than deadly force could reasonably be expected to accomplish the same end, such as the arrest of a dangerous fleeing subject, without unreasonably increasing the danger to the officer or to others, then it must be used.[63]

Many cities have adopted a necessity standard in their policies, and the State of California recently enacted legislation (AB 392) that police officers could use deadly force only when necessary. Assistant Chief Vic Wahl informed the Committee that MPD was in agreement with inclusion of the necessity principle, provided that it only applied to deadly force. Wahl stated, "[T]hat's indeed appropriate in a deadly force encounter." MPD has adopted concordant language in its SOP for use of deadly force, which now states, "The application of deadly force is a measure of last resort, only to be employed when an officer reasonably believes all other options have been exhausted or would be ineffective."

B. Proportionality

The Police Executive Research Forum (PERF) lists proportionality as the third most important principle (for police departments to adopt) out of thirty in its 2016 publication, "Guiding Principles on Use of Force." This publication articulates guiding principles that can reduce unnecessary use of force, prevent many "lawful but awful" deaths, and help restore trust in American policing. Many major U.S. cities, including Chicago, San Antonio, Philadelphia, San Francisco, and Seattle have incorporated a requirement for proportionality in the use-of-force policies. Former MPD Chief Noble Wray has advocated the adoption of this principle.

As PERF explains in "Guiding Principles on Use of Force"[64]:

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[63] Attorney General October 17, 1995 Memorandum on Resolution 14 (Attachment). Retrieved from https://www.justice.gov/archives/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-2
[64] Police Executive Research Forum. (2016) *Guiding Principles on Use of Force*. Critical Issues in Policing Series. Retrieved from https://www.policeforum.org/assets/30%20guiding%20principles.pdf

3. Police use of force must meet the test of proportionality.
In assessing whether a response is proportional to the threat being faced, officers should consider the following:
• Am I using only the level of force necessary to mitigate the threat and safely achieve a lawful objective?
• Is there another, less injurious option available that will allow me to achieve the same objective as effectively and safely?
• Will my actions be viewed as appropriate—by my agency and by the general public—given the severity of the threat and totality of the circumstances?

Discussion
How members of the public will react to an officer's use of force is one part of the equation on proportionality. However, this consideration should be approached from a broad perspective and should take place before an officer reaches the instant where a use of force may be necessary.
The concept of proportionality does not mean that officers, at the very 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.

Officers already make these types of judgments all the time. For example, officers would not respond to a noise complaint at a pool party with their firearms drawn, because members of the public would view that as excessive and inappropriate. However, officers might respond with their firearms drawn if there was a report of shots fired at a pool party. In that case, the public would view their actions as appropriate and necessary.

Proportionality also considers the nature and severity of the underlying events. There are some incidents that are minor in nature, but for whatever reason, the mere presence of police officers may escalate the situation. Under the concept of proportionality, officers would recognize that even though they might be legally justified in using force as the situation escalates, given the minor nature of the underlying event, a more appropriate and proportional response would be to step back and work toward de-escalation. The assessment of how the public will likely view police actions is not meant to be a "check-the-box" step taken immediately before an officer uses force. Rather, it is meant to be one factor that officers should consider throughout their decision-making on what a proportional response would be to the situation they face and the totality of the circumstances confronting them.

"30 Guiding Principles on Use of Force" includes a statement by Noble Wray, in its section on the principle of proportionality:

Noble Wray, Chief, COPS Office, Policing Practices and Accountability Initiative:
The First 3 Principles Are Questions of Humanity
As I look at the 30 Principles, I see that the first three, on the sanctity of life, professional standards, and proportionality, are issues of the heart, and where we are as a profession in terms of what we think about humanity. We need to start thinking more in our profession about practical wisdom. How do we develop our people to make decisions that reflect critical thinking? There are times you have to make the right decision for the right reason, and you're not going to have a bright line rule. The other 27 Principles are easier to grasp, because they are things we can just do, and we need to get working on them.

Assistant Chief Vic Wahl expressed concerns about adopting proportionality. Wahl's primary concern was that proportionality could be misinterpreted as requiring officers to use the same type and level of force as the subject. He noted, "It's not defined very well. And it suggests that the officer is required to use an equal amount of force to what has been applied in resistance. And, of course, the whole purpose of police application of force is to control someone for a lawful objective. And it's not a competition, it's not a wrestling match. We have to get control. And so to suggest in policy or some other document that that there needs to be an equal level is a misunderstanding."

The original proportionality provision from the President's Work Group action item stated only "Proportionality: When force is needed, the force used shall be in proportion to the threat posed." To address Assistant Chief Wahl's concern that

proportionality could be misinterpreted, the Committee amended this provision, adding language predominantly based on specific policy language that PERF had recommended for inclusion in use-of-force policy in Winslow, AZ,[65] but also borrowing slightly from proportionality language in use of force policies for Chicago,[66] Seattle,[67] and Cleveland.[68] The additional language states:

> Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. 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. Proportional force does not require officers to use the same type or amount of force as the subject. 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.

This language, based largely on PERF's definitions, has the advantage of offering greater specificity – providing much better direction by spelling out more clearly what proportionality means. By offering better guidance, it increases the likelihood of bringing about the desired norms in officer behavior. And it very explicitly states that proportionality does not require officers to use the same type or amount of force as the subject (i.e., proportional force does not mean equal force). Assistant Chief Wahl continued to express some concern that a proportionality requirement could be somewhat divergent from state mandated training materials and policies of most other Wisconsin municipalities, but the Committee is satisfied that this language strikes the appropriate balance.

C. Reassessment

Such policy language would require officers to reassess the situation after each discharge of their firearms. For example, policy language passed by the San Francisco Police Commission in June 2016,[69] provides: "'The above circumstances (2.a, i-iv) apply to each discharge of a firearm or application of deadly force. Officers shall reassess the situation, when feasible and safe, to determine whether the subject continues to pose an active threat."[70] Similarly, the Philadelphia Police Department use-of-force policy states: "Further, an officer is not justified in using deadly force at any point in time when there is no longer probable cause to believe the suspect is dangerous, even if deadly force would have been justified at an earlier point in time."[71]

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[65] Police Executive Research Forum. (2017) *Winslow, AZ Police Department, Review and Assessment, Final Report*. Retrieved from http://www.winslowaz.gov/PERF%20Winslow%20Police%20Department_Final%20Report%20to%20WPD%204-3-17.pdf

[66] Chicago Police Department. (2017) *General Order G03-02 - Use of Force*. Retrieved from http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html

[67] Seattle Police Department. (2019) *Seattle Police Department Manual, 8.000 - Use of Force Core Principles*. Retrieved from https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles

[68] Barge, M. (2016) *Motion Recommending Approval of Revised Use of Force Policies of the Cleveland Division of Police*. Retrieved from https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf

[69] The intent of the policy was that officers be held responsible for individual discharges, as opposed to merely the decision to begin firing. Officer-involved fatalities have dropped sharply in San Francisco over the last few years, and such changes in policy and training are thought responsible.

[70] San Francisco Police Department (2016) General Order 5.01 (draft). Retrieved from http://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/AgendaDocuments/PoliceCommission-DGO-5.01-for-meet-and-confer-clean-copy.pdf

[71] Philadelphia Police Department (2017) Directive 10.1. Retrieved from https://www.phillypolice.com/assets/directives/D10.1.pdf

Campaign Zero (a police reform campaign initiated by activists associated with Black Lives Matter) offers the following language in its model use-of-force policy: "The above circumstances apply to each discharge of a firearm or application of deadly force. Law enforcement officers shall reassess the situation, when feasible, to determine whether the subject continues to pose a current and active threat. A law enforcement officer is not justified in using deadly force at any point in time when the subject no longer currently and actively poses an immediate threat of death, even if deadly force would have been justified at an earlier point in time."[72]

Such policy language holds officers responsible for each discharge, as opposed to just an initial decision to begin firing. This has the potential to save lives. Statistical analysis of MPD officer-involved shootings shows an increase in the number of rounds fired in officer-involved shootings over the last two decades, likely contributing to the relatively high fatality rate in recent years. [73]

There is obviously a training aspect to this principle as well. In a report by OIR to the Anaheim police department, providing systemic recommendations regarding officer-involved shootings, OIR noted:

> APD teaches its officers to shoot when they are presented with a deadly threat to themselves or others and continue to shoot until the threat that they originally perceived is no longer perceived by them to be a threat. In contrast, some law enforcement agencies teach to fire in small bursts (two rounds), reassess the situation, and based on that reassessment, make an additional decision about whether there is a need to fire additional rounds. The differences in these two training approaches could have significant impact on the number of rounds an officer eventually fires. Under the APD training methodology, the officer is to essentially presume the threat exists and continue to fire until observations confirm otherwise. Because it may take some time for the suspect to go down or drop a weapon after being struck with gunfire, the confirmation that the threat has been neutralized may not occur until after numerous rounds have been fired. Under the burst and reassess training, controlled fire is the aspiration and the presumption is that the short burst of deadly force, if on target, will likely stop the threat.[74]

Assistant Chief Vic Wahl informed the Committee that MPD was not opposed to inclusion of such reassessment language in its SOPs. He said that the principle applied broadly (for example, to Tasers as well) and was consistent with how MPD trained.

D. Totality of officer conduct.

The first sentence of this provision, encapsulating the core concept of this principle ("The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force"), is taken from the Los Angeles Police Department use of force policy. The remainder, explicating the concept in greater detail, is from the Philadelphia Police Department use-of-force policy.

James Fyfe, who served as NYPD's Deputy Commissioner for Training, articulated the basic point in his seminal 1989 article "Split-second Syndrome and Other Determinants of Police Violence."[75] As he explained in an interview, many adverse outcomes are avoidable, and are a consequence of poor tactics:

> Too many officers force unnecessary confrontations, and then have to make some split-second decision about how to get out of them without being hurt. … [S]omebody asked about the police and the emotionally

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[72] Campaign Zero. Model Use of Force Policy. Retrieved from https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5ad8f2d00e2e72796700f33f/1524167376663/Campaign+Zero+Model+Use+of+Force+Policy.pdf

[73] As noted in forensic reports, of the seven shots fired in the officer-involved shooting of Tony Robinson, the last four appear to have occurred after Robinson was no longer standing, and these appear to have been responsible for his death. In contrast, in the 2018 MPD officer-involved shooting of Scott Stein, only one round was fired, and Stein survived.

[74] OIR Group. (2015) Officer-Involved Shootings Re Anaheim Police Department: Systemic Recommendations. Retrieved from https://www.anaheim.net/DocumentCenter/View/9388/Office-of-Independent-Review-Group-Report-April-2015?bidId=

[75] Fyfe, J.J. (1989) Split-second Syndrome and Other Determinants of Police Violence. *Critical Issues in Policing: Contemporary* Readings, P 465-479, Roger G Dunham and Geoffrey P Alpert, eds.

> disturbed—that's what typically happens in these cases. Ill-prepared and/or insensitive officers back an obviously disturbed man up against a wall at gunpoint and surround him. Then they are surprised when he tries to escape. But because they have surrounded him, he can only escape by running in the direction of one or more officers—if he does this and has a knife or other weapon in his hand, they perceive themselves to be in danger, and they make a "split-second decision" to shoot him. In such cases, split second decisions are the consequence of poor tactics and insensitivity. We need to get the focus off the instant at which the cop pulls the trigger and to look more closely at how he or she got into that situation. If it was the result of bad tactics, we need to hold police accountable for taking lives.[76]

A very good analysis of this general topic, in a legal context, is provided in "A Tactical Fourth Amendment" by Brandon L. Garrett (University of Virginia School of Law) and Seth W. Stoughton (University of South Carolina School of Law).[77] In advocating for the importance of considering tactics leading up to use of deadly force, Garret and Stoughton note:

> Yet many lower courts have adopted the "split-second" assumption, focusing on the precise moment at which force was used rather than looking more broadly at whether an officer's tactical decisions that led up to the use of force were reasonable. Imagine, for example, an officer standing within arm's length of a paraplegic suspect sitting in the middle of an empty parking lot aggressively waving a knife. By focusing solely on the threat to the officer in that moment, deadly force would certainly seem appropriate. But that narrow view misses two important points. First, did officers unreasonably create a dangerous situation? After all, the "split-second" nature of the use-of-force decision depends in large part on the officer's tactical choice to approach. Second, when the threat manifested, were there reasonably safe options other than using force? If, for example, the officer could have easily stepped away from the suspect and taken cover behind a squad car, the choice to shoot would seem quite problematic.

Garret & Stoughton discuss key tactics that can help avoid officer-involved shootings, including use of time and distance, cover and concealment, tactical restraint and tactical withdrawal, conflict avoidance, and de-escalation. They specifically quote the noteworthy Philadelphia policy language that articulates this principle:

> Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.[78]

Moreover, the OIR report suggested that this specific language be included in MPD's use-of-force SOPs (see discussion for Ad Hoc Committee Recommendation #110 [OIR Report #89]). Thus, the "totality of officer conduct" principle recommended here for inclusion in MPD use-of-force policy essentially matches OIR's recommendation.

Assistant Chief Vic Wahl informed the Committee that MPD was not opposed to this recommendation. He said it is consistent with the way MPD trains, and he stated that MPD policy already contains some language indicating that officers are expected to use tactical principles consistent with their training. However, the language is only in MPD's de-escalation SOP and states, "Officers should utilize appropriate tactical and officer safety principles to avoid placing themselves at risk unreasonably." The Committee believes that the specific "totality of officer conduct" language stated here should be included, and specifically in MPD's use-of-force SOPs. Inclusion in the use-of-force SOPs would be consistent with OIR's recommendation. Moreover, the existing SOP language is less explicit than the language recommended (e.g., the concept of tactical withdrawal is nowhere explicitly mentioned in existing MPD SOPs).

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[76] Fyfe, J.J. (2001, July 3) A Blue Wall of Silence. *Washington Post, Live Online*. Retrieved from http://www.washingtonpost.com/wp-srv/liveonline/01/metro/metro_fyfe070301.htm

[77] Garrett, B. & Stoughton, S. (2017) A Tactical Fourth Amendment. *Virginia Law Review* 103(2) 211-307. Retrieved from https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6535&context=faculty_scholarship

[78] Philadelphia Police Department (2017) Directive 10.1. Retrieved from https://www.phillypolice.com/assets/directives/D10.1.pdf

E. Immediate threat

Current MPD policy authorizes use of deadly force given an "imminent threat." Although the distinction is a fine one, this is not the same as a requirement of "immediate threat." Use of the latter provides a more restrictive standard and could help avoid unnecessary officer-involved shootings. Specifying a requirement of "immediate threat" is most consistent with key U.S. Supreme Court rulings, recommendations from the U.S. Department of Justice, and advice from law firms that specialize in providing consulting services for law enforcement departments on constitutional policing practices. For use of deadly force, many major city police departments require an immediate threat.

While the case law is not entirely consistent, numerous legal authorities suggest that "imminent" is less restrictive than "immediate." Some courts use the terms interchangeably, but upon closer inspection the cases tend to acknowledge a difference. "Immediate" is something that is happening or just about to happen. "Imminent" can be something approaching or looming. In *State v. McCoy*, 143 Wis.2d 274 (1988), for example, the Wisconsin Supreme Court observed: "Black's Law Dictionary does make a slight distinction between the words, defining the term 'imminent' as 'mediate rather than immediate.' ... A word may have a variety of recognized meanings, however, and its precise meaning must be found in its context and relation to a statute's subject matter." Other courts have recognized the distinction in even starker terms. As a Virginia court observed, "the temporal proximity of the threat and the threatened harm is the true issue, and the proper distinction between imminent and immediate harm is how far in the future is the harm to occur from the time the threat is made. While the term 'immediate' is commonly understood to mean instant or direct, the term 'imminent' has a connotation that is less than 'immediate,' yet still impending and present." *Daung Sam v. Commonwealth*, Va. App. (1991). Given that there is this recognized difference in meaning and that "immediate" more clearly articulates the appropriate standard, the Committee believes that "immediate" is the preferable term.

Policing authorities also recognize the distinction and the preference for "immediate." Thomas Aveni of the Police Policy Studies Council writes:

> An immediate threat is one that is ongoing. Literally, the possibility of mortal injury is immediate. By accepted legal definition, the word imminent is characterized as threatened actions or outcomes that may occur during an encounter or threatened harm does not have to be instantaneous.
>
> An immediate threat is measured in finite terms of time. It is now. As imminence is defined above, it is not defined in terms that are clearly finite. Indeed, imminence is 'elastic' in time…. An imminent threat is often one that is perceived to be unfolding. Quite often, that perception is mired in ambiguity.[79]

Moreover, an "immediate threat" standard is specified in both *Graham v. Connor* (the 1989 U.S. Supreme Court case establishing the current Constitutional standard for use of force) and *Tennessee v. Garner* (a 1985 U.S. Supreme Court case establishing restrictions on use of deadly force). As *Graham* states:

> Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," *Bell v. Wolfish*, 441 U.S. 520, 559 (1979), however, 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. See Tennessee v. Garner, 471 U.S., at 8 -9 (the question is "whether the totality of the circumstances justifie[s] a particular sort of . . . seizure") (emphasis added).

The "immediate threat" standard established in *Graham* and *Garner* has been cited in various subsequent court decisions, including decisions of U.S. appellate courts (e.g., *Bennett v. Murphy*, 120 F. App'x 914 (3d Cir. 2005)) and the U.S. Supreme Court (e.g., *Saucier v. Katz*, 533 U.S. 194 (2001)).

[79] Aveni, T. (2005, Jan.) The Must-Shoot vs. May-Shoot Controversy. *Law and Order Magazine*. Retrieved from http://www.theppsc.org/Newsletters/03-17-05/Jan-05.pdf

Thus, the U.S. Department of Justice has recommended use of "immediate" rather than "imminent" threat in police department use-of-force policy. The following is an excerpt from the U.S. Department of Justice COPS review of the Philadelphia Police Department ("Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department"):[80]

> Notably, the term "imminent" does not appear in the *Graham v. Connor* decision.
>
> … [T]he use of the term "imminent" can serve as a source of confusion, particularly when coupled with the "immediate threat" factor enumerated in *Graham v. Connor*. Directive 10 defines imminent as "threatening, likely, and unavoidable." This language is vague and insufficient.
>
> Recommendation 5
> The PPD should remove the term "imminent" from directive 10.
>
> The factors enumerated in *Graham v. Connor*, specifically that the officer should be facing an "immediate threat," provide a sufficient framework for officer decision making when it comes to use of force. The latest model use of force policy published by the International Association of Chiefs of Police (IACP) eliminates the term "imminent," noting that it unnecessarily requires officers to distinguish between immediate and imminent.

The Daigle Law Group – a law firm specializing in management consulting services for law enforcement departments, with a focus on constitutional policing practices – provides an analysis, specifying that the optimal term is "immediate," not "imminent." As it notes:

> The importance of defining imminent v immediate threats cannot be overstated. "Quite often, the misunderstanding in may-shoot scenarios is embedded within our mistaken assumption that imminent threats are synonymous with 'immediate threats.' From a legal and policy perspective, you can drive a truck through the difference." [81]

Leading amendment-based use-of-force training centers for law enforcement teach that the threat must be immediate. [82] Many police departments (e.g., Atlanta GA, Worcester MA, Oakland CA, Irving TX, Village of Schaumburg IL, Laredo TX, San Francisco CA, Berlin MD, University of Cincinnati OH, Long Beach CA, Chelsea MA, Riverside CA, Philadelphia PA, Framingham MA, etc.) specify that an immediate threat (not an imminent threat) is required for use of deadly force. Similarly, the state of Minnesota provides a "Use of Force and Deadly Force Model Policy" specifying the need for an immediate threat.[83] Likewise, the National Consensus Policy on Use of Force requires an "immediate threat" for use of deadly force, other than with regards to a fleeing felon (i.e. deadly force is authorized "to protect the officer or others from what is reasonably believed to be an *immediate* threat of death or serious bodily injury").[84]

Assistant Chief Vic Wahl stated that MPD favored "imminent threat" language for use of deadly force, since "immediate threat" would be divergent from state mandated training material and common practice of Wisconsin police agencies. Though it is noteworthy that an examination of Wisconsin training material (Defensive and Arrest Tactics Training Guide for Law

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[80] Fachner, G. & Carter, S. (2015*) Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department*. U.S. Department of Justice, Office of Community Oriented Policing Services. Retrieved from https://cops.usdoj.gov/RIC/Publications/cops-w0753-pub.pdf

[81] Daigle Law Group, LLC. (2016) *Teaching the New Constitutional Pre-Trial Detainee Standard: "The End of the Legal Twilight Zone".* Retrieved from https://daiglelawgroup.com/wp-content/uploads/2016/10/Teaching-the-New-Consitutional-Pre-Trial-Detainee-Standard.pdf

[82] Marker, J. (2012) Teaching 4th Amendment Based Use-of-Force. *AELE Monthly Law Journal.* 2012(7) 501-509. Retrieved from https://www.njsacop.org/rc_files/368/AELE%20Monthly%20Law%20Journal%20-Teaching%204th%20Amendment%20Based%20Use-of-Force.pdf

[83] Use of Force and Deadly Force Model Policy. MN. Stat. 626.8452 (2011) Retrieved from https://dps.mn.gov/entity/post/model-policies-learning-objectives/Documents/Use-of-Force-Deadly-Force-Model-Policy.pdf

[84] National Consensus Policy and Discussion Paper on Use of Force. (2017) Retrieved from https://noblenational.org/wp-content/uploads/2017/10/Consensus-Policy-and-Discussion-2017.pdf

Enforcement Officers) shows it to include both terms, treating "imminent" and "immediate" as synonyms (stating the definition of imminent as: "The word imminent means 'about to happen.' An imminent threat is an immediate threat."), and such confusion of terms is also found in some Wisconsin police department policies.

Committee members noted that "imminent" would include cases where officers could still potentially divert the situation, taking it into another arena and avoiding use of deadly force – there may be leeway in some such situations. A looming threat (where an attack may seem imminent) will not always turn into an actual attack. For example, many police departments train that someone with a bladed weapon within 21 feet is a direct and imminent threat (warranting deadly force). But if they're not advancing, they may not be an immediate threat (and many may not actually proceed to attack). In the period 2000-2014, across the U.S., thousands of officer-involved fatalities likely occurred in such circumstances, but only a total of four officers have died from bladed weapons, and only one could possibly have been saved by being quicker to shoot.[85] Committee members also noted that, though there have been no MPD officer-involved fatalities and only one officer-involved shooting since mid-2016, on a longer-term basis, Madison's per capita rate of officer-involved fatalities has been substantially above the average for major U.S. cities, and that a change to "immediate" would be of benefit in this context. In addition, separate from these considerations, some committee members argued that we could not or should not water down the Constitutional command, given that *Graham* specifies "immediate." It was also recognized that a shift to "immediate threat" would require translation into changes in training.

Considering all the above factors, the Committee concluded that MPD should adopt a requirement of immediate threat for use of deadly force, even though MPD currently opposes such a change. Committee members believe that a requirement of immediate threat would be most concordant with U.S. Constitutional standards and would avoid use of deadly force in cases where it may not be necessary, thus saving lives.

Recommendation #110:

MPD should modify its use of force policies to more clearly instruct officers on the duty to employ tactical alternatives to force, and to make clear the Department's expectation that officers follow tactical principles of officer safety.
[OIR Report #89]

Discussion: The Committee approved this recommendation in full as proposed by OIR. In its response to the OIR Report, the MPD agreed that "[t]hese are laudable goals, consistent with MPD's philosophy and core values." This recommendation relates to Action Items 3 and 5 from the President's Work Group report. Action Item 3 ordered the Chief to explicitly incorporate the duty to intercede and de-escalate into MPD's use-of-force and deadly-force SOPs, while Action Item 5 directed the Ad Hoc Committee to evaluate a set of precautionary principles (necessity, proportionality, reassessment, totality of officer conduct, and immediate threat) for incorporation into MPD policies, practices, and procedures.

In explicating this overall recommendation, the OIR Report made two specific recommendations on policy language:

1. OIR noted: "The current 'Purpose' statements at the beginning of both the deadly and non-deadly force policies states, 'The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics, when feasible.' This provision could be strengthened and clarified, to further reinforce the idea that the Department's interest is to reduce incidents of force to a minimum. For example, instead of qualifying the statement with 'when feasible,' the policy could be modified to include language such as:

> The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics. When time, circumstances, and safety permit, officers should consider these alternatives to using force."

2. OIR also recommended that MPD specifically include the following language in its use-of-force policies:

[85] Moskos, P. (2014) The 21-Foot Myth. *Cop in the Hood*. Retrieved from http://www.copinthehood.com/2014/09/the-21-foot-myth.html

> Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.

This provision goes to the heart of OIR Recommendation 89. It is identical to the core language of the "totality of officer conduct" precautionary principle specified in President's Work Group Action Item 5 and adopted by the Ad Hoc Committee in Recommendation #109. Specifically, the "totality of officer conduct" principle consists of this language, prefaced by the sentence, "The reasonableness of an officer's use of force includes consideration of the officer's tactical conduct and decisions leading up to the use of force." In its supplementary report, OIR further notes: "MPD responds that it already has adopted language that speaks to the 'same concepts.' We respectfully disagree." MPD subsequently incorporated the following sentence, partially responsive to this recommendation, in its de-escalation SOP: "Officers should utilize appropriate tactical and officer safety principles to avoid placing themselves at risk unreasonably." This is a beneficial addition, but less explicit than the language recommended by OIR and was not included in the use-of-force policy as OIR recommended (it was included instead only in the de-escalation SOP). Moreover, current MPD SOPs do not appear to explicitly mention the option of tactical withdrawal. MPD stated that officers would receive training on the updated SOP. It will remain important that the Independent Monitor proposed in Recommendation #1 of this Report review the adequacy of and compliance with this new SOP.

Recommendation #111:

MPD should publicize to its officers and its community its commitment and willingness to go beyond the *Graham v. Connor* standards when it further refines its policies relating to the use of force. [OIR Report #90]

Discussion: *Graham v. Connor* is a 1989 U.S. Supreme Court case wherein the court specified that excessive force claims should be judged in terms of the 4th Amendment ban against "unreasonable searches and seizures," using a standard of "objective reasonableness." The *Graham v. Connor* standard provides a floor, determining when police conduct violates minimal U.S. constitutional standards, and, hence, criminal and civil law (since most states, including Wisconsin, do not set a more restrictive legal standard). *Graham v. Connor* only outlines broad principles on how police use of force is to be judged; it sketches the outer limits of police force that is permissible under the Constitution. But the Constitutional standard itself is not a use-of-force policy; it only sets a constitutional line beyond which no considered use-of-force policy can go. There is no prohibition in the U.S. Constitution, or anywhere else, to providing a more restrictive internal standard for when force is to be used, and many police departments, including the MPD, have done so in various ways – adopting detailed policies and training standards that go beyond the bare requirements of *Graham v. Connor*. For example, MPD SOPs include a De-Escalation SOP, prohibitions on warning shots, restrictions on shooting at vehicles, limitations on electronic control device use, etc.

Nonetheless, prior to the commencement of the OIR review, MPD insisted that it could not adopt a policy that goes beyond *Graham v. Connor*. However, it has more recently indicated that it has flexibility to adopt more stringent standards to further guide officers and help keep officers and the community safer by reducing the number of force incidents. The Ad Hoc Committee commends the Department on this. It is consistent with the Police Executive Research Forum recommendation that "Agencies should continue to develop best policies, practices, and training on use-of-force issues that go beyond the minimum requirements of *Graham v. Connor."* As OIR notes, "However, because of the earlier public pronouncements to the contrary, clarification of the Department's philosophical shift in this arena would help eliminate any residual confusion."

The City Attorney's response to the OIR report states that it is "aware of no police department in the United States who subjects its officers to a more stringent standard for using deadly force." Attorney Seth Stoughton (Associate Professor at University of South Carolina School of Law), one of the subject matter experts consulted by OIR during its review of MPD (and himself a former police officer), notes in response:

> The assertion that the City attorney may not be aware of any agency that has done so may be true, but the implication that no agency actually has done so is not. Agencies commonly exceed the bare constitutional standard. My research has included reviewing use-of-force policies at the largest police agencies in the country (see Brandon L. Garrett & Seth W. Stoughton, A Tactical Fourth Amendment, 103 VA. L. REV. 211 (2017)). I and others have found that while most police agencies do include the Graham standards in their training and in the administrative regulations that govern the use of force, many agencies also go beyond the Graham standard.

