# Thirty-Ninth Report
## *of the* Independent Monitor
## *for the* Oakland Police Department

## Introduction

This is the thirty-ninth report on the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.,* in the United States District Court for the Northern District of California under the direction of Judge Thelton E. Henderson. Since my appointment in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003, I have issued 21 quarterly reports; and pursuant to a Court Order in May 2015, an additional 18 monthly reports. The monthly reports devote special attention to the most problematic component parts of the Task that are not yet in full or sustained compliance, and discuss areas where the Monitoring Team provides technical assistance to the Department.

As directed by the Court on March 23, 2016, in my role as both Monitor and Compliance Director, my Team and I became involved in overseeing the investigation of IAD case 15-0771 "to ensure that this case and any related matters are properly and timely investigated, and that all appropriate follow-up actions are taken." The Court issued the Order as a result of concerns about the measure of investigative effort undertaken by the Department in the case, indicating that "irregularities and potential violations of the NSA" occurred. The Order continues, "This case raises most serious concerns that may well impact Defendants' ability to demonstrate their commitment to accountability and sustainability – both of which are key to ending court oversight." As reported previously, OPD wrapped up its initial investigation in September; and as a result, several involved officers were served with discipline, and some were charged with criminal conduct. Yet this matter is not yet over, and my Team remains involved in several ways. We continue to monitor the pending investigations that stemmed from the original matter; and we continue to support and offer technical assistance to the IAD team investigating these cases Assistant Chief Downing, the Executive Team, and City leadership.

We will continue to monitor all of these developments and report on their outcomes in our future reports.

We also welcome the recent appointment of Anne Kirkpatrick as Oakland Police Chief, and look forward to working with her as she moves OPD into full compliance with the NSA.

## This Report

In this report, we describe our recent assessments of Tasks 5, 34, and 41. Because we now report on a monthly (as opposed to quarterly) basis, we do not assess and discuss each active or inactive Task in each report; however, for each report, we select several active and/or inactive requirements to examine, and discuss the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable.

In accordance with the May 21, 2015 Court Order, we provide increased technical assistance – via monthly joint monitoring/technical assistance visits by designated Team members – in these areas. We also provide particular guidance and direction to the Department on the Tasks (5, 34, and 45) that have been in partial compliance. (As of our last quarterly report, OPD was in full compliance with all Tasks except for these three Tasks.) We also continue to monitor closely the Department's progress with the December 12, 2012 Court Order as it relates to Task 34 and other critical issues.

Below is the current compliance status of the Tasks listed in the May 21, 2015 Court Order.

| Compliance Status of Tasks Listed in the May 21, 2015 Court Order | | |
|---|---|---|
| **Task** | **Description** | **Compliance Status** |
| 5 | Complaint Procedures for IAD | As of the twenty-first reporting period (covering October through December 2014), this Task was in partial compliance. The pending IAD investigation, referenced above, requires that this Task be found not in compliance. |
| 20 | Span of Control | In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report. |
| 26 | Force Review Board (FRB) | In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report. |
| 30 | Executive Force Review Board (EFRB) | In compliance since the nineteenth reporting period (covering April through June 2014). Now considered inactive. Not assessed in this report. |
| 34 | Vehicle Stops, Field Investigation, and Detentions | In partial compliance since the fourth reporting period (covering July through September 2010). |
| 41 | Use of Personnel Assessment System (PAS) | In compliance since the twentieth reporting period (covering July through September 2014). Now considered inactive. |
| 45 | Consistency of Discipline Policy | As of the twenty-first reporting period (covering October through December 2014), in partial compliance. Not assessed in this report. |

## *Increasing Technical Assistance*

Each month, our Team conducts visits to Oakland that include both compliance assessments and technical assistance.[1] During these visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation. We also provide technical assistance in additional areas, especially those that relate to the remaining non-compliant Tasks or areas identified by the Department. Within the last few months, we have provided technical assistance to OPD officials in the areas of IAD investigations (Task 5); stop data (Task 34); risk management and the development of the new PRIME system, which is scheduled to replace PAS within the coming year (Task 41); several Department policies and procedures, including policies on handcuffing and the use of electronic control weapons; and the Department's ongoing audit of the recruitment and training of new officers. We are also closely following the Department's adoption of Lexipol, the online policy platform. To ensure continuing compliance with the NSA, the Monitoring Team and the Plaintiffs' attorneys will review and re-approve all polices related to all active and inactive Tasks. OPD recently provided us with the first Lexipol-formatted policy for our review and approval.

## *Building Internal Capacity at OPD*

We continue to work closely with the Office of Inspector General's (OIG) lieutenant and staff to identify areas that it should audit or review – and to help design approaches to these audits that are not cumbersome, so as to ensure sustainability.[2] Each month, we review OIG's progress reports, which detail the results of its reviews; and continue to assist OIG as it becomes a stronger unit and further develops its capacity to monitor the Department's continued implementation of the NSA reforms.

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[1] Per the May 21, 2015 Court Order, "The Monitor will provide increased technical assistance to help Defendants achieve sustainable compliance with NSA tasks and address, in a sustainable manner, the strategies and benchmark areas included in the Court's December 12, 2012 Order re: Compliance Director and the shortcomings identified in the Court Investigator's April 16, 2015 report."

[2] Per the May 21, 2015 Court Order, "The Monitor will also help Defendants institutionalize an internal system of monitoring by the Office of Inspector General or other City or Department entity, along with internal mechanisms for corrective action."

OIG's December report examined: 1) OPD's supervisory span of control tracking process; and 2) supervisors' reviews of PDRD recordings. In the first audit, OIG interviewed Bureau of Field Operations (BFO) personnel and reviewed documentation to evaluate how BFO tracks span of control. OIG noted its concerns that OPD "has depleted its pool of administrative relief sergeants," which "is likely to affect future compliance." OIG recommended that the Department "increase the number of available administrative relief sergeants and/or the consistency and availability of assigned primary sergeants." OIG also recommended that BFO conduct weekly audits of the span of control tracking process.

