

Burbank Police Department

ANNUAL REPORT OF THE INDEPENDENT
POLICE MONITOR: 2022 Review

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Introduction

In a time of heightened scrutiny for law enforcement, jurisdictions throughout the country have sought recently to develop formal oversight of their local agencies as a way of increasing accountability. For the City of Burbank, though, independent oversight and formal public engagement about policing issues has been a reality for more than a decade.

The Burbank Police Commission, a panel of seven residents, was created in 2007 and has a monthly meeting to hear presentations and discuss issues related to the policies and procedures of the Police Department ("The Department" or "BPD").¹ And BPD's internal review mechanisms – including its response to misconduct allegations, uses of force, and critical incidents – have been the subject of annual audit by OIR Group² since 2011.

This Report represents the results of our audit for BPD activity in 2022. The audit is meant to provide the public with a window into how BPD scrutinizes the actions of its own officers and responds to performance that fell short of expectations. There are good reasons for resting the initial and primary responsibility for addressing these issues with BPD itself. A law enforcement agency's management obviously has the requisite knowledge of its own standards and training and is best situated to constructively monitor the day-to-day actions of its personnel. But our audit process is meant to counterbalance some of the limitations of that model in a couple of ways.

First is by providing an independent assessment of the legitimacy of the Department's process. One element of public skepticism about police accountability relates to questions about the rigor and objectivity with which

¹ At the April 2023 meeting, for example, the Commission covered topics that included the role School Resource Officers and BPD's K-9 program.

² OIR Group's team of experts in police practices has worked in the field of civilian oversight of law enforcement for more than two decades. Led by Michael Gennaco, a nationally recognized leader in the field, OIR Group provides a range of consultations, evaluations, and investigations for jurisdictions around California and in several other states. More information about their work, including a number of public reports, is available at www.oirgroup.com.

agencies investigate and evaluate the actions of their own officers – especially in the face of allegations of misconduct from the community. With that in mind, we look at the actual investigation files to determine whether identified issues were identified properly, pursued thoroughly, assessed objectively, and remediated appropriately. Our independent access to these otherwise confidential files and materials allows us to stand in the shoes of the public to scrutinize the Department's processes and add to their accountability.

The second point of the process is to identify systemic issues that might benefit from adjustment to policy, procedure, or training for the sake of enhanced future effectiveness. We bring to each audit cycle our years of experience and our familiarity with a range of best practices. The process helps us to raise specific questions and make recommendations that we hope will strengthen BPD operations in the future. We offer 24 new ones in this Report.

In light of our decade-plus relationship with the City of Burbank, we are also able to draw upon our history to make useful comparisons and track the Department's progress. That progress has been considerable over the years. Indeed, BPD's systems of internal review have become so refined that we often cite their elements in making recommendations to other jurisdictions. And we believe that the commitment by supervisors and executives to rigorous scrutiny has paid dividends in officer performance. Though of course there are still lapses and shortcomings, BPD's ability to identify issues – and its willingness to push for improvement – helps to turn these moments into learning opportunities for the future.

The format of our audit has remained largely consistent. We are in regular communication with BPD throughout the year to keep apprised of significant developments. After the end of the year, the Department assembles the complete investigation files (including body-worn camera recordings) for a range of cases as stipulated in our contractual scope of work. The categories include the following:

- All bias-based policing complaints;
- All administrative investigations conducted by the Internal Affairs Bureau in which the subject employee holds the rank of sergeant or higher;

- 1/3 of all administrative investigations conducted by the Internal Affairs Bureau, as randomly selected by OIR Group;
- 1/3 of all citizens' complaints randomly selected by OIR Group (this may include review of both sworn and civilian personnel);
- 1/4 of all use of force reviews randomly selected by OIR Group;
- All vehicle pursuits.

Our audit of this year's materials served as the basis for the discussions that follow, which separately evaluate the different BPD mechanisms for internal review of misconduct allegations, force, and pursuits. Overall, the respective investigation reflected a commitment by the Department to careful scrutiny of its own officers and operations. As in the past, BPD management did not limit itself to "bottom line" assessments as to whether policies were violated, but instead took a holistic approach and treated the cases as opportunities to refine performance. This annual process contributes our own layer of outside analysis to that approach, and hope that the observations and recommendations we share below will contribute to the agency's continuous improvement.

Our agreement with the City also includes access to the reviews of any deadly force or in-custody death incidents. Last year's Report, for example, featured a lengthy discussion of BPD's most recent officer-involved shooting case (from March of 2021). In 2022, there was one such event: a 48-year-old male who had been arrested by BPD officers died while in the station jail at Department headquarters. However, the various investigative processes – including the legal review by the District Attorney's Office and the administrative review by BPD itself – had not been finalized by the close of the audit period. We will presumably be in a position to discuss this matter in our next Report.

A final feature to our annual scope is the inclusion of an additional subject for one-time auditing, in an effort to gain insight into a different aspect of BPD operations each year. Last year's topic was body-worn cameras, which at that point were relatively new to the agency. Along with evaluating the Department's own efforts to ensure compliance with relevant policies and expectations, we asked for recordings from ten different "routine" arrests to evaluate how officers were adapting to the new technology. We wrote about our impressions and offered accompanying recommendations for further refinements of a very good program.

This year's Report features an evaluation of BPD's mental health response protocols, particularly in conjunction with calls for service or other encounters that revolve around taking people into custody pursuant to the psychiatric hold provisions of state law. (Specifically, we are referring to Section 5150 of the Welfare & Institutions Code.) Public safety and enforcement issues have long overlapped with the actions of individuals who are experiencing crisis or living with long-term mental illness. As society looks for new ways to address this dynamic, police agencies around the country are re-evaluating their own approaches.

In Burbank, the emphasis on effective mental health intervention has been reflected within BPD for several years – and the results have been noteworthy. A cornerstone of the Department's approach is the Mental Health Evaluation Team ("MHET"), which pairs a sworn officer with a civilian clinician from Los Angeles County's Department of Mental Health. Their focus is on responding to relevant calls for service, developing relationships with individuals who are living with mental health challenges, facilitating connections with available resources and supports, and providing a backstop for other Department personnel who regularly encounter people in need.

Along with increasing our own familiarity with the MHET program and its results, we looked at body-worn camera recordings and reports from ten calls for service that resulted in a "5150 hold." While several of these calls involved a MHET response, some did not – a reflection of the reality that the demand for skilled management of these encounters exceeds the weekly availability of the MHET unit members. But it was interesting to note that the care and patience of the MHET approach had seemingly taken hold throughout the agency. We were struck by the ways in which many responding officers seemed well-versed in the strategies for effective handling of these difficult situations.

As a last note of introduction, we repeat a point we have made in the past. The effectiveness and value of this audit process is contingent on a couple of primary factors. First is the full cooperation of BPD personnel in terms of providing not only the requisite information but also their thoughtful responses to the questions that arise during our development of this Report. And the second is a receptivity to the ideas that we share, along with a willingness to adopt many of the recommendations that we ultimately produce. We are pleased to acknowledge that the cooperation has certainly occurred during this

cycle, and past experience makes us confident that BPD will bring a similar receptivity to the Report's contents.

Review of Misconduct Investigations

In the past, our evaluation of BPD's completed misconduct cases has produced a number of favorable impressions about the process. The same is true of this year's audit. As we discuss below, investigations into alleged misconduct are consistently thorough, thoughtful, and rigorous. The files are comprehensive, and the memorandum that summarizes the cases is uniformly methodical and clear.

This reflects well on the skill of the Department's investigators, and it has been our sense in the past that BPD has prioritized the Internal Affairs role by staffing the bureau with highly capable people. At the same time, this year's cases included a handful of instances in which patrol sergeants were entrusted with conducting the investigations, and the finished products remained impressive. This too is a positive sign: we have advocated a philosophy that makes effective discipline a shared responsibility throughout the supervisory ranks, and to accomplish this without losing investigative rigor is a noteworthy achievement.

This year, we looked at a total of eighteen cases, which was half of the 36 that were completed during the audit period. Most originated as public complaints, but it should be noted that each year BPD also initiates a number of investigations based on performance or compliance issues that it identifies internally; we reviewed five of those in this cycle. Very few of the total involved sustained findings of policy violations, and none of the ones within our randomly selected sample were major investigations in terms of the severity of alleged misconduct and ultimate consequences.³

³ The Department did make us aware of a criminal investigation that it completed last spring against one of its own officers, who was relieved of duty last spring and charged with felony counts of insurance fraud and perjury. That officer is no longer with the agency.

Still, we were able to assess BPD's process and focus attention on the questions that are customarily of concern in our audits: Did BPD address allegations from the public fully and investigate them objectively and thoroughly? Was there appropriate accountability when officers were found to have violated policy? Did the Department use the process as an opportunity to identify issues and develop constructive interventions, even if policy violations were not directly implicated? When the answer to these questions is yes, as it generally was in this group of cases, the legitimacy of the individual investigation outcomes is that much more reliable.

With this in mind, we highlight below some of the noteworthy elements of the BPD administrative discipline process, as reflected in this year's cases.

Thorough, Holistic Review

The investigations we looked at this year had several attributes that were consistent with commendable features we've noted in the past. For example, it is striking to us that BPD automatically treats any civil claim against its personnel as a form of complaint and pursues the issues in a formal internal investigation even though it is under no requirement to do so. In our view, this approach reflects the sort of proactive and inclusive mindset that makes administrative discipline most productive.

BPD's move to body-worn cameras for patrol officers, beginning in 2020, has had a major impact on complaint investigations: in most cases, the recordings offer significant (or even definitive) evidence as to what occurred, and therefore have the potential to streamline the process considerably. The Department, however, does not use this asset as a basis for cutting corners. Instead, the videos are part of a comprehensive package that also includes police reports, other video footage (such as that from surveillance cameras), interviews with involved parties and other relevant materials. Still shots from the videos are reproduced and annotated to accompany the narrative reports prepared by investigators, and key moments from the videos are summarized in detail – and with accuracy.