Stoughton furnishes numerous concrete examples of police department policies more restrictive than *Graham v. Connor*. He also notes that use of *deadly* force is governed primarily by *Tennessee v. Garner* (a Supreme Court case that predated *Graham*), such that the Supreme Court's own standard for use of deadly force in certain ways imposes requirements beyond the "objective reasonableness" standard in *Graham*.

The City Attorney also expressed concern that more restrictive policy might increase liability risk for the city ("as claims might be made that failure to meet the City's new self-imposed standard was actionable"). However, for multiple reasons, such policy changes are unlikely to impact liability risk adversely:

1. As Michael Gennaco of OIR notes:

> The City Attorney is exclusively viewing the question through the lens of after the fact legal liability…. [H]e doesn't want the City to hold officers to a more stringent standard or hold them accountable administratively so that he is better positioned to argue that whatever the officers did was "justified" in court; even if it was inconsistent with what should be the City's expectations of officer performance…. [W]hat the City Attorney ignores in his calculus is the likelihood that adopting a more stringent standard, instituting training consistent with those standards, and holding officers accountable when they perform inconsistent with those standards will reduce deadly force incidents prospectively…. I would feel comfortable arguing that from a pure liability perspective that a stringent standard, training, and accountability program that reduces shootings results in less overall liability for the City than a lenient standard that results in more shootings to defend where lawyers and juries then argue about whether what the officer did was "reasonable."

2. In addition, as Michael Gennaco also notes, instituting such standards can help defend against suits brought against the city and city officials acting in their official capacity under the U.S. Supreme court's 1978 decision, *Monell v. Department of Social Services of New York.* Under *Monell*, local governing bodies (and local officials sued in their official capacities) can be sued for constitutional violations where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by policy-makers. Under this principle, local governments and officials may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such custom has not received formal approval through the government's official decision-making channels. Hence, failure to adopt policies and training that adequately guard against unwarranted uses of force can itself create liability for the city and city officials. Gennaco explains: "[C]reating rigorous standards and accountability for officers mitigates the likelihood of plaintiffs successfully proceeding under a *Monell* claim (a jurisdiction is deliberately indifferent to officer conduct)."

3. Moreover, adopting more stringent departmental policies would not disadvantage Madison in federal court given the irrelevance of such policies to claims of constitutional violations. The major financial losses incurred by the City of Madison in policing-related lawsuits have been in federal civil rights suits claiming constitutional violations, pursuant to 42 U.S.C. § 1983. Risk of losses under state law claims is far more limited (given various restrictions in state law – general discretionary act immunity, strict caps on damages, strict notice deadlines, etc.).

Wisconsin falls in the Seventh Federal Circuit. The precedent in the Seventh Circuit (binding federal courts within the Circuit's jurisdiction) is set by *Thompson v. City of Chicago* (2006), which affirmed that police policies, practices, and procedures are irrelevant to civil rights (§ 1983) excessive force claims (and can be excluded from evidence). This is grounded in the U.S. Supreme Court decision *Whren v. United States* (1996). As the decision in *Thompson* states:

> The fact that excessive force is "not capable of precise definition" necessarily means that, while the CPD's General Order may give police administration a framework whereby commanders may evaluate officer conduct and job performance, it sheds no light on what may or may not be considered "objectively reasonable" under the Fourth Amendment.... [T]he violation of police regulations or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established.

Thus, in Wisconsin, evidence that an officer violated a policy is not evidence that the officer violated the 4th Amendment. On the other hand, under *Lynn v City of Indianapolis* (2015), evidence that an officer complied with a departmental policy can be used to help establish that an officer's actions were "objectively reasonable."

Given the huge human and societal costs of officer-involved shootings, it is desirable to promulgate policies that provide guidance beyond *Graham v. Connor*. The Ad Hoc Committee thus endorses this recommendation and welcomes the flexibility recently shown by MPD on this matter.

Recommendation #112:

MPD should amend its Electronic Control Device Use SOP to limit ECD use to circumstances involving violent or assaultive subjects, or to prevent subjects from harming themselves or others. [OIR Report #91]

Discussion: The Committee adopted this OIR recommendation as proposed, given that the recommendation states sound policy and that MPD is in agreement with that policy. MPD's original SOP language allowed ECD use "[t]o overcome violent or assaultive behavior or its threat; if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person." OIR's concern was that the second clause could be interpreted as a sufficient condition for ECD use. MPD responded that the second clause was meant to be interpreted as delimiting the first, and that this requirement had long been addressed in MPD training. OIR replied that they were pleased to learn that the intent of the policy was to limit ECD use to those circumstances in which the subject is violent or assaultive, but recommended very slight tightening of the language to remove any ambiguity. MPD then fully addressed this recommendation by simply replacing "; if" with the word "when."

Recommendation #113:

MPD should modify its ECD guidelines to prohibit ECD use, outside of exigent circumstances, on women obviously pregnant, elderly individuals, obvious juveniles, individuals on stairwells, rooftops, or other elevated positions, and bicyclists. [OIR Report #92]

Discussion: Because of the high risk that ECD use can cause catastrophic injuries or death when deployed in certain circumstances or against vulnerable individuals, it is important to limit ECD use to those circumstances where it is most useful, and the benefits are not outweighed by the risks of unintended harms. MPD policy already recognizes this, given that the MPD SOP expressly prohibits ECD use (absent exigent circumstances) in a list of circumstances, including handcuffed subjects, fleeing subjects, and those operating a motor vehicle. OIR noted, however, that while this list is commendable, it has "a few notable omissions." This recommendation adds to the SOP by filling those gaps.

The OIR recommendation also urged abandoning the exception to these prohibitions for "exigent circumstances," noting that, for example, "[i]t is hard to imagine an 'exigent circumstance' that would make it reasonable to use a Taser on a handcuffed individual or one using a motor vehicle." MPD objected, however, arguing that "[a] complete prohibition on ECD use in these contexts is unwise, as the alternative force options or outcomes that result from not using an ECD could be far worse than the potentially increased risk from using an ECD." OIR noted in reply, "If MPD believes that there is a need to have an 'exigent circumstance' exception to prohibited use (although it is hard to contemplate an exigent circumstance when ECD use would be appropriate in dealing with a person on a rooftop), it should define what circumstances would constitute an exigency." To accommodate the MPD's objection, the Committee amended the OIR recommendation to permit use of Tasers in these contexts if officers are truly presented with "exigent circumstances," but with the understanding that those circumstances will arise exceedingly rarely. MPD subsequently amended its SOP to add prohibitions, unless exigent circumstances are present, for ECD use against "subjects in an elevated position where a fall is likely to result in significant injury," "small children," "a subject who is visibly pregnant or known to be pregnant," and "elderly subjects." The circumstances that would constitute an exigency appear to remain undefined.

Recommendation #114:

MPD should modify its ECD guidelines to require officers to re-assess the threat posed by an individual prior to any successive ECD application, as is the case for any repeated use of force. [OIR Report #93]

Discussion: Recent studies of Taser use—including a 2011 report by the National Institute of Justice[86]—caution against prolonged or multiple uses of Tasers or simultaneous use of Tasers on a single subject because of the significantly increased health risks. This recommendation is designed to limit the repeat use of Taser applications to those circumstances where such repeated use is truly required and outweighs the health risks. MPD responded that requiring reassessment before reapplying Taser shocks is a principle that "applies to any use-of-force tool or technique and is a cornerstone of MPD's use-of-force training." In recognition of this, the Committee amended the OIR recommendation by adding the last clause, acknowledging, "as is the case for any repeated use of force." The Committee agrees with OIR, however, that spelling this out more explicitly in the ECD SOP is advisable. As OIR notes: "We do not disagree that the principle is covered in training, but believe it is wise nonetheless to include it in a policy specific to ECD use because of the frequency with which we have seen officers from other agencies use the device multiple times, beyond its necessity or usefulness, and the significantly increased health risk for persons on whom the ECD is used."

Recommendation #115:

MPD should modify its ECD guidelines to preclude officers from deploying more than three ECD applications on an individual or a prolonged single application lasting longer than five seconds, unless exigent circumstances are present where the higher use of force would be required to gain control of a subject. [OIR Report #94]

Discussion: To adequately understand the logic underlying this recommendation, a basic knowledge of Electronic Control Device operation is required. As OIR explained:

> MPD's guidelines for deploying Electronic Control Devices (ECDs) – Tasers – are contained in the SOP for use of non-deadly force. An ECD fires two small electrodes that are intended to penetrate a subject's skin like probes or darts, but remain connected to the weapon by wires. The darts deliver an electric current and, when both are fully embedded, cause incapacitation of the affected muscles. It also causes considerable pain and involuntary muscle contraction that ends after a standard five-second initial cycle. Officers can apply additional cycles by redeploying the trigger on the Taser and can lengthen the standard cycle by keeping the trigger engaged. A Taser's incapacitating effect often causes a subject to fall to the ground.

To its credit, MPD's ECD policy includes some features that OIR frequently found absent or lacking when reviewing other agencies' policies. For example, MPD policy prohibits deploying a Taser in drive stun mode, in which the device makes direct contact with the subject without the probes, causing localized pain but generally not incapacitation. In the drive stun mode, the Taser is often used for "pain compliance," in which the goal is to gain control of a subject by compelling him/her to surrender to stop the pain. MPD's policy prohibiting use of drive stun mode is consistent with recommendations published by the Police Executive Research Forum (PERF) and U.S. Dept. of Justice Community Oriented Police Services (COPS).[87]

After commending MPD for banning stun mode, OIR went on to discuss MPD policy regarding the use of ECDs and noted several areas where such policies should be revised. For example, MPD policy was silent regarding multiple simultaneous uses and prolonged or repeated uses of the Taser (with the exception of requiring medical evaluation for the subjects). MPD's policy was thus at odds with recent studies of Taser use, including a 2011 report by the National Institute of Justice.[88] That report cautioned against prolonged or multiple uses of Tasers or simultaneous use of multiple Tasers on a single subject because of the significantly increased health risks posed by such use – for example, the study noted that "[l]aw enforcement personnel should be aware that the associated risks are unknown and that most deaths associated with ECD use involved multiple or prolonged discharges. Therefore, multiple or prolonged activation of ECD as a means to accomplish subdual should be minimized." As a result of these concerns, OIR recommended that MPD tighten its existing policy on the use of Tasers

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[86] National Institute of Justice, "Study of Deaths Following Electro Muscular Disruption" (May 2011).

[87] Police Executive Research Forum and Community Oriented Police Services of the U.S. Department of Justice (2011) *Electronic Control Weapons Guidelines*.

[88] National Institute of Justice (2011, May) *Study of Deaths Following Electro Muscular Disruption*. U.S. Department of Justice, Office of Justice Programs.

enacting a blanket rule prohibiting "officers from deploying more than three ECD applications on an individual, or a prolonged single application lasting longer than five seconds."

In its response to the original OIR 94 recommendation, MPD noted that its ECD training discusses the potential for increased risk caused by repeated or prolonged ECD cycles, and expressed its opinion that a complete prohibition on allowing officers to deploy more than three ECD applications on an individual, or a prolonged single application lasting more than five seconds, would be unwise. MPD noted that there may be times when prohibiting use of more than three cycles may eliminate the only factor preventing a situation from escalating to deadly force. MPD Assistant Chief Wahl shared with the Ad Hoc Committee that most Taser deployments are one-time uses; that MPD officers are trained to use Tasers for control and that the goal is to gain control of the individual within the first five-second cycle; but that when this does not happen, then subsequent deployments may be needed. Chief Wahl also noted that a third deployment of a Taser might be working to slow the escalation of the situation but still not yet subdue the individual enough for officers to be able to apply handcuffs.

In its supplementary report, in response to MPD's position, OIR stated: "The MPD response to these recommendations notes that these concerns are addressed in training, and argues against an absolute prohibition, leaving officers the discretion to decide whether and when to use an ECD in these situations. We disagree. At a minimum, the issues of successive or prolonged ECD application and multiple simultaneous applications should be addressed in the ECD guidelines, even if MPD chooses not to adopt complete prohibitions." OIR noted the frequency with which they had seen officers from other agencies use an ECD multiple times, beyond its necessity or usefulness. This has been an issue locally as well. As noted by an Ad Hoc Committee member, in the incident involving Genele Laird, MPD officers had deployed multiple ECD cycles, with several of the deployments occurring after Ms. Laird was already on the ground and one officer had his knee in her back and another was delivering strikes.

Michael Gennaco of OIR noted that if three ECD deployments have not been successful in subduing a subject there is typically little reason to believe that it will work a fourth time, and that each deployment increases the risk of permanent health damage. He further noted that risk of permanent injury or death goes up exponentially with the number of times a Taser is used, or the longer Taser use is sustained, or with simultaneous deployment of Tasers, and that the MPD policy did not offer guidance and therefore officers could continue to use ECD deployment in an effort to subdue an individual, with each subsequent deployment increasing the risk, possibly resulting in an in-custody death. In response to MPD concerns, Gennaco suggested policy language to the effect that officers should not deploy a Taser more than three successive times unless confronted with a deadly force situation or potential deadly force situation, or unless exigent circumstances – which the officers must be able to articulate – justify the decision to deploy the Taser a fourth time. Assistant Chief Wahl argued that, for controlling a violent, assaultive individual, even outside of a deadly force situation, an additional cycle of Taser use may be preferable to other force options such as baton strikes or beanbag rounds, which pose their own risks.

The Ad Hoc Committee heard the concerns of MPD as well as the concerns of parents and advocates working with vulnerable individuals about the risks of multiple ECD deployments or prolonged deployments on the health of the individual, especially those who have underlying medical conditions, including seizure disorders and women who may be pregnant but are not yet "showing."

To accommodate all of these concerns, the Ad Hoc Committee modified the language of the recommendation to add "unless exigent circumstances are present where the higher use of force would be required to gain control of the subject." Ad Hoc Committee member and retired MPD Assistant Chief Luis Yudice perhaps summed up the modified recommendation best in saying, "We want to make sure our citizens are protected, recognizing the inherent dangers in utilizing this particular device, but also want to make sure that we don't cloud the issue so much for police that they feel they need to go to something else which could make the situation worse."

In response to this recommendation, MPD has now added a provision to its SOP stating: "Multiple, extended or simultaneous ECD applications against a single individual are generally not recommended, and should be avoided unless the officer reasonably believes that the need to control the subject or unavailability of alternative force options outweighs the potential risk posed by multiple, extended or simultaneous applications."

Recommendation #116:

MPD should modify its ECD guidelines to preclude multiple officers from simultaneously deploying their ECDs on an individual unless exigent circumstances are present where the higher use of force would be required to gain control of a subject. [OIR Report #95]

Discussion: Similar to the concerns and issues outlined in the discussion and rationale for Recommendation #115 [OIR Report #94], the Ad Hoc Committee sought to balance the concerns of MPD with the health and safety of community members who could find themselves the subject of an arrest. In fact, the two recommendations were considered and discussed in conjunction with one another; therefore the concerns raised by OIR and Ad-Hoc Committee members and outlined above are the same concerns related to this recommendation.

As with the previous recommendation, MPD argued that a complete prohibition of simultaneous deployments could be problematic in higher risk situations. MPD also noted that there are times when simultaneous deployments are accidental with an officer using his or her Taser without realizing that another officer has also deployed a Taser. Again, concern about the potential risk to the individual on whom the ECD is deployed was a focus of the Ad Hoc Committee's discussion.

As with Recommendation #115 [OIR Report #94], the Ad Hoc Committee believes that the modified language of the recommendation, adding, "unless exigent circumstances are present where the higher use of force would be required to gain control of the subject," addresses both the concerns of MPD regarding an absolute prohibition, as well as the need for guidelines that are more in line with the National Institute of Justice's recommendations and related concerns about health risks from multiple ECD deployments. In response to this recommendation, MPD has now modified its SOP language to discourage simultaneous ECD applications (see discussion for Recommendation#115 [OIR Report #94] for the full language of this new SOP provision).

Recommendation #117:

MPD should modify its ECD guidelines to require medical clearance of all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel. Medical personnel could conduct this medical screening and removal of darts at the scene, and subjects for whom the screening has found medical conditions, reactions, or injuries, or who are requesting medical attention, should be transported to a medical facility for evaluation and treatment. City medical personnel who may be tasked with providing clearance should be consulted before guidelines are changed. [OIR Report #96]

Discussion: The MPD has been using ECDs – Tasers – since 2003. Initially its policy was to have the Taser probes/darts removed by medical personnel. MPD noted that medical staff at the emergency rooms did not like having to remove the probes and officers noted that the medical personnel removed the probes/darts the same way the manufacturer's training manual for officers described. As a result, MPD stopped having medical personnel remove the darts and officers now do so on site and proceed with arrest. Additionally, individuals who have been the subject of an ECD deployment are not medically cleared by medical personnel but by an officer on site, and if arrested, the individual may be screened at the jail for additional medical concerns. However, these current MPD practices are not in line with U.S. Department of Justice model recommendations developed by the Police Executive Research Forum (PERF).

In its report OIR noted that "the SOP permits trained officers to remove Taser probes unless they are embedded in a sensitive area, and to proceed with arrest procedures without getting a subject medically cleared, except in defined circumstances. More common practices consistent with best principles of risk management and medical care are to require medical clearance for all subjects on whom an ECD has been used, and to have any embedded darts removed by medical personnel." In its supplemental report OIR wrote, "MPD responds that having a subject upon who an ECD is used be medically cleared is 'wasteful' and unnecessary. While we recognize that there are differing perspectives on this issue, we side with the many police agencies that recognize that it would only take one occurrence with a bad consequence to include and justify the precaution for medical clearance and dart removal by medical professionals." The Committee agreed that transportation to a hospital should not be required for dart removal in most instances; in most instances, a medically trained person from Fire-Rescue could respond to the scene to perform a medical screening and remove the darts. The arrestee could be transported to jail if cleared, though if the medical personnel indicated that there were issues, a trip to the hospital would result.

Michael Gennaco of OIR told the Committee that the OIR recommendation came from the U.S. Department of Justice model recommendations for tasers that was put together by PERF. Gennaco noted that one of the reasons the DOJ recommends having medical personnel remove the darts is because when a dart gets under an individual's skin, it intrudes on the subject's corpus and constitutes what is now considered by many to be a biohazard. Accordingly, Gennaco noted, many agencies utilize medical personnel to remove the darts to reduce the risk to their officers. Another reason to have medical personnel remove the dart is that a medical professional has greater ability to recognize a person who is in distress or may be going into distress after taser deployment. The Committee noted that there are a number of underlying health conditions that can interact adversely with being tased but that may not be immediately visible, especially to a non-medical-professional. These conditions can include diabetes, seizure disorders, high blood pressure, and heart disease, among others. Committee members therefore agreed that it was key that the screening for medical clearance be done by medical personnel, consistent with the PERF recommendation that "[a]ll subjects who have been exposed to an ECD application should receive a medical evaluation by emergency medical responders in the field or at a medical facility."

MPD reported that if anyone asks for medical treatment, they get it, but Gennaco and Ad Hoc Committee members noted that some people might understate or refuse to state to an officer that they are in discomfort or would like medical attention, but would be comfortable telling that to a medical professional. Committee members further expressed concern that some people who are in discomfort after taser deployment might not know that what they are experiencing is not a normal reaction, or they might be in shock and unable to express themselves. As one Committee member noted, one cannot rely on a person in such a situation to say, "I need this; I have this condition." Another Committee member referenced the Genele Laird incident in which a teenage girl experienced multiple ECD deployments. She required medical treatment but ultimately did not seek it, because it was her understanding that she would have to pay for it, and she couldn't afford it.

Ad Hoc Committee members expressed concern that the current MPD SOP does not outline for officers what to look for in terms of distress after someone has been subjected to an ECD deployment. One Committee member cited the numerous deaths in the Milwaukee County Jail when medical risk was not appropriately or adequately assessed by either police or jail staff as a reason to require medical clearance

While it is reasonable to consider the time and resources required to implement this recommendation, according to the MPD, the Department deploys ECDs on individuals 20-30 times per year. The Ad Hoc Committee was sensitive to concerns about allocation of resources, but ensuring proper care for those 20-30 individuals each year should not be unduly burdensome. Of equal concern to the Committee was the health and wellness of those 20-30 individuals annually who may be subjected to an ECD deployment.

The original OIR recommendation stated: "MPD should modify its ECD guidelines to require medical clearance for all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel." After considering all the factors above, the Committee reached consensus on a modified recommendation, the key components of which were the following: 1. All subjects on whom ECDs were used should be screened by medical personnel. 2. For most subjects, this could occur at the scene. 3. Appropriate medically trained personnel from the Madison Fire Department (MFD) could be used for this purpose. 4. Trained MFD personnel could also remove the darts. 5. If screening at the scene showed subjects to have medical conditions, reactions, or injuries, or if they were requesting medical attention, they should be transported to a hospital for evaluation and treatment. 6. Since this would place additional demands on the Madison Fire Department, there should be consultation with city medical staff to see how it could be accommodated.

MPD did not express opposition to this recommendation in its final form. The Ad Hoc Committee believes that the modified recommendation balances the need to use our resources wisely while recognizing that individuals on whom an ECD is deployed, especially multiple times, simultaneously or for prolonged periods, may be facing a genuine medical emergency, including a life-threatening emergency. The recommendation seeks to minimize the potential long-term health risk to individuals and to eliminate the risk of in-custody deaths (and associated liability) due to the use of ECDs.

Recommendation #118:

MPD should train the Police Executive Research Forum recommendation that an ECW deployment that is not effective does not mean that officers should automatically move to their firearms. [CRT #4]

Discussion: PERF notes that: "Accounts of fatal police shootings often state that 'the officer tried an ECW [electronic control weapon], it had no effect, and so the officer then used a firearm.' This is an inappropriate way to view force options. ECWs often do not work because the subject is wearing heavy clothing or for many other reasons. An ECW deployment that is not effective does not mean that officers should automatically move to their firearms. Under the Critical Decision-Making Model, an ineffective ECW deployment should prompt officers to re-assess the situation and the current status of the threat, and to take appropriate, proportional actions. In some cases, that may mean tactically repositioning, getting together as a team, and assessing different options." MPD states that this is consistent with current MPD training.

Studies show that successive iterations of Taser shots greatly reduce the frequency of failure to incapacitate. MPD currently uses the X26P model, which requires cartridge reloading between shots. MPD notes that it "would welcome additional funding to support a transition to either the Taser X2 or Taser 7… Both offer the ability for rapid multiple shots if needed. Ineffective Taser deployments are not uncommon, and the immediate ability to deploy a second shot would be beneficial and likely avoid the need for additional force use in some instances."

Recommendation #119:

MPD should amend its SOP on Foot Pursuits to fully address the safety concerns associated with chasing a suspect without communicating with dispatch, solo foot pursuits, pursuing in unfamiliar areas or after losing sight of the suspect, and chasing a suspect while not in full patrol uniform and gear. [OIR Report #97]

Discussion: Foot pursuits are inherently somewhat dangerous, and lead to a disproportionate number of officer-involved shootings and other instances of use of major force. As OIR notes:

> The dynamic of most foot pursuits is inherently unsafe for the officer. The suspect determines the path of the pursuit. If the suspect is armed, he can draw the officer in and then turn and shoot the pursuing officer before the officer has an opportunity to react. Even worse, if the armed suspect has an opportunity to turn a corner, jump a fence, or enter a building, causing the officer to lose visual contact, the suspect then has a tactical advantage and can ambush the pursuing officer. Running with an unholstered gun places an officer in a better position to react to an ambush, but creates additional problems, including the possibility of an accidental discharge and hampering the officer's ability to engage in a hand-to-hand fight with the suspect. A long foot pursuit can leave an officer (who is weighed down by the necessary gear on his or her belt) winded, and the exhaustion can compromise the officer's tactical skills and decision-making ability.
>
> The dynamic is also unsafe for the public and the suspect being pursued, as the heightened sense of danger faced by officers in this scenario may cause the officer to perceive any ambiguous move by the person being chased – such as grabbing at his waistband – to be an indication that the suspect is armed. Because officers are trained to anticipate lethal threats, the stress of a foot pursuit and insufficient distance between the officer and subject sometimes causes an officer to use deadly force in response to perceived aggression when, in fact, it turns out that the person being chased was not armed after all.

To provide guidance to officers and mitigate the danger, police departments, including MPD, have constructed foot pursuit policies. However, MPD's SOP provides less guidance than OIR recommends and that we agree is needed. OIR specifically recommends that MPD policy be modified to address the following four points:

1. "The SOP states it is the pursuing officer's responsibility to notify dispatch of pertinent facts, 'if possible.' Better practice is to require officers to terminate a pursuit if they cannot communicate with dispatch, or lose radio contact for any reason."

2. "Officers are instructed to consider the availability of backup when initiating a pursuit, but there is no prohibition on solo pursuits, or, at a minimum a requirement that a solo pursuer only chase for tracking purposes and not close the distance to apprehend a suspect on his or her own."

3. "The SOP does not instruct officers to terminate a pursuit if the officer loses sight of the suspect – jumping fences or entering buildings, for example – or becomes unsure of his or her location."

4. "The SOP does not address the risks of engaging in a foot pursuit for officers not in uniform or without a full set of authorized equipment on their belts (Detectives, for example)."

Since the OIR report was issued, MPD has altered the SOP to address point 4 (with the SOP now stating that factors to consider in initiating a pursuit include available equipment and whether a uniform is being worn), but it appears that point 1-3 remain unaddressed in policy.

In its response to the OIR report, MPD noted that these issues are addressed in training. However, OIR pointed out, "including the concepts in policies messages to officers a heightened importance of compliance and provides the Department the ability to hold officers accountable should the policy be violated," and further noted that, "While training is important, there needs to be clear guidance through policy so that all officers understand in writing what the expectations of the Department are when they engage in a foot pursuit." We agree with OIR's reasoning that these provisions should be embodied in policy. See also Ad Hoc Committee Recommendation #120 [CRT #8], advising that MPD further tighten discretion that officers have about engaging in foot pursuits.

Recommendation #120:

MPD should modify in the near future its training or SOPs to tighten up discretion that officers have about engaging in foot pursuits and, in considering those revisions, it should consider adopting the recommendations of the CRT about foot pursuits, including:

- **a) provision that directs officers to maintain a safe distance, rather than overtaking the suspect, until sufficient cover (e.g. backup officers, etc.) is available to take the suspect into custody. This provision may include a list of techniques to consider (e.g. paralleling the suspect, etc.; see Portland OR policy for an example of such a list).**
- **b) A provision to the effect of "No sworn member shall be criticized for deciding against initiating or discontinuing his/her involvement in or terminating a foot pursuit."**
- **c) A provision specifying safety-enhancing explicit restrictions on engaging/continuing foot pursuit (see Portland OR policy for an example of such a list). Among other restriction, foot pursuit of armed suspects should be prohibited unless, in extreme circumstances, no other alternative strategy is feasible and a delay in the apprehension of the suspect would present a threat of death or serious physical injury to others.**
- **d) A provision directing officers to consider factors related to the suspect's behavior when deciding whether to initiate or continue pursuit (see Portland OR policy for an example).**
- **e) Language requiring the officer to continually assess whether to continue the pursuit.**
- f) **A provision specifying that, whenever possible, the first officer to reach the suspect should not go "hands on" with them, but instead should wait for backup to take that role.** [CRT #8]

Discussion: National data shows that foot pursuits are one of the circumstances most likely to lead to police shootings. For example, the MPD officer-involved shooting on September 1, 2018, followed a foot pursuit. Departments, including MPD, have adopted policies to reduce this risk. However, many large city police departments have foot pursuit policies that are more detailed and restrictive, offering more guidance to officers, than MPD's. This remains true even though MPD recently added provisions to its foot pursuit policy, given pertinent concerns raised by OIR (see OIR recommendation 97). The Portland, OR, Police Department foot pursuit policy[89] is a good example of a model policy containing important provisions, absent in Madison policy, that reduce the risk of harm to the officer, the suspect, and the public. Incorporating such provisions from Portland (or from analogous policies in other cities) into MPD policy would reduce the risk of adverse outcomes.