In the second audit, OIG examined whether supervisors conducted the random, monthly reviews of their subordinates' PDRD recordings required by Departmental General Order I-15.1, *Portable Video Management System*. The audit found that 100% of the officers in OIG's sample had their recordings reviewed; and that 96% of the reviews were documented, as required, in the PDRD system. In the remaining 4%, supervisors documented their reviews in PAS, which is inconsistent with policy.

We look forward to discussing these findings and recommendations with OIG during our upcoming site visits, and continuing to assist OIG as it further develops its capacity to monitor the Department's continued implementation of NSA reforms.

We will also continue to work with OIG to ensure that the Department appropriately and sufficiently follows up on the recommendations that OIG offers in its monthly reports. In several recent reports, OIG detailed the findings of its in-depth evaluations and audits, which identified several shortcomings within various components of OPD. These included, for example, OPD's failure to comply with training requirements set forth in policy for dispatchers, supervisors, and criminal investigators; the timely and thorough completion and processing of performance evaluations; and OPD's compliance with its use of force investigation timelines. We were pleased to learn during our last site visit that OPD, in response to findings and recommendations of a recent OIG audit, has revised its policy related to criminal investigative training requirements; the new policy takes a more realistic and practical approach than the former policy.

In the past, we have expressed concerns regarding the lack of sufficient, documented corrective action among Department officials in response to OIG's reports. While OIG has improved the way it tracks and documents whether corrective action is or is not taken following the issuance of its reports, the Department's leadership needs to more actively ensure that appropriate OPD personnel review and follow up on the findings of OIG's reports.

## *Focused Task Assessments*

## Task 5:  Complaint Procedures for IAD

Requirements:

1.  *On or before December 1, 2003, OPD shall develop a policy so that, OPD personnel who become aware that a citizen wishes to file a complaint shall bring such citizen immediately, or as soon as circumstances permit, to a supervisor or IAD or summon a supervisor to the scene.  If there is a delay of greater than three (3) hours, the reason for such delay shall be documented by the person receiving the complaint.  In the event that such a complainant refuses to travel to a supervisor or to wait for one, the member/employee involved shall make all reasonable attempts to obtain identification, including address and phone number, as well as a description of the allegedly wrongful conduct and offending personnel, from the complainant and any witnesses.  This information, as well as a description of the complaint, shall immediately, or as soon as circumstances permit, be documented on a Complaint Form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander, and shall be treated as a complaint.  The supervisor or appropriate Area Commander notified of the complaint shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.*

2.  *An on-duty supervisor shall respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest.  The supervisor shall ensure the Communications Division is notified and forward any pertinent documents to the IAD.  All other misconduct complaints, by a jail inmate shall be handled in the same manner as other civilian complaints.*

3.  *In each complaint investigation, OPD shall consider all relevant evidence, including circumstantial, direct and physical evidence, and make credibility determinations, if feasible.  OPD shall make efforts to resolve, by reference to physical evidence, and/or use of follow-up interviews and other objective indicators, inconsistent statements among witnesses.*

4.  *OPD shall develop provisions for the permanent retention of all notes, generated and/or received by OPD personnel in the case file.*

5.  *OPD shall resolve each allegation in a complaint investigation using the "preponderance of the evidence" standard.  Each allegation shall be resolved by making one of the following dispositions:  Unfounded, Sustained, Exonerated, Not Sustained, or Administrative Closure.  The Department shall use the following criteria for determining the appropriate disposition:*

a.   *Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.*

b.   *Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.*

c.   *Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all Oakland Police Department rules, regulations, or policies.*

d.   *Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.*

e.   *Administrative Closure: The investigation indicates a service complaint, not involving an MOR violation, was resolved without conducting an internal investigation; OR*

f.   *To conclude an internal investigation when it has been determined that the investigation cannot proceed to a normal investigative conclusion due to circumstances to include but not limited to the following:*

   1)   *Complainant wishes to withdraw the complaint and the IAD Commander has determined there is no further reason to continue the investigation and to ensure Departmental policy and procedure has been followed;*

   2)   *Complaint lacks specificity and complainant refuses or is unable to provide further clarification necessary to investigate the complaint;*

   3)   *Subject not employed by OPD at the time of the incident; or*

   4)   *If the subject is no longer employed by OPD, the IAD Commander shall determine whether an internal investigation shall be conducted.*

   5)   *Complainant fails to articulate an act or failure to act, that, if true, would be an MOR violation; or*

   6)   *Complaints limited to California Vehicle Code citations and resulting tows, where there is no allegation of misconduct, shall be referred to the appropriate competent authorities (i.e., Traffic Court and Tow Hearing Officer).*

g.   *Administrative Closures shall be approved by the IAD Commander and entered in the IAD Complaint Database.*

6.   *The disposition category of "Filed" is hereby redefined and shall be included under Administrative Dispositions as follows:*

> a.  *An investigation that cannot be presently completed. A filed investigation is not a final disposition, but an indication that a case is pending further developments that will allow completion of the investigation.*
>
> b.  *The IAD Commander shall review all filed cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed and may direct the closure or continuation of the investigation.*
>
> 7.  *Any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, investigators, with the approval of an IAD Commander, are not required to interview and/or take a recorded statement from a member or employee who is the subject of a complaint or was on the scene of the incident when additional information, beyond that already provided by the existing set of facts and/or documentation, is not necessary to reach appropriate findings and conclusions.*

(Negotiated Settlement Agreement III. E.)

**Relevant Policy:**

There are six Departmental policies that incorporate the requirements of Task 5: Department General Order M-03, *Complaints Against Department Personnel and Procedures* (published December 6, 2005 and revised most recently on August 22, 2013); Communications Division Policy & Procedures C-02, *Receiving and Logging Complaints Against Personnel and Use of Force Incidents* (published April 6, 2007); Training Bulletin V-T.1, *Internal Investigation Procedure Manual* (published June 1, 2006); Special Order 8270, *Booking of Prisoners at the Glenn E. Dyer Detention Facility* (published June 24, 2005); Special Order 8565, *Complaints Against Department Personnel* (published May 11, 2007); and IAD Policy & Procedures 05-02, *IAD Investigation Process* (published December 6, 2005). In addition, NSA stipulations issued on December 12, 2005, and March 13, 2007, incorporate the requirements of this Task.