The thoroughness and investigative rigor of the cases is also a distinctive feature of BPD's efforts in this arena. We saw that illustrated on several occasions this year. Examples included the following:

- An investigation into a traffic accident included a review of in-car video, traffic surveillance cameras, and GPS tracking for the relevant patrol vehicle in an effort to independently ascertain the description of the involved officers.
- A similar compilation of available technologies was utilized when an officer's driving behavior was challenged as dangerous by an individual who went on to lodge a discourtesy complaint after he himself was pulled over. This included an overlay comparison of the city's traffic cameras to the cell phone video provided by the complainant, which was apparently missing nine key seconds of the encounter.
- Body-worn camera recordings were meticulously evaluated from several different angles in order to address an allegation of excessive force and determine the physical positioning and responses of both the resistant subject and the surrounding officers.
- The Department was diligent in attempting to identify and interview witnesses and obtain independent statements when complaints about an incident were filed.
- In a case involving a handcuffed detention of an armed robbery suspect who turned out to be uninvolved, the Department obtained closed circuit camera recordings that showed the considerable physical similarity between the perpetrator and the complainant (who unfortunately happened to be in the area when officers arrived at the scene). They also ordered a translated transcription of the relevant body-worn camera recordings, in light of the complainant's status as a Spanish-speaker.

Taken as a whole, these examples add to our sense that addressing allegations properly is a priority to the agency, and that the outcome of each case is grounded in an assessment of all available evidence.

That officers be accountable for any sustained findings of misconduct is, of course, fundamental to the purposes of public and internal complaint review. In our view, though, this is a cornerstone but not an endpoint to effective administrative discipline. Ideally, law enforcement agencies will treat complaints and allegations as opportunities as well as obligations.

At their best, these investigations are vehicles for evaluating performance through a different lens and making relevant adjustments – even in the absence of formal policy violations. As we discuss below, this proactive, inclusive, holistic approach has been a hallmark – and distinctive strength – of BPD's *force review* process for several years now. But we have seen evidence of the same mindset in recent misconduct investigations as well.

One element of this is an openness to addressing potential concerns when they come to the Department's attention, even if the conduct at issue does not rise to the level of a policy violation or fall within a specifically prohibited category. For example, one of this year's cases involved a traffic stop that evolved into a lengthy and contentious detention before the man was finally released at the scene. He submitted a complaint alleging racial profiling, illegal detention, and excessive force. The detailed investigation was able to rely on body-camera recordings from several different officers, as well as interviews with the participants (including the complainant, who was interviewed twice).

Although the Department ultimately determined that no policy violations had occurred during the interaction, the review process revealed several aspects of the encounter that warranted follow-up. There were issues with the tactics of the initial officer on scene in terms of approaching the vehicle, failing to coordinate well with his backup officer, and communicating ineffectively with the subject.

Interestingly, the investigation also identified shortcomings in the actions of the two supervisors who responded. In particular, the soundness of the decision to release the subject – which seemed to derive in part from confusion or uncertainty about potentially applicable criminal violations – was questioned as being less appropriate than an arrest would have been.

All three involved employees ended up receiving separate counseling sessions to address the particulars of the case. The results were documented and added to the case file – a form of "showing your work" that helps ensure the actualizing of good intentions into interventions that influence performance going forward.

Timeliness

The importance of the timely completion of misconduct investigations is a theme we have visited in prior reports. Apart from the statutory one-year deadline in California for imposing discipline on an officer once an allegation of possible misconduct becomes known, the prompt resolution of cases serves the effectiveness of the discipline process in a few ways. It promotes the efficient collection and preservation of evidence. It allows involved officers to have closure and move past the uncertainty of a pending case. It provides agency management the chance to identify and correct performance issues in a way that reduces the likelihood of their recurrence. And it works to enhance public confidence that allegations are a priority to the agency and are handled accordingly.

BPD's commitment to ensuring the timely completion of cases has been especially evident in recent years, after we had identified lapses in prior reports. Several of the cases we looked at were completed within a month, and none even came close to exceeding the one-year statutory period.

The new prominence of body-worn camera recordings as an aid to efficient, decisive determinations is undoubtedly a factor in this trend. But there are other indicia of BPD's focus on this issue, most clearly in the form of language that is part of the form that is one method for registering a complaint.⁴

"Departmental procedure allows 60 days for completion of an investigation into a citizen complaint. Complaints are normally completed within this time period. Extensions may be granted by the Chief if additional time is required. In the event of a delay, you will be notified of the reason(s) for the delay by the Department."

⁴ The form is available in hard copy as well as online; importantly, the Department's inclusive approach to intake incorporates emails, phone calls, and in-person contacts from complainants.

This is a commitment that sends a clear message about the pace of process both internally and externally. One concern would be that the quick turnaround is occurring at the expense of thoroughness, but that was not the impression left by the investigations we looked at. Even examples we saw that were completed in less than two weeks seemed to include appropriately robust evidence-gathering and analysis.

At the same time, we saw several cases that exceeded the 60-day mark in terms of actual completion – and did not see documentation in the case file that reflected either the Chief’s approval of an extension or an effort to notify the complainant of the delay. To be clear, we did not find the length of any of the investigations to be inordinate. But the apparent gap between the stated protocols and the practical reality of the investigation timelines merits attention. BPD should follow through with (and memorialize in the file) its stated protocols for ensuring the timeliness of investigations.

RECOMMENDATION 1

BPD should adhere to its 60-day commitment for completing investigations, or to its approval and notification protocols for those cases that require additional time.

Notification Letters

State law requires police agencies to provide complainants with a letter notifying them of the outcome of investigations once they are complete. At the same time, out of deference to officer privacy rights, state law places limits on the details that can be shared.

This tension between transparency and confidentiality has created challenges when it comes to providing meaningful information for complainants at the end of the process. In our experience, many agencies address it by favoring the side of caution and taking a minimalist approach. This can be frustrating: a few lines of boilerplate language that tell a complainant that his or her

allegations were unfounded – and nothing more – presumably do little to promote a sense that the concerns were taken seriously.

As we have noted before, and to the Department's credit, BPD has gone in the other direction. We have written in past reports that BPD's letters make a concerted effort to "show their work" in arriving at the listed conclusions; the letters offer a detailed accounting of the evidence that was available and the specific factors that shaped the analysis. The letters leave little doubt that the Department understood the nature of the complainant's concerns and addressed them in the form of a careful investigation and review. As we have said before, even when outcomes are disappointing to the complainant, it matters to at least demonstrate that the complaint was taken seriously.

This year's letters continue – and seemingly build upon – this approach. The availability of body-worn camera recordings has enhanced investigators' ability to see disputed encounters for themselves and evaluate key moments based on the video evidence, and the notification letters take advantage of this to provide summaries that are even more comprehensive than previous versions. In our view, this form of engagement is worth the extra time and thoughtfulness that it requires. And we were impressed to see the Department not "resting on its laurels," but instead moving further in the direction of sharing information about its complaint and investigative process with those who have chosen to participate in it.

Biased Policing Allegations

For several years now, the sampling of misconduct investigations that we review has included all complaint cases that feature an element of discriminatory or bias-based policing. The City of Burbank was quicker than many jurisdictions to recognize the sensitivity of these issues – and their centrality to public trust in law enforcement – and accordingly made them a focal point of its oversight model.

In 2022, BPD opened five such cases. Three of the complainants were Black, one was Hispanic, and one alleged discrimination on the basis of gender identity. None of the allegations was sustained.

As we have discussed in the past, these cases can be unsatisfying for complainants and accused officers alike. Against a backdrop of national racial tensions and longstanding statistical disparities in our justice system, concerns about unfair, discriminatory treatment are understandably prevalent in many communities. But these allegations are also notoriously hard to prove much depends on the subjective mindset and motivations of the involved officers, and denials – in conjunction with plausibly legitimate explanations for decision-making – are quite difficult to refute. And for those officers who are genuinely committed to principles of equality, the accusations themselves are disheartening or even offensive. Finally, to the degree that implicit bias may impact an officer's decisions on who to stop, search, and arrest, such bias will likely be undetectable through the investigative process since unconscious factors are influencing those decisions.

To BPD's credit, they have handled complaints of biased policing with genuine thoughtfulness in an attempt to push past these dynamics and reach evidence-based conclusions. They go beyond the paradigm of "You stopped me because of my race" vs. "No, I didn't," in an attempt to hone in on the basis for the complainant's perceptions and analyze the relevant encounter in its complete context.

One noteworthy example that we have recommended to other agencies relates to allegations of biased traffic stops and citations. BPD investigators developed a practice of moving beyond the isolated incident to assess a larger sampling of the subject officer's activity in conducting such stops, in an added effort to look for noteworthy patterns or disproportionalities.

We saw a similar example of rigorous scrutiny this year. In that case, a young black man was walking in an alley (near his home) in the early morning hours, wearing a hoodie and carrying a backpack. Two patrol officers approached in their car and then stopped him for questioning, claiming to be concerned about a number of property crimes that had been occurring in the vicinity in recent weeks. After providing some initial responses to the officers' inquiries, the young man declined to provide his identification and eventually asked for a supervisor; two sergeants responded. The officers finally did search his person after a grudging consent. They found his identification, confirmed that he lived in the area, and allowed him to leave.

The young man came to the station the next day to file his complaint. He noted that the officers had made him late to work, alleged an improper search and detention, and claimed racial bias.⁵

The body-worn camera recordings of the officers captured the incident in its entirety, and they matched the largely overlapping versions provided by both the complainant and the officers. The two perspectives boiled down to this: the officers hoped to confirm his story by checking his identification, and the complainant felt strongly that he should not have to acquiesce to this further intrusion, since he had done nothing wrong. This reluctance, however, only served to heighten the officers' concerns – thereby exacerbating the tension of the situation on both sides. Eventually, the young man gave his grudging consent to be searched, and he was allowed to leave without further incident.⁶

The conflict was in some ways a frustrating one. In our view, both sides were politely intent on communicating effectively, and both had valid points that were ultimately not reconcilable. In the end, the officers were able to articulate a number of objective factors that accounted for their assertion of "reasonable suspicion" and a right to detain the complainant.⁷ And they were conscientious about recognizing the young man's experience of the event and attempting to provide him with relevant explanations.