In addition, data analysis by the Center for Policing Equity (CPE), a research think tank that consults with police departments on equity issues, found that complaints of excessive force disproportionately occur after foot pursuits. This appears to be a consequence of officers being highly escalated following a chase. Moreover, the bulk of foot pursuits stop when the suspect realizes he or she is surrounded and gives up. CPE thus recommends that departments adopt policies specifying that,

[89] Portland Police Bureau. *Directive 0630.15 Foot Pursuits.* Retrieved from https://www.portlandoregon.gov/police/article/526060

whenever possible, the first officer to reach a suspect should not be the first person to "go hands on" with them, leaving it to those who arrive later. Implementation of such a policy in Las Vegas resulted in a 30% reduction in use of force.[90]

These concepts would be useful in policy or training. We thus adopted this CRT proposal, though we amended the language, which had originally stated "MPD should modify its foot pursuit policy to decrease risk of adverse events. Specifically, the following should be included." This language was modified to recommend that training or policy should be modified in the near future to tighten up officer discretion, and that the listed specific provisions should be "considered" for use in those revisions.

The Committee amended the recommendation for a number of reasons: 1. MPD had only recently modified its foot pursuit policy in response to the OIR report and wished to avoid having to immediately change and train on new policy again. 2. MPD believed that some of the requisite changes could be better addressed in training rather than policy. 3. We wished to avoid fully dictating all the specifics of the changes, given that some details were seen as requiring expert judgment. Although the Committee recommendation gives the MPD latitude when addressing the underlying concerns related to the recommendation, Committee members also suggested that the Independent Monitor should ultimately review the changes made by MPD.

Recommendation #121:

MPD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties. [OIR Report #98]

Discussion: OIR noted that the MPD SOP on Use of Deadly Force stated that deadly force was authorized:

> To effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm.

Such a deadly force policy provision is often colloquially referred to as a "fleeing felon rule." OIR pointed out that MPD policy "permits the use of deadly force, even when there is no imminent danger of death or great bodily harm to the officer or others, to prevent the escape of someone where there is a 'high probability' that person may later pose a threat." OIR noted that "the better policy, largely adopted by progressive police agencies, would limit the use of deadly force to those situations that present imminent danger to the officer or others."

Many major city police departments have more restrictive policies. Some cities, such as New York City and Philadelphia, have no specific provision authorizing use of deadly force on a fleeing felon (consistent with OIR's recommendation to MPD to "eliminate authorization for shooting to prevent escape"). For example, Philadelphia Police Department policy states only one condition under which deadly force is authorized: "Deadly force is authorized when the officer has objectively reasonable belief that they must protect themselves or another person from the immediate threat of death or serious bodily injury." It further states that "Police officers shall not discharge their firearms to subdue a fleeing individual who presents no immediate threat of death or serious physical injury to themselves or another person." New York City has a similar prohibition and specifies that the threat of death or serious physical injury must be to "the MOS [member of the service] or another person present." Others, such as the Metropolitan Police Department of the District of Columbia, do contain a "fleeing felon" provision, but specify quite restrictive conditions:

> Members may use deadly force to apprehend a fleeing felon ONLY when every other reasonable means of affecting the arrest or preventing the escape has been exhausted AND,

[90] Callaghan, P. (2015, Aug. 27) The professors and the police: How a Minneapolis project may change the way cops everywhere relate to the public. *MinnPost*. Retrieved from https://www.minnpost.com/politics-policy/2015/08/professors-and-police-how-minneapolis-project-may-change-way-cops-everywhere/

a. The suspect fleeing poses an immediate threat of death or serious bodily harm to the member or others; OR (CALEA 1.3.2)
b. There is probable cause to believe the crime committed or attempted was a felony, which involved an actual or threatened attack which could result in death or serious bodily harm; AND
(1) There is probable cause to believe the person fleeing committed or attempted to commit the crime, AND
(2) Failure to immediately apprehend the person places a member or the public in immediate danger of death or serious bodily injury; AND
(3) The lives of innocent persons will not be endangered if deadly force is used.

In response to the OIR recommendation, MPD stated that it "agrees that this language in the Use of Deadly Force SOP could be improved." It subsequently adopted a policy containing a fleeing felon rule that authorized deadly force:

To prevent the escape of a fleeing subject when all of the following are present:
a. The officer has probable cause to believe that the person has committed or has attempted to commit a felony involving the use or threatened use of deadly force.
b. The officer reasonably believes the subject presents a continuing imminent risk of great bodily harm or death to the officer or another subject if not immediately apprehended.

This policy is more restrictive than the original MPD policy, and requires "continuing imminent risk," but is less restrictive than the policies of cities such as New York, Philadelphia, and Washington D.C. The new MPD policy should somewhat reduce the risk of unnecessary use of deadly force relative to the prior policy. Note also that this new MPD policy could be interpreted as less restrictive than the OIR recommendation adopted by the Committee, in that that the OIR recommendation specified that MPD policy should not authorize shooting where there isn't an "imminent threat" (where "threat" is generally understood in common usage and dictionary definitions as something "likely to cause" harm) against "identifiable" individuals, while the MPD policy requires only a "continuing imminent risk" (where "risk" is generally understood in common usage and dictionary definitions as "possibility" of harm) and does not appear to explicitly require that the individuals considered at risk be identifiable.

Recommendation #122:

MPD should modify its policy prohibiting shooting at moving vehicles to read: "Firearms shall not be discharged at a moving vehicle unless: 1) A person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or 2) The vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical). To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves in the path of any moving vehicle and, when such positioning is unavoidable, to move out of the vehicle's path as soon as practical."
[OIR Report #99, CRT #17]

Discussion: This recommendation reflects a modification of both the original MPD policy on shooting at a moving vehicle and the OIR recommendation related to that policy.

The original MPD policy reviewed by OIR stated:

Deadly force is never authorized:
…. 3. At a moving vehicle unless an officer has reasonable cause to believe that one's self or another is in imminent danger of death or great bodily harm or Deadly Force Authorized, paragraph 3, regarding certain felons applies.

Paragraph 3:
The use of deadly force is only authorized when, under any of the following circumstances, an officer reasonably believes a lesser degree of force would be insufficient:
…. 3. To effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm.

As the OIR report notes:

> Shooting at a moving vehicle is widely considered by experts in police tactics to be both ineffective and inherently dangerous for officers and the public. A bullet is not designed to stop a 3,000-plus pound vehicle, but commonly ricochets off and could strike a bystander. And if the bullet penetrates a vehicle's window and somehow strikes the driver, the risks of the vehicle veering out of control are high.

An article in Vox, summarizing expert opinion, makes similar and additional points:

> Imagine a case in which an officer is in front of a car that's speeding toward him. If the cop decides to shoot, that could put him in harm's way, since, instead of getting out of the way, he'll be focused on shooting. That could get the officer seriously injured. The other issue is that shooting a moving vehicle is a very ineffective way of actually stopping it. Most of the time, officers will miss…They might even hit the wrong target, like a passenger or a passerby near the car. But even if they do hit the driver, that in no way guarantees that the car will actually stop. A wounded driver or dead body could lean into the pedal harder, causing the car to spiral out of control — and maybe hit more people and do more damage.[91]

Furthermore, OIR notes that in the original MPD policy, "the 'fleeing felon' exception completely swallows the prohibition," undermining it. Accordingly, OIR originally recommended the following:

> MPD should modify its prohibition on shooting at moving vehicles to make it clear that discharging a firearm at a moving vehicle is prohibited unless an individual in the car poses an immediate threat of death or serious bodily harm by means other than the vehicle, and that officers have a duty to move out of the path of a moving vehicle.

The Police Executive Research Forum (PERF) advocates a policy identical to this in "30 Guiding Principles on Use of Force." Chuck Wexler, Executive Director of PERF, argues that "[y]ou can't stop a moving vehicle. You shouldn't shoot at moving vehicles. Period. No exceptions. ... If it isn't a strong prohibition, then what happens is officers will put themselves in a position in which they do feel their life is in danger, and they have no choice." Many major city police departments (e.g., New York City, Boston, Philadelphia, San Francisco, etc.) have adopted policies along these lines. The Washington, D.C., Metropolitan Police Department had a similar policy, but recently added a narrowly crafted exception, specifically allowing officers to fire at a vehicle being used in a terrorist ramming attack against a crowd of people.

MPD argued that a policy with a strict prohibition would be unwise, given "the potential for the intentional use of a vehicle as means of killing or as a terroristic tool." It advocated for a broader exception to the general prohibition than the exception in the Washington D.C. policy, allowing an officer to fire at a vehicle if "[t]he vehicle is operated in a manner that reasonably appears deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical)." OIR consultant Samuel Walker has argued against an exception of this nature, stating that this specific policy language "opens a door that most departments have for years felt it best to keep closed."

The CRT proposed that, at a minimum, the policy should include a sentence, crafted by OIR consultant and police regulatory expert Seth Stoughton, stating that, "To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves in the path of any occupied vehicle and, when such positioning is unavoidable, to move out of the vehicle's path as soon as practical."

The Ad Hoc Committee took all of these factors into account, and settled on a policy combining the policy language proposed by MPD and the additional sentence proposed in CRT #17, but with the latter modified by substituting the term "moving vehicle" for "occupied vehicle" (since officers sometimes, for example, approach parked vehicles and need to be able to move about or look at the front of the vehicle).

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[91] Lopez, G. (2017, May 8) Police have known for 45 years they shouldn't shoot at moving cars. But they still do it. *Vox*. Retrieved from https://www.vox.com/policy-and-politics/2017/5/8/15533536/police-shooting-moving-cars-jordan-edwards

Recommendation #123:

MPD should develop specific policies, training, and code of conduct standards intended to limit strikes to the body to circumstances where they are truly necessary and provide specific guidance as to what those circumstances might be and in all circumstances ban strikes to the head and strikes to individuals who are non-resisting or in restraints. [Findley #42]

Discussion: MPD officers are trained to go through a series of escalating responses to combative or resisting subjects. Among the authorized techniques is the delivery of blows or strikes to the individual. No policies limit the use of such blows, however, beyond the general policy and training to use the least force necessary, and only to escalate to techniques such as striking the individual if less violent efforts are not alone working. The Committee is concerned that permitting officers to strike individuals whenever they deem it useful because a subject is continuing to be resistant or combative is unseemly and inappropriate in a free society operating under the rule of law. Police officers are human beings subject to the ordinary range of emotions that can produce violent responses in situations evoking a high degree of agitation. Permitting officers to act on those emotions by striking individuals is inappropriate. By explicit policy and training, officers should be limited to delivering strikes only in those circumstances where such force is truly necessary for protection of the officer or others or under other extreme circumstances. Anecdotally—based on statements from individual officers and review of videos of encounters in which MPD officers have been caught striking individuals in the course of taking them into custody—it appears that delivering such blows as a method of restraining and subduing an individual is rarely productive. Indeed, it is hard to imagine how such blows would mitigate a violent encounter short of a blow so violent as to incapacitate the subject.

Moreover, as a matter of public and community relations, the MPD has suffered significantly from the negative perceptions generated by videos of subjects being punched and struck even while being held and restrained by several officers. In addition, comparisons with surveys of other U.S. police departments suggest that the MPD may use bodily force at rates that are somewhat higher than average. Given that one of the primary challenges facing the MPD is to build trust and confidence in Madison's various communities, strict limitations on hitting or striking individuals should be in place.

MPD maintains that striking individuals, while rarely appropriate, is sometimes necessary, and can avoid the necessity of implementing even more dangerous or lethal force. Accordingly, the Committee does not recommend banning body blows altogether, but does believe they should be severely curtailed by explicit written policies and training to those circumstances where they are truly necessary, and that they should never be permitted when a subject is restrained and that blows to the head should never be permitted.

Recommendation #124:

All of Fyfe's Principles should be incorporated into MPD's "Response to Persons with Altered State of Mind" SOP. [CRT #18]

Discussion: The frequency of officer-involved shootings can be reduced by implementing appropriate tactical policy for dealing with people in an altered mental state. This is important, since the vast majority of MPD officer-involved shootings involve people suffering from mental illness or chemical intoxication (apparently true of 12 of the last 13 officer-involved shootings).

Consequently, in 2017, the Common Council, *via* the President's Work Group report, ordered the Chief of Police "to issue a SOP that explicitly details the goals, tactics, policies, and procedures to deal with an EDP [emotionally disturbed person] (including those who are intoxicated)." One of the key items the President's Work Group reviewed, and asked that MPD consider incorporating in this SOP, was Fyfe's Principles for police interaction with people in an altered mental state. Given relatively limited use of Fyfe's Principles in the resulting SOP, the Community Response Team then asked that the Ad Hoc Committee adopt this recommendation to incorporate all of Fyfe's Principles.

James Fyfe, the originator of Fyfe's Principles, was an NYPD officer and professor of criminal justice, who served as NYPD's Deputy Commissioner for Training. He introduced many beneficial changes in training and policy at NYPD, leading to large reductions in officer-involved shootings. Fyfe noted that the vast majority of situations that end violently begin to go awry in the first 30 or 40 seconds after police arrive, and, consequently, he argued that it is much more important to raise the level of expertise of first responders than to train a special team. Fyfe's publication, "Policing the Emotionally Disturbed," (2000) introduced seven key principles for minimizing officer involved shootings of people in an altered mental state. Fyfe noted:

> The dangers and unpredictability of police encounters with EDPs are significant, but they can be reduced greatly by adherence to a few simple principles…. These principles, which can be taught and absorbed in no

> more than a couple of days, considerably increase the chances of resolving EDP confrontations without bloodshed…. Because the techniques and strategies for resolving EDP situations are relatively simple, all police patrol officers, who are almost invariably the first police responders to such situations, should be trained in them and held accountable for following them.[92]

The rules formulated by James Fyfe for how police should deal with resistant people in an altered mental state (including those who might be armed) fit well with recommendations from Normal Accident Theory (a theory, with considerable empirical support, of factors underlying risk of disasters).

Under Normal Accident Theory, the risk of accidents is tied to: 1) the interactive complexity of a system (more parts or more people interacting = higher risk) and 2) the degree of coupling in the system (tight coupling, with little capacity to accommodate things going wrong = higher risk). Police scholars have successfully applied this framework to gain insight into means of avoiding officer-involved shootings.

Here are Fyfe's rules, stated in relation to Normal Accident Theory (with the latter explicated in brackets):

> 1. *Officers should keep a safe distance away from EDPs (emotionally disturbed persons) and otherwise avoid putting themselves in harm's way when handling EDPs.* [More distance = looser coupling, better able to accommodate errors/unexpected actions]
> 2. *Officers should avoid unnecessary and provocative displays or threats of force.*
> 3. *An officer should try to avoid confronting an EDP while alone and should always make sure that back-up assistance is called so that the EDP can be contained at the same time that bystanders are cleared away.* [Clearing bystanders reduces complexity of the system, though backup officers increase complexity.]
> 4. *One officer (the talker) should be designated to talk to the EDP, and everybody else on the scene should "shut up and listen."* [Reduction in complexity.]
> 5. *Officers should make sure that the talker is in charge of the scene and that nobody takes unplanned action unless life is in immediate danger.* [Reduction in complexity. Retain the benefit of backup officers while ameliorating the additional risk created by having more officers present.]
> 6. *Officers should make sure that the talker does not threaten the EDP, but instead makes it plain that the police want to help him or her and that the way to accomplish this is for the EDP to put down any weapons and to come with the police for help.*
> 7. *Officers should take as much time as necessary to talk EDPs into custody, even if this runs into hours or days.* [Allowing as much time as needed = more slack/less pressure/looser coupling.]

The President's Work Group report explicitly articulated these seven principles and requested that MPD consider incorporating them into the SOP. The "Response to Persons with Altered State of Mind" SOP that MPD issued in response to the Council order was a major positive step and did incorporate some of Fyfe's Principles, but most were not incorporated, or were incorporated only in a very vague sense. For example, principle 2 was not included (note that attempts to intimidate people into complying can be very counterproductive when dealing with people in an altered mental state). Principle 3 was not included (the SOP only states "Request additional personnel if indicated"). Principles 4 and 5 were not fully incorporated – the closest the SOP comes to this is to say: "Have only one officer communicate with the person at a time." Under the MPD policy, multiple officers can be talking to the person, just not at the same time. Sequential statements from multiple officers can still be confusing or agitating to someone in an altered state. And the policy does not suggest that the talker should be in charge of the scene or prohibit other officers from taking unplanned action.

MPD stated, in the context of this recommendation, that it is not opposed to reviewing SOPs and "evaluating whether additional clarification or language modification is appropriate." The Ad Hoc Committee endorses fully incorporating all of Fyfe's Principles, given the established capacity of these rules to reduce the risk of adverse outcomes.

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[92] Fyfe, J.J. (2000) Policing the Emotionally Disturbed. *Journal of the American Academy of Psychiatry and the Law*. 28, 345-347. Retrieved from https://pdfs.semanticscholar.org/cc28/be36f9d4e56857f7ae79c6640e2f2d6ccd2d.pdf

Recommendation #125:

The Use of Force Coordinator and executives assessing force should regularly reevaluate the SOPs governing uses of force in light of the facts and circumstances of the incidents they review, making amendments as necessary. [OIR Report #100]

Discussion: OIR explained that "[o]ne major benefit of the Use of Force Coordinator position and the Department's relatively new effort to track and monitor force incidents is the capability of recognizing the need to create or amend policy. In the past, the Department's ability to do so was limited by the fact that it had no centralized way to review uses of force. A more robust review process [as specified in multiple recommendations elsewhere in this report] will identify areas of needed improvement and will be positioned to see that those improvements are made." MPD stated in response that it "does this now and will continue to do so." The Committee believes that the types of more thorough and extensive review called for in this report, including root-cause analysis of critical incidents, will yield additional data and insights that can provide a sound basis for continued improvement and upgrading of use of force SOPs, reducing the likelihood of undesirable outcomes.

Recommendation #126:

MPD should consider deploying additional protective equipment in squad cars, including but not limited to transparent acrylic personal protection shields and Kevlar stainless steel gloves, and provide training in their use. [CRT #2]

Discussion: As one of its guidelines for reducing use of deadly force, the Police Executive Research Forum (PERF) recommends that patrol officers have access to acrylic personal protection shields and training in their use. PERF notes: "Personal protection shields enhance officer safety and may support de-escalation efforts during critical incidents, including situations involving persons with knives, baseball bats, or other improvised weapons that are not firearms." Acrylic personal protection shields are a cornerstone of handling resistant persons with mental health issues for NYPD and across Europe. Likewise, Kevlar stainless steel gloves provide protection from bladed weapons. MPD notes that it would welcome funding for additional protective equipment, particularly ballistic shields for squad cars.

➢ SECTION 6. Use of Force Equipment

Recommendation #127:

MPD should consider acquisition and training in additional well-developed, less-lethal tools, such as newer options for chemical sprays and better/safer kinetic weapons. An example of the former is the Piexon JPX4. An example of the latter is the 40 mm platform with appropriate less-lethal ammunition. [CRT #3]

Discussion: Appropriate less-lethal weapons can be used to handle situations where deadly force might otherwise be used. One of PERF's recommendations for avoiding use of deadly force is that agencies should consider new options for chemical sprays. In the United Kingdom, some agencies now use PAVA spray, which provides a concentrated stream that can be targeted more accurately than traditional OC spray. PERF notes: "While PAVA is not currently available in the United States, agencies should research and evaluate products that provide some of the same features and benefits." One such option is the Piexon JPX4, designed to deliver a confined, high velocity splat of OC to the face at a range of 23 feet. This is a relatively small device, carried on an officer's belt, and allows up to four successive shots without reloading.

Better/safer kinetic weapons are also available. A 40 mm platform with 40 mm ammo has longer range, greater accuracy, and greater safety (reduced risk of penetrating injury) than beanbag rounds. MPD notes that it "currently has a small number of 40mm launchers, but wider deployment would be beneficial." In addition, MPD continues to look at new technologies that might provide additional use of force options and is currently testing the Bolawrap 100 (a weapon that entangles subjects). Purchase of new less-lethal weapons, and training in their use, would require funding.

➢ SECTION 7. Other Cities or Nations as Fresh Sources of Insight

Recommendation #128:

MPD should reach out to NYPD administration to gain a detailed understanding of NYPD's schema of "firearms control," to determine if NYPD's approach, or elements of it, could be useful in reducing the frequency of officer involved shootings in Madison. If the answer is affirmative, MPD should consider incorporating this approach. [CRT #6]

Discussion: NYPD has a substantially lower rate of officer-involved shootings than MPD. NYPD's success in reducing officer-involved shootings in part revolves around its implementation of the concept of "firearms control." The basic concept is that avoidable officer-involved shootings result from loss of firearms control — officers might lose focus, get startled or frightened, and begin shooting unnecessarily; or they many continue shooting when it's no longer required; or they may begin shooting contagiously; etc. The concept is one of continuous restraint and careful and deliberate decision-making regarding firearms use. NYPD's strong departmental commitment to this idea is apparent in its heavy emphasis in NYPD policy and training materials. In addition, NYPD publishes a firearms discharge report annually (analyzing circumstances and patterns across all discharges) and officers who exhibit firearms control in difficult situations are provided public recognition. A similar concept appears to be emphasized in many European police departments. For example, "Don't Shoot" is both the title and main goal of a typical police firearms training course in Germany. MPD has indicated that it is not opposed to exploring this concept further.

Recommendation #129:

MPD should reach out to the Police of Finland, particularly the Police University College, and send at least one command officer to Finland, to learn about Finnish Police methods (training, tactics, etc.) that may be useful for reducing the frequency of fatal officer involved shootings. [CRT #7]

Discussion: U.S. policing has much to learn from policing models used in other countries, and particularly Finland. Key cultural factors are similar between Finland and the U.S., with high rates of violence and high per capita gun ownership in both countries. In addition, Finnish police officers routinely carry guns, like police in the U.S. and unlike police in a number of other E.U. countries. Yet the per capita rate of fatal officer-involved shootings is about one hundred fold lower than in the U.S., and the rate of injuries to Finnish police officers is also much lower than in the U.S. PERF has recently noted the importance of examining policing models in other countries and has begun incorporating lessons learned from the Scottish policing model. The Finnish policing model might be even more relevant. MPD is not opposed to exploring Finnish police training/operations. Contact with police training instructors at Finland's police education facility might be especially useful.

PART V: INTERNAL CULTURE & PROTOCOLS

➢ SECTION 1. MPD Culture

Recommendation #130:

MPD should engage in regular internal assessments (such as surveys) and other feedback opportunities, to ensure that issues relating to minority status within the Department are not adversely affecting individuals or groups, and to continue seeking potential remedies and reforms when such dynamics arise. [OIR Report #101]

Discussion: Though the Department has sought diversity, OIR observed that "[t]here are … occasional fault lines in the efforts to welcome, accept, and appreciate a diverse pool of co-workers." Internal MPD groups such as "Judgement Under the Radar" and the "Diversity and Inclusion" committee have worked to address these issues. However, such efforts have proven difficult to sustain (and in at least one case encountered pushback—a Judgement Under the Radar training in 2015 provoked negative reactions from rank-and-file officers). OIR writes of the Diversity and Inclusion committee that it:

> got together with the approval of management to explore possible divides within the Department's ranks, and a collective sense of alienation among representatives of different racial or ethnic groups. There were attempts to survey personnel regarding relevant topics, and a discussion of potential solutions. We spoke with a few different participants in that process – including some who had questioned the need, and others

> who were struck by the gap between the overall survey results and their own personal or anecdotal perceptions. One member offered a persuasive analysis of that group's ultimate arc: the good intentions and earnest support of MPD leadership, followed by multiple meetings that did not seem to advance things in a focused way, and eventually led to a loss of energy and initiative. In that respect, the committee was reflective of the larger dynamics we observed ourselves.

However, OIR notes that "MPD distinguishes itself with its willingness to at least try grappling internally with these challenging questions."

OIR advises that "MPD's leadership and Department members of all ranks and responsibilities must refrain from resting on the laurels of impressive diversity numbers and inclusive 'official' messaging. Instead, it should remain attuned to the possibility that officers from different backgrounds may indeed be feeling a sense of marginalization or frustration that relates to their gender, race, ethnicity, or other distinctive characteristic."

The Committee endorses this recommendation and notes the importance of attending to difficult realities, even when they might deviate from an organization's preferred self-perception. MPD's response to this recommendation stated, "MPD leadership is committed to engaging employees in a variety of ways. A number of strategies have been used previously, including a pilot 360 input process for employees, a civilian climate survey, an organizational climate survey, electronic 'comment boxes' at the district or unit level and peer input surveys for the promotional process and closed/specialized team selection processes. These efforts are ongoing; as an example, the MPD Equity Team is currently examining internal processes to determine if any are creating unintended barriers. MPD is committed to continuing these efforts and will review constructive ways to do so." And in its updated response, MPD informed the Committee that it "will be working with the National Police Foundation to administer several internal surveys."

Recommendation #131:

MPD should assess its recruit training programs and patrol deployment strategies with an eye toward supporting and taking positive advantage of the unique perspectives and life experiences of its officers of color. [OIR Report #102]

Discussion: OIR wrote that it had

> noted instances in which there seemed to be room for MPD to do more to maximize the advantages that go along with a diverse and experienced workforce. As accepting – and even solicitous – of recruits from diverse backgrounds as the Department has become, some of those same recruits found themselves expected to conform to more traditional paradigms once their Academy experience began. The same dynamic can weigh on officers once they graduate and become part of the force. For some of those officers, they were struck by how the supposed attributes that led to them being hired ended up being disregarded or discredited in the field. More than one African-American officer with whom we spoke, for example, described the frustration of having a comfort level and insight into the dynamics of a call for service in a largely black neighborhood, only to find that the white officer who happened to be the lead respondent was not solicitous of ideas or help. Another officer described attempting to close the handling of a call by engaging with the community, only to receive push back from his partner who was interested in moving on to the next call. We also heard from an officer who was disturbed overhearing the "locker room talk" at the station about eating certain food in the "ghetto," and other inappropriate and insensitive remarks that were made in his presence. And we heard from an African-American officer who drew suspicion from fellow officers when efforts at relationship-building with the community while on patrol were perceived as getting "too close to suspects."

MPD stated it "agrees with this, and this concept is fully integrated into the pre-service academy learning environment. Instructor discussion and active participation result in the sharing of various perspectives and experiences…. MPD does take note of all officers' unique abilities and perspectives, and seeks to utilize employees' skills in the best way." The Committee endorses this recommendation and encourages the Department to reflect on instances such as the examples related here and to continue to seek further means to ensure that it is fully supporting and taking positive advantage of the strengths of its officers of color.

Recommendation #132:

The Madison Professional Police Officers Association should make efforts to enlist greater participation by officers of color, including in leadership positions. [OIR Report #103]

Discussion: The Madison Professional Police Officers Association (MPPOA) is the union that represents approximately 500 law enforcement professionals who serve the city of Madison as either police officers, detectives, investigators, or sergeants. In addition to advocating to improve MPD officers' working conditions, MPPOA helps its members navigate the discipline process and files grievances on their behalf as needed. Historically, MPPOA leadership roles have been filled by white men, and there are currently no officers of color in leadership positions.

MPD values diversity and inclusion, but to fully realize those values, it is important that the leadership of the union representing MPD officers reflect the diversity of its membership. Greater participation by officers of color in MPPOA will increase the likelihood that their voices are heard by MPD. MPPOA notes there are ongoing efforts to have diverse representation in leadership positions.

➢ SECTION 2. Seniority Shift Assignments

Recommendation #133:

The City should work to revise the current agreement with the Madison Professional Police Officers Association (MPPOA) in order to provide MPD more flexibility regarding shift and location assignment of officers. [OIR Report #104]

Discussion: The needs of the community and the goal of providing it the best service possible should be the primary considerations when making shift and patrol assignments. Ideally, every shift and station should contain a mix of officers of varying levels of experience and diversity. Under the current agreement with MPPOA, patrol officers, community policing team members, and detectives are able to choose their shift and patrol assignments based on seniority, thus limiting the ability of MPD management to base shift decisions on factors such as officer performance, experience, and patrol district and community needs. There are several drawbacks to the current approach:

- The rule prevents MPD from reassigning an officer who has an antagonistic relationship with members of the community s/he patrols, thus limiting the ability of MPD to use its resources to most effectively serve the community.
- Those with seniority can choose their shifts so there may not be a balance of officers of varying levels of experience and diversity on each shift in each district.
- Officers can switch to another shift with a new supervisor who may not be aware of performance issues.
- The seniority shift rule, with its annual rotations, is potentially distracting in the weeks and months leading up to the change because officers strategize to find an assignment, shift, and supervisor that works best for them.