**Commentary:**

OPD had been in partial compliance with Task 5 since the twenty-first reporting period. That status reflected a Court-ordered investigation regarding OPD and the City's discipline and arbitration process. On March 23, 2016, the Court issued a new Order indicating that irregularities and potential violations of the NSA occurred in ongoing IAD investigation 15-0771. The Order noted that the investigation raised issues of accountability and sustainability of compliance. The Court ordered that the Monitor/Compliance Director oversee that a proper and timely investigation occur and that appropriate follow-up action be taken. The Court Order was a serious development in the Department's progress toward full compliance. As there are still residual issues associated with this matter, we deem Task 5 to be not in compliance.

Task 5 consists of several subtasks, briefly described below. Based on OPD's compliance history with many of the subtasks, not all are being actively monitored at this time.

**Task 5.1** requires that when a citizen wishes to file a complaint, the citizen is brought to a supervisor or IAD, or a supervisor is summoned to the scene. **Task 5.2** requires that if there is a delay of greater than three hours in supervisory response, the reason for the delay must be documented. **Task 5.3** requires that where a complainant refuses to travel to a supervisor, or wait for one, personnel make all reasonable attempts to obtain specific information to assist in investigating the complaint. **Task 5.4** requires that specific information be documented on a complaint form and submitted to the immediate supervisor or, in his/her absence, the appropriate Area Commander. **Task 5.5** requires that the supervisor or Area Commander notify Communications and forward any pertinent documents to IAD.

To assess compliance with Task 5.1 through and including Task 5.5, we reviewed the Daily Incident Logs (DILs) prepared by the Communications Division and forwarded to IAD each business day. The DIL form has been modified several times during our tenure to elicit "forced responses" that gather all of the information required to evaluate compliance with these Tasks. These modifications have significantly enhanced OPD's ability to document compliance by properly filling out and distributing the logs, and compliance rates with these subtasks have been near 100% for several years now. Consequently, we no longer actively assess OPD's compliance with these subtasks, but we continue to receive both the DILs and Daily Complaint Referral Logs (used to document when Information Business Cards (IBCs) are provided to citizens in lieu of a complaint forms). We spot-check these forms regularly to verify that the quality of their completion has not diminished.

**Task 5.6** requires that an on-duty supervisor respond to take a complaint received from a jail inmate taken into custody by OPD, who wishes to make a complaint of Class I misconduct contemporaneous with the arrest of the inmate. To assess Task 5.6, we reviewed all complaints closed in October 2016 that appeared to have originated from North County Jail, Santa Rita Jail, Glenn E. Dyer Detention Facility, Juvenile Hall, or John George Pavilion. We reviewed these complaints for two triggering events: an allegation of Class I misconduct; and the complaint lodged at the time of arrest. If both of these were not present, the case was deemed in compliance if it was "handled in the same manner as other civilian complaints."

Two cases originated as complaints from a detention facility. In one, the complainant called from John George Pavilion, where he was being detained on a psychiatric hold after being refused at North County Jail following his arrest for driving a stolen vehicle. He alleged that some money that he originally had in his possession – which was secured by OPD officers at the time of his arrest – did not make it to John George after he was transported there by Emergency Medical Services (EMS). The supervisor responded to John George and took the complaint. We concurred with the not sustained findings for care and control of property. EMS personnel refused to cooperate with the investigation.

In the other case, a supervisor responded to the Santa Rita Jail to take a complaint of sexual assault, allegedly perpetrated by OPD officers. The complainant suffered from psychiatric issues, and the supervisor correctly identified that his complaint involved Alameda County Corrections personnel. The supervisor appropriately referred the complaint and then appropriately administratively closed it.

**Task 5.12** requires that the Watch Commander ensure that any complaints that are applicable to Task 5.6 are delivered to and logged with IAD. Under current policy, the Communications Division must record on the DILs complaints that are received and/or handled by on-duty supervisors, and the DILs is forwarded daily to IAD.

OPD remains in compliance with Tasks 5.6 and 5.12.

**Task 5.15** through **Task 5.19**, and **Task 5.21,** collectively address the quality of completed IAD investigations, and therefore remain the subject of our focused Task assessments. To assess compliance with these Tasks, we reviewed 15 IAD cases that were approved in October 2016.

This sample included investigations completed by IAD and Division-level investigations (DLIs). It also included cases that were resolved via formal investigation and investigations that were resolved via summary finding.[3]

Together, **Tasks 5.15** and **Task 5.16** require that OPD: gathers all relevant evidence; conducts follow-up interviews where warranted; adequately considers the evidence gathered; makes credibility assessments where feasible; and resolves inconsistent statements.

In 14 of the 15 cases we reviewed, we believe that OPD gathered and considered all relevant evidence available. In the overwhelming number of cases, video and/or audio recordings proved to be a significant factor in allowing OPD to reach a proper conclusion. In the one non-compliant case, the complainant alleged that an OPD command officer did not respond to emails he sent. First, as further described below, this was not treated as a separate allegation despite the complainant's adamancy in his interview that he viewed this as a lack of service. Second, evidence as to whether or not it occurred is, undoubtedly, available via OPD's email system. While OPD briefly inquired with the command officer regarding his lack of response to the complainant's emails, and the commanding officer even volunteered to research his emails during his interview, there is no indication in the case file as to whether or not this occurred.[4]

Investigators conducted follow-up interviews to seek clarification or resolve inconsistencies in four of the 15 cases we reviewed. In one, both the complainant and the subject officer were interviewed three times. In another, the subject officer was interviewed twice. In the other two, the complainants were interviewed twice.

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[3] Summary findings are investigations in which the Department believes a proper conclusion can be determined based on a review of existing documentation with limited or no additional interviews and follow-up.

[4] The investigator also requested that the command officer provide a copy of an email he sent to CID concerning the complainant's crime report. There is no indication of compliance with this request, nor any follow-up from the investigator.

OPD made credibility assessments for all involved parties in eight of the 15 cases. The seven remaining cases were approved for summary finding, and by policy, investigators are not required to assess credibility in these instances since a determination can be made without interviewing all involved. In seven cases (including three handled as summary findings), complainants and/or witnesses were deemed not credible. In each of these cases, PDRD recordings refuted some of the assertions being made by those involved.