To the Department's credit, though, the investigation also included a thorough review into whether the officers' expressed concerns about property crimes in the area had factual legitimacy. It turned out that they did: the investigation

⁵ The lieutenant who spoke to the complainant was certainly gracious. We noted, however, that much of the 25-minute intake discussion involved the lieutenant speculating about the officers' possible mindset and describing legal standards. This was clearly well-intentioned, but we reiterate a point that we have made before: ideally, intake interviews will focus on the complainant's perspective so as to not give the impression that the supervisor is already "explaining away" his concerns prior to the investigation having even commenced.

⁶ Though he was with the officers for approximately a half hour, part of that time was a function of his request to speak with a supervisor at the scene.

⁷ Interestingly, one of the officers pointed out in his administrative interview that, because of the hoodie he was wearing, the complainant's race was not even discernible when they first decided to contact him.

listed dozens of calls for service and more than 30 arrests that had arisen in the general vicinity of the stop in the last few months, and the case file even featured a map with annotations.

The complaint was ultimately unfounded. However, by taking its analysis to the next level of evaluation, the Department gave added credence to this result – and showed an understanding of the skepticism that mere denials or pat explanations can create.

A second case involving a Black male subject reinforced the "perception gap" that can complicate encounters that are routine for law enforcement – but often less so for members of historically disadvantaged groups. The incident that gave rise to the complainant's claim of racial discrimination was a traffic stop for a minor infraction (a broken center brake light). In watching the recordings of the event, we noted that the subject began to act overtly anxious soon after he handed the officer his (expired) driver's license.

He held his hands at the top of the steering wheel, moved and spoke extremely slowly, and communicated his every move to officers in detail, stating that he was doing so for "everyone's safety." While the contact officer remained calm and professional, he chose not to engage with the man's apparent agitation or otherwise reassure him that he was in no danger.⁸

To their credit, officers used discretion to issue a fix-it ticket and citation to renew the license, in lieu of available and more punitive options. And the "best" way to assuage a person who seems unduly upset in any given situation is inevitably a matter of speculation. In our view, though, a sensitivity to tensions potentially arising from race and identity is worth bearing in mind; here, a low-key form of reassurance would perhaps have been beneficial.⁹

⁸ We acknowledge that some of the subject's unease may have been attributable to his expired license as much or more than the racial dynamics; he later stated that losing his car would be especially problematic because he lived in it.

⁹ Some jurisdictions in California and legislators in Sacramento are discussing ways to consciously move away from traffic stops that are predicated on minor equipment violations only, with a goal of minimizing contacts that have been found to be historically discriminatory. The Police Commission may wish to consider initiating that discussion in Burbank.

We know from other contexts that BPD officers are certainly capable of responding effectively to cues from the subjects they encounter – even when circumstances define that effectiveness in terms of patience or kindness.

RECOMMENDATION 2

BPD should continue to promote strategies for empathy, dispassionate explanations, and de-escalation in situations that may have a racial subtext in the perception of subjects.

Driving Cases

We noted two cases which were generated by the Department involving traffic collisions that were determined to be preventable and thus the fault of the involved officers. Both were relatively minor in nature: one involved backing into a parked car, and the other a low-speed collision with another car that resulted in a broken hand for the officer who was driving.

Each of the cases had a dimension we thought was noteworthy. In the first, the accident turned out to be the *sixth* involving the same officer since 2018. This was a factor in contributing to the disciplinary consequence that the officer received – which in our estimation was still quite minor.

A key fact in the second case was that neither officer was wearing his seatbelt at the time of the collision – which apparently the other driver had noticed and which the officers themselves acknowledged. While they both received "sustained" findings for the violation of policy, it made an impression about the extent to which this issue – unfortunately common throughout law enforcement in our experience – is pervasive in Burbank.

Taken together, the cases leave us with a mixed impression: while the findings were appropriate, the high volume of incidents for the first officer and the seat-belt laxity of the other two were concerning. We encourage the Department to assess its approach to preventable traffic collisions in particular and safe driving in general as an ongoing priority.

RECOMMENDATION 3

BPD should re-evaluate its strategy for imposing consequences for preventable collisions and for incentivizing officers to comply with policies relating to driving safety, including the seat belt requirement.

Review of Force Cases

In 2022, the Department recorded 72 incident in which force was used. We sampled eighteen of these incidents and reviewed the totality of the case file, including all body-worn and in-car camera footage. Nine involved uses of physical force such as control holds, takedowns, or team takedowns – a low level of intervention that typically constitutes a majority of the agency's annual deployments. The others covered a range of force options, including Taser deployments, use of the police K-9, use of the 40mm less lethal weapon, and OC spray. One case involved head strikes that resulted in serious injuries to the subject (we discuss this case in detail).

While tactical issues were identified and debriefed, none of the uses of force in our sample were found to be out of policy.

We continue to be impressed with the rigor of the Department's use of force review process, which has evolved considerably during our time as monitors. We consider it to be exemplary in many ways. In our experience, it is rare for an agency to show BPD's level of commitment to the systemic, holistic review of each force deployment, highlighted by separate scrutiny from sergeants, lieutenants, and executives. The BPD process achieves appropriate accountability while also seeking out opportunities to refine performance, policy, or training. The form that documents its formal assessment of each force incident includes a specific check box for whether training or tactical issues were identified – and more often than not they have been.

This speaks to a point we have made in prior reports, but which bears repeating: meaningful, effective force review goes beyond the bottom-line question of policy compliance and recognizes that these events are worthy of careful, holistic scrutiny. A finding of actual policy violations in force cases is rare in most every law enforcement agency. This is a reflection of a few things, not the least of which is the legitimacy of officer's actions in this

important context.¹⁰ But in all but the most straightforward of incidents, the kind of engagement that results in a use of force is a learning opportunity in one or more categories such as tactics, training, communication, supervision, or equipment. Burbank does an exceptional job of exploiting these opportunities in the service of improved future performance and reduction of uses of force.

In this year's sample cases, we were especially impressed with supervisors' thorough and complete initial investigations, which included even more extensive analysis and issue-spotting than in previous years (though, as we discuss later, these should be completed by uninvolved supervisors). Clearly, the Department's recent history of rigorous review has become "second nature" in a way that shapes the approach of supervisors at all rank levels – and presumably influences the mindset and performance of officers in the field as well.

Examples of detailed, constructive responses to individual incidents included the following:

- In a case involving a Taser deployment at a gas station, the safety of the weapon near the pumps was flagged as a concern. Though the lieutenant ultimately determined that it had not been a significant problem in this instance, the potential issue was nonetheless addressed with the involved officers.
- In a case involving a foot pursuit, the reviewer noted the lack of effective radio traffic that involved officers had provided during the chase, in contravention of expected tactics.
- In a case involving the search for burglary suspects, the reviewer noted that verbal announcements/warnings about the release of the dog were not broadcast through an available speaker that would have helped ensure the subject's awareness.
- In a case that involved the response to a melee involving several subjects, the reviewer reminded officers that OC spray would have

¹⁰ When we do see questionable deployments, it is more frequently the result of faulty performance or decision-making, as opposed to malice.

been a viable initial option to disrupt the fighting in a relatively safe, efficient fashion.

And, with one exception that we discuss below, the subsequent Critical Incident Review Board (“CIRB”)¹¹ discussion and written analysis appropriately addressed issues and often raised ancillary concerns, thereby adding substantive value as well as quality assurance to the earlier stages of the process.¹² Irrespective of policy outcomes, the CIRB directed involved officers in every incident to at least some form of debrief or training. This “follow-through” piece – including a documentation requirement – helps ensure that thoughtful insights and good intentions are translated into actual impacts on officer performance. Supervisors consistently provided written responses wherein they detailed the topics covered and the officers’ response, indicating their commitment to accountability and appropriate follow-through. And all of this material was included in the investigative file for our review.

Still, our audit raised areas worth further consideration, which are summarized in the bullets below. We discuss these areas in detail and provide actionable recommendations in the subsequent sections.

- The first of these relates to the role of BPD supervisors: in some cases, we found that supervisors became involved in use of force incidents, rather than directing them, and that these involved supervisors

¹¹ Once the handling supervisor compiles the initial package of reports and evidence and conducts his or her own assessment according to established criteria, each case then goes to a lieutenant for additional review and “insights.” The updated investigation is then submitted to a panel of Department executives, who often include subject matter experts if the incident warrants it.

¹² One example of an additional issue the CIRB panel was particularly conscientious about citing related to the flagging of uses of profanity, however minor, when they were observed; this has been a long-running recommendation of importance to both OIR Group and the Chief. We also noted the case review in which the panel found widespread instances of unprofessional language in the context of efforts to gain control at a hectic scene with multiple individuals fighting. The profanity suggested that officers had become overwhelmed by the situation. In response, the Department developed a briefing item for all patrol shifts about adequate resources for crowd control, the importance of an organized response – and a reminder of the agency’s profanity policy.

sometimes also authored the use of force reviews, a practice that the Department changed several years ago.

- The second relates to use of the Conducted Electrical Weapon, or Taser. We received seven cases that involved use of the Taser; our review of these suggests that the Departments should reconsider the ways in which officers are using Tasers.
- The third relates to the risk of positional asphyxia when using the leg restraint device and adherence to the reporting requirements listed in restraint device policy.
- The fourth relates to a recommendation that we made in last year's report regarding more deliberate consideration of de-escalation. In that report, we recommended that officers document their use of de-escalation techniques or, if none were used, why they were not used. Similarly, we recommended that the review process consider de-escalation techniques and tactics. Overall, while we saw some consideration of de-escalation, it was not consistent nor as robust as we recommended.
- Finally, we observed that the Department chose to create separate case files for uses of force that occurred in the same incident. We flag this because it is a practice that we have not observed in prior years, and one that may not be effective for case reviews.