MPD and the City Attorney do not oppose this recommendation but note it is subject to collective bargaining. MPD also asserts that allowing officers to choose their shifts based entirely on seniority provides a sense of "fairness." But OIR notes, "If MPD takes back managerial discretion in how to deploy officers most efficiently, uses that discretion fairly, and communicates those decisions effectively to its officers, we believe that officers will recognize that the deployment decisions are 'fair' and appropriate and will result in a deployment that will better serve the communities of Madison."

MPD further notes it has the ability to restrict seniority picks based on discipline or performance issues, and has done so, albeit rarely. MPPOA likewise notes the current contract contains at least four references to management's ability to influence the seniority selection of an officer and there have been rare instances in which MPD management has limited an officer's ability to select an assignment based on seniority.

The Ad Hoc Committee recognizes this recommendation is subject to collective bargaining and recommends MPD work with the City and MPPOA in future collective bargaining negotiations to implement this recommendation.

➢ SECTION 3. Performance Evaluations

Recommendation #134:

MPD should reinstitute an officer performance evaluation system that collects and incentivizes progressive policing activity. [OIR Report #105]

Discussion: Employee performance evaluation provides a means to document and enhance employee performance. Such a process is key to accountability, employee incentivization and motivation, and effective management. It is essential for shaping employee activities to align with organizational objectives – in the case of MPD, objectives such as increased use of problem-oriented policing practices and adherence to community-policing ideals.

Research clearly shows that a well-designed performance evaluation system can greatly improve employee performance. However, various traditional performance evaluation systems have been legitimately criticized. Poorly constructed performance evaluation systems can devolve into unpleasant formulaic rituals, demotivate employees with negative feedback, build fear, and undermine teamwork. Moreover, as W. Edwards Deming and others in the quality movement have noted, poor quality is often a function of system breakdowns, not individual failures. But concentrating solely on system problems to the exclusion of human problems can lead to seriously defective people management procedures.

Given Deming's critiques, MPD began experimenting with alternative performance evaluation processes in the 1980s. Until several years ago, a "goal setting" approach was used, but some supervisors did not document the process well enough for it to be meaningful and useful. MPD then abandoned written performance evaluations altogether, leaving only "supervision by walking around," where supervisors are supposed to provide employees with guidance as appropriate on an ongoing basis. As OIR notes: "the process does not require any regular and written assessment of the employee's performance. As a result, there is no current requirement for a supervisor to record the performance of a competently functioning employee."

As OIR discusses in its report, developing a good performance evaluation system for police officers can be challenging. Supervisors have disincentives to distinguish among employees – as OIR observes, "it is most convenient to issue evaluations whereby 'everyone gets an A.'" And it can be difficult to develop criteria that are fair and objective, and not merely a reflection of the relationship between the officer and evaluator. Moreover, both OIR and MPD correctly note that some "objective" criteria – such as number of stops, citations, or arrests – can incentivize conduct completely inconsistent with principles of progressive policing.

But, as OIR further observes:

> The challenges of devising effective evaluative processes, however, has not, in our experience, ever led to MPD's current model of essentially abandoning them. One problem with the elimination of the documented performance evaluation process is that it entirely does away with one device through which a police agency can impact officer performance. For example, if an evaluative process made it clear to officers that a key metric of their performance would be the degree to which they deployed problem-solving techniques in their daily activity, or implemented de-escalation strategies in dealing with combative subjects, the performance evaluation system could be used to incentivize officers to use these tools more frequently. Moreover, a performance evaluation system setting out such goals requires supervisors to devise ways to identify such activity, which can lead to more effective and engaged supervision. A police agency without a performance evaluation system gives up a potentially valuable device to impact officer performance individually and Department culture systemically.

This recommendation integrates closely with other of our recommendations, including: Recommendations #53 [OIR #38], #54 [OIR #39], and #62 [OIR #47] (documenting officer activities, particularly problem-oriented policing activities, through logs or other comparable methods); Recommendations #45 [OIR #30], #56 [OIR #41], and #66 [OIR #51] (obtaining community input on performance of officers assigned to various specialized units); and Recommendation #55 [OIR #40] (developing evaluative metrics for neighborhood officers in conjunction with neighborhoods). Collectively, they articulate a comprehensive vision whereby data and input are obtained as a basis for performance evaluation, allowing accountability and incentivization of progressive policing activities in accordance with community policing ideals.

A great deal of empirical research has been conducted on performance management. MPD could potentially benefit from implementing evidence-based practices in the domain of performance evaluation. Evidence-based measures include goal setting with frequent feedback/coaching, the use of behavioral and learning goals for complex tasks (rather than merely output goals), and a focus on building strengths (rather than a deficit orientation with negative feedback).[93] It may be productive to view performance evaluation as predominantly a development tool.[94] In addition, the U.S. Office of Community Oriented Policing Services recently published an executive guidebook for performance management in community policing organizations.[95] It recommends a procedural-justice-infused approach to performance management, and MPD might find some of its suggestions of value.

In its response to the OIR report, MPD stated: "In 2016, MPD identified re-instituting some type of employee performance evaluation or more formalized feedback mechanism as a department goal (as part of the MPD's equitable workforce plan). Since then, the department has been taking incremental steps towards this end. Last year, the department worked to identify software to assist with the process. We anticipate establishing a work group in 2018 to iron out details of a more formalized process for employee feedback and coaching, with a goal of implementation in 2019. The precise makeup of this process is yet to be defined. The OIR report highlights some of the many shortcomings of traditional performance evaluations, and MPD will strive to implement a process that is meaningful and productive." And in its November 2018 update MPD stated: "The department has also been continuing to move forward with exploring a performance evaluation/employee feedback process; we hope to implement a process in mid to late 2019." The Ad Hoc Committee fully endorses this OIR recommendation, recognizing it as crucial to accountability and the goal of furthering use of progressive policing practices.

Recommendation #135:

MPD should regularly audit performance evaluations to ensure that supervisors are uniformly documenting officer activity objectively and fairly. [OIR Report #106]

Discussion: MPD abandoned annual performance evaluations of its officers in favor of "supervision by walking around"—an informal process that does not ensure meaningful evaluations and produces no written record of an employee's performance. Recommendation #134 [OIR Report #105] specifies, "MPD should reinstitute an officer performance evaluation system that collects and incentivizes progressive policing activity." To be effective, the performance evaluations must be fair and objective. As an evidence-based review (by the Chartered Institute of Personnel and Development — an international professional association for human resource management) of research on performance evaluations found, "The most central factor in how people respond to feedback is whether they see it as fair. In essence, perceived fairness is a prerequisite for effective appraisal."[96] Studies show strong evidence that "[t]he perceived fairness of the performance appraisal process has a medium to large moderating effect on future performance."[97] Various forms of bias can improperly influence performance evaluations (e.g., whether a manager personally likes or dislikes an individual, etc.). Research shows that "[a]ppraisal ratings are more accurate and reliable when the raters are held more accountable for their judgments. From controlled experiments that vary the level of scrutiny that ratings are subjected to, we can see that being aware of accountability reduces bias due to rater's personality…. It also makes their judgements more consistent."[98] Based on this evidence, the Chartered Institute of Personnel and Development notes, "One course of action we would recommend to employers is to 'appraise the appraisal.'"[99] Moreover,

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[93] Gifford, J. (2016) *Could do better? Assessing what works in performance management*. Chartered Institute of Personnel and Development. Retrieved from https://www.cipd.co.uk/knowledge/fundamentals/people/performance/what-works-in-performance-management-report

[94] Moran, M. (2013) Making the appraisal process more constructive. *HR Magazine*. Retrieved from http://www.hrmagazine.co.uk/article-details/making-the-appraisal-process-more-constructive

[95] Branly, S., Luna, A., Mostyn, S., Schnitzer, S., & Wyoff, M.A. (2015) *Implementing a Comprehensive Performance Management Approach in Community Policing Organizations: an Executive Guidebook*. Washington, DC: Office of Community Oriented Policing Services.

[96] Gifford, J. (2016) *Could do better? Assessing what works in performance management*. Chartered Institute of Personnel and Development. Retrieved from https://www.cipd.co.uk/knowledge/fundamentals/people/performance/what-works-in-performance-management-report

[97] Ibid.

[98] Ibid.

[99] Ibid.

in the absence of audits imposing accountability, and given other demands on their time, managers may fail to complete and document meaningful evaluations. For example, in discussing a performance evaluation system that MPD used previously, OIR noted:

> Most recently, a "goal setting" evaluation process was used. As part of the process, the supervisor would discuss future goals with the employee, with the idea that from year to year, performance would be evaluated on how well the employee achieved the goals set out for her or him in the year previous. We were informed that while some supervisors worked with their employees to develop laudable and tangible goals and did a fine job reporting how well their employees achieved their objectives, some supervisors did not document their individual processes well enough for the "goal setting" exercise to be meaningful and helpful.

Thus, the Committee concurs with OIR that MPD should regularly audit performance evaluations. MPD indicated that it intends to reinstate an officer performance evaluation system and, in response to this recommendation, it stated that audits "will be incorporated into the process."

➢ SECTION 4. Obtaining Consent to Search

Recommendation #136:

MPD should collect data on how many times officers request consent to search individuals and places, and on the demographics of those who are subject to such requests and searches. Whenever officers are in range of an operable recording system, they should audio record the entire consent encounter. MPD should amend its SOPs to require, prior to any consent searches, that officers explain to individuals that they have a right to refuse consent. MPD should change its current SOP to require presentation and signature of a consent to search form when audio recording of the encounter is not possible prior to executing a voluntary search. [OIR Report #107]

Discussion: This recommendation originated from OIR 107, which stated that "MPD should change its current SOP to require presentation and signature of the consent to search forms prior to executing a voluntary search."

The Fourth Amendment to the U.S. Constitution protects people against unreasonable searches. Absent a warrant or probable cause, police can only conduct a search if the person to be searched consents. President Obama's Task Force on 21st Century Policing recommends "Law enforcement officers should be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause. Furthermore, officers should ideally obtain written acknowledgement that they have sought consent to a search in these circumstances."

MPD has policies that address consent searches, but none require officers to inform people of their right to refuse to consent to a search. Nor do the SOPs require officers to complete "consent to search forms" as evidence that the search was consensual.

Many people do not understand they can refuse to consent to a search. The law does not require police officers to inform people of their rights before asking for consent to search, and most people are predisposed to comply with any request a person in authority (such as a police officer) makes of them. As OIR noted, routine use of consent to search forms would align MPD policy with the Task Force recommendations and best practices.

MPD opposed this OIR recommendation, arguing that it has an SOP on consent searches that is adequate (in that it requires officers to have an articulable reason for requesting consent to search and requires the officer to document the reason in a report) and contending that consent forms are cumbersome.

The Ad Hoc Committee recognizes the importance of ensuring that Madison residents fully understand their right to refuse to consent to a search. Therefore, it adopts an amended version of this recommendation. The reasons for each part of the amended recommendation are:

1. *MPD should collect data on how many times officers request consent to search individuals and places, and on the demographics of those who are subject to such requests and searches.*

President Obama's Task Force on 21st Century Policing recognized the importance of internal collection and promulgation of demographic data regarding police activity. As a core recommendation, the Task Force recommended that law enforcement agencies should "regularly post on their website information about stops, summonses, arrests, reported crime and other law enforcement data aggregated by demographics."

Data collection serves several important functions. It can be used to build trust with the community by providing transparency and insight into police operations; it allows for both internal and external analysis that can be used to identify problems and improve performance; and it allows for identification of any racial disparity trends.

2. *Whenever officers are in range of an operable recording system, they should audio record the entire consent encounter.*

   The best evidence that a search was consensual is a recording of the entire encounter. This will allow the encounter to be examined in context to determine if the consent to search was truly voluntary. Moreover, this would often provide an easier means of documenting consent than obtaining signature of a form. MPD does not oppose this recommendation but notes that not all squad cars have recording capabilities.

3. *MPD should amend its SOPs to require, prior to any consent searches, that officers explain to individuals that they have a right to refuse consent.*

   This recommendation is consistent with the position of President Obama's Task Force on 21st Century Policing that people should be informed of their right to refuse to consent to a search. The first step to gaining trust and building relationships is to be honest with people and inform them of their rights.

4. *MPD should change its current SOP to require presentation and signature of the consent to search form when audio recording of the encounter is not possible prior to executing a voluntary search.*

   The Ad Hoc Committee recognizes that officers may not always be in range of, or have access to, a recording system. In those circumstances, requiring the use of the consent to search form provides some evidence, albeit not definitive, of the voluntariness of the consent. Again, this recommendation is consistent with the position of President Obama's Task Force on 21st Century Policing.

➢ SECTION 5. MPD Sergeants & Representation

Recommendation #137:

MPD should work with the City and the Madison Professional Police Officers Association (MPPOA) to consider the feasibility of moving sergeants to the Association of Madison Police Supervisors. [OIR Report #108]

Discussion: Currently, the MPPOA is the union that represents all MPD personnel below the rank of Lieutenant. A separate union, the Association of Madison Police Supervisors (AMPS), represents all personnel in the position classifications of Lieutenant, Captain, Assistant Chief and Deputy Chief. Accordingly, personnel at the rank of sergeant are currently represented by the MPPOA, not the AMPS.

A law enforcement officer who is promoted to the rank of sergeant assumes new responsibilities, including the duties to lead and supervise their former peers, ensuring compliance with the agency's SOPs, and holding former peers accountable for violating the SOPs. In Madison, MPPOA represents both officers and sergeants. Therefore, the potentially competing interests of sergeants and officers are represented for all labor purposes by the same union. When sergeants and officers are in the same union, there is a risk that sergeants who recommend disciplinary action against an officer will be shunned by the membership, thus creating an impediment to sergeants performing their supervisory duties. Also, the union can be in the position of advancing a grievance against a sergeant, who they are then required to represent, thus creating real and potential conflicts of interest.

MPD and the City Attorney note this recommendation is subject to collective bargaining. MPD further states it has not experienced problems with the current arrangement. MPPOA's position is that the rank of sergeant is best represented by MPPOA and that having sergeants in the union has never interfered with sergeants performing their jobs as supervisors and holding officers accountable.

The Ad Hoc Committee agrees with OIR that sergeants should be moved to AMPS given inherent conflicts of interest and impediments to supervisors' intent on ensuring accountability under the current system. The Committee recognizes this recommendation is subject to collective bargaining and recommends MPD work with the City and MPPOA in future collective bargaining negotiations to implement this recommendation.

➢ SECTION 6. Dispatch Services

Recommendation #138:

MPD training staff should work with the Dane County Department of Public Safety Communications to establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year. [OIR Report #109]

Discussion: MPD has not been entirely satisfied with some aspects of the function of the 911 center. OIR noted that "[a] key to continued improvement, and an MPD priority in this arena, is to enhance 'police-specific' training opportunities for the call-takers and dispatchers who staff the center. MPD does currently conduct a training block at the academy for dispatchers, and all new dispatchers are required to do an eight-hour ride-along with an MPD officer. In addition, all dispatchers are sent to an abbreviated 16-hour Critical Incident Partner training facilitated by the UW-Madison Police Department, and some have attended the 40-hour Critical Incident Team training taught by MPD. Managers at the County 911 center acknowledge that it would be useful for their communicators to do more training with MPD personnel, but training budgets are thin. MPD could assist by establishing itself as a regular presence at the quarterly in-service training for dispatchers. MPD has occasionally presented a class at this training, and reports that it is always available to do so when asked, but in the past MPD has only been requested to send trainers around a particular issue or concern. A better practice would be for MPD to work with the 911 center to set a regular schedule for MPD to teach at the communicators' in-service training so that dispatchers receive regular, ongoing training from MPD officers at least once a year on important, law enforcement related concerns." The Committee concurs on the value of such regular, quarterly MPD participation in training of dispatchers. MPD stated in response, "MPD is committed to working with the Dane County Public Safety Communications Center to ensure that a high quality of service is delivered to the public. The department is certainly willing to explore providing training to communicators as appropriate. Obstacles include the availability of training time (based on resources and competing training needs for the 911 Center) and the availability of MPD resources to prepare and present training."

Recommendation #139:

MPD should work with Dane County 911 center to develop scenario-based interagency training to better integrate the functions of patrol officers and dispatchers, particularly with regard to calls for service involving persons in mental health crises. [OIR Report #110]

Discussion: OIR noted that all new MPD recruits spend two hours observing dispatch operations, but that increasing the frequency of contact between officers and communicators through joint training would allow both groups to better connect, understand each other's challenges, and find ways to more effectively work together. This type of cross-training could be particularly valuable for handling calls involving mental health related situations. The amount and type of information conveyed in such situations can be crucial—for example, informing an officer that a person is diagnosed bipolar is not particularly helpful unless accompanied by specific behavioral indicators. Cross-training, along with more effective communication between the Mental Health Team and the communications center's managers and trainers, could help clarify such issues and establish specific expectations. Working through scenarios involving individuals in mental health crisis could hone tools for both dispatch and officers and help devise optimal responses to those calls. For example, in a call involving a person in crisis, the dispatcher may have an intrinsic incentive to hand off the call quickly to officers arriving on the scene, so that the dispatcher can attend to the next call, but this may not be the most effective way to deal with someone in crisis, especially if the dispatcher has developed a relationship with the caller while awaiting police arrival. Joint scenario-based training could address such scenarios in depth. In its January 2018 response to this recommendation in the OIR Report, MPD stated that it "supports this concept, and planning is underway for this type of training to take place in 2018. Long-term

implementation is dependent on willingness and availability of the 911 Center and on MPD staff time to prepare, present and attend."

Recommendation #140:

When MPD convenes a critical incident review, communications issues involving dispatch should be among the topics reviewed, and in cases where the effectiveness of communications is in issue, managers from the Dane County 911 center should be invited to participate. [OIR Report #111]

Discussion: OIR noted that "[c]ommunications by both officers and dispatch often play an important role in determining effective or less optimal responses in critical incidents. Recognizing this, police agencies that conduct robust critical incident analyses routinely invite those responsible for communications to the post-incident review meeting. The participation of a dispatch or communications supervisor often provides helpful insight into the discussion and assists in developing effective remedial plans." MPD stated in response that it "agrees that radio communication can be a critical component of critical incident response, and is committed to this concept." The Committee concurs with this recommendation and recognizes that radio communication issues can be a common contributing factor in critical incidents. For examples, a review of officer-involved shootings in the Las Vegas Metropolitan Police Department (LVMPD) found that "[r]adio communication was the single most prevalent tactical error that occurred during LVMPD OIS [officer-involved shooting] incidents. Forty percent of LVMPD OIS incidents from 2007 to 2011 involved some sort of breakdown of radio communications."[100]

➢ SECTION 7. Hiring & Training MPD Officers

Recommendation #141:

MPD should continue to strive for a diverse recruitment and hiring program, and should regularly assess its criteria and any other hiring process to ensure there is no unnecessary exclusion of persons who otherwise might be excellent officers. [OIR Report #112]

Discussion: MPD has long sought candidates with diverse backgrounds and prefers persons with life experience and higher levels of education. Those tasked with recruiting are encouraged to think creatively about new ways to attract diverse candidates. The Department prides itself on its willingness and desire to hire candidates whose background would not traditionally suggest a career in law enforcement, and it is willing to take calculable risks on individuals who might not seem on paper to be excellent candidates. Though there necessarily are some automatic disqualifiers (e.g., felony or domestic assault convictions), the Department has few of the bright-line rules that are common in other agencies (e.g., a history of juvenile contacts with police, or gang ties, or distant drug use are not automatic disqualifiers for MPD). Its recruiting squad goes to career fairs at colleges in seven states, visiting criminal justice programs as well as sociology and psychology departments to make personal connections with potential recruits. The Department also engages in creative initiatives such as writing to coaches of women's NCAA sports teams in an effort to attract diverse female recruits. OIR praised MPD's recruitment efforts and commitment to diversity and recommended that "MPD should continuously assess its hiring requirements, in keeping with other City efforts, to ensure it does not in advertently exclude persons who might otherwise be excellent police officers. The City is currently engaging in such self-reflection, examining entry tests to see if the knowledge needed to pass is important to effectively serve in the job being sought. If the test requires knowledge not necessary for effective policing, the test may disqualify applicants who might otherwise be well-suited to the position and may cause an unnecessary disparate impact." The Committee concurs with this recommendation. MPD stated in its Response that it "regularly reviews all aspects of the hiring process and will continue to do so."

Recommendation #142:

MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis. [OIR Report #113]

Discussion: As part of MPD's hiring process, candidates are subjected to a psychological examination. The goal of the

[100] Fachner, G. & Carter, S. (2014) *Collaborative Reform Model: Final Assessment Report of the Las Vegas Metropolitan Police Department*. U.S. Department of Justice, Office of Community Oriented Policing Services. Retrieved from https://www.lvmpd.com/en-us/Documents/LVMPD_Collab_Reform_Final_Report_v6-final.pdf

psychological examination is to evaluate candidates' innate personality traits to assess their suitability for careers in law enforcement. The contract psychologists MPD uses examines traits such as impulse control, judgment, honesty, integrity, personal biases, capacity to perform under stress, and ability to deal with supervision. They have also been used by MPD to examine trends that may be of concern – for example, when a number of female applicants dropped out of the Academy, a psychologist was asked to analyze if there was anything about their backgrounds or the training process that may have adversely affected their chances of success. OIR noted, "Another way that the psychologist could be useful would be to identify ways to improve the background investigation process. The Department should regularly ask the psychologists whether there is additional information about the applicants that could or should be obtained that would be helpful to their assessment. In addition, the psychologist should be encouraged when reviewing individual background investigations to identify any important follow up that might provide further helpful insight into the applicant, and MPD should then reopen the investigation to follow the additional leads."

The Committee concurs with this recommendation. It is critical that unsuitable candidates be screened out at this stage, but accurately identifying such individuals can be very challenging. MPD could gain valuable insights from the psychologists about (a) potential systemic improvements to the investigative process and (b) matters that warrant further investigation in specific individual cases. MPD stated that it "supports the concept of soliciting additional input on the overall process, but this will require additional funding as this work is outside the current contractual agreement with the psychiatrists."

Recommendation #143:

MPD should examine whether it would be beneficial to include the M-PULSE Inventory as a pre-employment screening instrument. [CRT #16]

Discussion: Police departments routinely screen recruits with psychological tests, in an attempt to screen out candidates who are likely to engage in problematic behaviors as police officers. In police departments, a small number of individuals are generally responsible for a very disproportionate share of the problems. But detecting candidates who pose an elevated risk is very difficult. Commonly used tests have low predictive power, missing most problematic candidates. The measures used lack consistency and standardization. Most commonly, the psychological testing instruments employed are not specifically designed for law enforcement officers, and to assess law enforcement liabilities. Rather, most tests used are simply designed to detect psychopathology. The most commonly used test is the MMPI-2.

This recommendation, which came to the Committee from the Community Response Team, suggests that a potentially better method would be an instrument constructed on empirically measured links between responses to test questions and subsequent problematic officer behavior. This is the basic approach behind the M-PULSE Inventory, a newer evaluation tool (first released in 2008). The Matrix Predictive Uniform Law Enforcement Inventory (M-PULSE) is a self-report, actuarial instrument used to predict law enforcement officer job performance and liability risk, as well as assist law enforcement agencies in selecting qualified candidates. It is the only law-enforcement-officer-screening instrument based on actuarial modeling. Actuarial measures assess for vulnerabilities and the potential for financial loss through mathematical modeling – in this case, actuarially predicting performance of law enforcement candidates across several domains. It is specifically designed for screening law enforcement officer candidates, unlike generalist psychological testing tools such as the MMPI-2

M-PULSE consists of a 455-item inventory that provides information scoring the candidate on 18 liability scales (for risk in specific areas such as potential for termination, motor vehicle accidents, procedural and conduct mistakes, criminal conduct, lawsuit potential, discharge of weapon, excessive force, etc.) as well as four scales assessing personality characteristics and attitudes that could negatively influence law enforcement work, and two validity scales to assess the degree to which the examinee responded in an open and honest fashion. Research has shown the M-PULSE to be highly accurate in predicting future misconduct. It has also been directly compared to metrics based on the MMPI-2 in several studies and was found to be more accurate in predicting the liabilities (risk for future problems) it measures. Officers who committed acts corresponding to the liabilities generally did not score any differently on the MMPI2 than officers who did not. While the testing on M-PULSE is thus very promising, it should be noted that M-PULSE has been subjected to less research than various other instruments used in law enforcement officer screening (such as the MMPI-2), since it's a newer instrument.

Note that the proposed recommendation is simply to examine whether inclusion of this test would be beneficial during assessment of candidates. It does not impose use of the M-PULSE, leaving that decision up to MPD and the PFC. MPD has no

objection to exploring this and notes there would likely be a cost to adding this to the hiring process, and that any change to the process requires PFC involvement.

Recommendation #144:

MPD should engage community members at the interview stage of its promotional process. [OIR Report #114]

Discussion: Engaging the community on how it wants to be policed and by whom is essential to building trust between the community and police. Involving community members in the interview stage of the promotional process is one way to build trust and garner community support. And as OIR notes, "As civilians outside MPD's culture, community members could provide insight and a fresh perspective on candidates [whom] the MPD interviewers likely already know. Moreover, during the interviews, community representatives will likely focus on issues such as the candidate's ability to productively engage with the community."

MPD currently includes "a civilian (preferably from within the department)" in the oral interview board for closed competitive positions, and also includes a civilian in the oral interview board for the initial hiring process. Community members (and civilian members of the department) are not involved in the promotional process, other than that the Police and Fire Commission must review and approve the list of people recommended for promotion by MPD.

OIR notes, "While we appreciate the value of that process, it occurs at the back end when MPD's tentative decisions have already been made. Having a representative of the community involved in the selection process itself could result in a changed dynamic."

MPD and the City Attorney do not oppose this recommendation but note the process is subject to collective bargaining. MPD specifically notes that the promotional process for detectives, investigators, and sergeants is covered by the Madison Police Professional Officers Association (MPPOA) contract and does not involve a traditional interview, but instead uses an assessment center (essentially a series of tests and exercises) that provides an objectively scored evaluation of the candidates' performance designed to evaluate technical, job-related knowledge, followed by a portfolio presentation to the Chief of Police. Though this creates a structural barrier, OIR notes that these protocols could be reconfigured if community input is highly valued.

In its November 2018 updated response to the OIR report, MPD stated that it is currently working with MPPOA to incorporate civilians "with subject matter expertise in relevant areas" into the existing assessment center process. It also notes that the promotional process for command ranks is at the discretion of the Chief and currently does not include a traditional panel interview, but that "the promotional process for the rank of Captain in 2018 involved a scored scenario with four community members serving as participants and evaluators."

The Ad Hoc Committee believes that engaging community members—particularly individuals truly representative of the community—in an interview stage could be of great value during the promotional process and recommends that MPD work with the City and MPPOA in future collective bargaining negotiations to implement this recommendation.

Recommendation #145:

MPD should provide mentors for promising officers from underrepresented groups to help them prepare for and be motivated to apply for promotions. [Findley #40]

Discussion: This recommendation came to the Committee indirectly through conversation with an MPD officer of color, who thought it would be very helpful, and is based on the recognized need of the MPD to fortify relationships with minority communities by ensuring representation of persons of color in the ranks of command staff. MPD supports the concept, and informed the committee that it already "has a formal mentorship program, where all newly hired officers are paired with a veteran officer/mentor. Commanders and supervisors are encouraged to identify promising officers – including female officers and officers of color – and provide support and mentorship to them. This can include providing encouragement, or more direct support (such as identifying relevant training to attend)." MPD thus notes that along these lines, it already provides considerable support for all officers, including officers of color. The Committee commends the MPD for this, but encourages the MPD to engage in even more formalized mentoring approaches for promising officers from underrepresented groups, geared to facilitate their promotion.

Recommendation #146:

MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation. [OIR Report #115]

Discussion: To MPD's credit, its emphasis on diversity means that each recruit class includes students with some degree of experience with the distinctive communities they will be assigned to police. However, for some, new officers, the first experiences they have with persons of color, or homeless individuals, or someone living with mental illness, is in a traditional law enforcement role. MPD has worked to educate its new officers on the constructs of explicit and unconscious bias and how such biases can result in disparate treatment of members of the community. Beyond the cultural competence training and Judgment Under the Radar programs introduced in the Academy, training staff work to bring people from the community into the Academy to share their unique perspectives. However, a classroom setting is not ideal for these encounters and does not go far enough toward exposing students to diverse communities in a positive way. OIR noted that "[o]ne way to address this gap – and one utilized by some other agencies – is to devote Academy time to having students work constructively with members of diverse neighborhoods. In at least one other agency we are aware of, recruits are assigned to work with community-based programs for two weeks and assist in providing social service assistance to the neighborhoods. In addition to the value of having future officers relate to the community outside of and prior to their law enforcement responsibilities, the experience also encourages students to recognize the value of such programs and to begin to think of ways to integrate broader problem solving strategies when they embark on their law enforcement careers." The Committee believes that the experience, cultural competence, and mindset gained from such an approach would be very valuable, and that it should be implemented. MPD noted in its Response that "[t]he suggested concept is one that MPD supports, though it would require extending the pre-service academy by two weeks (which will have a cost)."