In 11 of the 15 cases we reviewed, OPD successfully resolved inconsistent statements. In 10 of the cases, PDRD recordings were available and assisted in the determination. In the other case, an audio recording of a call to Communications allowed for a definitive finding. Four cases had findings of not sustained. Not sustained is an acceptable finding, and by definition, it implies that inconsistencies were not resolved despite investigative efforts.

**Task 5.17** requires that OPD permanently retain all notes generated and/or received by OPD personnel in the case file. OPD personnel document that all investigative notes are contained within a particular file by completing IAD Form 11 (Investigative Notes Declaration). OPD has a sustained history of 100% compliance with this subtask. During this reporting period, the form was again properly completed in all 15 cases we reviewed.

**Task 5.18** requires that OPD resolve each allegation in a complaint investigation using the preponderance of the evidence standard. **Task 5.19** requires that each allegation of a complaint is identified and resolved with one of the following dispositions: unfounded; sustained; exonerated; not sustained; or administrative closure. Our sample of 15 cases contained 56 allegations that received dispositions as follows: 17 exonerated; 28 unfounded; six not sustained; and five administratively closed. There were no sustained findings. We did not disagree with any of the findings. However, we believe that in two cases, not all allegations were properly documented or investigated. One case, mentioned above, involves the allegation of failing to respond to the complainant's emails. The complainant was clearly upset about this, it is a complaint of poor service, and it involves something that could easily be verified and sustained or refuted. In the other case, which involved a complaint against an officer by his former business partner, we believe that the investigator uncovered potential additional violations during his investigation that were not explored. The commanding officer of IAD concurred with our assessment and advised that the case was being reopened.

**Task 5.20** requires that the IAD Commander review all "filed" cases quarterly to determine whether the conditions that prevented investigation and final disposition have changed. A filed case is defined as an investigation that cannot be presently completed and is pending further developments that will allow completion of the investigation; filed is not a final disposition. Traditionally, as part of our review of this Task, we also reviewed cases that are tolling. OPD defines a tolled case as an administrative investigation that has been held in abeyance in accordance with one of the provisions of Government Code Section 3304. While we are no longer actively assessing this subtask, we note that filed and tolling cases are reviewed with the Chief during his weekly IAD meetings and are listed by case number on the printed meeting agendas. We receive and review these agendas regularly, and when available, we attend these meetings.

**Task 5.21** requires that any member or employee who is a subject of an internal investigation, as well as any other member or employee on the scene of an incident at which misconduct has been alleged by a complainant, shall be interviewed and a recorded statement taken. However, with the approval of the IAD Commander or her designee, investigators are not required to interview and/or take a recorded statement in all cases. For example, interviews are not needed from a member or employee who is the subject of a complaint, or who was on the scene of the incident when additional information – beyond that already provided by the existing set of facts and/or documentation – is not necessary to reach appropriate findings and conclusions. Seven of the 15 cases we reviewed were resolved via summary finding, and all were appropriately approved for such closure. In all of these cases, the availability of video and/or audio recordings was the primary reason interviews were unnecessary.

OPD remains not in compliance with Task 5, both because of our review of these sample cases, and its still pending satisfactory progress with the provisions of the March 23, 2016 Court Order.

# Task 26: Force Review Board (FRB)

**Requirements:**

*OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:*

1.  *Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*

2.  *Require the FRB to review all use of force investigations;*

3.  *Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*

4.  *Require the FRB to forward sustained policy violations to the Discipline Officer.*

5.  *Require the FRB not to review any use of force allegation until the internal investigations has been completed;*

6.  *Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*

7.  *Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*

> 8. *Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
>
> 9. *Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

**Relevant Policy:**

Department General Order K-4.1, *Force Review Boards,* was published February 17, 2006, and most recently revised on December 21, 2015.

**Commentary:**

Force Review Boards are convened for the purpose of reviewing Level 2 use of force events.[5]

OPD has been in compliance with Task 26 since the nineteenth reporting period; however, we continue to attend, observe, and assess FRBs when during scheduled our monthly site visits.

OPD conducted 15 Force Review Boards in 2016.

The table below indicates a steady decline in Level 2 uses of force during the period 2007-16; this decline, at least in part, can be attributed to the conduct of these boards – as well as the training and attention given to use of force events by OPD.

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[5] Level 2 Use of Force includes, 1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person.
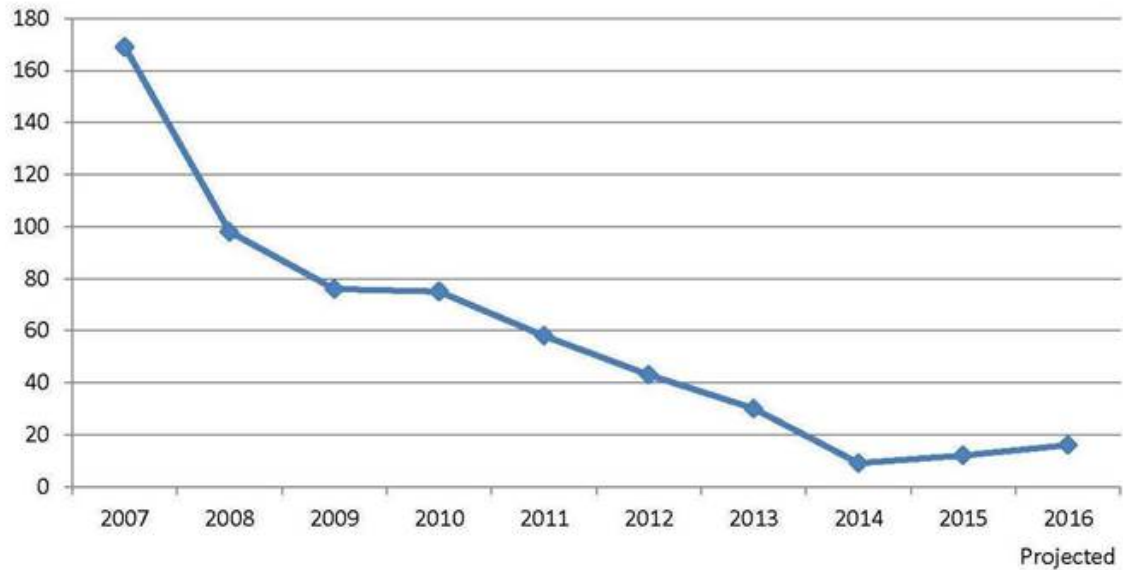
The most recent FRB was conducted during our December site visit. In this incident, officers observed two subjects standing adjacent to an unregistered motor vehicle (with its engine running), and attempted to determine which of the two subjects was in possession of the vehicle. During the interaction, officers developed information leading them to believe the subjects had connections with a particular street gang and were possibly armed – whereupon one of the subjects attempted to flee; however, after a brief struggle, officers successfully gained control.