Our comments on these topics are not intended to critique officer behavior or needlessly re-hash issues that the Department has already identified and debriefed. Many of these were identified by the CIRB at some level, again a credit to its robust capacity for self-evaluation. Instead, our intention is to highlight policy and tactical considerations where we feel that further attention from BPD is warranted.

Evaluation of Head Strike Case

While we found that nearly all the Department's reviews appropriately and thoroughly evaluated uses of force, we identified one case that gave us pause.

In this case, officers encountered a subject who was likely under the influence of methamphetamine; officers discovered him nodding off with a meth pipe in his hands. The subject immediately resisted officers' commands to show his hands and began grappling with the officers, which resulted in one officer falling to the ground with the subject on top of him. Officers used various strike techniques, including knee drives to the torso, to subdue the subject, but the subject seemed impervious to pain. Seeing that the subject's arms were unsecured and near his partner's duty belt and believing that the subject might attempt to disarm his partner, one officer delivered a kick to the right side of the subject's face. This had no apparent effect.

The fight continued. The officer delivered two additional kicks to the subject's torso and several closed-first strikes to the subject's head and torso. Then, after issuing a warning, he deployed the Taser four times; twice in "probe" mode and twice in "drive-stun" mode. None of these uses of force apparently affected the subject; at one point, the subject even reached back to pull out the Taser probes. Officers delivered additional knee strikes. Two other officers arrived to assist, and officers eventually gained sufficient control to handcuff the subject. The subject was medically treated for contusions to the face and a fractured arm and cleared for booking.

The Department appropriately classified this as a "Type-1" use of force, the highest level and a category reserved for deadly force and force that results in serious injury. It also followed its typically rigorous investigative protocol both on scene and after. The investigation included a robust canvass for witnesses and extensive evidence collection.

Because of its classification as a Type-1, the case was assigned to Internal Affairs for review, and the investigator produced a report with an impressive amount of insight and detail. For example, the investigator noted that the officer used closed-first strikes, which are not advised, stating: "[the officer]

struck [the subject] in the face with his fist on more than one occasion. [Striking] with a fist can be problematic in regard to breaking small bones in the hand an elbow or forearm may have been more appropriate.” (while here we do not agree with the suggestion that an elbow or forearm to the face are “more appropriate,” we appreciate the detailed issue-spotting).

And the investigator's observations and thoroughness extended to the granular level, as in noting that “the police reports do not include the name of the medical staff that treated [the officer].”

Given this backdrop, though, we were all the more puzzled that the Department did not explicitly review what to us was the most concerning aspect of this incident: the kick to the subject’s head. The absence of any specific mention of the kick to the head by either the investigator or the CIRB (outside of the incident description) was conspicuous.

We turned to policy for guidance and found it to be vague with respect to *kicks* to the head. The Department’s Use of Force policy classifies head strikes with an impact weapon as deadly force:

Officers should be trained that a hard strike to the head with any impact weapon, including a baton, could result in death, and any strikes to the head should be consistent with policy and training.

Current policy is unclear as to two significant things: whether an officer's foot should constitute an impact weapon, and what standard was used by BPD in determining whether that particular force application was justified. The substantive answer to these questions is, of course, interesting to us, but the larger issue is why BPD's normally robust process fell short of its own standards for comprehensive incident review.

RECOMMENDATION 4

BPD should clarify policy to reflect that a kick to the head be considered deadly force and not to be used unless the deadly force threat levels are met.

The Role of Supervisors

The role of the supervisor in the field is defined throughout the Department's policy manual as one of monitoring, directing, and managing. At times, the presence or intervention of a supervisor serves to de-escalate or slow an incident. In most cases, we observed the benefits of a strong command-and-control supervisor presence. This is what we have come to expect from BPD's supervisors, and a skill we have commended in past audits. For example:

- One case involved the apprehension of several burglary subjects who were hidden in backyard spaces and garages. Under the direction of various supervisors, officers set up containment and searched using a K9. When the subjects were located, officers established arrest teams and then commanded the subjects to move toward them, rather than going to the subject. The supervisors here took explicit control by commanding officers to stop yelling various commands, assigning specific roles, and establishing a tactical plan.
- In another case, a senior officer acting in a supervisory capacity developed a plan to remove a subject who had locked himself in a fast-food restaurant bathroom and directed the operation. This officer's tactical plan ensured that only a limited number of officers operated in the small space, including designating an arrest team of three officers who performed a takedown to apprehend the subject in a systematic way.

But, in a handful of cases, we found that supervisors became involved in the force instead of actively directing it. In these cases, the lack of clear command-and-control created tactical concerns such as crossfire and overcrowding, and heightened tension instead of de-escalating. For example:

- In one incident, the circumstances necessitated that officers immediately enter a narrow residential hallway to rescue a victim who was actively under attack. We observed officers and at least one

supervisor fill the hallway from both the back and front doors of the residence, creating crossfire concerns and confusion.

As that incident unfolded, even more officers responded to the narrow hallway, and the supervisor did not direct their movement. While the subject was successfully apprehended, the sheer volume of officers in a small space with no command jeopardized officer safety and limited force options.

- In another case, we observed two officers initially engage in a tug-of-war with a driver who refused to exit his vehicle¹³ while two, unsecured passengers were still seated inside the vehicle. Moments into this struggle, a supervisor responded to the scene. Rather than direct, this supervisor became actively involved, which seemingly agitated the subject and ultimately resulted in a use of force.

We acknowledge that some incidents are dynamic in nature, that supervisors must sometimes engage instead of direct, and that supervisors do not always have the time and space to create a safe tactical plan. Still, effective command and control by supervisors could have made an impact, resulting in far safer tactics and outcomes for all involved.

In both of these cases, the Department identified and addressed tactical concerns, but did not explicitly evaluate the role of the supervisor(s). In the first incident, for example, the Department acknowledged that “the working environment became overcrowded with officers looking for work,” and counseled all officers on areas of improvement, such as assigning specific roles and better tactical communication. We encourage the Department to evaluate the role of the supervisor more explicitly.

RECOMMENDATION 5

In its force review process, BPD should add a metric requiring express evaluation of the actions of on-scene supervisors to consider whether

¹³ The Department appropriately assessed this incident against Policy 470: Reaching into Vehicles and identified the dangers of reaching into a vehicle to apprehend the subject. We raised this tactical concern in our last audit.

they performed their supervisory roles consistent with Departmental expectations.

In force incidents, a supervisor has the additional responsibility of responding to the field to conduct the use of force review. Several years ago, the Department modified its policy to reflect a preference for an *uninvolved* supervisor to conduct the use of force review (Policy 300.7.3). But in four cases, we noted that an involved supervisor conducted the force review.

The CIRB identified this issue in three of the four applicable cases. While it noted the preference for an uninvolved supervisor to conduct the review and counseled the involved supervisor, the CIRB did not document any rationale for why this occurred in the first place. We suggest that the Department take a closer look at this issue to understand why involved supervisors are completing force reviews despite the written guidance to the contrary set out in BPD policy.

RECOMMENDATION 6

BPD should determine why involved supervisors are completing force reviews in contravention of Department policy.

Use of the Taser

In this period, we reviewed seven cases that involved use of the Conducted Electrical Device, commonly known as the Taser. Each incident was evaluated by supervisors and CIRB and found to be in policy. But the Department found that many of these Taser deployments were ineffective; that is, the use of the Taser did not result in neuromuscular incapacitation as intended. Further, we reviewed cases where the Taser use, while warranted based on the totality of the incident, may not have been necessary at the moment of deployment, and where officers failed to issue appropriate warnings as required by policy.

Taken collectively, these cases and the issues they raised suggest that the Department should take a closer look at the ways in which officers are using Tasers in the field.

First, we observed cases where officers used the Taser in drive-stun mode, a mode that is not advisable per Department policy, in several recent studies,¹⁴ or by the manufacturer.¹⁵ We highlight these instances to encourage the Department to evaluate its training and policy regarding use of the Tasers in this mode.

We learned that in response to an incident in early 2022 that involved a takedown and lengthy struggle with a subject, BPD held a Department-wide defensive tactics training session. During that session, the instructor advised that rather than continue to grapple with the subject, the officers could have used a Taser in **close contact mode**. Close contact is when the officer deploys one Taser probe and places the Taser device against the body to complete the electrical loop. This, reported the Department, could have resulted in faster incapacitation of the subject and, overall, was safer than going hands-on for extended grappling.

In theory, close contact mode can be a valuable tool to quickly stop a subject's actions if neuromuscular incapacitation is achieved, one that is allowable per

¹⁴ See PERF & COPS, 2011 Electronic Control Weapon Guidelines (March 2011), pages 14, 19.

¹⁵ The Taser is intended to create neuromuscular incapacitation (NMI) by delivering a shock to the body through electrical conduction. This is achieved in two ways: by deploying the two electrical probes that attach to the skin, or by deploying one probe and completing the electrical loop by placing the Taser device itself against the skin, which is called "close contact mode." In either method, the probe(s) must spread and attach to deliver the electrical shock. This is less likely to occur in close contact mode; the officer's proximity to the subject can impede the probe spread and attachment. These two modes are allowed per BPD's policy (309.5.1):

The following methods may be used to apply the TASER device:

1. Probe Mode – This method is used to fire probes from the TASER device into a subject to cause Neuromuscular Incapacitation (NMI).
2. Drive-Stun with probes deployed – If necessary and reasonably appropriate, this method may be used as a follow up to the Probe Mode to spread NMI over a wider area. This method may also be used if NMI is not achieved due to narrow probe spread or when only one probe impacts the subject.