Recommendation #147:

MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds. [OIR Report #116]

Discussion: Each MPD Academy graduate is ranked on a set of objective criteria that is largely based on performance on academic tests. This class ranking assigned to new officers determines seniority rank in the class, which has potentially long-term impacts on the officer's career. For example, the choice of patrol and shift assignments are largely based on seniority.

As OIR noted:

> There is concern that the Academy ranking system may give unfair advantage to those who come to the Department with a strong educational background and history of success in academic settings. Historically, students of color and from other diverse backgrounds, or those who have followed less traditional paths into law enforcement, have not always performed best on the objective tests. Though these students bring life experience the Department values, and indeed sought out in recruitment, they feel that diversity of experience is undervalued as they begin their careers because of the weight given to class rank.

Mike Gennaco of OIR further explained the reason for the recommendation:

> This … recommendation came from conversations we had with line officers at the police department, particularly the newer line officers, and for those who ended up with a lower rank coming out of the Academy, they felt that that unfairly caused them to not have as much flexibility in shift assignment, etc., based on what they thought was fairly arbitrary criterion in the academy. And then there was a perception among some minority officers we talked to that ranking had a disparate impact.

OIR advised MPD to "examine its class ranking system to determine whether empirical evidence confirms the view that the Academy class ranking system disproportionately impacts students from diverse backgrounds." MPD noted in its response to the OIR report that it would task the MPD Equity Team with reviewing the academy class rank process and making recommendations for improvement if needed.

MPD subsequently provided the Committee with a short MPD Equity Team analysis that used Madison's Racial Equity and Social Justice Initiative (RESJI) Fast Track Tool, but there was no demographic data attached and no actual analysis of demographic data appears to have been done. The RESJI analysis stated that "those who are better at taking written tests have a greater advantage of scoring higher," much as OIR pointed out in making this recommendation. But the disparate impact was never measured. The MPD Equity Team concluded that, apparently because the MPD tests are facially neutral, the current system does not create any disproportionate impact on recruits from communities of color or low-income communities. The MPD Equity Team also noted that one minor aspect of the scoring system (awarding merit points to recruit officers) provided room for subjectivity, introducing the potential for bias, and MPD stated that this component of the system would be reviewed and improved.

But it is important to note that whether a system is facially neutral does not address empirical questions of disparate impact. The key question appears to remain unanswered. MPD stated that it "supports additional analysis of the system from an equity perspective, though a rigorous, data-driven analysis would require external professional assistance (with a resulting cost)." It is the position of the Ad Hoc Committee that a proper, data-based analysis must be done. It is also worth noting that if funding were not available, simple statistical analyses of the demographics of class/seniority rank would be trivial to perform, with no associated monetary cost.

Recommendation #148:

MPD should evaluate whether using Academy class rank for purposes of seniority places outsized importance on such criteria, or whether there are alternatives for determining the "seniority" of students in the same class. MPD should report to the Common Council and to the Independent Monitor at the end of each academy the demographics of each class, including race, ethnicity, gender, and socioeconomic background and a demographic comparison of those who received seniority based on class rank. MPD should work with the Common Council to develop the reporting process. [OIR Report #117]

Discussion: As articulated in Recommendation #147 [OIR Report #116], there is a concern that the current MPD seniority ranking system has a disparate impact, disadvantaging officers from diverse backgrounds. There is a need to actually analyze demographic data to determine whether the perception of a disparate impact is valid and its extent.

If the concerns about disparate impact are supported by the data, and to the extent the Department needs to rank students to create an order by which officers express preference for job assignments, the Department should evaluate whether using class rank for seniority places too much importance on this criterion and whether it should use other ways to determine "seniority" of students from the same class. There are many possible options. As OIR noted, MPD could use an officer's application date or the date he or she accepted the preliminary offer of employment, or it could use a random lottery system. Alternatively, it could use metrics based on factors tied to lived experience and relevant skills (cultural competency, languages known, etc.), or a weighted combination of such metrics with class rank.

The initial OIR recommendation stated: "MPD should consider whether using Academy class rank for purposes of seniority places outsized importance on such criteria, or whether there are alternatives for determining the 'seniority' of students from the same class." The Committee changed this item from a suggestion ("MPD should consider whether") to a directive ("MPD will evaluate whether"). It also added a requirement that demographic data, including race, ethnicity, gender, and socioeconomic background for class/seniority rank be provided to the Common Council and Independent Monitor at the end of each Academy class.

MPD Assistant Chief Wahl indicated that years ago, MPD had experimented with assigning new recruits seniority randomly, and that this had adverse effects (e.g., undercutting incentives for students to give maximum effort during the academy). However, as noted above, one option could be some combination of class rank and other factors, retaining a degree of reward and incentivization for academy performance but ameliorating disparate impacts. MPD also argued that the effect of class rank on the career of an officer is diminished over years of service, as additional recruit classes with lower seniority enter the department. But OIR noted in response, "officers and former officers of color that we talked to did indicate to us their 'perception' that Academy class rank was important and impactful on their subsequent career."

Assistant Chief Wahl also noted that MPD does not currently collect information on recruits' economic backgrounds. However, the Committee believes that socioeconomic diversity is of importance and often overlooked, that disparate impacts on recruits from low-income communities should be examined, and that there is no intrinsic barrier to collecting such data (as many institutions do). Assistant Chief Wahl also expressed concern that making data on demographics and class rank available to the Council could potentially be embarrassing to some individuals if they could be identified (e.g., if there's only one person in a class with a certain gender and ethnic background in a class and they were last in class rank). However, Wahl also acknowledged that this was probably public information, available through an open records request, and committee members expressed confidence in MPD's ability to provide data to the Council in a manner that would not identify individuals in an embarrassing fashion. For example, MPD could report data aggregated over two years (lumping together a larger number of recruits, making it harder to identify individuals) or MPD could report the demographics of the top 50% of the class relative to the class as a whole.

The Ad Hoc Committee thus believes that, to the extent that disparities exist, MPD should evaluate alternatives for ameliorating them, and that data on race, ethnicity, gender, and socioeconomic background should be regularly provided to the Council and Independent Monitor to keep them appraised of the situation.

Recommendation #149:

MPD should regularly solicit the Madison community for topics to be presented at the pre-service Academy or during in-service training. [OIR Report #118]

Discussion: Regular in-service training is important to replenish perishable skills, provide new skills, and implement changes in practice. MPD officers receive 24 hours of in-service training each year in three separate eight-hour days. One of these is district-specific, where all officers from a given district meet as a group to address topics of particular importance in their district. Another generally addresses state-mandated training topics, such as refresher training on vehicle pursuits, first aid, or Taser use. The third in-service day is used by MPD to cover topics the Department chooses. Ideas for these training days come from various sources. The flexibility of the in-service training day is an asset for the Department, allowing it to train officers on timely subjects or to introduce new or innovative concepts or respond to concerns that have arisen throughout the year. In-service training days provide an opportunity for the Department to look "outside the box" of traditional law enforcement training and encourage its officers to look at things from a different perspective. OIR noted, "We encourage the Department to continue to take an inventive approach to its in-service training curriculum." In particular, OIR noted that, just as the Department engages the community in other matters, "the Training Team should, consistent with President Obama's Task Force on 21st Century Policing recommendation, look for ways to expand community engagement in the training process. The Task Force found that the community should learn about and evaluate the existing training within a department and provide input into shaping that same training content and delivery. While MPD does use members of Madison's community to assist in creating and delivering specialized training, there is no regular effort to solicit training topics from its community, either broadly – perhaps through the website or the Chief's blog – or in a more targeted way, by asking mental health professionals, juvenile justice experts, or other stakeholders in the criminal justice system for their ideas." The Committee agrees, and MPD also stated it agreed with this concept. In its supplementary report, MPD stated, "Moving forward, the department will work to increase community input on training topics in several ways:

- A direct link will be added to the MPD Training Section website to solicit and accept input on training topics.
- District command staff will be encouraged to seek input on training topics from the public at community meetings and from their Captain's Advisory Groups.
- The Training Team will solicit input from MPD Community Academy attendees.
- The Public Safety Review Committee will be encouraged to provide input on training topics."

The Committee commends MPD on its responsiveness to this recommendation.

Recommendation #150:

MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern. [OIR Report #119]

Discussion: It is important to keep officers updated on changes in training and other training-related issues as they arise. OIR noted that "[a]nother way to continually provide relevant, timely training updates to officers is to prepare periodic training bulletins that can be electronically distributed to officers. Topics can include particular field challenges that have been identified by training staff, or a lack of knowledge or simple reminders of best practices. Some police agencies regularly prepare training bulletins after a critical incident review identifies a training deficiency. Instead of waiting for the next scheduled in-service training, these issues can be addressed in a written bulletin, giving training staff a medium to effectively and more frequently communicate to officers throughout the year. MPD has occasionally issued training bulletins, and it does routinely publish Legal Updates on changes to the law or its interpretation. The same philosophy behind circulation of Legal Updates supports the routine preparation of training bulletins." The Committee concurs on this recommendation. MPD states that it agrees with this concept, but that "current staffing levels in the Training Team do not allow for this to be accomplished."

Recommendation #151:

MPD should continue to examine training protocols throughout the country and use that review to continue to improve its well-functioning training. [OIR Report #120]

Discussion: MPD uses its training facility and personnel to provide various specialized training classes (e.g., CIT training, Judgment Under the Radar training, etc.) and these classes are open to and utilized by officers from other local agencies. When an agency comes to be viewed as a local leader in education and training, as is the case with MPD, it may ironically reduce that agency's curiosity about new training concepts developed by other agencies. Though MPD does at times sent its training staff out to learn about other agency's training approaches—for example, sending an officer tasked with developing in-service training on de-escalation tactics to Seattle, to observe their federal court-approved curriculum. MPD should support and further develop this practice of examining training conducted by other agencies in Wisconsin and nation-wide, in an effort to continually improve its own programs. MPD agrees and states that it "does this now and will continue to do so." MPD also notes that its lead trainers are members of International Law Enforcement Educators and Trainers Association, which provides a mechanism for exposure to new concepts and national best practices.

Recommendation #152:

MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first-level supervisors. [OIR Report #121]

Discussion: In Madison, there is no formal sergeant supervisory school that a new sergeant must attend prior to assuming supervisory responsibilities. The moderate size of the department and the fact that there is not a large class of new sergeants at regular intervals undercuts the sustainability of such a program. In the past, MPD provided a "Leadership Academy" that was a prerequisite for any officer seeking to become a sergeant, but that was eventually discontinued, apparently due to the small number of individuals utilizing it. In the last few years, in an effort to provide formal exposure to principles of leadership and supervision, MPD arranged for new MPD sergeants go through a specialized round of one-on-one trainings with Department subject matter experts on 20 discrete topics. Theoretically, this "cross-training" regimen is a valuable if unorthodox endeavor. Additionally, more recently, MPD hosted a state Department of Justice supervisory school at its own training facility and sent some of its own newly promoted personnel through that. MPD also experimented with importing curricula from a police leadership training initiative associated with the International Association of Chiefs of Police, but this initiative was not ultimately supported by executive management. Thus, OIR noted that a gap remained. OIR stated, and the Committee agrees, that "[l]eadership certainly can be learned through observation and practice over the course of a career, but this kind of learning can be enhanced and accelerated through education and instruction on different leadership philosophies, techniques, and strategies. The Department should look for opportunities to expose its supervisors, particularly new sergeants, to outside training to broaden perspectives and develop their leadership capabilities."

In its response to the OIR report, MPD stated that it agreed with the concept, and in its supplementary response, it stated,

"The department is moving forward on this recommendation. All MPD sergeants and newly promoted lieutenants received leadership training provided by Virtus Leadership in November of 2018…. A workgroup is also exploring additional training opportunities/processes for MPD's first level supervisors, and MPD will continue to send newly promoted supervisors to the Wisconsin Department of Justice front-line supervision course."

➢ SECTION 8. Sexual Assault Response Protocols

Recommendation #153:

MPD should comprehensively follow a victim-centered, trauma-informed approach for sexual assault response. MPD should review the Police Executive Research Forum "Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault," and modify its sexual assault response policies, procedures and training where necessary to concord with the Guidebook recommendations. We also offer the following specific recommendations:

1) **MPD's sexual assault response policies should explicitly communicate leadership messages and priorities about maintaining a victim-centered, trauma-informed approach (so that they are analogous to model policies in the Executive Guidebook). When developing sexual assault policies, MPD should enlist the help of experts or victim advocates.**
2) **All MPD officers should be well trained on trauma response and the neurobiology of trauma to ensure they are familiar with the range of potential reactions to sexual assault and to provide victims with the best possible services. It is important that responding officers and investigators understand that a victim's self-protective measures in the wake of a sexual assault might not comport with other people's expectations or the objectives of the justice system.**
3) **MPD should do more department-wide scenario-based training for sexual assault response. Scenario based training should be provided on a regular basis to all department members.**
4) **MPD should partner with local advocacy organizations to use experienced victim advocates as actors for scenario-based sexual assault response training.**
5) **Sexual assault cases that MPD has mishandled (or handled suboptimally) in the past should be included in the training scenarios. Such cases should be dissected, looking for where mistakes were made. It is crucial that MPD own its mistakes, maintaining an open-minded, non-defensive perspective, if it is to improve.**
6) **Officers should be educated about common biases, stereotypes, and myths surrounding sexual assault (for example, common misunderstandings about rates of false allegations), and how to counteract these myths to ensure accurate and unbiased investigations. Training and policy should explicitly emphasize that sexual assault cases be investigated in an unbiased manner, free of assumptions and stereotypes about victims. Cases in which this may be important include, among others, same sex couples, male victims, victims with disabilities, and victims with mental illness (mentally ill individuals may often be more vulnerable to sexual assault than the unaffected population, but may be discriminated against in the criminal justice system).**
7) **When interviewing a sexual assault victim, officers should work to build rapport with the victim, use trauma-informed and victim-centered practices, avoid harsh or neutral tones, and accept and document the victim's statement without hesitation. The victim should be treated respectfully and with dignity.**

   Officers should remember that an interview of a sexual assault victim is not an interrogation and should be careful about asking questions that may come across as judgmental or victim-blaming. Detectives should ask the victim for a full account of what happened using open-ended questions, allowing them to speak uninterrupted.
8) **Supervisors and department leaders should recognize officers for displaying competencies in the area of victim sensitivity in investigations and interactions with victims.**
9) **Policies and procedures should adequately incorporate considerations for specific underserved/marginalized populations or communities. Cultural competency and cultural awareness within the department are crucial to providing the best care to victims. Officers should receive training to assist them in their response to non-English speaking victims, victims from diverse racial, religious or ethnic groups or cultures, victims with disabilities, elderly victims, immigrant victims, victims who identify as lesbian, gay, bisexual, transgender or queer (LGBTQ), and victims who are involved in trafficking and commercial sex exploitation. Detectives should be trained to understand how cultural issues may impact victim response, to avoid misinterpreting culturally-based behavior. Practices should be improved with regards to use of interpreter services. That a victim knows some minimal English should not result in interviews being conducted in English when that is not the victim's primary language. Children or other family members should not be used to interpret.**

10) **MPD should maintain open lines of communication with victim advocates and solicit feedback on its performance, utilizing this feedback to improve performance. In responding to sexual assaults, officers should adequately take into account the experience of victim advocates present and have an understanding of victim advocates' privilege.**
11) **Whenever possible, reports should include transcripts of key interviews and, when summarizing key interviews, investigators should use the victim's own words (in quotation marks).**
12) **A case should be classified as "unfounded" only after a thorough investigation demonstrates that the report was false or baseless, and this classification should be avoided except for rare circumstances.**
13) **When cases are charged, MPD should fully inform victims, both orally and in writing, about available services, including the District Attorney's Victim Witness Unit program, with sufficient follow up procedures/assistance.**
14) **MPD should partner with local organizations working in this field to do more public education on sexual assault, including on how common sexual assault is, the prevalence of drug/alcohol facilitated sexual assault (particularly on campus), human trafficking, and the hurdles victims face.**
15) **MPD should take additional steps to maintain the wellbeing of officers who work on sexual assault crimes, given the potential for vicarious trauma and other negative impacts. This should include Mindfulness Based Resiliency Training and implementing a Special Victims Unit wellness program.**
16) **Note that many of these recommendations are also applicable, and should be followed, in cases of domestic violence, human trafficking, or commercial sexual exploitation. This includes the importance of a victim-centered, trauma informed approach. Moreover, note that domestic violence and sexual assault can intersect.** [Taylor #44]

Discussion: This recommendation grew out of a submission to the Ad Hoc Committee by Representative Chris Taylor, who represents Madison's Isthmus and surrounding neighborhoods in the State Legislature:

> I would recommend that the committee look at MPD's "Sexual Assault Investigation" Standard Operating Procedure. The Police Executive Forum published an Executive Guidebook in May 2018 titled "Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault." I believe MPD's current SOP on this topic could be strengthened so that the public, and especially sexual assault victims, has a better idea of what to expect out of sexual assault investigations. For example, a more robust policy might outline victim rights, interviewing victims, evidence collection, working with victim advocates, providing information on resources, and considerations for specific underserved populations or communities.

Recent years have brought increasing societal awareness of sexual assault crimes, particularly with the rise of the "Me Too" movement. For too long, such crimes were often discounted, and police responses to sexual assault crimes have often been suboptimal. In Madison, this was typified by the infamous 1997 "Patty" case, as detailed in journalist Bill Lueders' book "Cry Rape: The True Story of One Woman's Harrowing Quest for Justice." "Patty," a visually impaired rape victim, was disbelieved by police, humiliated and pressured to recant, then charged with falsely reporting a crime after she complained about police mistreatment, before the truth finally emerged that she had indeed been raped.

The Police Executive Research Forum (PERF) developed the "Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault"[101] to aid law enforcement agencies in improving their handling of sexual assault cases. PERF collaborated with the Women's Law Project of Philadelphia to produce this guidebook, with funding from the federal Office of Violence Against Women Technical Assistance Program. A key goal was to identify best practices that all law enforcement agencies could adopt. As PERF notes, the "guidebook presents recommendations for law enforcement agency policies and procedures, accountability mechanisms, training, collaboration, report-writing and file maintenance, crime coding, case management, and public education. Each section includes promising practices that are informed by research and the extensive experience of practitioners, including police officials, prosecutors, advocates, and social service providers, as well as PERF's experience working with agencies across the country." At its core, much of the Guidebook is motivated by a victim-centered, trauma-informed perspective.

[101] Police Executive Research Forum. (2018) *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault*. Retrieved from https://www.policeforum.org/assets/SexualAssaultResponseExecutiveGuidebook.pdf

The Ad Hoc Committee hosted a presentation by Lieutenant Kathleen Riley of the MPD Special Victim's Unit and performed a careful review of the PERF Guidebook in conjunction with existing MPD policies and practices. Many of the specific numbered subrecommendations presented here are drawn in full (subrecommendations 1, 2, 6, 7, 8, 11, 12) or in part (subrecommendations 3, 9, 10, 14, 15) from the PERF Guidebook. See the Guidebook for a more detailed understanding of the rationale for each of these. Other recommendations originated from suggestions by Lieutenant Kathleen Riley (subrecommendations 3, 14, 15) or from proposals by Ad Hoc Committee members, sexual assault victims, or victim advocates. For example, in the context of discussion of the "Patty" case, Ad Hoc Committee member and former MPD Assistant Chief Luis Yudice suggested subrecommendation 5 (that sexual assault cases that MPD has mishandled in the past should be included in training scenarios, to learn from mistakes) and the value of the concept was immediately apparent to all. Specific subrecommendations were articulated where there was evidence that existing MPD policies or practices could be improved or further optimized.

➢ SECTION 9. Investigative Protocols

Recommendation #154:

In the interest of preventing false confessions and enhancing community trust, MPD should adopt a policy, and provide corresponding training to all investigating officers, providing that, apart from the deceit inherent in appropriate undercover operations, interrogating officers should not, except in extraordinary circumstances, and when feasible with the prior approval of supervisory staff, utilize deceit about the material facts of the case during interrogations. [Findley #38]

Discussion: For decades, the dominant interrogation tactic employed by most police departments in the United States has been the Reid Technique, or a variant of that approach. Under this approach, police are trained to make an early determination of a suspect's guilt and then to shift from an information-gathering "interview" to a guilt-presuming "interrogation." The goal of an interrogation, under this method, is not to obtain information, but solely to obtain a confession. In its most rigorous form, the Reid Technique involves a nine-step process designed to isolate a suspect, break the suspect down, convince the suspect that he or she will be convicted (by for example, telling the suspect about overwhelming evidence collected, which often includes lies about evidence that does not actually exist), and make confession appear to be the best choice under the circumstances, offering the best resolution to a bad situation (by suggesting leniency or a moral justification for the crime). The method has proven to be very effective, but unfortunately it is so powerfully psychologically coercive that it has been proven effective at getting confessions from the innocent, as well as the guilty. Indeed, nearly 25% of all DNA-based exonerations of wrongly convicted people in the United States—almost all in serious cases like rape and murder—have been in cases in which the accused was coerced into confessing falsely.

Much to its credit, the MPD does not teach or employ the Reid Technique, but instead utilizes less overtly coercive practices. But at least one vestige of the Reid Technique remains—police in Madison are permitted to employ deceit when they question suspects. The Committee believes that deceit by police officers, except in undercover operations (where deceit is of course inherent and unavoidable), should be prohibited in all but the most exceptional circumstances, for two reasons:

1) The record of wrongful convictions demonstrates that use of deceit during questioning of suspects, particularly deceit in the form of false claims about evidence, runs too high a risk of inducing a false confession. The MPD informed the committee that its officers do not routinely utilize deceit, but it objected to a blanket ban on deceit (as originally proposed) because it believes that in rare circumstances deceit is necessary. The Committee, however, notes that most European nations ban deceit during suspect interrogations, and that those interrogations continue to produce confessions at rates comparable to those in the United States, and often with more and richer information in the confessions and related statements. Given the MPD's concerns, however, the Committee modified this recommendation from a complete ban on deceit to strict limitations on the circumstances in which deceit can be used during questioning of subjects. The Committee believes, additionally, that approval by a supervisor prior to use of deceit in most cases can serve as an important reminder to officers and detectives about the risks and disadvantages of deceit and can help to ensure that it truly is limited to extraordinary circumstances.

2) Additionally, for a department striving to gain the trust of and improve relationships with all of the communities it serves, allowing officers to lie to community members is counterproductive. A Department known to lie to individuals it has contact with is a Department that will struggle to earn the trust of the community, especially in those

communities that have been historically subject to stops, arrests, and questioning at disproportionately high rates—the very communities with which police-civilian relations are already the most strained.

Recommendation #155:

MPD should work, in collaboration with the State Crime Laboratories if possible, to develop policies and procedures for submitting information to the crime laboratories that are designed to minimize context and other cognitive biases in forensic analyses. [Findley #39]

Discussion: The goal of criminal investigations is, of course, to identify and apprehend the true perpetrator of any given crime. Increasingly, police across the country, including in Madison, rely upon the state or local crime laboratories and other forensic science experts to analyze crime-scene evidence to develop leads, exclude innocent individuals, or develop evidence that can be used to convict the perpetrator. The last two decades, however, have revealed that many of the forensic sciences the system has come to rely upon lack basic scientific validation and can at times produce erroneous results. As the National Academy of Sciences (NAS) (the nation's pre-eminent authority on scientific questions) concluded in 2009, after an exhaustive examination of the state of forensic sciences in America, "With the exception of nuclear DNA analysis, however, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source." Indeed, among the known wrongful convictions in this country since 1989, flawed or mistaken forensic science evidence has consistently been one of the leading contributors to those false convictions.

The NAS, and numerous scholars both before and since its 2009 report, have identified context and cognitive bias—what the NAS and other federal scientific bodies refer to as "human factors" in forensic analysis—as one of the leading causes of forensic error. Specifically, because so many of the forensic disciplines rely upon subjective judgment of the forensic analyst, those judgments are susceptible to contamination resulting in unintended skewing, when the analyst knows facts of the case that seem to point to a particular individual but that are not relevant to the analyst's scientific work. Routinely, police submit requests for forensic analysis to the laboratories that include not only information essential to enable testing, but also extraneous, biasing information, such as information about whom the police believe committed the offense, whether the suspect has confessed or an eyewitness has identified the suspect, the suspect's prior record, etc. A fingerprint analyst, for example, needs to know the basic nature of the crime and where to look on a piece of physical evidence, and needs to have prints to compare to crime scene evidence, but the analyst does not need to know which of those prints came from the suspect, or any of the other potentially incriminating evidence outlined above. Providing that kind of non-domain-relevant information serves no legitimate purpose but does make it very difficult for the analyst to make truly objective judgments about what can be gleaned from comparison of various fingerprints.

To enhance the reliability of forensic testing, MPD can help solve this problem by creating policies and procedures, and by training personnel on those policies and procedures, to ensure that MPD detectives and other personnel who submit information to the State Crime Laboratories and other forensic experts provide only that information to the laboratories that the analysts need to do their work, and that they refrain from contaminating the process with extraneous and biasing information. The State Crime Laboratories are currently very engaged in efforts to improve the scientific bona fides of their work, and likely would be very amenable to working with the MPD to craft scientifically appropriate policies and procedures.

As any scientist knows, for any type of scientific testing to have any validity, it must be "blind" testing, to the greatest extent possible. MPD can help ensure that its evidence meets that standard.

➢ SECTION 10. Staffing Analysis

Recommendation #156:

For purposes of assessing staffing levels and needs, and making requests for personnel expenditures to the Common Council, the MPD should find ways to capture and convey data on both patrol and non-patrol officer staffing levels, and to ensure that staffing levels of all categories are not underreported to the Common Council. [CRT #15]

Discussion: To determine police staffing needs, various police departments, including MPD, perform workload analysis. This includes estimating the amount of time officers spend on reactive policing activities (i.e. responding to resident calls for service) versus proactive policing activities (i.e. self-initiated activities).

No objectively justified, universally accepted standard exists for police staffing allocation and workload. However, a common convention (endorsed by US Office of Community-Oriented Policing Services, the International City/County Management Association Center for Public Safety Management, and other professional organizations) is that about 60% of a department's officers should be assigned to patrol, and about 60% of a patrol officer's time should be reactive. For example, the study, "How many officers do you really need? A Review of 62 Police Agencies Analyzed by the International City/County Management Association Center for Public Safety Management," notes:

> There should be approximately 60 percent of the total number of sworn officers in a department assigned to the patrol function. According to the table the mean patrol percentage is 66.1 percent. In other words the average department in this study assigns about two-thirds of its officers to patrol…. The ratio of dedicated time compared to discretionary time [also termed reactive versus proactive time] is referred to as the "Saturation Index" (SI). It is CPSM's contention that patrol staffing is optimally deployed when the SI is in the 60 percent range. An SI greater than 60 percent indicates that the patrol manpower is largely reactive, and overburdened with CFS [calls for service] and workload demands. An SI of somewhat less than 60 percent indicates that patrol manpower is optimally staffed. SI levels much lower than 60 percent, however, indicate patrol resources that are underutilized, and signals an opportunity for a reduction in patrol resources or reallocation of police personnel.[102]

In contrast to the average U.S. police department, MPD assigns a substantially higher percentage of its officers to specialized units (Community Policing Teams, Neighborhood Officers, etc.) that perform predominantly proactive policing, and a lower percentage of its officers to patrol (i.e. substantially less than 60%). This reflects Madison's historical commitment to community policing and is, we think, a good thing. But simultaneously, in analysis of patrol staffing, MPD targets a relatively low 50% reactive time for patrol officers (rather than 60%) and treats a higher percentage as understaffing. Such an approach appears to effectively consider Patrol Division in isolation (as though it were operating alone in the field). However, as the US Office of Community-Oriented Policing Services notes (in "A Performance-Based Approach to Police Staffing and Allocation"): "Agencies developing a specialized unit have less need to increase the discretionary time for patrol officers to devote to community policing…. Some communities might want officers to be available for patrol for at least half their shift. Others, like Chicago, devote considerable resources to specialized patrol units; as a result, beat cars need less time for officer-initiated activities."[103]

In analyzing and targeting an appropriate ratio of reactive to proactive time, consideration should be given to the overall composition of units in the field, since in the case of MPD, Patrol Division is not operating alone in the field. If Madison wishes to commit to a 1:1 reactive: proactive allocation of time, comprehensive estimates of time spent on reactive and proactive policing activities, taking into account all units in the field (including predominantly proactive specialized units) appear needed

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[102] McCabe, J. (2012) *An analysis of police department staffing: How many officers do you really need? A Review of 62 Police Agencies Analyzed by the ICMA / CPSM*. International City/County Management Association, Center for Public Safety Management. Retrieved from https://icma.org/sites/default/files/305747_Analysis%20of%20Police%20Department%20Staffing%20_%20McCabe.pdf

[103] Wilson, J.M. & Weiss, A. (2014) *A Performance-Based Approach to Police Staffing and Allocation*. U.S. Department of Justice, Office of Community Oriented Policing Services. Retrieved from https://cops.usdoj.gov/RIC/Publications/cops-p247-pub.pdf

for rational and informed decision-making by elected officials. In addition, estimates of MPD staffing requirements based on comparisons with other cities should employ sufficiently comparable cities. For example, a population ratio analysis using cities that are predominantly larger or higher in crime, or a comparable cities analysis including a benchmark city with much higher crime and incarceration rates, would not provide a representative result.