After a crowd, apparently friendly with the subject, began to form, and became hostile toward officers; the officers attempted to remove the subjects from the area. As officers were doing so, the subject pulled away and fled. Officers pursued the subject and ordered him to stop, issuing a verbal Taser warning. The subject continued to flee, while one of the pursuing officers observed him reach for his waistband and throw what appeared to a shiny object, which the officers believed was a firearm. One of the officers deployed the Taser, which was effective, and the officers took the subject into custody. The officers located the object that the subject had thrown, a firearm.

The investigating sergeant provided the board with a detailed presentation of the event and the ensuing investigation, including training points, a tactical assessment, and findings. The FRB carefully reviewed the entire event and investigation, and found the force in compliance with OPD policy.

The FRB was detailed and thorough. OPD remains in compliance with this Task.

## Task 30: Executive Force Review Board (EFRB)

**Requirements:**

1.  *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police. The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*

2.  *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)


**Relevant Policy:**

Department General Order K-4.1, *Force Review Boards,* was published February 17, 2006, and most recently revised on December 21, 2015.


**Commentary:**

Executive Force Review Boards (EFRBs) are convened for the purpose of reviewing Level 1 use of force events.[6]

OPD has been in compliance with Task 30 since the nineteenth reporting period; however, we continue to observe and assess EFRB activities when conducted during our monthly site visits.

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[6] Level I Use of Force events include: 1) Any use of force resulting in death; 2) Any intentional firearm discharge at a person, regardless of injury; 3) Any force which creates a substantial risk of causing death, (The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made); 4) Serious bodily injury, to include, (a) Any use of force resulting in the loss of consciousness; and (b) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis); 5) Any unintentional firearms discharge, (a) If a person is injured as a result of the discharge; or (b) As directed by the CID Commander; 6) Any intentional impact weapon strike to the head; 7) Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.
The EFRB consists of three senior commanders as voting members. In addition, regular non-voting attendees include the Training Section Commander and a representative of the City Attorney's Office.
A Level 1 use of force may include both criminal and administrative elements; accordingly, both the Criminal Investigation Division (CID) and IAD present the results of their respective investigations to an EFRB

OPD conducted eight Executive Force Review Boards in 2016. There have been no officer-involved shooting events since November 2015; and, to date, all board reviews are complete. (The last was conducted in August 2016.) OPD has, over time, seen a decrease in officer-involved shootings, which, as illustrated below, is a noteworthy achievement. Clearly, the seriousness with which OPD approaches the review of these serious uses of force is a contributing factor to this decrease.



Level 1 Uses of Force – Officer Involved Shootings ONLY
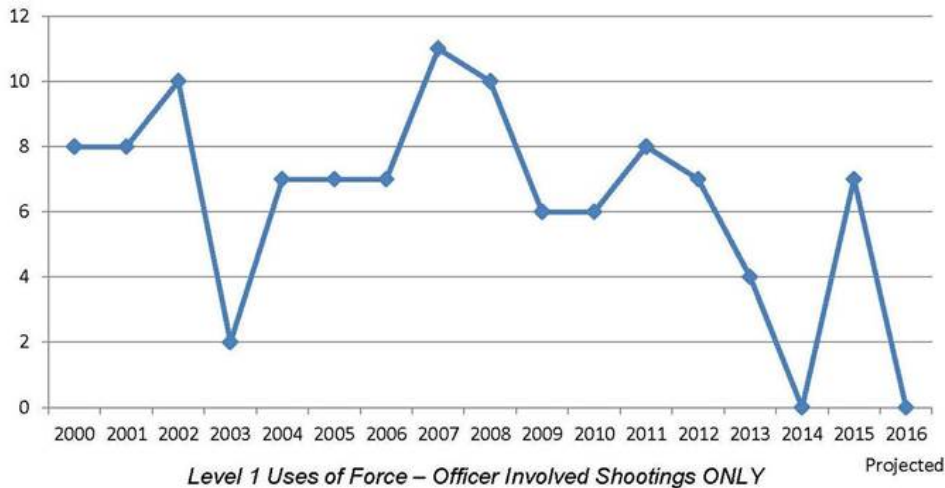
OPD remains in compliance with this Task.

## Task 34: Vehicle Stops, Field Investigation, and Detentions

**Requirements:**

1.  *OPD shall require members to complete a basic report on every vehicle stop, field investigation and every detention. This report shall include, at a minimum:*

    a.  *Time, date and location;*

    b.  *Identification of the initiating member or employee commencing after the first year of data collection;*

    c.  *Reason for stop;*

    d.  *Apparent race or ethnicity, and gender of individual(s) stopped;*

    e.  *Outcome of stop (arrest, no arrest);*

    f.  *Whether a search was conducted, and outcome of search;*

    g.  *Offense categories (felony, misdemeanor or infraction).*

2.      *This data shall be entered into a database that can be summarized, searched, queried and reported by personnel authorized by OPD.*

3.      *The development of this policy shall not pre-empt any other pending or future policies and or policy development, including but not limited to "Promoting Cooperative Strategies to Prevent Racial Profiling."*

(Negotiated Settlement Agreement VI. B.)