The Taser can also be used in drive stun mode in very specialized circumstances per Department policy; drive stun can only be used "as a distraction technique to gain separation between an officer and a subject, thus giving the officers time and distance to consider other force options or actions."

Department policy, and one that officers in the right conditions might consider. But in practice, we observed officers use **drive-stun mode** instead, which was neither effective nor advisable. For example:

- In one case, an officer used drive-stun mode twice when attempting to gain control of a fighting subject; once when the subject was actively fighting (punching and kicking officers), and, later when the subject pinned his arms under his body and refused to be handcuffed. These drive-stuns had no effect on the subject. The officer in this case reported that he intentionally used drive-stun mode because he was concerned that the Taser probe wires might impede his partner officers who were engaged in the ongoing fight. While NMI “would have been ideal,” he did not believe it was feasible.
- In another, the officer used five drive-stun deployments (each lasting one-to-two seconds by his estimation) to assist other officers in overcoming a man's struggle to resist handcuffing. The same officer then used two drive stuns to assist in overcoming the resistance to handcuffing of a second subject. Though the officer believed the deployments were a factor in finally gaining both subjects' acquiescence, the review process emphasized that the use of "probe mode" had been an available option and one that would have been more effective.

The Department scrutinized the use of drive-stun mode but fell short of holding the officers accountable for their use of the Taser in drive-stun mode (and outside of the limited exceptions set out in policy). We recommend that the review process place special attention on any Taser use in drive stun mode. Further, we recommend that the Department re-train all officers on the allowable and effective ways to deploy a Taser.

RECOMMENDATION 7

BPD should ensure that careful attention be placed on the review of any Taser use in drive stun mode to ensure that it meets the limited exceptions set out in policy.

RECOMMENDATION 8

The Department should evaluate its training related to use of the Taser to ensure that officers use the appropriate mode (probe or close contact) to achieve NMI, and not use drive stun mode except in the limited circumstances dictated by policy.

Second, we reviewed two cases where the Taser deployment occurred at a moment when the subject was running away from officers:

- The first involved officers who were following a subject who was waving a metal rod and refusing officer commands to stop walking and drop the rod. After walking a considerable distance, the subject then turned and moved toward officers who were standing in the roadway parallel to the subject, while still holding the metal rod. An officer deployed a single round from a 40mm less lethal device. This was partially successful: the man dropped the metal rod but continued to run away. Another officer deployed the Taser; however, due to the subject's thick clothing, the probes did not attach, and the Taser was ineffective. The man tripped, fell, and was apprehended.
- In the other incident, officers attempted to contact a subject in a parking lot after he was identified by a convenience store worker as the individual who had just been stealing from his establishment. He was a barefoot male in his early twenties, and when officers started to speak with him, he moved briskly toward them and suddenly swung his arm, striking an officer in the chest with a glancing blow before turning and running away.

A foot pursuit ensued. After his commands to stop were ignored, one officer eventually used his Taser as they ran through traffic. Though the initial deployment was not effective, a second set of probes incapacitated the subject and caused him to go to the ground, and officers successfully handcuffed him shortly thereafter.

In both instances, the Department endorsed the use of force as justified by the circumstances, providing extensive rationale for this decision in their memoranda. We encourage BPD to focus additional attention on the

distinctive scenario of Taser use at fleeing individuals, including language in its own policy.

Both incidents arguably involved subject behavior that extended beyond the "mere" flight that is delineated in policy.¹⁶ However, we would encourage the Department should screen such deployments with heightened rigor to ensure that the spirit of the policy is in fact understood and followed in the field. That rigor should include expressly setting out the "mere flight" application of current policy to the facts presented.

RECOMMENDATION 9

BPD should ensure that Taser deployments for purposes of apprehending fleeing subjects are scrutinized to ensure that the totality of circumstances meets the Department's policy threshold for justified force, including examining whether the use was for "mere flight".

Finally, we observed that officers did not always issue a clear warning that the Taser would be deployed as required by policy. In one case, the Department concluded that the incident unfolded too quickly to issue a clear warning, but

¹⁶ BPD policy states:

309.5.2 APPLICATION OF THE TASER DEVICE The TASER device may be used in any of the following circumstances when perceived by the officer at the time that such application is reasonably necessary to control a person:

(a) The subject is violent or is physically resisting.

(b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, self, or others.

Mere flight from a pursuing officer, without other known circumstances or factors described in bullets (a) and (b) above, is not good cause for the use of the TASER device to apprehend an individual.

trained officers to issue warnings in the future. However, when we reviewed the body-worn camera footage, we observed the officers give several commands during this incident; a Taser warning was seemingly also feasible.

Similarly, the use of multiple drive stuns in another case was not accompanied by an initial warning. Here, the reviewer flagged it as something that could and should have occurred and debriefed the officer accordingly. But the critique quickly moved to the legitimacy of the force itself in light of the subject's resistance.

As the reviewer in the second case noted, a warning could have elicited the compliance of the subject, which is one of the purposes of the policy. We encourage BPD to further reinforce this expectation with its officers and to ensure appropriate accountability when officers deviate from expectations in this regard.

RECOMMENDATION 10

BPD should reinforce the necessity set out in policy to provide a warning regarding Taser use to ensure appropriate accountability when officers deviate from expectations in this regard.

Use of and Reporting on the Leg Restraint Device

Officers reported, and we reviewed, four uses of the front leg restraint device on subjects to restrict movement. The “front leg restraint” is a device typically used when the subject is handcuffed; it restricts movement of the legs.

However, use of the leg restraint device can also increase the potential risk of positional asphyxia:¹⁷ in the cases that we reviewed, the positioning of the leg restraint device appeared to prevent the subjects from fully sitting upright, which could inhibit a subject's ability to breath (though we did note that officers placed subjects in the "recovery," or side-laying, position, at various points).¹⁸

For example, in one case the subject, who appeared to be intoxicated, struggled with officers who tried to handcuff him. When his behavior escalated to kicking and pulling, a supervisor on scene directed officers to move him to the ground and apply the leg restraint device. Officers immediately turned the subject to his side, but the position of the device prevented the subject from sitting up. Officers eventually carried the subject to the rear of the police vehicle. Because the body-worn camera footage was blocked, we were unable to definitively see how the subject was placed in the police vehicle for transportation (of concern is that the restraint device may have restricted his breathing during transport).

Further, in reviewing the use of the restraints, we also noted that the officers' police reports in two cases did not fully document items required by Policy

¹⁷ The Department advises on position asphyxia in its Use of Force policy (300), but not in the Restraint policy (306). Policy states:

300.3.2.1 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia", "restrained asphyxia", and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence, or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once controlled, the individual should be placed into a recovery position e.g., supine or seated) and monitored for signs of medical distress.

¹⁸ In a fourth case, it appeared that the leg restraint was applied only to the subject's ankles, though this was difficult to discern on body-worn camera. The subject was able to walk/shuffle to the police vehicle escorted by the officers.

306.8, such as the estimated length of time a subject was held in the leg restraint.

We recommend that BPD evaluate incidents where the leg restraint device is applied for risk of positional asphyxia and, where a risk is identified, debrief/retrain officers on the application of the device. We also recommend refresher training on the reporting requirements for use of the front leg restraint device.

RECOMMENDATION 11

BPD should evaluate incidents where the leg restraint device is applied for risk of positional asphyxia and, where a risk is identified, debrief/retrain officers on the application of the device.

RECOMMENDATION 12

BPD should provide refresher training on the reporting requirements for use of the front leg restraint device.

Documentation and Consideration of De- Escalation in Force Incidents

In our most recent audit, we recommended that, in light of calls for policing reform that highlighted the importance of de-escalation, the Department consider more explicitly documenting use of de-escalation or explain why de-escalation techniques were not feasible. While current policy requires officers to consider de-escalation, there is no affirmative requirement to document those considerations. We advised that this happen both in officers' own police reports and in the subsequent review process.

To be fair, our report was released late in the year and a change of this type will take time to implement. And we do note that, while the Department agreed with the importance of de-escalation tactics, they questioned the need for our recommendations to formally document them. BPD responded that de-

escalation features prominently in their approach to every call for service. As such, they did not adopt our recommendations by, for example, making policy changes or delivering new training to emphasize documentation.

So, it is not surprising that we did not see any formal documentation of de-escalation, either by officers or the CIRB. While the CIRB considered and debriefed on tactics that are consistent with principles of de-escalation, such as slowing an incident down or better communication, the reporting was not explicit, nor was as consistent or robust as we recommended.

We stand by our recommendation. As we discussed in our previous report, requiring officers to fully document de-escalation efforts, can provide meaningful data on de-escalation and positively reinforce these important tactics. In addition to learning where and how de-escalation works most effectively at the Department-level, the documentation may also serve to highlight the efforts of specific officers who excel in the skill set.

We again recommend that the Department consider reporting on and documentation of their efforts to de-escalate an incident. As we presented in our previous report:

RECOMMENDATION 13

BPD should amend policy or issue a training bulletin advising that all officers detail in writing the circumstances surrounding their use(s) of force to include any efforts to de-escalate prior to the use of force; and if no de-escalation techniques were deployed, an explanation for why none were deployed.

RECOMMENDATION 14

BPD should revise its CIRB force review policy to require the Board to expressly consider and document whether de-escalation techniques were deployed prior to moving to force options and if not, whether it would have been appropriate to consider them.

Review of Vehicle Pursuits

From the start of our engagement, part of our mandate has been to report on the Department's review of vehicle pursuits. BPD's internal scrutiny of these events – and its efforts to respond to developing trends through policy, training, and other interventions – has been recognized by City leadership as a worthy focus for our annual process.

The effort to navigate tension between effective apprehension of subjects and the inherent risk of pursuits has prompted several adjustments in recent years, and we have catalogued these shifts in prior Reports. In 2013, for example, BPD implemented a lengthy policy that significantly restricted vehicle pursuits after seeing its numbers rise to concerning levels. The pursuit count fell drastically in subsequent years, dropping into single digits.