Staffing analysis for police departments is a complex topic and, given limitations in expertise of committee members, the language of the original CRT proposal was amended to convey the key concept that staffing levels of both patrol and non-patrol units should be captured and taken into account, and that overall staffing levels should not be underreported to the Council, but without being overly-prescriptive on the details of how this should be done.

➢ SECTION 11. Officer Wellness

Recommendation #157:

MPD should integrate into its staff psychologist/peer support program an annual wellness support program that mandates annual mental wellness assessments with ongoing stress management counseling, restorative support and restoration practices built into police shifts. With all officers participating in this program, it's fundamentally equitable. No single officer's participation will appear out of the ordinary thus protecting them for an invasion of privacy or being ostracized. The annual wellness assessment will not be a fitness for duty evaluation except when a therapist, as part of their ordinary duties, is required to disclose information to protect the public from harm. The City of Madison should provide sufficient funding to support these assessments. [CRT #24]

Discussion: Policing is a high demand/low control profession that requires constant peak performance levels. Studies show that these kinds of professions present unique health risks and increase the probability of mental and physical health problems and therefore call for optimal mental and physical healthcare.[104] Officers are legally and ethically required to maintain good physical and mental health in order to perform their duties; however, several obstacles stand in their way.

One obstacle to achieving such care is treatment resistance from officers stemming from a common fear that colleagues and superiors might view seeking help as a sign of being unreliable or weak, and that they may be denied promotional opportunities or even fired.[105] In 2018, the State of Illinois passed a widely supported law preventing law enforcement officers from being fired for seeking mental health treatment to address this perception.[106]

Another obstacle that exists specifically for Wisconsin officers is that PTSD is not considered a worker compensation injury unless it results from extraordinary stress beyond what is normally experienced by most officers on the job.[107] Officers are thus denied medical coverage for treatment if they develop the condition from the relatively high day-to-day stresses of their job. In 2017, a bill was introduced[108] to remedy this issue but did not make it past the Workers Compensation Committee in the Department of Workforce Development due to opposition from representatives of the insurance industry.

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[104] Redman, J. (2018, Jan. 23) Why do cops avoid counseling? Eight myths about law enforcement officers and mental health treatment. *Counseling Today*. Retrieved from https://ct.counseling.org/2018/01/why-do-cops-avoid-counseling-eight-myths-about-law-enforcement-officers-and-mental-health-treatment/

[105] Ibid.

[106] WQAD Digital Team (2018, Aug. 27) *New Illinois law lets police seek mental health services without fear of getting fired*. WQAD. Retrieved from https://wqad.com/2018/08/27/new-law-lets-police-seek-mental-health-services-without-fear-of-getting-fired/

[107] SFM (2018) *When is PTSD covered by workers' compensation*? Retrieved from https://www.sfmic.com/when-is-ptsd-covered-by-workers-compensation/

[108] 2017 Assembly Bill 434. Wisconsin State Legislature. Retrieved from https://docs.legis.wisconsin.gov/2017/related/proposals/ab434

While rates of officer suicide[109] are challenging to track with absolute accuracy, what is known shows that officers are dying by their own hand more than in the line of duty and that the rate of officer suicide exceeds the national average.

The problem is acute enough[110] that Congress passed the Law Enforcement Mental Health and Wellness Act of 2017 which "directs the Department of Justice, in consultation with the Department of Defense and the Department of Veterans Affairs, to develop resources to equip local law enforcement agencies to address mental health challenges faced by officers. It also makes grants available to initiate peer mentoring pilot programs, develop training for mental health providers specific to law enforcement mental health needs, and support law enforcement officers by studying the effectiveness of crisis hotlines and annual mental health checks."

Recruits of the Madison Police Department must pass a wellness screening in order to be hired by MPD but nothing mandatory occurs once they are on the job experiencing a range of traumatic events. Currently, MPD officers may seek help on a self-referral basis and MPD has a peer-support program, but apparently it is not used much. This is common across the country and it is for this reason that some police officers have come forth to request that there be mandatory stress management throughout their careers.[111] Rates of PTSD, addiction, stress-related diseases, divorce, domestic violence and suicide tell us that officers need preventive and proactive wellness care to restore their minds and bodies after repeated stressful and traumatic circumstances and doing so will better ensure their ability to serve the public safely and well. Courts have frequently referred to the fact that law enforcement agents are entrusted with an "awesome power," including with respect to use of force, and thus, ensuring officer mental wellness is of importance and benefit not only to officers themselves, but also to residents of the communities they police.

The original recommendation proposed by the CRT consisted of the first three sentences of the recommendation above. MPD's initial response to the CRT proposed recommendation noted that, "... [within MPD, w]ellness consultations are required after certain officer involved critical incidents, and in 2019 the department will begin mandatory wellness consultations for a small number of employees with particularly challenging assignments. MPD would welcome funding to expand wellness support and service for employees. A mandatory, agency-wide program might create some unanticipated issues or objections, but the department supports additional resources to expand current wellness offerings."

MPD Assistant Chief Vic Wahl expressed general support for the concept, but some concern that if the wellness screening and care were conducted as a test of fitness for duty, officers would not want to participate. Wahl told the Committee:

> As long as we're not blurring the lines with these being fitness assessments .... I think it's right in line with what we're doing with small groups this year, mental health check-ins…. So certainly, we are absolutely supportive of doing everything to support officers and moving forward and doing something like this…. I think this is an area we're willing to explore, but there's going to be a funding component to it – pretty significant…. The sort of the pilot we're doing this year for a small group of employees is, they have mandatory time where they're going to meet with someone. The provider doesn't tell us anything.... [I]t's between them and the provider, and if there's issues or concerns or, for the treatment, that's for the employee and the provider. Now, if there's something called the fitness for duty … then the physician, the provider is working for us, and they're saying, yes, this person is fit to come do that – it can be a physical condition or could be a psychological condition…. Clearly, [with mental wellness sessions that aren't fitness for duty evaluations] I think some of the issues … with officers' behavior and trying to intervene early, would come up during this process. And I think we're fully supportive of that. I think it's just the mechanics of how it works, and how we frame it…. If we tried to phrase it as a mandatory fitness for duty for every employee, I'm quite confident that the employees and MPPOA will not be supportive of that. I think they'll support the check-in model that we're doing now because they've been part of those discussions.

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[109] Olson, A. & Wasilewski, M. (2016, Sept. 7) Suffering in silence: Mental health and stigma in policing. *PoliceOne*. Retrieved from https://www.policeone.com/police-products/human-resources/articles/218917006-Suffering-in-silence-Mental-health-and-stigma-in-policing/

[110] House Republicans (2017) *The Importance of Mental Health Among Police Officers*. Retrieved from https://www.gop.gov/the-importance-of-mental-health-among-police-officers/

[111] Thomas, T.S. (2018, March 21) PTSD: 'The Dirty Little Secret of Law Enforcement'. *The Crime Report*. Retrieved from https://thecrimereport.org/2018/03/21/ptsd-the-dirty-little-secret-of-law-enforcement/

Committee members also noted that if this were set up as a fitness-for-duty evaluation, officers might not be fully forthcoming, open, and honest in the sessions, out of concern for job security, reducing the efficacy of the counseling.

However, Committee members also recognized the need to flag any officers who, during the mental wellness assessments, revealed themselves to be a risk to public safety. For example, in 2013, MPD noted upon reviewing the mobile data system messages of one officer involved in a recent officer-involved shooting, "this message content, combined with his repeated messages containing threats and references to violence, gives the perception of a frustrated and angry individual on the brink of aggressive action."[112] The deteriorating mental health of such an officer might have been clearly apparent in a mental-wellness assessment, and in such a case, a therapists could have warned MPD, allowing a tragedy to be averted. In Wisconsin, psychotherapists do have a "duty to warn or protect" third parties, established not by statute, but by the Wisconsin Supreme Court case *Schuster v. Altenberg* (1988) and subsequent case law. As *Schuster* states: "a 'duty' exists when it is established that it was foreseeable that an act or omission to act may cause harm to someone. *A. E. Investment*, 62 Wis. 2d at 483. Consequently, the duty to warn … is not limited by a requirement that threats made be directed to an identifiable target." *Schuster* recognized that psychotherapists encounter difficulties in attempting to forecast, but that they need only to utilize reasonableness standards (under the criterion that the individual "may cause harm to someone"), and that the duty extends from readily identifiable victims to any unforeseeable third persons who are injured by foreseeable harm. Moreover, Wis. Stat. § 51.17 authorizes health care providers to disclose records to fulfill a duty to warn third parties.

For the reasons articulated above, the Committee agreed upon adding the following language to the original proposed recommendation: "The annual wellness assessment will not be a fitness for duty evaluation except when a therapist, as part of their ordinary duties, is required to disclose information to protect the public from harm. The City of Madison should provide sufficient funding to support these assessments." It is worth noting that the Americans with Disabilities Act does permit mandatory periodic medical screening, including psychological testing, of employees whose jobs implicate public safety,[113] and this has been expressly noted by the Equal Employment Opportunity Commission in its guidelines (with police officers specified as an example).[114] However, the mental-wellness assessments envisioned in this recommendation, though mandatory, would have a substantially different intent and approach. Information disclosed in the therapeutic relationship would remain confidential and not come back to MPD, except when a therapist, as part of their ordinary duties, is required to disclose information to protect the public from harm. MPD appears to be in support of such a program and Assistant City Attorney Marci Paulsen told the Committee that this arrangement is "definitely something that would be legal."

Recommendation #158:

MPD should establish a policy to ensure the privacy and confidentiality of all officers as they participate in the mental wellness program. [CRT #25]

Discussion: As discussed in the justification for Recommendation #157 [CRT #24], among police officers, resistance to mental wellness care stems from a common fear that colleagues and superiors might view seeking help for mental health challenges as a sign of being unreliable or weak, and that they might be denied promotional opportunities or even fired. Ordinarily, if an officer were to seek the assistance of a licensed mental health professional on their own, their department could not legally demand to know whether they did seek counselling, or what the results of the counselling was. The Health Insurance Portability and Accountability Act of 1996 prevents the non-consensual release of patient health data by healthcare professionals except under very limited circumstances. Given a number of common myths, however, officers are often not

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[112] Brogan, D. (2018, March 8) Shielded. *Isthmus*. Retrieved from https://isthmus.com/news/cover-story/officer-stephen-heimsness-hid-another-cops-rifle-without-being-punished-month-later-he-killed-paul-heenan/

[113] Martin, D.V. (1998) 911: How Will Police and Fire Departments Respond to Public Safety Needs and the Americans with Disabilities Act. *Legislation and Public Policy*. 2, 37-141; Gonzales, J. (2006) "A Matter of Life and Death - Why the ADA Permits Mandatory Periodic Medical Examinations of 'Remote-Location' Employees. *Louisiana Law Review* 66(3). 681-731; Mayer, M. J., & Corey, D. M. (2016). Current issues in psychological fitness-for-duty evaluations for law enforcement officers: Legal and practice implications. In C. L. Mitchell & E. Dorian (Eds.), *Police psychology and its growing impact on modern law enforcement*, pp. 93-117. Hershey, PA: IGI Global

[114] U.S. Equal Employment Opportunity Commission (2000). *Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA).* Retrieved from https://www.eeoc.gov/policy/docs/guidance-inquiries.html

fully aware of the extent of privacy protections with respect to mental health care by licensed professionals.[115] As an additional protection for law enforcement officers, the U.S. Supreme Court has affirmed that the confidential relationship between a psychotherapist and an officer is privileged (*Jaffee v. Redmond* (1996)).

These same protections do not, however, extend to peer counseling programs. According to Counseling Today, a publication of the American Counseling Association:

> Limits to confidentiality vary by department and the standards may be different than those that licensed professionals have. The peer support member must disclose these limitations in the first meeting. ... most peer support teams are also expected to report crimes and sometimes policy violations. Outside of those limitations, conversations between a peer support member and an officer are confidential.[116]

Moreover, apart from privacy concerns about disclosure of the *content* of information revealed in counseling, officers might be concerned if it becomes known how many times they see a counselor, particularly if they utilize counseling beyond the minimum number of sessions specifically mandated by the Department for all officers.

Therefore, in addition to the generally strong confidentiality laws that already exist regarding protected healthcare data, and as an added assurance to its officers that participation in any counseling programs (either by licensed therapists or peers) will be held in strictest confidentiality, MPD should clearly articulate a confidentiality policy for its mental wellness programs for officers.

Recommendation #159:

The City of Madison should advocate for changes in Wisconsin State Statutes to allow law enforcement officers to receive workers' compensation and duty disability for PTSD acquired as a result of the day to day traumas and stresses of police work, as outlined in recently introduced legislation. [CRT #43]

Discussion: Relative to the civilian population, police officers experience traumatic events at a greatly elevated frequency – with measurements showing an average rate of three traumatic events for every six months on the job.[117] Such events can range from violent altercations to depressing events, such as handling a deceased individual. This places police officers at elevated risk of post-traumatic stress disorder (PTSD). Studies have found a rate of PTSD among officers of 7-19%, compared to a rate of 4% in the general population.[118] Moreover, PTSD increases suicide risk, and the rate of suicide among police officers greatly exceeds the national average (to date for this year, 41 officers have been killed by felonious assault[119] whereas 163 officers have taken their own lives[120]).

In Wisconsin, the major obstacle that prevents most officers with PTSD from receiving needed compensation and medical care is Wisconsin State Statute §102.42. Under §102.42, if a law enforcement officer is diagnosed with PTSD and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that officer may not receive workers' compensation benefits (or duty disability) unless the officer can demonstrate that the PTSD resulted from an "unusual stress of greater dimensions than the day-to-day emotional strain and tension that similarly-situated employees must experience." Courts and insurers have consistently concluded that, since seeing horrific car accidents, infant deaths, shootings, etc. is a normal part of police work, an officer who develops PTSD from any of these events cannot receive compensation. An officer was recently denied compensation when she developed PTSD after she fatally shot a gang member and then lived with repeated threats of retribution over a period of years, since these events were judged to not be sufficiently unusually stressful for the profession.

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[115] Redman, J. (2018, Jan. 23) Why do cops avoid counseling? Eight myths about law enforcement officers and mental health treatment. *Counseling Today*. Retrieved from https://ct.counseling.org/2018/01/why-do-cops-avoid-counseling-eight-myths-about-law-enforcement-officers-and-mental-health-treatment/

[116] Ibid.

[117] Patterson, G. T. (2001). The relationship between demographic variables and exposure to traumatic incidents among police officers. *Australasian Journal of Disaster and Trauma Studies*, 2, 1–9.

[118] Klimley, K.E., Van Hasselt, V.B., & Stripling, A.M. (2018) Posttraumatic stress disorder in police, firefighters, and emergency dispatchers. *Aggression and Violent Behavior*. 43, 33-44.

[119] Officer Down Memorial Page (2019) Retrieved from https://www.odmp.org/search/year/2019

[120] Blue Help (2019) Retrieved from https://bluehelp.org

Thus, currently, most Wisconsin police officers with PTSD acquired as a result of their occupation are ineligible for workers' compensation.

In 2017, a bill was introduced[121] in the Wisconsin legislature that would have created a presumption, for the purposes of workers' compensation, that PTSD in a public safety employee arose out of the employment, and would have removed the requirement to show that the PTSD was caused by unusual stress of greater dimension than that experienced by other, similarly-situated officers. This bill died due to opposition from representatives of the insurance industry when it was brought before the Workers Compensation Advisory Council of the Department of Workforce Development (which advises the Legislature on workers' compensation law).

This year, another draft bill[122] is being considered by the Workers Compensation Advisory Council, and the Council has informally agreed upon a proposal to cover PTSD for up to 32 weeks. As the analysis by the Legislative Reference Bureau states:

> The bill provides that if a public safety officer is diagnosed with post-traumatic stress disorder by a licensed psychiatrist or psychologist and the mental injury that resulted in that diagnosis is not accompanied by a physical injury, that public safety officer can bring a claim for worker's compensation benefits if the conditions of liability are proven by a preponderance of the evidence and the mental injury is not the result of a good-faith employment action by the person's employer. Under the bill, such an injured public safety employee is not required to demonstrate a diagnosis based on unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by similarly situated employees as required under School District No. 1 v. DILHR, 62 Wis. 2d 370, 215 N.W.2d 373 (1974).

If this bill receives active support from constituents across the state, it is more likely to ultimately be approved by the Council, and then the Legislature. The Ad Hoc Committee believes that the City of Madison should support removal of the statutory impediments to adequate compensation and treatment for officers suffering from PTSD.

PART VI: Accountability

➢ SECTION 1. Administrative Discipline: Issues of Employee Misconduct

Recommendation #160:

MPD should provide accessible literature at its stations, encouraging feedback regarding the performance of its officers, including blank complaint and commendation forms. [OIR Report #122]

Discussion: External complaints and commendations are two types of important public feedback on the performance of MPD personnel. Both types of input should be encouraged by MPD. OIR noted that complaints or commendations could be submitted online by accessing MPD's website, or by telephone, email, or in person at MPD stations, and that complaint and commendation forms were also available at Madison public libraries. However, OIR noted that, while MPD's station lobbies had other informational messages, they did not have complaint or commendation forms readily available – an option OIR had encountered elsewhere. The Committee agrees that these forms should be provided at district stations. In its response to this recommendation, MPD stated that the unavailability of these forms at district stations was inadvertent, and that all the relevant forms had now been made available at its stations.

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[121] State of Wisconsin 2017 Assembly Bill 434. https://docs.legis.wisconsin.gov/2017/related/proposals/ab434

[122] State of Wisconsin, 2019 Bill LRB-0740/1. *An Act to amend 102.42 (1); and to create 102.17 (9), 102.42 (1p) and 102.44(7) of the statutes; relating to: claims for compensation for post-traumatic stress disorder by police officers and fire fighters under the worker's compensation law*. Retrieved from https://drive.google.com/file/d/18jBqSm6uo4ULMRnpA-9FhLqSM9Ee2cLM/view?usp=sharing

Recommendation #161:

MPD should remove the 90-day limit from its SOP on investigation of complaints and investigate all complaints that allege a violation of rules. [OIR Report #123]

Discussion: OIR noted that MPD policy placed an arbitrary 90-day limit on submission of complaints for investigation following an incident. The SOP stated:

> As a general rule, citizen complaints will not be investigated if the complaint is received more than 90 days after the alleged incident. If such a complaint is brought forth, it will be limited to a supervisory review of the available information, unless the complaint involves an alleged criminal violation, a significant rule violation (such as excessive use of force), or the complainant can show good cause for not making the complaint within the specified time limit.

OIR pointed out that of the numerous law enforcement agencies they had worked with, none placed a time limit on investigation of complaints. Complaints provide both a basis for accountability and an opportunity for an agency to learn about concerns raised by its community. Thus, OIR argued, and the Committee agrees, that complaints more than 90 days old remain important to investigate. MPD responded that, in practice, it investigates complaints outside of the 90-day limit "when warranted," but it acknowledged "the potential for this to discourage incoming complaints" and stated that it would remove the time limit. MPD has now modified the SOP to state that all complaints will be investigated. The Committee applauds MPD for making this change.

Recommendation #162:

MPD should codify its current practice to expressly indicate in its SOP that it is committed to investigating anonymous complaints. [OIR Report #124]

Discussion: OIR noted that MPD policy did not indicate that MPD would accept anonymous complaints. OIR stated that, "[w]hile potentially difficult to investigate, if sufficient leads exist to move forward, the agency should make every effort to do so…. The current PSIA [Professional Standards and Internal Affairs] leadership has informed us that…it would be and has been receptive to investigating such complaints if received. We encourage this correct approach to be memorialized for future guidance." The Committee concurs with this recommendation and MPD has now amended its SOP to state that "[a]nonymous complaints will be accepted and investigated based on the available information."

Recommendation #163:

MPD's SOPs should be revised so that every complaint alleging a policy violation receives a PSIA number. [OIR Report #125]

Discussion**:** OIR noted a major "fork in the road" for MPD's discipline process when allegations were originally received, evaluated, and disseminated for further investigation. Under the policy that existed during the OIR review, allegations of unlawful conduct or significant rule violation were provided a PSIA (Professional Standards and Internal Affairs) number and were investigated by PSIA, and some "lower level conduct violations" were handled similarly, when formal discipline was anticipated. However, complaints that were considered lower level conduct violations and were considered unlikely to result in formal discipline (either because of a lack of merit, or the perceived sufficiency of lesser interventions) were entered as a "Conduct Review" rather than being provided a PSIA number, and these were generally investigated with less thoroughness and were usually handled by supervisors at the unit of origin. OIR stated:

> [T]he designation process is concerning for a number of reasons. First, the outcome of internal investigations should be governed by the facts collected during that investigation. The Department's process suggests that the triage about whether a matter gets a PSIA number is dependent on an anticipated result before evidence can possibly be complete. More significantly, the assumed discipline level has the potential to influence outcomes prematurely, in both a procedural and substantive way. For example, investigations that might benefit from more formality and rigor (for the sake of the subject officer as well as the process) do not always receive it, while established misconduct that might actually warrant formal discipline is addressed through milder remediation.... In assessing the materials provided to us, we found that gaps in the evidence, or outcomes that surprised us with their leniency, tended to occur in cases that had been characterized as

> "Conduct Reviews." ... In our view, and certainly with some exceptions, an investigation should follow a standard level of formality and thoroughness until such point that a more refined determination of its seriousness can be made. Indeed, the scope of a given case may well widen depending on how it proceeds, and the degree to which the officer accepts responsibility may well impact the decision on whether discipline is appropriate…. The better system is to assign a PSIA number to all complaints in which a violation of MPD rules is alleged.

The Committee concurs with this recommendation, as did MPD, by changing practice and its SOP accordingly.

Recommendation #164:

MPD should change its policy so that all interviews of victims, witnesses, or complainants to internal investigations that could result in discipline are recorded unless the situation proves impossible or if a civilian witness declines.
[OIR Report #126]

Discussion: It is critically important that the public have confidence that MPD will thoroughly investigate and properly resolve complaints made against it. Essential to engendering confidence is to have a policy requiring the recording of all interviews made during an internal investigation that could result in discipline. The only exceptions to the recording policy should be when it is impossible to record the interview or when a civilian witness declines to have the interview recorded. At the time of the OIR review, the MPD SOP on Professional Standards and Internal Affairs Complaint Investigation did not require every interview to be recorded. The SOP provided that audio recording was discretionary, and that the decision on whether to record should consider the severity and complexity of the allegation, the location and relevance of the interview, and the willingness of the interviewee to have the interview recorded. That policy is not consistent with best investigative practices. In response to this OIR recommendation, MPD noted that transcribing these interviews may lead to increased costs. However, the reality is that recordings are only transcribed if an issue arises, so a policy change will likely not lead to greatly increased costs. Most interviews will never be transcribed. If real disputes arise, then the ability to transcribe the interviews will be essential to fair and transparent resolution of the issues. Further, lack of resources should not be a reason to not implement policy changes that are consistent with best practices.

In May 2019, MPD moved toward adoption of this OIR recommendation. The SOP retained the original list of factors to consider in making a decision whether to audio record an interview, but added the clause, "When the allegations, if proven true, would likely result in discipline, complainant interviews should be recorded unless it is impractical to do so or the complainant declines to have the interview recorded." This policy change does move MPD toward best practices, but it is worth noting that the current MPD SOP language is somewhat less stringent than OIR's (e.g., "would likely result in discipline" would appear to set a more restrictive threshold for mandatory recording than "could result in discipline").

Recommendation #165:

MPD should ensure that violations of integrity are appropriately charged as such in the disciplinary process.
[OIR Report #127]

Discussion: In its report, OIR registered concerns about MPD's disciplinary process and noted that it appeared that violations of integrity (i.e., a serious form of misconduct) were not always appropriately charged. For example, in a case where an officer photocopied the exam of another officer and submitted it as their own work, MPD characterized the matter as a "Performance of Duties" violation and handled it with a Letter of Reprimand (the lightest possible sanction), rather than charging it as an integrity issue involving cheating. Because any truthfulness matter can also be considered a violation of performance of duties, decisions to charge such cases only as the latter can seriously undermine accountability. OIR noted: "Some police agencies have a 'you lie, you die' philosophy in which they assert that any integrity issues will be addressed consistently and exclusively through termination. While we are not adherents to such a rigid approach, it appears that … an offense that appears to have been a serious breach of integrity was characterized another way."

In response, MPD stated that it "is committed to a robust system of internal accountability" and the Madison Professional Police Officers Association stated, "[W]e agree that violations of integrity are serious and should be dealt with appropriately."

Recommendation #166:

MPD should consider whether there is sufficient accountability in its disciplinary process regarding violations of integrity and force. [OIR Report #128]

Discussion: It is critically important that the public have confidence that MPD will hold its employees accountable for violations of integrity and force. MPD uses a disciplinary matrix that categorizes offenses and the range of standard sanctions. The matrix is designed to promote consistency and fairness in disciplinary actions. OIR found evidence of a potential pattern of leniency in discipline, including breeches of integrity handled as lesser violations, sanctions weaker than those specified in the disciplinary matrix, and minimal use of suspension days. MPD's philosophy that the goal should be to reform officer behavior and have officers accept responsibility, rather than to punish, is laudable. But OIR expressed some concern about whether consequences for violations are significant enough to offer appropriate accountability and send a firm message. MPD notes it is committed to a robust system of internal accountability. This recommendation demands nothing more than that MPD itself re-assess whether its disciplinary process is demanding sufficient accountability. The recommendation is significant, nonetheless, especially in light of the role envisioned for the Independent Monitor proposed in the Committee's Recommendation #1. Central to ensuring there is sufficient accountability in the disciplinary process is an independent monitor who would review internal investigations and provide an assessment of potential violations of policy, outcome, and level of discipline independent of MPD.

Recommendation #167:

MPD should expand its restorative justice disciplinary program to authorize and address courtesy violations or other low-level violations involving police/civilian contacts. [OIR Report #129]

Discussion: Restorative justice is a framework applied in situations of wrongdoing as an alternative to retributive punishment. It emphasizes repairing harm—recognizing the needs of the person(s) harmed, the needs of the community in order to heal and restore, and the needs of the person who caused the harm. Restorative justice is an essential component of an effective disciplinary system. OIR states that:

> It appears from the language of MPD's policy, however, that the use of restorative justice is limited to performance issues. Other police agencies have used these remedial principles in a broader array of situations. For example, officers who have found to have been discourteous or who have violated a Department's social media policy could be asked to write a letter of apology to the complainant. This type of remediation more directly addresses the transgression and has the added benefit of atonement to complainants in the true spirit of restorative justice.

MPD contends that it uses restorative justice as part of its disciplinary process to address a broad array of issues, not just performance issues. The Ad Hoc Committee encourages use of restorative justice for courtesy violations and other low-level violations involving police/civilian contact. This is likely to provide better remediation of officer behavior and greater satisfaction to victims of violations and could facilitate building trust between MPD and the community.