**Relevant Policy:**

Department policies relevant to Task 34 include: General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing;* Report Writing Manual (RWM) Inserts R-2, N-1, and N-2; Special Order 9042, *New Procedures Regarding Stop Data Collection* (published June 2010); and Special Order 9101, *Revised Stop Data Collection Procedures* (published November 2012).

**Commentary:**

OPD's Stop Data Form provides officers with the means to capture essential, required data on each discretionary motor vehicle and pedestrian stop in a uniform, consistent manner. Since 2013, OPD has continually evaluated and adjusted this form, its design, and its review processes to improve the data collection process. Ultimately, these adjustments will enhance OPD's ability to identify, address, and resolve indicators of bias-based policing, racial profiling, and/or disparate treatment among the identified population groups, as required by this Task.

The most recent improvements to the both the data collection form and the process involve modifications to more clearly identify reasons for stops, which includes the identification of stops based on intelligence. These stops may result in numerical disparities among the population groups; therefore, documentation of the basis for these stops is important when reviewing databases for indicators of disparate treatment or racial profiling. However, recognizing the possibility of an overuse of "intelligence" as one of the legitimate reasons for a stop, OPD developed specific guidance for making and recording such stops. In addition, OPD is carefully reviewing stops indicated as intelligence-based to ensure compliance with these carefully defined guidelines.

Stop data collection is an ongoing endeavor, as is the compilation and review of the data. OPD attempts to schedule a full review of stop data from one of its five Areas as part of a more broadly based risk management meeting each month during our site visits. A panel of command officers reviews the data with the particular Area Commander during these meetings in an effort to identify areas *indicative* of racial profiling and/or disparate treatment; and, where appropriate, to address relevant crime control, deployment, or supervisory strategies.

The review of Area stop data generally includes discussions regarding anomalies and/or variances in stop data between citywide and Area data and among Area squads; and an examination of stops, searches, search recovery rates, and other related data.  Following these reviews, commanders are often assigned "deliverables" to identify and further define the basis for what appear to be data anomalies or crime control and/or personnel deployment strategies.  For example, one of the deliverables assigned during this past month's RMM included a review of specific officers' stops, searches, recovery, and handcuffing rates to assess anomalies for bias.  Consistent with this practice, the commander was assigned to provide an assessment for command review.

The commanders' reports on deliverables generally provide a detailed review of various officers' activities, but also analyses of stops and searches and operational strategies.  Ongoing analyses of data by commanders find stops and searches to be lawful and within OPD policy; this is consistent with our analyses.  In addition, data is often reflective, and results from intelligence-directed crime control strategy, which is developed based on crime data and expressed community concerns.

Such was the case with the Area RMM for this report.  The Area Commander provided a detailed description of Area demographics, criminal activity, community concerns, and strategies developed to address of each – all of which play into the stop data, illustrated in the tables below.

The reviews and discussions of the RMMs have proven valuable and fruitful; in particular, the Department's scrutiny of – and attention to – search data has resulted in a significant increase in the overall search recovery rates, but also a decrease in the variance between the recovery rates among the various population groups.

However, we continue to recommend that OPD further refine its process for focused analysis (drill-downs) of selected squads' data that appear to reflect disparities among population groups.  This will assist the Department in intervening to address any identified disparate treatment among the population groups.

The Stanford research team found "little evidence that disparate treatment arose from explicit racism or purposeful discrimination.  Instead, [the team's] research suggests that many subtle and unexamined cultural norms, beliefs, and practices sustain disparate treatment."  Despite this, the team reports recommended 50 actions that OPD should take to change the Department's culture and strengthen ties with the communities it serves.[7]  To address these recommendations, OPD has developed an implementation plan, which it presented in December for our review.  The plan indicates that 28 recommendations have been implemented or are in progress.  The remaining 22 are scheduled to be in progress or completed by July 2017.

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[7] Hetey, R.C., Monin, B., Maitreyi, A., and Eberhardt, J.L. (2016).  Data for Change: A Statistical Analysis of Police Stops, Searches, Handcuffings, and Arrests in Oakland, Calif., 2013-2014. Stanford University, SPARQ: Social Psychological Answers to Real-World Questions; Eberhardt, J.L. (2016) Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif., Stanford University, SPARQ: Social Psychological Answers to Real-World Questions.

STOP DATA REVIEWS

The stop data presented for review and discussion in December indicated that officers stopped and interacted with a total of 23,930 individuals during the specified time period, or on average 83 per day.[8] Within the Area under review, OPD officers stopped and interacted with a total of 2,706 – or on average, nine per day.

As is our practice, we are including additional tables for illustration purposes with the following caution: While the data illustrates a significant numerical variance in the stops of individuals within the identified population groups, this in and of itself is not a dispositive indicator of disparate treatment, given the multitude of factors that are involved in directives to or decisions by officers when making stops. For example, our repeated review of stops has found the stops legitimately based on traffic safety violations; reasonable suspicion; or probable cause oftentimes related to specific, focused OPD crime control strategies. Therefore, any determination of the presence or absence of disparate treatment among population groups requires more in-depth analysis. This is an ongoing OPD activity, which we are closely monitoring.

Tables One and Two illustrate citywide stop data; Tables Three and Four illustrate specific Area data.

| Table One Citywide Vehicle Stop Summary[9] | | | |
|---|---|---|---|
| **Race/Ethnicity** | **Stops** | **Searches[10]** | **Recoveries** |
| **African American** | 60% | 29% | 32% |
| **Asian** | 5% | 5% | 36% |
| **Hispanic** | 21% | 17% | 38% |
| **White** | 10% | 7% | 34% |
| **Other** | 3% | 8% | 19% |
| **Total** | **100%** | **22%** | **33%** |
| | **20,253** | **4,457** | **1,481** |

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[8] This dataset includes activity for the period January 16, through October 31, 2016.

[9] This dataset includes activity for the period January 16, 2016 through October 31, 2016.