That 2013 policy had the intended effect of reducing the number of pursuits in the City. But the Department also noticed that it was resulting in a higher percentage of out of policy pursuits, an outcome that some attributed to the policy's complexity and restrictiveness.¹⁹ Concerned that they had overcorrected, the Department in 2019 began a slow process of revising with an eye toward simplifying the criteria and giving greater discretion and latitude to officers in the field.

While the new policy was being developed, the Department saw a sudden and drastic uptick in pursuits: in 2020, the Department reported 16 pursuits and continued this upward trend with five more pursuits the first two months of 2021 before the new policy was finalized (for a total of 21 over that period). While there was no clear data to prove why this upward trend occurred, the Department pointed to factors related to the pandemic (e.g., members of the

¹⁹ The exception was 2016, where only one of six pursuit cases was found to be out of policy.

public willing to engage in higher-risk activities) and a younger patrol force with less overall experience.²⁰ Only three of these were found to be out of policy.²¹

Interestingly, implementation of the new policy in late February 2021 coincided with a decrease in volume for new incidents: the Department ended 2021 with only three more pursuits from February to December of 2021 (for a total of eight), each of which was found to be in compliance with the new policy.

Taken collectively, the 2022 incidents that we discuss here constituted another swerve in the trend lines: there were eleven pursuits (a slight increase), and six of the 11 were found to be out of policy. To its credit, the Department conducted a robust evaluation of each pursuit, and directed additional training on the pursuit policy, either to the specific officers or to entire units. And, importantly, none of these incidents resulted in an injury to an officer, subject, or member of the public.

It should also be noted that the pursuit policy violations are not egregious (with one exception: a case in which an officer initiated a high-speed, high-risk chase of a subject he believed to be a wanted felon). This was not always the case in the past. And it seems less suggestive of reckless officer behavior than continued confusion over how to implement aspects of the new policy. These include the acceptable reasons for initiating a pursuit and the proper implementation of “Tracking Mode,” a new feature intended to provide officers

²⁰ OIR Group did not conduct a formal audit in 2020. We, did however, include a small sample of 2020 Vehicle Pursuit cases in our most recent Report, which was issued in 2022.

²¹ Of the three cases that found policy violations (and which BPD shared for our review), each involved suspected DUI drivers or so-called “reckless” driving. These pursuits were found to be out of policy because they did not meet the criteria for a pursuit and/or involved driving over the speed limit guidelines. As we reported in our last Report, however, we determined that at least two more pursuits could have been found to be out of policy for speeding alone, and one exceeded the number of units allowed in a pursuit.

opportunity to follow a subject without formally initiating a pursuit.²² This was true for both officers in pursuit and the supervisors directing them.

We also identified a new potential concern: deployment outside of jurisdictional boundaries. The new policy does not expressly define jurisdictional boundaries or the requirement to transition pursuits that enter the freeway to the California Highway Patrol. This, coupled with Tracking Mode, resulted in lengthier pursuits than in previous years that entered freeways and traveled outside of City limits, calling into question the most effective use of BPD resources and the relationship with outside agencies. Additionally, a pursuit outside BPD officers' normal patrol areas creates issues due to unfamiliarity, potential radio communications, and the inability to summon additional BPD assistance.

Appropriate Training and Correction

Determination of whether an incident meets the criteria for a pursuit can be nuanced and requires quick decision-making; consequently, the likelihood that standards will be misapplied by officers and supervisors is greater than for other policy requirements. Two very similar incidents that occurred almost back-to-back serve to illustrate the difficulty of assessing the pursuit criteria in real-time and reflect the need for regular reinforcement of the standards. These incidents also reflect the Department's commitment to careful analysis and appropriate training. In the face of officers' confusion, this commitment to accountability is necessary, and promising.

- In one case, officers pursued subjects wanted for what they believed was a felony – a residential robbery. Moments into the pursuit, officers learned that the residence had been vacant, reducing the severity of the crime. In that moment, the CIRB opined, the officers should have immediately terminated the pursuit, which no longer met the pursuit criteria. The Department found the pursuit to be out of policy and ordered remedial training.

²² "Tracking Mode" is when an officer must terminate a pursuit for safety but can still follow the suspect vehicle, either "Code-3" (with lights and sirens) or without. Officer must do so "at reduced speed" and "out of the suspect line of sight."

- A mere two weeks later (and before the CIRB reviewed either incident or trained officers), officers again received a call of a residential robbery. When they learned the residence had been vacant as in the above incident, the first responding officers did not initiate a pursuit. In this incident, however, the robbery involved a firearm, a nuanced detailed that increased the public risk, severity of the crime, and did meet the pursuit criteria. Eventually, officers initiated a pursuit (VP2022-009), which ended when the subjects fled their vehicles while on the highway.

In these two cases and the five others that were found to be out of policy, the Department identified deficiencies and immediately sought to correct behavior. In some cases, involved officers received a Comment Card²³ for their actions. The focus on training and debriefs (as opposed to disciplinary sanctions) allows officers and supervisors to better learn the policy while also holding them accountable and providing a foundation for more rigorous future consequences should they be needed.

In the aftermath of these cases, the Department identified and trained on several relevant issues:

- Concerns with speed or unsafe driving
- Communication or broadcast issues
- Confusion over assessment period or tracking mode
- Pursuits that did not meet pursuit policy criteria

In documenting their training debriefs, supervisors reported that the officers acknowledged the deficiencies, took accountability, and, we hope, learned for future performance. Similarly, where the Department identified issues with supervisor performance, such as a supervisor's failure to appropriately terminate a pursuit or accurately count the number of involved units, the

²³ A "Comment Card" is a memo placed in the employee's personnel file that addresses a performance issue and follows a discussion between a supervisor and the employee. It could reference something positive as well as a concern. Comment cards are meant to reinforce the former and correct the latter at a less formal level and remain in the file until the next evaluation period.

Department provided the appropriate training and debrief to ensure that supervisors were aware of deficiencies.

Our expectation is that the Department will continue to train on the pursuit policy and hold officers and supervisors accountable for any identified deficiencies. The Department is now nearly two years into the new policy, and we expect that accountability, especially for out of policy pursuits, will be commensurate with the deficiencies noted.

New Policy Elements and Accountability

As noted, the Department has been, and continues to be, committed to identifying areas of improvement and training. It is because of this commitment that we remain quite cautious of the newest features of the pursuit policy: the “Assessment Period,” which allows officers to assess the subject’s compliance with a vehicle stop prior to initiating a formal pursuit, and “Tracking Mode.” In our prior review, we commented that these new policy features may authorize “pursuit-like” activity without the same restrictions or procedural requirements. We asked, “are these features markedly different than a formal vehicle pursuit to the point where the new distinctions are justified?”

In response, the Department stated that these were added to give officers greater latitude in the field. This provides officers an additional opportunity to evaluate a situation before initiating a formal pursuit, and without implicating the safety concerns and risk factors that are most concerning about pursuits. And, indeed, at least one case proved this as officers used the “assessment period” to direct a previously reckless driver carefully and safely through City streets (until he entered the freeway without yielding).

But the very first case of 2022 exemplified our concern about higher-risk “pursuit-like” activity that, because officers declared it to be Tracking Mode, was not initially treated as a pursuit in the field. In that incident, a patrol unit identified a subject driving a stolen vehicle. When the driver fled, units implemented Tracking Mode and called for an Air Unit because they had not met the criteria to initiate a formal pursuit. While in Tracking Mode, officers

followed the subject for some unknown distance, onto and off the freeway.²⁴ One officer had lights on and, seeing this, a motorcycle officer who joined later and could not hear his radio believed that the units were in a formal pursuit. Against Department policy, the motorcycle officer activated his lights and sirens and proceeded past the patrol vehicles to become the primary pursuit unit.²⁵

Eventually, the subject reached a dead end. When he turned around, he intentionally struck one of the units. Now the officers *did* have rationale to initiate a formal pursuit – an Assault with a Deadly Weapon – and they pursued for an additional two miles. The subject’s vehicle became disabled, and he was apprehended. This incident was appropriately found to be out of policy for the motorcycle officer’s actions and officers were trained on use of Tracking Mode and motor unit involvement.

A second case provided another example of high-risk “pursuit-like” activity. While outside his vehicle conducting a traffic stop, an officer observed a vehicle driving the wrong way. The vehicle nearly struck him. The officer attempted to chase down the subject’s vehicle at high speeds on surface street without lights or sirens. When he “caught up” and initiated a traffic stop, he took an “assessment period” to determine if the subject would yield before broadcasting that he was initiating a formal pursuit. The Department appropriately found this to be out of policy and trained the officer – who had never engaged in a previous pursuit – on policy and the appropriate use of the assessment period.

In these two examples, by declaring the activity to be “assessment” or “tracking,” officers initially engaged in what appeared to be vehicle pursuits without formally initiating one. Had they not eventually resulted in a formal vehicle pursuit, these two incidents may not have come to the attention of the

²⁴ The exact distance is unknown because Tracking Mode is not a formal pursuit, and the distance is accordingly not calculated nor reported.

²⁵ The motor officer was found out of policy for becoming the first unit in a pursuit on a motorcycle which is prescribed by BPD rules.

CIRB or been formally evaluated.²⁶ This dynamic raises questions in our mind over whether similar episodes – that might well have warranted scrutiny in light of their "pursuit-like" qualities – never received attention because no "official" pursuit resulted from the incident.

Perhaps supervisors would have counseled officers, or the Department would have debriefed informally in Roll Call briefings regardless of a formal pursuit review. But as we detailed above, the *personalized* counseling and/or training – the outcome of the Department’s careful formal evaluation -- is effective for overall safer and more mindful vehicle pursuits. And, without formal mechanisms for reporting or reviewing these “pursuit-like” activities, the Department cannot provide statistics about their use or effectiveness.