➢ SECTION 2. Mediation & Other Tools for Public Connection

Recommendation #168:

MPD and the City should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process. [OIR Report #130]

Discussion: Mediation provides an alternative complaint resolution mechanism.[123][124] Under the existing MPD complaint process, when a civilian files a complaint about officer conduct, MPD conducts an internal investigation. If the investigation shows violation of policy, discipline is imposed, generally including some form of remediation. The complainant is not involved in the process, other than filing the complaint and being notified of the final result.

Many municipalities (e.g., Minneapolis, New York City, Boston, New Orleans, Portland, Milwaukee, Washington D.C., San Francisco, etc.) now handle some police complaints through a mediation process. Mediation involves the informal resolution of the complaint through a face-to-face meeting in which a professional mediator serves as a neutral facilitator and where both parties ultimately agree that an acceptable resolution has been reached. As OIR notes, "When the mediation is successful, it proves to be consistent with principles of restorative justice, allows both participants a window into each other's perspectives, and provides an opportunity for productive dialogue." The traditional legalistic complaint-resolution process focuses on fact-finding, pinpointing responsibility, determining guilt or innocence, and punishing those found guilty. In contrast, mediation focuses on understanding, problem solving, and reconciliation.

Mediation is a voluntary and confidential process. Confidentiality promotes candor and open communication. It assures the officer that any apology or acknowledgment of wrongdoing will not be used against them, either by the police department or by a private attorney. Parties entering mediation sign a written confidentiality agreement. Typically, the agreement leaves parties free to talk with others about what was said in mediation, but specifies that all communications, negotiations, or settlement discussions by and between parties is inadmissible and not subject to discovery in any arbitration, administrative adjudication, civil action, or other non-criminal proceeding. Confidentiality of mediation is protected by Wisconsin (Wis. Stat. §904.085) and Federal (28 U.S.C. §652) statutes, which also establish professional standards for mediators. Mediation programs offer officers a tangible incentive because a successfully mediated complaint is not investigated and does not appear on an officer's record (and officers are paid for the time they spend in mediation). Mediation can result in creative, nontraditional outcomes, including agreements to take some type of action outside the mediation session (e.g., an officer agreeing to attend a cultural diversity course). Municipalities vary in the range of complaints eligible for mediation. Complaints involving potential criminal charges against the officer are generally not eligible for mediation and the majority of programs do not permit mediation of use-of-force complaints. Cases involving officers with a history of citizen complaints are ineligible for mediation in many programs, to prevent officers from avoiding departmental discipline for repeated misconduct.

Mediation offers many benefits as a mechanism of police complaint resolution. It is typically quicker, more efficient, and less expensive than the traditional complaint process. In addition, research indicates that both complainants and police officers who go through mediation report greater satisfaction than with the traditional approach. Mediation introduces a new dimension to police accountability—in traditional complaint procedures, an officer accused of misconduct is directly accountable only to other police officers (such as internal affairs investigators) whereas an officer participating in mediation is directly accountable to the community member who filed the complaint. By bringing the parties together in a face-to-face meeting, mediation may be uniquely suited to helping bridge racial and ethnic divides. Furthermore, in mediation, officers are empowered to take responsibility for resolving the problem, in contrast to traditional processes that disempower officers by rendering them passive subjects of investigation. Mediation creates an opportunity for self-expression and participation, including, potentially, apology, whereas in traditional complaint procedures officers are reluctant to say anything that could be interpreted as an admission of guilt. Consistent with the basic philosophy and goals of community policing, it may lessen the

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[123] Police Training and Standards Commission. (2017) *Community Member – Police Complaint Mediation Program Reference Guide*. Maryland Department of Public Safety & Correctional Services. Retrieved from https://mdle.net/pdf/Mediation_Reference_Guide_April2017.pdf

[124] Walker, S., Archbold, C., & Herbst, L. (2002) *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders*. U.S. Department of Justice, COPS. Retrieved from http://restorativejustice.org/am-site/media/mediating-citizen-complaints-against-police-officers.pdf

"us versus them" perspective that can result in community members being viewed in a hostile light. At its best, both citizens and officers may leave the mediation feeling a sense of empowerment and recognition.

In its response to the OIR report, MPD stated that it "supports the concept of utilizing mediation to resolve certain external complaints against officers." The Madison City Attorney's Office offered a number of concerns, but the Committee believes those concerns are inapt. The City Attorney's Office stated that for the recommendation to be effective the "citizen would have to sign a document waiving their right to bring an action against the officer with the PFC" and "a second document waiving their right to initiate a civil action," and that "the police officer would have to sign a waiver document agreeing to accept the results of the mediation and waiving his/her right to appeal the matter to the PFC." The Madison City Attorney's Office also expressed concern that "either party could attempt to argue against the signed waiver, ignore the mediation outcome and proceed with the matter either before the PFC or in civil litigation."

However, most experts in the field believe that requiring waiver of the right to any further action as a precondition to taking part in mediation undermines the basic purpose of mediation, which is to get both parties to discuss the issue and reach an acceptable agreement. It removes the incentive for meaningful participation (e.g., an officer could choose to stonewall) and, thus, very few programs impose such a requirement. Instead, a confidentiality agreement is signed at the outset, and a successful mediation session is documented with a statement signed by both parties (which can be used to prevent either party from attempting to later reopen the case). For the most part, enforcement of mediation agreements for police complaints is not a concern because the final outcome does not involve the exchange of tangible resources. In addition, a review of mediation of police complaints published by the U.S. Office of Community Oriented Policing notes: "The interviews and site visits for this report revealed no breaches or attempted breaches of confidentiality (e.g., a private attorney seeking to obtain mediation records)…. Although concern about confidentiality exists, we could not find a single violation of confidentiality in a citizen complaint mediation case."[125] In most programs, when the mediation is unsuccessful the complaint is returned to the police department or civilian oversight agency for investigation in the traditional manner.

Both MPD and the City Attorney's Office noted that funding would be needed for an external mediator. OIR notes that in some jurisdictions, cost has been mitigated by recruiting volunteers from the legal community or having the independent police auditor facilitate the program. In addition, it is worth noting that police departments with mediation programs have found that the cost of mediating a complaint is generally several fold lower than the cost of investigating and processing a complaint, resulting in net savings.

Many cities have vibrant mediation processes that have served both their communities and police agencies well, and the Ad Hoc Committee believes that such a program would be of benefit to Madison. The Ad Hoc Committee thus endorses this recommendation.

Recommendation #169:

PSIA should continue to build upon its current practices of post-investigation complainant outreach, including the evaluation of cases for possible informal discussion opportunities with involved parties. [OIR Report #131]

Discussion: OIR noted that beneficial dialogues can be had when parties in the complaint process come together and exchange information and perspectives. Such dialogue can allow a "meeting of the minds" and shift both parties' perceptions for the better. OIR commended the Department's commitment to circling back with complainants at the end of the process to provide information and explanation regarding outcomes and noted that this step is surprisingly not required under Wisconsin law. OIR advocated an affirmation by Police Standards and Internal Affairs to look for opportunities to conclude the complaint process on these constructive notes, and the Committee concurred. MPD supported this recommendation and stated that, "[w]hen complaints are resolved, the PSIA Lieutenant or Sergeant regularly will contact and engage the complainant regarding the disposition of the case. These discussions will include efforts to educate and provide transparency into the complaint process and reasons for the disposition. In several instances, complainants or witnesses were invited to view relevant video after the resolution of the complaint, in an attempt to help explain the outcome."

[125] Walker, S., Archbold, C., & Herbst, L. (2002) *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders*. U.S. Department of Justice, COPS. Retrieved from http://restorativejustice.org/am-site/media/mediating-citizen-complaints-against-police-officers.pdf

➢ SECTION 3. Audits, Reports & Interventions

Recommendation #170:

MPD should regularly evaluate serious disciplinary cases to determine whether, pursuant to Department policy, they should be subject to proactive release. [OIR Report #132]

Discussion: The public's call for transparency is closely connected to its pursuit of greater accountability with regard to American law enforcement. Wisconsin has a system that is relatively transparent with respect to confidentiality laws regarding police officer disciplinary records; the state's public records provisions provide the public access, upon request, to summary documents describing an officer's founded disciplinary history. MPD issues quarterly discipline summaries, providing case numbers and very brief summaries of the corresponding violations, to all of the area media outlets. For higher profile, more public types of cases, the PSIA office also has the ability under policy to send out a separate media summary with a synopsis of the incident, the basis for the discipline, and the disciplined employee's name. The policy indicates that whether to issue a summary with identification of the employee will be weighed on a case-by-case basis in determining the "public's right to know about the conduct." OIR noted that, "[d]uring our review, we learned of no instances in which MPD has utilized this provision of its policy." In light of the recent increased interest by some members of the Madison community in access to officer disciplinary records, it would behoove MPD to consider proactively publishing information about high profile or otherwise serious cases that result in discipline, rather than simply including a terse summary in the quarterly reports. Such proactivity would likely instill additional public confidence in MPD's interest in sharing such information to the degree the law and its policy allow. In response to this recommendation, MPD stated, "The department agrees that significant disciplinary or misconduct cases might call for individual public release. This has occurred previously, and the department will continue to do so when appropriate." The Committee encourages MPD to regularly evaluate serious disciplinary cases for individual public release and to provide as much transparency as possible.

Recommendation #171:

Rather than rely entirely on the computer to identify early intervention candidates, MPD's Early Intervention System should regularly request first-level supervisors to identify officers who might benefit from the remedial aspects of the program. [OIR Report #133]

Discussion: In most police departments, a small number of officers generate a disproportionate number of complaints and other risk-associated activities. This has led to widespread implementation of what is referred to as an Early Intervention System (EIS). The goal of an EIS is to identify and intervene to correct individual officers' potentially damaging behavior patterns. An EIS program uses agency-collected data such as uses of force, complaints, internal affairs investigations, lawsuits, and attendance records to identify officers in need. The EIPro EIS implemented by MPD will flag officers when they exceed thresholds for one or more of a designated set of performance measures (e.g., number of complaints). The EIS program is not intended to be punitive but to provide the agency an early indication that an officer may be engaging in problematic conduct so the agency can intervene through mentoring, closer supervision, or additional training to get that officer's career on the right path. Moreover, as OIR noted, "[a] key to success with an EIS is to create a mechanism for allowing human judgement to factor into the alert system. Actively engaging sergeants in the process of identifying officers who may benefit from the program's mentoring and training programs but who may not have triggered any performance alerts will significantly advance the credibility of the system." The Committee concurs with this recommendation and MPD is also in agreement. In its initial response, MPD noted that it encourages supervisors to engage with those they supervise and to be aware of any potential issues, and stated that "an aspect of the Early Intervention System (EIS) deployment/training will remind supervisors that the EIS is not a replacement for their day-to-day supervision and engagement." MPD has now issued an EIS SOP that integrates mentoring, check-ins, and human judgement with data-driven software output.

Recommendation #172:

MPD should press forward toward full implementation of its Early Intervention System. [OIR Report #134]

Discussion: OIR noted that MPD had been discussing some form of an EIS for years, but for technical and philosophical reasons had not moved toward actual implementation until fairly recently. OIR strongly encouraged MPD to move with a sense of urgency to complete its planning and fully implement its EIS program, and the Committee concurred. MPD has now

implemented an EIS and promulgated a "Supervision and the Early Intervention System" SOP. The Committee commends MPD on taking this action and believes it will reduce risk of adverse incidents.

Recommendation #173:

MPD should continue its work on an early warning system and move in the future towards working with Chicago Data Science for Social Good to enhance the early warning system. [PWG #11]

Discussion: It has long been known that in most police departments, a small proportion of officers are responsible for the bulk of adverse events (e.g., complaints, inappropriate use-of-force cases, etc.). For example, it's known that officers who are involved in one questionable officer-involved shooting are far more likely to be involved in additional subsequent shootings. In response, police departments through the U.S. have implemented early intervention systems (also referred to as early warning systems) – systems to identify officers at high risk of future adverse events, to allow early intervention (retraining, counseling, reassignment, or other measures) to prevent adverse events. Such systems allow a department to intervene to avert potential tragedies.

The core element of any proper early intervention system is a computerized mechanism to flag at-risk officers. For example, MPD has recently begun using IAPro (Internal Affairs database software), including the EIPro early intervention platform. Using this, in conjunction with a mechanism that allows human judgment to factor into the alert system, is a worthwhile advance for MPD.

However, almost all existing systems, including those employed by IAPro, use simplistic, inaccurate rules such as thresholds (e.g. 3 complaints in 180 days) to flag officers. Such simplistic, arbitrary, binary threshold approaches don't provide a quantitative assessment of risk and have very limited predictive value – performing only modestly better than chance in flagging officers who go on to be involved in future adverse events. The inaccuracy of flagging based on such an approach can result in the system being ignored (e.g., since too many officers are flagged for intervention) and questions of legitimacy. There's long been a need for a more sophisticated, accurate approach using an actual statistical model or machine learning algorithm.

Fortunately, such an approach – a data-driven, properly predictive early intervention system – has recently been developed by the University of Chicago Data Science for Social Good Fellowship (DSSG) and the Center for Data Science and Public Policy (DSaPP), as part of the Obama White House Police Data Initiative. This data-driven system uses a machine-learning approach, provides continuous risk scores rather than binary flags, can incorporate information on differences between neighborhoods and shifts, and provides a large improvement in sensitivity and specificity. DSSG/DSaPP partners and works with police departments on implementation of the system. Implementations are now being used in the Charlotte-Mecklenburg and Metropolitan Nashville Police Departments, and multiple other police departments have taken steps toward implementation, including the San Francisco Police Department.

The increase in accuracy over traditional systems is striking. For example, compared to the optimized binary threshold system that the Charlotte-Mecklenburg Police Department was using earlier, the DSSG/DSaPP system generated a 76% increase in true positives (i.e., officers who went on to have adverse events over a one-year period) and a 22% decrease in false positives. It was also able to provide insight into the factors most predictive of future adverse events.

An advantage of a predictive score (as generated by such a system), as opposed to a simple binary threshold, is that it's quantitative, with the highest risk corresponding to the highest scores (in the extreme tail of the distribution). This permits a department to prioritize intervention, recognizing tradeoffs and allocating resources to those officers who need it the most. The ability of such a system to incorporate information such as neighborhood and shift is another important advantage (e.g., a given frequency of use of force may be more concerning in an officer assigned to a low-crime beat than one assigned to a high-crime beat). In addition, such a system cannot readily be gamed, in comparison to traditional, known, binary thresholds, for which officers can slightly modify behavior to avoid detection (e.g., not reporting an action taken).

Given knowledge of this program, action item 11 of the President's Work Group report recommended that the Ad Hoc Committee "speak with the University of Chicago Data Science for Social Good statisticians to explore collaboration to develop a predictive early warning system." On September 7, 2017, the Ad Hoc Committee hosted a presentation on predictive early intervention systems by data scientist Joe Walsh of DSSG. After full examination of the question, the Ad Hoc Committee

recommended implementation by MPD. This system will more accurately identify the MPD officers in greatest need of intervention.

Such a predictive early intervention system could potentially be built on top of MPD's IAPro database and could also potentially use other data. The system should be set up to maximize accuracy in predicting risk of adverse incidents and should utilize any data needed for this purpose, including all complaints, even those not sustained, and information from officers' long-term history. A robust early intervention system requires as much information as possible – excluding some types of information (such as old or "unfounded" complaints) would impair performance (e.g., such exclusions have been recognized as contributing to the poor performance of the Chicago Police Department early intervention system).

DSaPP recently partnered with Benchmark Analytics to commercialize the University of Chicago early intervention software. This partnership has also launched a Research Consortium, composed of academics and practitioners, to research how to more accurately identify officers who engage in problematic conduct and to find evidence-based interventions most effective in altering such conduct. MPD should inquire about the most appropriate means of acquiring and implementing suitable predictive early intervention software in the current context.

Recommendation #174:

MPD should develop an SOP that provides direction to officers instructing them to manually engage dashcams and audio microphones whenever they can reasonably anticipate an encounter with an individual or group they may temporarily detain or take into custody. [CRT #20]

Discussion: This recommendation was originally proposed by the CRT as: "Dashcam video and audio mics must be manually engaged in circumstances where automatic initiation of recording is disabled i.e. lights and sirens have been turned off due to the officer's desire to be stealthy for tactical reasons." The rationale was given as: "In Nov of 2012, MPD Officer Heimsness shot an unarmed man engaged in disorderly conduct in an incident that was one of MPD's most controversial both inside and outside of the department. There was no recording of the incident since Officer Heimsness failed to engage his audio recording device. An audio and/or video recording of the incident would have provided important answers to those who did not see the incident and were dissatisfied with the outcomes of the criminal and internal investigations as well as those bothered by the public response." As noted in the In-Car Video System SOP:

> Video recordings … are initiated when:
> a. The squad's emergency lights are activated.
> b. The wireless microphone's record (REC) button or auxiliary (AUX) button is depressed. c. The record button is depressed on the back of the front camera.
> d. The record button is selected in the in-car video software on the MDC.
> e. The vehicle crash sensor is triggered.
> f. The vehicle speed trigger threshold has been exceeded.

In its response to this proposed recommendation as well as the related proposed recommendations CRT #21 and CRT #22 (addressed in Ad Hoc Committee Recommendations #175 and #176 below), MPD stated: "While these specific recommendations are not feasible as proposed, MPD is not opposed to reviewing the In-Car Video SOP for possible modifications to address these concepts." After discussion with MPD Assistant Chief Vic Wahl, the Ad Hoc Committee formulated and adopted an amended version of the proposed recommendation that captures the fundamental intent of the original CRT proposal and that MPD would be amenable to. This would ensure video and audio recording under a broad set of circumstances where it is currently not required – whenever an officer can reasonably anticipate an encounter that may result in detention or arrest. It would thus ensure recording under those circumstances where use of force is most likely and that might require subsequent investigation.

Recommendation #175:

During events that by policy require or recommend the use of recording devices, officers should be required to make a complete uninterrupted audio recording unless a victim or witness refuses to speak while the encounter is being recorded. Records must not be edited and must be real time and continuous. Officers may mute their microphones in situations involving personal conversations or training or mentoring discussions that have no relationship to the events that triggered the activation of the dashcam system. [CRT #21]

Discussion: This recommendation was originally proposed by the CRT as: "During events that by policy require or recommend the use of recording devices, officers should be required to make complete, uninterrupted audio recordings as sometimes evidence does not reveal itself as such until after the fact. Records must not be edited in real time and be continuous. Redactions that pass the 'balance test' may be applied at the time of a records request and the reason for redaction must be reasonably articulated."

The rationale for this proposed recommendation noted: "Current MPD SOPs governing the operation of in-car video allows officers to, at their discretion, mute their microphone during an audio recording. This amounts to editing records in real time which is unwise and potentially harmful to investigations as evidence sometimes does not present itself as such until after the fact."

Per the current In-Car Video System SOP, "Officers may temporarily mute audio recording of conversations between police personnel when such discussions involve strategy, tactics, or supervisor's directives." However, discussions involving strategy, tactics, or supervisor's directives may actually constitute some of the material of greatest importance to a subsequent investigation. Thus, the Committee believes that this information should always be recorded and preserved.

MPD representative Assistant Chief Vic Wahl expressed concern that some victims or witnesses might not be willing to speak to an officer if they were being recorded. The Ad Hoc Committee recognized this as a valid point and amended the recommendation accordingly. Assistant Chief Wahl also noted that some incidents could be very protracted and that not allowing officers to mute their mics would be problematic when they wished to engage in personal conversation that they wouldn't want recorded, or in training or mentoring discussions that were irrelevant to the situation that precipitated the recording. Though policy allowing muting on these grounds might be subject to abuse (i.e., to avoid recording material that actually concerns the incident), this matter does present a legitimate privacy issue (e.g., a policy that did not allow muting of personal conversations, which officers might wish to be private, could be burdensome in a protracted assignment, and likewise it could inhibit free and open mentoring/training discussion of unrelated matters). The Ad Hoc Committee thus amended the recommendation to allow officers to "mute their microphones in situations involving personal conversations or training or mentoring discussions that have no relationship to the events that triggered the activation of the dashcam system." The final sentence of the original CRT proposed recommendation merely restated Wisconsin open records law and was thus discarded. The Committee thus adopted the crux of the proposed CRT recommendation but provided for appropriate exceptions in a manner amenable to MPD.

Recommendation #176:

In any circumstance in which an officer is otherwise required to write a report of the incident, that report must include a statement explaining any decision to mute any portion of the recording or to terminate the recording prior to the conclusion of the incident pursuant to the in-car video SOP. [CRT #22]

Discussion: This recommendation was originally proposed by the CRT as: "Add to part 6 of IN CAR VIDEO SYSTEM SOPS, OPERATION OF THE IN-CAR VIDEO SYSTEM the following language: 'Officers must articulate why they or their supervisor stopped recording the event in their report of the event.'" The rationale was given as: "Current MPD SOPs governing the operation of in-car video allows officers to stop or delete a video recording at their own or their supervisor's discretion. Officers should have to, in their report of said incident, articulate why they or their supervisor stopped recording it."

Part 6 of MPD's In-Car Video System SOP currently Part 6 of MPD's In-Car Video System SOP currently states:

> Once initiated, video and audio recordings should not be terminated until the event is complete Except: 1. When a supervisor authorizes the cessation of the recording. 2. When, in the officer's assessment, there is

no evidentiary value in collecting further video.

The Ad Hoc Committee agrees that MPD should require that the reasons for terminating an in-car video system recording prior to conclusion of an incident be explained in the report of the incident and that, in addition, the reasons for muting any portion of the recording be explained in the report. This would reduce the likelihood of officers muting or terminating a recording without legitimate reason (helping to ensure a more complete audio and video record) and in any potential subsequent investigation would be needed to understand the circumstances of interruptions or termination. The Committee therefore adopted this CRT recommendation, modifying it only slightly to clarify that the recommendation was only intended to apply when circumstances otherwise required the writing of a report and to add a requirement that reasons for any decision to mute the recording (and not just a decision to terminate it) be explained.

Recommendation #177:

At the conclusion of this committee's work, the Common Council should appoint a new committee made up of members of this committee willing to serve and the original body camera committee willing to serve along with a representative from MPD to undertake a study looking into the issues in OIR recommendations #135, #136, #137, #138, and #139.

Discussion: Several of OIR's recommendations concerned body-worn cameras. Whether body-worn cameras should be implemented, and conditions that should govern their use if they are implemented, is a complex and controversial topic. The Ad Hoc Committee believes that, at this juncture, questions associated with body camera implementation require further in-depth, holistic examination, and that this mission should be given to a new committee, composed of those members of the MPD Policy and Procedure Review Ad Hoc Committee and the Community Policing and Body Camera Ad Hoc Committee who are willing to serve, along with a representative from MPD.

A committee of community members (rather than MPD) should guide this process given the sensitive and intrinsically political nature of many of the issues involved (including, for example, consequences for undocumented immigrants, effects on privacy rights, etc.), and in keeping with the principle that in a free and democratic society, critical aspects of the policing function should be controlled directly by the people themselves as much as possible. Members of the two specified committees are well-suited to accomplish this task, given the background they have already acquired in this and related policing issues, and given that these committees were specifically constructed to represent diverse communities in Madison, particularly those most impacted by policing. MPD should also have a seat at the table – a representative from MPD should attend the meetings to provide input, as with both prior ad hoc committees, though as a staff person they would not necessarily be a voting member of the committee.

The Ad Hoc Committee believes that this topic requires additional review and research in substantial part because of recent changes in key conditions and new findings from body camera trials (that have emerged since the original body camera committee concluded its work in 2015). One new consideration, in terms of political context, is that there is now increased concern about deportation actions by Immigration and Customs Enforcement (ICE). Facial recognition technology has advanced rapidly and is increasingly being used by ICE for data mining, and police videos are presumed to be public records, which would potentially allow ICE to access and mine them. Implementation of body cameras in Madison might result in undocumented residents being less likely to call for MPD assistance when it's needed and less willing to interact with officers.

In addition, research since 2015 has greatly altered our understanding of the influence of body cameras. A well-publicized, small, randomized controlled trial in Rialto, California, in 2014, found a large reduction in complaints against officers and use-of-force by officers wearing body cameras,[126] and the reduction in use-of-force in Rialto appears to have been sustained.[127] A larger randomized, controlled trial at the Las Vegas Metropolitan Police Department, published in 2017, is an example of a subsequent study that likewise showed a reduction, albeit smaller, in complaints against officers and use-of-force.[128] However,

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[126] Ariel, B., Farrar, W.A., & Sutherland, A. (2015) The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial. *Journal of Quantitative Criminology* 31(3) 509-535.

[127] Sutherland, A., Ariel, B., Farrar, W., & De Anda, R. (2017). Post-experimental follow-ups—Fade-out versus persistence effects: Rialto police body-worn camera experiment four years on. *Journal of Criminal Justice*, 53, 110–116.

[128] Braga.,A., Coldren, J.R., Sousa, W., Rodriguez, D., & Alper, O. (2017). *The Benefits of Body-Worn Cameras: New Findings from a Randomized, Controlled Trial at the Las Vegas Metropolitan Police Department*, Final report to the National Institute of

many additional trials and meta-analyses have been conducted since 2015, and it is now clear that police body cameras are not having the effects that many expected. In March 2019, researchers from the Center for Evidence-Based Crime Policy at George Mason University published what is now the largest and most comprehensive review of body camera use, covering 70 empirical studies on body cameras' effects, ranging from officer and citizen behavior to influences on law enforcement agencies as a whole.[129] One of the study's main findings is that body cameras "have not had statistically significant or consistent effects on most measures of officer and citizen behavior or citizens' views of police." Moreover, it appears that the consequences of body camera implementation vary widely across municipalities. Differences in outcomes may be mediated by differences in departmental body camera policies and their enforcement.

Though some individual trials, such as those in Rialto and Las Vegas, found a reduction in police use of force, most trials have shown no significant effect on use of force, and the direction of effects has not been consistent across studies. The largest randomized controlled body camera trial in a single city to date, in Washington, D.C., found no significant change in use of force,[130] and a recent large randomized controlled trial in Milwaukee similarly showed no reduction in use of force.[131] The largest multicity randomized controlled trial to date, performed in 10 cities, likewise found no overall effect on police use of force.[132] In some cities body cameras appeared to reduce use of force, but in others to substantially increase use of force. Greater de facto officer discretion about when to use a body camera (such that an officer could frame the nature of the encounter by selecting what was captured on video) was associated with increased use of force,[133] pointing to the crucial mediating effect of policy and how strictly policy was enforced. Moreover, this same multicity study found a significantly increased rate of assault against officers wearing body cameras (potentially due to this tool exacerbating already volatile situations).

In addition, randomized controlled trials found that body cameras reduced the rate of citizen complaints in most, but not all, police departments (likely, in large part, due to a reduction in the number of frivolous complaints or to officers informally negotiating potential complaints by reviewing video footage of the encounter with prospective complainants, discouraging them from filing a complaint).[134] Recent research also shows that viewers are more likely to absolve officers in body camera video than in dash camera video of the same incident because of distortions in perspective (the body camera wearer is less visually salient, and the chest-level placement of body cameras makes the focal subject look taller/larger and thus potentially more threatening)[135].

One of the main goals of body camera implementation has been to increase the public's trust in police. The research indicates that has not happened. Moreover, the comprehensive review from the Center for Evidence-Based Crime Policy notes, "The inability of BWCs [body worn cameras] to impact accountability structures may already be seen in findings that cameras are primarily used by the police (and prosecutors) to increase the accountability of citizens, not officers. The unintended consequences frequently seen from technology are often the result of technology being filtered through the existing values, systems, and cultures of the organization, not hoped-for ones…. It is not clear that BWCs improve [citizens'] views of police or

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Justice, 2013-IJ-CX-0016, retrieved from https://www.cna.org/cna_files/pdf/IRM-2017-U-016112-Final.pdf [https://perma.cc/7R5S-D3XC].

[129] Lum, C., Stoltz, M., Koper, C.S., & Scherer, J.A. (2019) Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*. 18(1), 93-118.

[130] Yokum, D., Ravishankar, A., & Coppock, A. (2019). A randomized control trial evaluating the effects of police body-worn cameras. *Proceedings of the National Academy of Sciences U.S.A.* 116(21), 10329-10332.