[10] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

| Table Two | | | |
|---|---|---|---|
| **Citywide Pedestrian Stop Summary[11]** | | | |
| **Race/Ethnicity** | **Stops** | **Searches[12]** | **Recoveries** |
| **African American** | 69% | 47% | 35% |
| **Asian** | 4% | 18% | 29% |
| **Hispanic** | 14% | 34% | 31% |
| **White** | 11% | 25% | 37% |
| **Other** | 2% | 35% | 26% |
| **Total** | **100%** | **41%** | **35%** |
| | **3,677** | **1,514** | **526** |

| Table Three[13] | | | |
|---|---|---|---|
| **Area Vehicle Stop Summary** | | | |
| **Race/Ethnicity** | **Stops** | **Searches[14]** | **Recoveries** |
| **African American** | 54% | 40% | 30% |
| **Asian** | 9% | 27% | 26% |
| **Hispanic** | 25% | 31% | 33% |
| **White** | 8% | 16% | 33% |
| **Other** | 3% | 17% | 15% |
| **Total** | **100%** | **34%** | **30%** |
| | **2,206** | **746** | **226** |

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[11]This dataset includes activity for the period January 16, 2016 through October 31, 2016.

[12] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

[13] This dataset includes activity for the period January 16, 2016 through October 31, 2016.

[14] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned excluded.

| Table Four[15] | | | |
| :--- | :---: | :---: | :---: |
| **Area Pedestrian Stop Summary** | | | |
| **Race/Ethnicity** | **Stops** | **Searches[16]** | **Recoveries** |
| **African American** | 64% | 35% | 28% |
| **Asian** | 4% | 33% | 29% |
| **Hispanic** | 18% | 43% | 28% |
| **White** | 10% | 29% | 21% |
| **Other** | 4% | 33% | 43% |
| **Total** | **100%** | **36%** | **28%** |
| | **500** | **179** | **50** |

*Pat-Down (Frisks) Searches*

Table Five illustrates the percentage of citywide stops resulting in pat-down or probation/parole searches.

| Table Five | | | | |
| :--- | :---: | :---: | :---: | :---: |
| **Citywide Stops** | | | | |
| **Percentage of Stops Resulting in Weapons or Probation/Parole Searches** | | | | |
| **Race/Ethnicity** | **Vehicle Stop Pat-downs (frisks)** | **Pedestrian Stop Pat-downs (frisks)** | **Vehicle Stop Probation/Parole Searches** | **Pedestrian Stop Probation/Parole Searches** |
| **African American** | 12% | 15% | 41% | 17% |
| **Asian** | 11% | 12% | 26% | 4% |
| **Hispanic** | 19% | 23% | 26% | 12% |
| **White** | 16% | 21% | 31% | 12% |
| **Other** | 19% | 20% | 39% | 15% |
| **Total** | **14%** | **17%** | **38%** | **15%** |

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[15] This dataset includes activity for the period January 16 2016 through October 31, 2016.
[16] Incident to arrest, weapons, inventory searches, other weapons and medical marijuana returned  excluded.

| Table Six<br><br>Area Stops<br><br>Percentage of Stops Resulting in Weapons or Probation/Parole Searches | | | | |
| --- | --- | --- | --- | --- |
| Race/Ethnicity | Vehicle Stop<br>Pat-downs<br>(frisks) | Pedestrian Stop<br>Pat-downs<br>(frisks) | Vehicle Stop<br>Probation/Parole<br>Searches | Pedestrian Stop<br>Probation/Parole<br>Searches |
| African American | 8% | 18% | 32% | 19% |
| Asian | 3% | 13% | 16% | 13% |
| Hispanic | 9% | 20% | 21% | 20% |
| White | 14% | 38% | 28% | 4% |
| Other | 17% | 23% | 22% | 23% |
| **Total** | **8%** | **20%** | **28%** | **18%** |

OPD has designed and developed a process for the collection and retention of stop data in a manner that can be accessed and analyzed so as to identify, address, and resolve indicators of bias-based policing or racial profiling. Such analyses should assist with building trust and enhancing its relationship with all segments of the Oakland community. As we have previously noted, the publication of the Stanford University report provides further guidance on ways to comply with both the letter and spirit of this Task.

In the meanwhile, the below-described specific issues remain incomplete; accordingly, we will continue to monitor OPD's progress on these issues until OPD achieves full compliance:

- The implementation of general and specific intervention strategies to address data indicators of abnormalities and/or possible bias at the Area, squad, and individual officer levels: OPD reviews Area data during its monthly RMM. The analysis of data prior to, during, and following these meetings is an ongoing endeavor to ensure a strong stop data process. We continue to work with the Department on the development of strategies to identify indicators of racial bias or disparate treatment among the various population groups, as well as the development of appropriate intervention processes.

- Assessing and addressing whether the present rotating review of stop data (once every five months) is sufficient to reliably identify possible bias and ensure sustained intervention and/or prevention measures. (This objective is temporarily delayed awaiting the implementation of PRIME, which should assist with the gathering and presentation of the voluminous data reviewed/assessed during the Area Risk Management Meetings.) However, in the meantime, OIG's review of stop/search/recovery data described above is a limited, but proactive, step.

- Development of a plan for the implementation of the 50 recommendations contained in the Stanford University report. OPD provided the implementation plan and progress report in December, which indicates that 28 recommendations have been implemented or are in progress, the remaining are scheduled to be in progress or completed by July 2017. We will continue to work with the Department on these strategies.

## Task 41:  Use of Personnel Assessment System (PAS) and Risk Management

**Requirements:**

*Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole.  The policy shall include the following elements:*

1. *The Chief of Police shall designate a PAS Administration Unit.  The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria.  PAS is to be electronically maintained by the City Information Technology Department.*

2. *The Department shall retain all PAS data for at least five (5) years.*

3. *The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*

4. *PAS, the PAS data, and reports are confidential and not public information.*

5. *On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior.  The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*

6. *Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT.  The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received*

*during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*

7. *When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

*Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.*

*Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's*

*immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.*

9.  *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*

10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*

11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*

13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*

14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the "no public contact" restriction. Sustained complaints from incidents subsequent to a member/employee's referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee's exclusion from, or continued inclusion in, PAS. The member/employee's exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*

16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*

17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*

> 18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department's rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

**Relevant Policy:**

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program,* in November 2013.