We respect the rationale for allowing officers the latitude to conduct an initial appraisal of subject behavior, and recognize that imposing the *full* review process would raise efficiency issues and undermine the spirit of the new approach. Still, this gap seems potentially problematic. We wonder if an analogue to BPD's "de minimis force review"²⁷ protocol could be developed that would address any "pursuit-like" aggressive driving that arises during encounters that do not ultimately result in an official pursuit.

RECOMMENDATION 15

BPD should develop a review protocol that provides at least some level of reporting and scrutiny when officers engage in "pursuit-like" driving behaviors in circumstances that don't evolve into actual, formally scrutinized vehicle pursuits.

²⁶ The pursuit policy states: “The pursuit, tracking mode and potential re-initiation of a pursuit will be reviewed by the Watch Commander and CIRB as one complete incident.” But, in our read, this does not provide for evaluation of tracking mode absent initiation of a formal pursuit.

²⁷ The "de minimis" protocol, which we have discussed in prior reports and consider to be an effective innovation by the Department, calls for documentation and supervisory acknowledgment of minor physical force (such as the use of control holds to overcome low-level and brief resistance) that does not rise to the level of formal reporting and review. This accomplishes a proportional measure of accountability in an efficient fashion.

Balance Test

The updated policy replaced specific guidelines for maximum pursuits speeds with a “Balance Test,” a series of considerations for safely initiating and continuing a pursuit, including speed.²⁸

In this year's group of cases, the Balance Test continued to be an effective prism through which BPD leadership evaluated officer performance in this context. As a regular practice, the CIRB evaluated incidents using this test to determine if the benefits outweighed the costs of engaging in or continuing a pursuit. For example, the Department found one case to be out of policy because of unsafe driving speeds –upwards of 115 MPH at some points. The inherent danger here was found to outweigh the need to apprehend the subjects in the first place. In a subsequent case, however, the CIRB used the Balance Test to determine that, although the driving speed was high, it was commensurate with the significant risk posed by the subject's remaining at large. He was wanted for robbery and assault. Favorable conditions (light traffic, daytime with visibility), and the officers' awareness were also considered as factors.

While we still observed high speeds in vehicle pursuits, we also noted that officers were – with a few exceptions that were identified and corrected – mindful of safer driving and terminating pursuits if speeds became overtly unsafe. But, as we discuss in the following section, pursuit speeds overall were increased because many of these pursuits travelled onto freeways.

Last year, the Department reported that it regularly and consistently trained officers on safe driving and cautioned against “over-driving.” We encourage the Department to remain focused on this particular aspect of the pursuit

²⁸ Per policy, a Balance Test is: “an ongoing decision process to evaluate the risk of initiating, continuing, or terminating a pursuit. If the threat to public or officer safety is greater than the need for immediately apprehending the suspect, the pursuit should not be initiated, or it should be terminated.”

policy and to promote driving tactics and speeds that are safe for both officers and the community.

Jurisdictional Boundaries & Resources

In the pre-2021 version of the Department's policy, any pursuit that entered the freeway was to be transferred to the California Highway Patrol (CHP). The updated version removed this requirement. The Department stated that this was purposely considered so that officers would focus on a successful pursuit handoff, rather than simply ending pursuits at highway on-ramps as a matter of cause. Per the new policy:

314.8 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area, and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

Where we previously saw BPD units terminate pursuits fairly quickly upon entering the freeway under the old policy, nine of the 2022 pursuits involved BPD officers entering the freeway and pursuing subjects for a significant distance. These pursuits involved several BPD units (up to four at a time as permitted by policy) and an Air Unit. And while BPD alerted CHP to the pursuit, we observed that it took some length of time for CHP to respond – if they did at all. (In one case, it took upwards of 20 minutes for CHP to take over, and CHP eventually lost sight of the subject.) Several of these pursuits then exited the freeway outside of Burbank's jurisdictional boundaries into those of the Glendale and Los Angeles Police Departments.

While all of this activity is technically within policy, it suggests a shift in the overall trendlines that merits additional attention by BPD management.

We are unclear why CHP's response time is extended and acknowledge that BPD does due diligence in alerting the agency to freeway pursuits. And we certainly do not wish to undervalue the importance of apprehending dangerous felony subjects (five of these resulted in apprehension of the subjects) or supporting neighboring agencies in doing so. But the resource implications and officer safety issues (e.g., a pursuit outside BPD officers' normal patrol areas creates issues due to unfamiliarity, potential difficulties with radio communications, and the inability to summon additional BPD assistance) of the trend toward longer and more multi-jurisdictional pursuits are worth noting.

In one case we reviewed, after alerting CHP that the pursuit would enter the freeway, BPD pursued armed residential robbers onto the freeway and traveled some distance attempting to catch up. These subjects bailed from their vehicles in the middle of traffic and fled on foot. BPD officers found themselves in a brief foot pursuit of potentially armed subjects on the freeway outside of their known area, a clear officer and public safety concern (which was, to the Department's credit, identified and debriefed).

In that case and others, an Air Unit was tracking and directing the pursuit. It seems feasible, then, for BPD units to fall back and return to service within its City limits. We recommend that, going forward, BPD leadership carefully consider its position regarding involvement in lengthy pursuits that enter the freeway, and its ongoing communication with and support of CHP, in an effort to ensure that managerial preferences are being reflected in the field.

RECOMMENDATION 16

BPD should continue to evaluate the latitude that its current policy provides officers for pursuits that enter the freeway and otherwise leave BPD jurisdiction and should consider adding standards that would ensure officer decision-making is aligned with Department preferences for these scenarios.

Mental Health Response Audit: BPD and "5150" Calls for Service

As part of our scope of work, we select one specialized area of interest to public safety for review. Last year we reviewed the Department's body-worn camera program; we performed a "quality control" assessment of the Department's own semi-annual body-worn camera audit program and determined that its findings were both accurate and appropriate. We also conducted a "mini-audit" of compliance with the body-worn camera policy in which we selected and reviewed five arrest cases from start to finish for compliance with the body-worn camera use policy.

That audit proved useful on two fronts: in addition to discovering potential issues related to body-worn camera use for the Department to consider (for example, providing more guidance on the use of the camera's muting functionality), we also were able to examine and report on "everyday policing" in Burbank, something that we rarely do as our focus is traditionally on high-risk, low-frequency police encounters such as uses of force. We were heartened to observe professional, effective, and commendable policing on the part of Burbank police officers.

This year, we have chosen to conduct another "mini-audit," this time of BPD interactions involving mental health responses, including transports under Welfare and Institutions Code Section 5150 ("5150") for mental health evaluation.²⁹ We selected this topic in light of the increasing overlap between mental health issues and public safety, the challenge that this dynamic poses

²⁹ Section 5150 of the Welfare and Institutions Code allows a person who is experiencing a mental health crisis to be involuntarily detained for a 72-hour psychiatric hospitalization when evaluated to be a danger to others or him or herself, or gravely disabled.

for law enforcement agencies across the country, and the heightened emphasis on the value of new approaches.

The Department's Mental Health Evaluation Team (MHET), a co-responder unit intended to address relevant calls more effectively in Burbank, provided us with a natural focal point for our review. As we discuss below, we were very impressed with the model and with the thoughtfulness of MHET's current members. At the same time, as they themselves were quick to acknowledge, the demand for a skilled, compassionate response to members of the community experiencing mental health crises extends well beyond the four ten-hour shifts that this unit works each week. Accordingly, every BPD officer is attuned to MHET as a resource – and specifically trained to make their own determinations in the field as needed.

To conduct our audit, we sat for an extended discussion with the MHET unit to hear about their experiences and perspective. And we evaluated the reports and body-worn camera video from ten recent calls for service that ended with BPD officers taking the subject into custody and bringing them to the hospital for an assessment pursuant to Section 5150. We asked for five incidents handled by MHET and five that were led by "regular" patrol officers.³⁰

Our takeaways were relatively straightforward. The audit provided new insight into the scope and the persistence of the challenges that officers face in carrying out this critical aspect of their jobs. The problems are widespread and often recurring, as the same individuals cycle through a system that is limited in its ability to meet their needs.

The criteria for an authorized hold are meant to ensure that individual rights are protected while providing law enforcement with the ability to intervene where necessary. But the standards are often hard to apply with precision, and in many situations (including some of the ones we assessed) the

³⁰ Though we were interested in this dichotomy as an obvious basis for comparison, we saw – as we discuss below – consistency in the approaches across each call, even when MHET was uninvolved or in a secondary role. This is for the best in several respects, not the least of which is a matter of sheer volume. Per BPD's statistics from 2022, patrol officers handled a full three-quarters of the total number of calls resulting in a mental health hold.

presenting circumstances were ambiguous or borderline. One incident we reviewed involved two calls in the same day to the same location; in the first, the responding officers determined that the reporting party's adult son (who had been vandalizing property in their shared home), did not meet the criteria. But the behavior escalated after their departure, and they did take him on a 5150 hold on the second visit.

But our review of BPD statistics showed positive trends as well. The subjects in the individual cases we reviewed were often well-known to the officers and/or had experienced multiple psychiatric holds in the past. And this familiarity has shaped the Department's ability to focus attention on identified individuals who required repeated service and help provide sustainable supports. This is a key factor in the dramatic reduction of actual 5150 commitment cases in recent years: instead of the nearly two per day in Burbank in 2017, the Department's last two complete years have seen an average of less than one.

This is a remarkable change. The Department believes that the City's shift in strategy – with its emphasis on seeking broad-based help for the specific people whose challenges are greatest – is the key factor in this reduction. The individual case studies it can cite are an anecdotal reflection of BPD's justifiable pride in this progress, and the statistics certainly reinforce those impressions.

The Department's annual statistics featured other noteworthy elements about 2022's activity:

- Only 3 of the year's mental health commitments involved the use of reportable force by the involved officers.
- BPD reported a concerning increase in the number of juveniles whose behavioral health issues had prompted a call for service and/or commitment.
- While engaging with unhoused individuals (including referrals and dealing with encampments) constitutes a significant part of the MHET responsibilities, this population comprised only about one-quarter of all mental health commitments for the year, perhaps signifying that MHET intervention provides assistance that mitigates the need for a commitment.