[131] Peterson, B.E., Yu, L., La Vigne, N., & Lawrence, D.S. (2018) *The Milwaukee Police Department's body-worn camera program: Evaluation findings and key takeaways*. Urban Institute. Retrieved from urban.org.

[132] Ariel, B., Sutherland, A., Henstock, D., Young, J., Drover, P., Sykes, J., Megicks, S., & Henderson, R. (2016). Wearing body cameras increases assaults against officers and does not reduce police use of force: Results from a global multi-site experiment. *European Journal of Criminology*, 13(6), 744–755.

[133] Ariel, B., Sutherland, A., Henstock, D., Young, J., Drover, P., Sykes, J., Megicks, S., & Henderson, R. (2016). Report: Increases in police use of force in the presence of body worn cameras are driven by officer discretion: A protocol based subgroup analysis of ten randomized experiments. *Journal of Experimental Criminology*. 12(3), 453–463.

[134] Lum, C., Stoltz, M., Koper, C.S., & Scherer, J.A. (2019) Research on body-worn cameras: What we know, what we need to know. *Criminology & Public Policy*. 18(1), 93-118.

[135] Turner, B.L., Caruso, E.M., Dilch, M.A., & Roese, N.J. (2019) Body camera footage leads to lower judgments of intent than dash camera footage. *Proceedings of the National Academy of Sciences U.S.A.* 116(4), 1201-1206.

their behaviors toward police…. BWCs also might exacerbate an already challenged relationship between citizens and the police, especially if citizens expect cameras to be used to increase police accountability and transparency, but officers primarily use them to increase the accountability of citizens."

However, we know anecdotally that video footage has changed some legal outcomes in ways that increase police accountability. As Professor Susan Bandes has observed, "bodycam footage of police officers planting evidence led to the dismissal of dozens of criminal cases in West Baltimore. Prosecutors have on occasion brought charges because of discrepancies between police accounts and video; charges that would not have been brought absent the release of the video footage."[136]

Given the uncertainties raised by the recent research about the effectiveness of bodycams, and the importance of implementing any body-worn-camera system with careful attention to the factors associated with greater success, the Committee believes that, if Madison were to proceed with body-worn camera implementation, a process and policy infrastructure would be needed. As one Committee member noted, "We don't have a process. There's no legislation about body cameras. There's no process about open records…. So before we jump into the lake or jump into the empty pool, we need to put in water, right? So we need to have those processes in place and take things one at a time. I'd hate to just [say] 'here's your camera.' And then what?" This concords with expert opinion that it is critical that policies governing body camera usage be carefully formulated and enacted first, prior to camera rollout.

The Ad Hoc Committee thus recommends that a new committee, composed as described, conduct further review of this general topic and the following OIR recommendations:

> OIR #135: Before a body-worn camera pilot project is implemented, MPD should seek the input of stakeholders—including City leaders, prosecutors and defense attorneys, civil rights litigators, privacy advocates, the community at large, and rank-and-file officers—to identify and prioritize, to the extent possible, the intended benefits and potential drawbacks of any body-worn camera adoption.
>
> OIR #136: Before a body-worn camera pilot project is implemented, MPD should work with stakeholders to develop policies for that implementation consistent with the principles set out in this Report, and with intended benefits identified and prioritized in a manner consistent with the prior Recommendation.
>
> OIR #137: If the pending Wisconsin legislation regarding body-worn cameras is enacted in its current form, Madison should delay implementation of any pilot program until the implications of the legislation on release of body camera footage can be assessed.
>
> OIR #138: Assuming a reasonable consensus can be reached on policy, Madison stakeholders should remain open to funding a body-worn camera pilot project.
>
> OIR #139: If MPD adopts body-worn cameras, it should commit to periodic evaluations (e.g., a one-year, three-year, and five-year review) to assess the qualitative and quantitative impact of the technology on the agency and stakeholders. Such periodic reviews should seek to identify whether the agency should continue its program and, if so, whether policy revisions are necessary to achieve or maximize the identified benefits.

[136] Bandes, Susan A. (2018). Video Popular Culture, and Police Excessive Force: The Elusive Narrative of Over-Policing. University of Chicago Legal Forum (2018), 1-23.

Recommendations with Potential Fiscal Impact

The vast majority of the recommendations the Committee has made can be implemented with no additional commitment of resources by the City. Some of the recommendations, however, will require additional funding for full implementation. The Committee here has identified those recommendations that it believes might have a fiscal impact. For some, the costs might be significant. For others, the funding requirements might be small or even non-existent. The Committee erred on the side of including every recommendation that had at least the potential for requiring additional funding to be implemented in full. The Committee has no ability to estimate the actual funding requirements for these recommendations.

These recommendations are grouped into general categories.[137]

Oversight and Accountability

Recommendation #1. The City should enhance its civilian oversight by establishing an independent police monitor's office staffed by an independent monitor and reporting to a civilian police review body. [OIR Report #146]

Recommendation #3. The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints. [OIR #144]

Recommendation #36. MPD should implement the Special Community/Police Task Force Recommendation to conduct random reviews of footage to evaluate officer performance. [OIR Report #24]

Recommendation #164. MPD should change its policy so that all interviews of victims, witnesses, or complainants to internal investigations that could result in discipline are recorded unless the situation proves impossible or if a civilian witness declines. [OIR Report #126]

Recommendation #173. MPD should continue its work on an early warning system and move in the future towards working with Chicago Data Science for Social Good to enhance the early warning system. [PWG #11]

Recommendation #168. MPD and the City should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process. [OIR Report #130]

Use of Force

Recommendation #97. MPD should amend its force reporting protocols so that, for certain categories of force, at minimum those that are recordable incidents, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it. [OIR Report #79]

Recommendation #98. MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy as well as compliance with any other policies implicated, such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force. [OIR Report #80]

Recommendation #117. MPD should modify its ECD guidelines to require medical clearance of all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel. Medical personnel could conduct this medical screening and removal of darts at the scene, and subjects for whom the screening has found medical conditions, reactions, or injuries, or who are requesting medical attention, should be transported to a medical facility for evaluation and treatment. City medical personnel who may be tasked with providing clearance should be consulted before guidelines are changed. [OIR Report #96]

[137] Some recommendations may correspond to more than one category. In such cases, they were placed in what appeared to be the most suitable category.

Recommendation #118. MPD should train the Police Executive Research Forum recommendation that an ECW deployment that is not effective does not mean that officers should automatically move to their firearms. [CRT #4]

Recommendation #126. MPD should consider deploying additional protective equipment in squad cars, including but not limited to transparent acrylic personal protection shields and Kevlar stainless steel gloves, and provide training in their use. [CRT #1]

Recommendation #127. MPD should consider acquisition and training in additional well-developed, less-lethal tools, such as newer options for chemical sprays and better/safer kinetic weapons. An example of the former is the Piexon JPX4. An example of the latter is the 40 mm platform with appropriate less-lethal ammunition. [CRT 3#]

Recommendation #129. MPD should reach out to the Police of Finland, particularly the Police University College, and send at least one command officer to Finland, to learn about Finnish Police methods (training, tactics, etc.) that may be useful for reducing the frequency of fatal officer involved shootings. [CRT #7]

Training

Recommendation #103. MPD should utilize ICAT as part of its training curriculum. [CRT #10]

Recommendation #79. City of Madison should contract with ProTraining to provide their full training program for all officers. [PWG #2]

Recommendation #150. MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern. [OIR Report #119]

Recommendation #152. MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first-level supervisors. [OIR Report #121]

Recommendation #37. MPD should implement the Special Community/Police Task Force recommendation to train detectives and officers in the use of trauma-informed interviewing skills. [OIR Report #25]

Recommendation #138. MPD training staff should work with the Dane County Department of Public Safety Communications to establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year. [OIR Report #109]

Officer Interaction with the Community and Continued Learning

Recommendation #12. Through resources and other forms of messaging, MPD management should enhance its structural and philosophical commitment to the Judgment Under the Radar program as a means of reinforcing its important work. [OIR Report #4]

Recommendation #14. In addition to CORE, MPD should add a volunteer, incentivized and paid continuous leadership-competency component called a "learning community" with adults and perhaps, older youth, from the public. The members of each learning community should represent a broad cross section of the socio-economic, racial, gender and ability groups that MPD typically interacts with in the community. Look to UW Madison's Leadership Institute to develop learning communities with members of the public who share a range of social identities. [CRT #23]

Recommendation #16. The CORE Team should take advantage of its centralized role in sponsoring and monitoring MPD outreach, and should work to provide rigorous analysis of individual initiatives as to their relative impact and effectiveness. [OIR Report #7]

Recommendation #17. MPD should work to effectively support and incorporate officer-driven outreach efforts within specific communities, such as Amigos en Azul, into its larger community policing strategies. [OIR Report #8]

Recommendation #34. MPD should continue to expand its efforts to create local Captain's Advisory Groups. [OIR #22]

Recommendation #146. MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation. [OIR Report #115]

Recommendation #21. As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention. [OIR Report #11] [for expansion of the Restorative Justice Court]

Recommendation #32. MPD should devise ways to incentivize its bilingual officers to assist in providing translation assistance in the field, including consideration of adopting a pay differential. [OIR Report #20]

Recommendation #57. MPD should devise ways to consistently publicize the community policing activities of its patrol officers as well as special assignment personnel. [OIR Report #42]

Information (Collection and Analysis)

Recommendation #18. MPD and the City should discuss the most efficacious way to analyze the demographic data regularly being collected on arrests, summons, and use of force. [OIR Report #9]

Recommendation #19. MPD should seek a collaboration with statisticians from University of Wisconsin – Madison, or highly-qualified statisticians elsewhere who have researched policing and racial bias, to determine if communities of color in Madison are incurring differential policing. Specifically, analysis should be conducted to determine (a) if rates of stops, arrests, and citations by MPD are correlated with neighborhood racial composition after controlling for crime rates, and (b) if the proportion of stops resulting in arrests or citations (hit rates) differs across racial and ethnic groups. If analyses do show differential policing, MPD should consider measures such as reallocation of policing resources across neighborhoods and corrective training. [CRT #9]

Recommendation #54. In order to be able to gain an evidence-based understanding of patrol officers' problem-oriented policing activity, MPD should develop a system to track and report the specific efforts including results, ongoing efforts, and collaboration with community groups. [OIR Report #39]

Recommendation #147. MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds. [OIR Report #116] [for study costs]

Recommendation #28. MPD should devise additional ways to solicit and encourage feedback from all of its constituents regarding the performance of the Department. [OIR Report #16]

Public and Officer Health

Recommendation #84. The City of Madison should explore through whatever mechanisms it deems appropriate (be it in partnership with the County, exploration of grants, or other mechanisms) to create a dedicated mental health first responder unit, outside of MPD, modeled off the CAHOOTS program in Eugene and Springfield, Oregon, to respond to known mental health crisis. [AHC #64B]

Recommendation #35. MPD should continue to dialogue with the City's Rapid Response Team to further develop a productive working relationship, and to assist in the Team's overarching objective of enhancing trust and providing additional services to the community victimized by a major crime. [OIR Report #23]

Recommendation #40. The Mayor and Common Council should further expand the use of a public health approach to curb violent crimes. [Community E-mail #34]

Recommendation #42. The Madison Metropolitan School District should be encouraged to consider implementing the Becoming a Man program, a cognitive behavioral therapy program for at-risk youth, to improve academic outcomes for at-risk youth and reduce juvenile crime. MMSD should also explore including girls in the program. [CRT #14]

Recommendation #83. The MPD Mental Health Team should work to integrate its volunteer assistants with Department resources in a way that provides consistency in data gathering and analysis tasks. [OIR Report #67]

Recommendation #70. MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues. [OIR Report #55]

Recommendation #76. MPD should quickly fill the position of Mental Health Team sergeant and should maintain funding for this position to ensure effective supervision of the team. [OIR Report #61]

Recommendation #157. MPD should integrate into its staff psychologist/peer support program an annual wellness support program that mandates annual mental wellness assessments with ongoing stress management counseling, restorative support and restoration practices built into police shifts. With all officers participating in this program, it's fundamentally equitable. No single officer's participation will appear out of the ordinary thus protecting them for an invasion of privacy or being ostracized. The annual wellness assessment will not be a fitness for duty evaluation except when a therapist, as part of their ordinary duties, is required to disclose information to protect the public from harm. The City of Madison should provide sufficient funding to support these assessments. [CRT #24]

Recommendation #142. MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis. [OIR Report #113]

Recommendation #143. MPD should examine whether it would be beneficial to include the M-PULSE Inventory as a pre-employment screening instrument. [CRT #16]

APPENDIX 1: RESOLUTION TO CREATE THE AD HOC COMMITTEE

Declaring the City of Madison's intention to review policies, procedures, culture and training of the Madison Police Department by hiring an expert(s) in community policing, law, problem-oriented policing, racial disparities, restorative justice and implicit bias and the creation of an ad hoc committee and amending the 2015 budget to appropriate up to $50,000 from the City's contingent reserve.

WHEREAS, the City of Madison is committed to be an exemplary participant in the national and local dialogue on the role of law enforcement in the community; and,

WHEREAS, the City of Madison understands a community should participate in defining how it wants to be policed and the community then has an obligation to review culture, practices, and procedures and then has an obligation to support the police department in fulfilling its responsibility; and,

WHEREAS, the City of Madison is committed to involving the community in advising and making recommendations to the Mayor, the Common Council, the Police and Fire Commission and the Madison Police Chief on matters of setting policies and procedures that reflect our City's longstanding tradition of community policing; and,

WHEREAS, the City of Madison is committed to transparency of policies, procedures, culture and training within the Madison Police Department; and,

WHEREAS, a comprehensive review of Madison Police Department's culture, training, policies and procedures, is critical to understanding the current status of our police department and identifying if there are areas for improvement, particularly in the areas of racial disparity, implicit bias, of use of force, dealing with people with mental health problems or who are under the influence of alcohol or other drugs, the rights of civilian witnesses, disproportionate contact with youth of color, culturally-related behavioral variations, and other areas,

NOW, THEREFORE, BE IT RESOLVED that the City will allocate up to $50,000 from the Contingent Reserve in the 2015 Budget to hire an expert(s) in community policing, law, problem oriented policing, racial disparities, restorative justice and implicit bias to thoroughly review the Madison Police Department policies, procedures, culture and training; and,

BE IT FURTHER RESOLVED that the City may create an ad hoc committee to

- Complete a thorough review of the Madison Police Department's policies, procedures, culture and training using the report, other resources and testimony and,
- The ad hoc committee will work with staff to establish criteria, issue an RFP, review applications and make recommendations to the Common Council. The contract with the recommended expert(s) will be subject to approval by the Common Council.
- Make final recommendations to the Mayor, the Common Council, Police and Fire Commission and the Madison Police Chief, by July 2016 with interim recommendations when deemed necessary; and,

BE IT FINALLY RESOLVED that the ad hoc committee members will be a diverse body composed of City of Madison residents appointed by the Mayor, including the appointments of two co-chairs, and will include but not be limited to representatives of the African American, Asian, Latino, Native American and LGBTQ communities as well as a diversity of ages, socioeconomic status, and work experiences and organizations in the fields of mental health, youth advocacy and AODA. The appointments by the Mayor to the ad hoc committee will be submitted to the Common Council for approval. Upon completion of this work and the Common Council receiving the recommendations of the ad hoc committee the committee will be dissolved.

APPENDIX 2: TIMELINE OF COMMITTEE MEETINGS WITH TOPICS

The following timeline documents the work of the committee from its inception on November 18, 2015 through the completion of this report on October 18, 2019.

Presentations from invited speakers and main concepts are in bold.

November 18, 2015

Alders DeMarb and Bidar-Sielaff presented the history of the ordinance and the charge to the committee.
Co-chairs appointed.

December 8, 2015

Adopted Robert's Rules.
Conducted an overview of the City's RFP process/Brian Pittelli.

January 7, 2016

Developed a road map, timeline and framework for the committee's work.
Presentation on the findings and recommendations of the Body Camera Ad Hoc Committee report.

February 4, 2016

Presentations from organizations that provide mental health services and those that interact with police: NAMI, Journey Mental Health, Sankofa Behavioral Services, Access Community Health, Freedom Inc., Operation Welcome Home.

February 18, 2016

Presentations from organizations serving communities of color: JEMS Enterprises, Hmong Community (Peng Herr), Latino Consortium for Action, Justified Anger, Black Lives Matter, Young, Gifted and Black.

March 3, 2016

Presentation from Freedom Inc. on interactions between police and communities of color.
Brian Pittelli provided an overview of the city's draft RFP.

April 7, 2016

Continued discussion of the city's RFP and compared and contrasted with the Community Response Teams' recommended RFP.
Voted to have the RFP developed by the committee with support from city staff.

April 21, 2016

Received a report from Gloria Reyes and Brian Pittelli on their research of costs involved in comparable studies nationwide.
Discussion with alders DeMarb and Bidar-Sielaff about seeking additional funding.
Tori Pettaway, Madison Equity Coordinator presented on the city's Racial Equity and Social Justice Initiative.

May 5, 2016

Continued the RFP policy study.
Adopted several sections from the Community Response RFP.

May 19, 2016

Discussed the need to amend the project timeline and funding to hire outside experts to conduct the review.
Voted to amend the work timeline and funding and recommended the allocation of $200,000 from the city's contingent reserve to support the study.

June 2, 2016

Finalized the RFP Process flow and timeline.

July 7, 2016

Meeting Canceled-Meeting date changed to July 14.

July 14, 2016

Reviewed vendor questions and formulated appropriate responses based on the RFP.
Purchasing staff, Pittelli, discussed the RFP scoring process and city guidelines.

August 4, 2016

Presentations by community organizations: Greg Jones, NAACP of Dane County, and Dr. Floyd Rose of One Hundred Black Men.

September 8, 2016

Presentation from Ald. Ahrens regarding the RFP process.
Developed questions for vendors to clarify proposals.

September 15, 2016

Presentations from Dr. Ruben Anthony, Madison Urban League, and Chief Mike Koval.
Reviewed RFP proposals and vendor scores.
Identified three vendors for interviews: OIR, Exiger, and Hillard Hintze.

October 6, 2016

Vendor Interviews: Exiger, OIR, and Hillard Hintze.

October 13,2016

Discussed, scored interviews and made final selection. Proposed the contract be awarded to OIR.

November 3, 2016

Canceled—Lack of quorum.

December 1, 2016

Presentation by OIR, Mike Gennaco and team.
Introduction to CCOC Subcommittee on Police Community Relations.

January 5, 2017

Canceled—Lack of quorum.

February 2, 2017

Update from OIR regarding meetings with the Mayor and city agencies.
Presentations from The Madison Police Community Outreach and Resource and Education Team (CORE) on roles and responsibilities.

March 16, 2017

Presentation from UW Professors Herman Goldstein and Cecelia Klingele on "Refining the Police Function in a Democratic Society".
Presentation from OIR, Mike Gennaco and team.

April 6, 2017

Canceled—Lack of quorum.

May 4, 2017

Presentations by Board of Education Anna Moffitt and MPD Captain Brian Ackeret on the role of police officers in MMSD schools.
OIR update, Mike Gennaco and staff.
Reviewed the Ad Hoc committee's work and process.

June 1, 2017

Alders Bidar-Sielaff, and Rummel presented on recommendations made by the CCOC Subcommittee on Police Community Relations.
Presentation from Deputy Mayor Gloria Reyes on the city's Rapid Response Team.

June 29, 2017

Presentation by MPD's Violent Crime Unit on crime in Madison, trends and use of crime analysis.

July 13, 2017

Presentation and update by OIR and team.
Presentation by Dr. Sam Walker on "Oversight of Law Enforcement Agencies; Strengths and Weaknesses."
Presentation by Police and Fire Commission Attorney Scott Herrick on the Wisconsin Police and Fire Commission System; Origins, Evolution and Current Operations.

August 3, 2017

Presentation by Professor Michael Scott, Director of the Center for Problem Oriented Policing on Root Cause Analysis and Problem Solving.
Presentation by Jacqueline Boggess on the Body Camera Ad Hoc Committee report and on community reactions to its findings and recommendations.

September 7, 2017

Presentation by Lauren Haynes, Assistant Director and Joe Walsh, Data Scientist, University of Chicago, Center for Social Good on Predictive Early Warning and Intervention Systems for law enforcement.
Presentation by Dr. Yasmeen Krameddine on the ProTraining Mental Health System for law enforcement.

October 5, 2017

Presentation from Representative Chris Taylor on Proposed Training and Policies for Law Enforcement on Use of Force and Deadly Force.
Presentation and update by Michael Gennaco and team.

November 15, 2017

Presentation from Michael Gennaco OIR on preliminary recommendations based on a review conducted of MPD.
Review of timeline and process to finalize the recommendations and report.

December 14, 2017

Presentation from Michael Gennaco and staff of written report on the current status of the Madison Police Department and recommendations.

January 11, 2018

Joint Discussion of Common Council and MPD Policy & Procedure Ad Hoc Committee on OIR report and recommendations.
PowerPoint Presentation by Michael Gennaco, OIR.
Q&A with Common Council and Committee members.
Election of new Co-Chairs, Keith Findley and Tom Brown.

February 15, 2018 **(New Chairs, Brown and Findley)**

Presentation and response by the Madison Police Department, Assistant Chief Vic Wahl, on the MPD response to the OIR report.
Review and discussion of the OIR surveys and implications for the final report.

Discussion of the committee's process for moving forward and plans for what the final product to the Common Council will look like.

March 22, 2018

Discussed nature and content of Committee's report to the Council.
Reviewed OIR's report.
Approved a number of OIR recommendations (See minutes for complete list).

April 26, 2018

Presentation by the City of Madison Department of Civil Rights on the City's Language Access Plan. Norman David and Felicia Jones presenting.
Presentation by the Denver Office of Independent Monitor on its role and function. Independent Monitor Nick Mitchell presenting.
Review of OIR's recommendations.
The meeting was adjourned at 6:52 pm due to lack of quorum.

May 24, 2018

Presentation by the Denver Office of Independent Monitor on its role and function. Independent Monitor Nick Mitchell presenting.
Presentation by Attorney Shirley Mora-Jones on the role and function of Lincoln, Nebraska's Citizen Police Advisory Board.

June 14, 2018

Review and discussion of OIR's recommendations.
Discussed and approved a number of recommendations (See minutes).

June 28. 2018

Approved a number of recommendations (See minutes).

July 12, 2018

Recommended amending the membership of the Committee from 15 to 13.
Approved a number of recommendations (See minutes).

July 26, 2018

Approved a number of recommendations (See minutes).

August 9, 2018

Approved a number of recommendations (See minutes).

August 23, 2018

Review of recommendations made by the President's Work Group on Police and Community Relations report.
Discussions regarding the Common Council's expectations of the Committee's report.

Recommendation made to ask the Council to allocate funds to hire a professional report writer and PowerPoint.
Approved a number of recommendations (See minutes).

September 13, 2018

Cancelled

September 27, 2018

Presentation by John Hollway, Executive Director of the Quattrone Center at the University of Pennsylvania Law School, and Michael Bell, regarding the development of a root cause analysis process with the Madison Police Department.
Approved a number of recommendations (See minutes).

October 11, 2018

Approved a number of recommendations (See minutes).

October 25, 2018

Approved a number of recommendations (See minutes).

November 8, 2018

Cancelled—lack of quorum.

November 29, 2018

Introduction and discussion with Carrie Rothburd, writer for the Committee's final report to the Common Council.
Approved a number of recommendations (See minutes)

December 6, 2018

Presentation and discussion via conference call with Dr. Ron Fisher of Florida International University, regarding psychological research regarding statements from police officers following a critical incident.
Approved a number of recommendations (See minutes).

December 20, 2018

Review and discussion of resident-submitted recommendations and MPD responses.
Approved a number of recommendations (See minutes).

January 10, 2019

Approved a number of recommendations (See minutes).

January 24, 2019

Meeting cancelled.

January 31, 2019

Meeting cancelled.

February 7, 2019

Meeting cancelled.

February 14, 2019

Discussion with Carrie Rothburd regarding the report timeline.
Approved a number of recommendations (See minutes).

February 21, 2019

Approved a number of recommendations (See minutes).

February 28, 2019

Review and discussion of resident-submitted recommendations and MPD responses.
Approved a number of recommendations (See minutes).

March 14, 2019

Meeting cancelled.

April 18, 2019

Approved a number of recommendations (See minutes).

May 2, 2019

Meeting cancelled.

May 8, 2019

Discussion with Carrie Rothburd regarding the final report to the Common Council.
Discussion regarding reducing the size of the committee from 15 to 12 members.
A motion was made to recommend that the size of the committee be reduced to 13 members and to recommend Gregory Gelembiuk's appointment.
Approved a number of recommendations (See minutes).

May 23, 2019

Approved a number of recommendations (See minutes).

June 6, 2019

Approved a number of recommendations (See minutes).

June 13, 2019

Approved a number of recommendations (See minutes).

July 11, 2019

Meeting cancelled.

July 15, 2019

Discussion with Carrie Rothburd regarding the report to the Council.
A motion was made to accept a partial draft of the report for purposes of releasing funds to Rothburd.
Approved a number of recommendations (See minutes).

August 8, 2019

Update from Veronica Figueroa on previous meeting transcriptions.
Discussion and editing of recommendation rationales.

August 15, 2019

Approved a number of recommendations (See minutes).

August 22, 2019

Meeting cancelled.

August 29, 2019

Approved a number of recommendations (See minutes).

September 12, 2019

Approved a number of recommendations (See minutes).

September 26, 2019

Discussion with Alder Shiva Bidar-Sielaff regarding process and submission of final committee report to the Mayor and Council.
Discussion with Deputy Mayor Cam McLay regarding earlier committee recommendations to the Mayor and Common Council.
Approved a number of recommendations (See minutes).

October 14, 2019

Discussion of remaining draft report sections and recommendations.
Discussion and preliminary approval of final report to Council.
Discussion of next steps for disseminating report to the community.

October 18, 2019

Discussion and approval of final report to Council.

APPENDIX 3: RELATED MATERIALS

Community submitted recommendations. December 2018.
https://madison.legistar.com/View.ashx?M=F&ID=6852080&GUID=FD436B3E-4363-4D9F-9150-D413E088FE84

Community Response Team recommendations. Sets 1 & 2. December 12, 2018.
https://drive.google.com/file/d/1YEawQ4kEEZ4H0Jyx15zZJDMtc4T-cu3F/viewhttps://drive.google.com/file/d/15McS9oksThadQ8R7zLpEXZ7I2nkYZZ6q/view

Gennaco, Michael, Stephen Connolly and Julie Ruhlin (OIR Group). *Madison Police Department Policy and Procedure Review: Report to the City of Madison and the Madison Police Department Policy and Procedure Review Ad Hoc Committee.* December 14, 2017.
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Gennaco, Michael, Stephen Connolly and Julie Ruhlin (OIR Group). *Madison Police Department Policy and Procedure Review, Supplement to December 2017 Report*. March 14, 2018.
https://madison.legistar.com/View.ashx?M=F&ID=5883089&GUID=9C7C69E9-85FB-40D9-A1C1-217814497872

Madison City Channel videos. Madison Police Department Policy & Procedure Review Ad Hoc Committee, proceedings of meetings. https://media.cityofmadison.com/Mediasite/Showcase/madison-city-channel/VideoSearch#VideoSearch/0/policy%20review/0/null/null/0/0.9489946334507997
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Madison Police Department. *Madison Police Department Response to OIR Report.* January 31, 2018.
https://www.cityofmadison.com/police/documents/OIRresponse.pdf

Madison Police Department. *Madison Police Department Response to OIR Report Update.* November 19, 2018.
https://www.cityofmadison.com/police/documents/OIRresponseUpdate2018-11.pdf

OIR Group Presentations on MPD Policy Review Report.
January 11, 2018.
https://media.cityofmadison.com/Mediasite/Showcase/madison-city-channel/Presentation/b4f645ad6c5544b9b4e5887118f656091d
December 14, 2017
https://media.cityofmadison.com/Mediasite/Showcase/madison-city-channel/Presentation/cfc7eeafb811496cbdfdedc674d068571d

President's Work Group on Police and Community Relations. *Recommendations on Police Policies and Procedures*. May 12, 2017.
https://www.cityofmadison.com/Council/meetings/documents/CCECFinalReportV.2.pdf

Wahl, Victor. MPD Responses to Community Recommendation. January 4, 2019.
https://madison.legistar.com/View.ashx?M=F&ID=6963652&GUID=4F750F78-0CC4-497D-B37C-A063E8B9DFA4