**Commentary:**

Despite the concerns noted in our last review, OPD continues to make progress on the development of the new risk management database, known as PRIME. Although City IT and key OPD staff hesitate to identify a "go live" date for the system, it is clear that the vendor and the City and Department are moving toward the implementation of PRIME. In fact, OPD reports that the software developers expect to have all but the use of force data module complete within a few days of our next site visit.

Through the course of testing the PRIME system, the vendor and the City and Department identified over 400 high-priority problems, classified as first priority (P1) or second priority (P2) problems. OPD indicates that it expects all P1 and P2 "bugs" to be fixed within a few days of our next site visit. OPD and City IT note that some additional high-priority bugs are likely to be found as problems are fixed and new issues come to light; and as a result, they will not set a clear "go live" date until all P1 and P2 bugs are fixed. Lower priority problems, classified as P3 and P4, are not viewed as threats to the integrity of the system and can be addressed while the new system is operational.

There are, however, varying degrees of concern with the seriousness of bugs among the OPD PRIME development and implementation team, and these will need to be worked out before the system can go live. Arrest data issues linger; and those issues will affect the creation of individual profiles, which, in turn, affect the setting of normative thresholds, and thus the selection of officers for further attention due to risk levels.

Testing the readiness of the PRIME system is a complex operation with multiple steps and multiple data comparisons. At the current time, some key testing processes cannot be performed until the P1 and P2 bugs are fixed. In particular, the migration of data from PAS to PRIME is temporarily blocked by yet-to-be-fixed bugs. Likewise, the algorithms use to identify officers by risk level cannot be implemented until the additional data issues are resolved.

Nonetheless, some cross-system comparisons are being done. Since PRIME will eventually replace the PAS database, a key test involves the comparison of results on officer profiles across the two data systems. Those comparison take into account numerous pieces of information from assignment, to arrest summaries, data in specific arrest categories, uses of force, and case review histories: a total of 33 information categories, plus eight types of single event thresholds for review. Audits indicate there remain some differences in these measures across the old and new data systems. OPD, along with City IT and the vendor, continue to work aggressively to address differences in findings. Success with that will minimize problems in which officers may find their data are inconsistent across the platforms.

Of course, data issues are only one of many concerns to address with the change to PRIME. A second major area involves revising OPD policy to address the requirements of the new system. The policy realignment involves the main risk management policy, Departmental General Order D-17, as well as a wide range of other policies that govern the recording and storage of data. Under PRIME, most data will be entered directly, rather than being transferred in from some other specialized database. The bulk of the new policy development is slated for the spring and will be part of the Department's Lexipol policy revision process.

As the development and implementation of PRIME continues, a significant amount of work beyond that directly associated with the data remains to be completed. Of high importance among them is the integration of the needed computer infrastructure to support the new system. OPD is working with the vendor to establish a high-speed cloud-based connection. The volume of data and demand for its use under PRIME will require this connection. This should address the problems associated with slow connection speeds that have been of concern during the development and testing processes.

Another critical area of work associated with implementation of PRIME will be training. Work yet to be done in this area includes the creation of lesson plans and additional other training material. Department-wide training orders will be necessary and, once those are in place, it is expected that it will take five weeks to complete the training on the new risk management system.

Finally, plans are being developed for the full implementation of PRIME and stopping the use of the PAS system. Currently, OPD is planning a period of parallel usage of both systems. This will allow for the stabilization of PRIME and the resolution of any remaining P3 and P4 problems. Both OPD and City IT have noted that PRIME will not be implemented until all P1 and P2 issues are resolved. The period of parallel usage will also allow managers of the numerous data bases to be integrated under PRIME to solve any problems that arise. As of our December site visit, OPD estimated that the period of parallel usage will begin in April 2017, and the actual "go live" full deployment of PRIME as the sole risk management database will follow once the system is recognized as ready.

The above text outlines several of the remaining critical steps in a project that can strengthen the Department's risk management efforts and address a wide range of related data and operational issues. PRIME is a project that has been long in development and has used significant resources and personnel to reach this point, and, even now, significant additional work is needed to bring the project to fruition. Furthermore, PRIME is one of several projects that share some core

common elements. The importance of understanding and correctly using data and analysis are also central to a new records management system (RMS) and the stop data project, which now draws heavily on Departmental and external resources.

Taken together, these three major undertakings can be recognized as marking a significant development for the Department. What began as individual projects are fast becoming integral to Department management and operation. The use of data and analytics – and the appreciation for measuring effectiveness – may arguably reflect an important approach to policing in Oakland, one that can provide officers and command staff with detailed and timely information to support them in their work. Furthermore, these developments suggest the likelihood that additional advancements will be made along these lines.
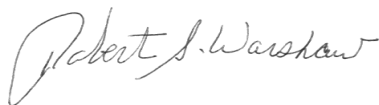
There are also good reasons to support such development. Not only do the roots of PRIME go back to the NSA, which was a response to critical problems, more recent problems also support the need for continued improvement in the use of data to understand and influence management decisions. The review of data on recently hired officers has been important to address recent problems and prevent problems in the future. Finally, there is another reason that the advancements in understanding and using data are important. The risk management system, the stop data analysis, and the records management system can all provide valuable tools for new Department leadership.

## Conclusion

As discussed above, during our December site visit, Monitoring Team members again observed the Area Risk Management meeting. At the meeting, the Area Commander led the review of information on officer activity. The discussion was focused and clear. The data provided an understanding of the past several months and directions for management moving forward. Since their beginning, OPD has continuously revised and reformulated these meetings and their agendas as the Department works to increase their value. The meetings make clear the potential that exists in the Department's use of information for monitoring and managing risk.

The evidence of the Department's continuing need for enhancing its capacity to appreciate and use data is clear. PRIME and the work on stop data and the anticipated improvements in records management all now draw on a cadre of staff and managers with knowledge, skills, and experience to support data utilization at this critical time in the Department when management systems and department leadership are changing. But as these changes occur, as we noted in our last report, some of the staff most prepared to provide the support needed to continue progress in these areas during this vital time may also be changing. Retirement and administrative reassignment can adversely affect progress in this area at this important moment in time.

The Department should explore ways to retain key staff working in these areas until the new systems and operations can be stabilized.

Chief (Ret.) Robert S. Warshaw

*Monitor*