As for the ten specific calls we evaluated, the most striking aspect to emerge from hours of video recordings was the methodical patience of officers – both MHET and in patrol functions – in responding to individuals who were experiencing behavioral crises. We noted repeated examples of effective rapport-building and other strategies to defuse the inherent tensions caused by police presence. Officers were adept at clear communication with the subjects, constructive and flexible in their responses to dynamic situations, and skilled at working together to balance safety and security concerns with the recognition that special handling was warranted.

And the MHET unit's positive influence was obvious. As discussed below, the team's knowledge and expertise have become established resources for Burbank residents living with mental illness, their family members, and the BPD colleagues who rely on them for advice and assistance. The Department would very much like to expand staffing for the model to enhance its reach, and it seems like a goal that we hope will be prioritized.

While our overall impressions were very favorable, we did note topics that we would encourage BPD to assess. These include the high number of officers that were deployed to many of the calls, and protocol issues relating to transportation and advisement of subjects.

MHET Background

BPD has one active MHET unit that is comprised of an officer and a licensed clinical social worker who is affiliated with Los Angeles County's Department of Mental Health and assigned to BPD on a full-time basis.³¹ They are supported by a civilian analyst who tracks the data from their daily encounters and activities and has established a case management system as a reference point for potential future contacts. This last element is a crucial one: it helps frame the calls for service by giving dispatchers, who have access to the case management system, useful background, which they in turn can provide to responding officers on all shifts.

³¹ The Department is in the final stages of securing authorization and staffing for a second unit, thereby expanding availability across other shifts and days.

The role has evolved during the several years of its history (dating back to 2012). The development of additional City resources has given MHET the flexibility to focus more on calls for service in lieu of its original broader-based community outreach and work with the unhoused.

The current MHET unit works four ten-hour days per week, with the usual shifts being Tuesday to Friday from noon to 10 PM. When the team is on duty, it prioritizes responding to unfolding calls for service with a mental health component. They are often accompanied by other officers at the scene and depending on the nature of the encounter will take a lead or supporting role in evaluating the needs of the subject and taking responsive action.³²

The unit fills in the rest of its weekly schedule in a variety of ways. The beginning of their week often entails follow-up on situations that arose over the weekend and were flagged by patrol officers for additional attention by MHET. And team members still do a significant amount of scheduled and informal community outreach, with a focus on homelessness and school-related issues.

The MHET unit also contributes a significant amount of training to other Department members as well as outside groups. Topics presented in 2022 included de-escalation techniques, crisis intervention, juvenile threat assessment, and gun violence restraining orders. And MHET members also developed and implemented a new awareness strategy that involves the distribution of decals that family members can voluntarily place at their residences or on their vehicles to inform responders that a special needs individual is potentially present.

In short, MHET provides BPD and the City with an asset that is directly and effectively responsive to an area of great need. Its value and influence were certainly reflected in the specific case examples we were able to survey.

³² For obvious reasons, a potential for physical danger in a given scenario would restrict the role of the civilian clinician. This is one of the many challenges that go along with enforcement activity for some of the people living with mental health concerns: a mental crisis may be at the heart of the "erratic behavior" that prompts a contact with the police, but when the subject is armed and/or confrontational, the public safety implications limit the options for intervention.

Case Review

We requested, and the Department provided, ten calls for service related to individuals experiencing some type of mental health crisis that might result in a 5150 hold. Five of these were handled exclusively by patrol officers, while the other five included a response by MHET.

We reviewed all relevant evidence, including body worn camera footage and police reports, for compliance with the Department's Policy 418: Mental Illness Commitments.

Overall, we found the Department's performance on these calls – both patrol and the MHET – to be exemplary and in compliance with the Department's policy:

- We noted that officers fully articulated the rationale for the involuntary hold in their police reports as required by policy.

We observed officers provide a comprehensive verbal debrief during the hand-off to medical staff.

- Officers also appropriately secured weapons from those subjects who had them (in one case, a knife; in another, an umbrella that the subject was using to “attack” cars and passers-by), as well as the subject's property.
- While none of the subjects in our sample were charged with any crime, we observed thoughtful discussion and analysis of whether charges would be appropriate or warranted. Where in some situations, officers could have charged the subject, they instead opted for the involuntary hold to treat the subject in a medical facility rather than in the jail. In cases where it was appropriate, officers gathered evidence from family members to inform their decisions.
- Officers used various de-escalation techniques, ranging from establishing rapport by citing memories or previous positive encounters

to presenting an authoritative, yet compassionate presence. The involved officers all showed the subjects considerable respect, even in the face of delusions, conspiracy theories or accusations; for example, when one subject stated that his father was trafficking women, including his mother, the officers brought the conversation back to the subject's present state of wellbeing rather than engage with the subject's theories.

With the single exception we noted above, officers kept their composure and displayed an extraordinary amount of patience in communicating with difficult subjects.

- Officers maintained situational awareness, clearly keeping officer, subject, and witness (e.g., family) safety in mind throughout the incidents we observed.

We also identified areas for the Department's consideration going forward where the responses were inconsistent with modern-day strategies in dealing with those who may be experiencing a mental health crisis; namely, transporting subjects, the appropriate deployment of resources, and providing a complete advisement to the subject. We discuss these in detail and provide recommendations after presenting case summaries.

Case Summaries

As we did with our body-worn camera audit, we provide case vignettes as these serve to illustrate the types of calls and responses experienced by BPD on a daily basis. As noted above, we reviewed five cases that primarily involved a patrol response:

- The first case involved various calls for service regarding a subject who was reportedly assaulting passing vehicles and passers-by; some reporting parties stated that the subject had a Taser. When the officers arrived, they encountered a subject who was known to them from several previous encounters. The subject was allegedly walking in the roadway, attempting to incite fights and attacking vehicles with an umbrella. The officers handcuffed the subject and spoke with him for

some time, attempting to determine what had occurred and de-escalating the subject's agitated demeanor. During this conversation, one officer, who was seemingly done attempting to de-escalate, approached the subject aggressively; other officers and a supervisor on scene intervened.

After a lengthy attempt to locate the victims of his reported crimes and finding none on scene, the officers determined that the most appropriate course of action would be to involuntarily detain the subject for a mental health evaluation as he was a possible danger to self (walking in the roadway) and others (attempting to fight). The officers collected the subject's belongings and transported him to a medical facility for evaluation.

- In the second case, officers responded to a call for service at a residence. Family members reported that the subject had threatened to harm/kill them and was acting erratically and aggressively. When they arrived, officers located the subject on the ground outside where he had slipped on the stairs. After determining that he did not require immediate medical attention, the officers brought him into the home and separated him from family members. While some officers collected information from the family, others asked the subject if he intended to harm his family or had suicidal ideations. The subject admitted to having suicidal thoughts all the time and that his behavior was due to smoking marijuana that he claimed was "laced" with cocaine.

The subject repeatedly stated that he was agitated by the number of officers who had responded to his home. The officers discussed if the incident met any criteria for a crime. But after learning from family that the subject had experienced mental health crises before and that he was possibly "off his meds," officers determined that they would transport the subject for medical evaluation. They handcuffed the subject and helped him dress in warmer clothing. The subject asked why he was being arrested, and officers advised him that he was not; he was being taken to see a doctor.

Officers escorted the subject out of the home to the police vehicle and transported him to a medical facility for evaluation.

- In the third case, officers responded to a call for service at a residence. The subject, a juvenile who had been released from a mental health hold earlier that day, was reportedly “manic,” threatened to kill family members and had armed himself with a knife. When officers arrived, they found the subject in the front yard, acting aggressively and threatening to punch officers; the officers surrounded the subject in a semi-circle to restrict his movement. This further incited the subject who said that “too many officers were looking at [him].” One officer took command of the scene and, noting that the subject was not armed, directed the officers to back away. After calmly speaking to the subject and establishing rapport, the officer was able to approach and handcuff the subject. After gathering information from the family, the officers eventually determined to place the subject on a hold for danger to others. They transported the subject back to the hospital for further medical evaluation.

According to the police report, the MHET was scheduled to conduct follow-up with the subject and his family.

- In the fourth case, a mother called the police about her teenaged daughter, who had recently experienced the death of a friend and was doing poorly, including references to suicide. (She had a prior history of mental health treatment and temporary holds.) Two patrol officers responded to the home, spoke with the parents, and then had a long exchange with the daughter, who was cooperative in dealing with the police but was resistant to the idea of being transported for care. The officers themselves seemed to consider it a borderline situation, since the young woman was articulate and appeared to be calm. But they eventually chose to transport her as a precaution and were able to convince her to accompany them of her own volition. She was transported in handcuffs and taken to a facility as recommended by the MHET unit (who were contacted by the patrol officers as a resource and made a brief visit to the scene.)
- In the fifth case, officers responded with a social worker to a sidewalk encampment, where they were hoping to provide resource options for one of the adult males at the location. As they spoke with the man, a second homeless individual (a male in his forties) became agitated and

confrontational with the officers. He eventually brandished a metal pipe in his possession and refused to put it down, saying that the officers were armed and that he was entitled to protect himself. The assembled officers worked patiently to de-escalate with the man, who had walked several feet away and was yelling; some of them had had prior experiences with him. They eventually persuaded the man to put down the pipe and sit down on a curb (an officer came in from behind and quietly moved the pipe a safe distance away). More conversation established that the man was unstable and had not been sleeping, but he initially declined their offers to transport him to the hospital. Eventually, his anger flared again, and when he stood abruptly to move back toward his possessions, officers surrounded him and quickly put him in handcuffs as a precursor to bringing him for treatment.

We also reviewed five cases that involved a MHET call-out:

- The first MHET case is an example of the MHET assisting patrol officers in a call for service. We reviewed one case that involved an elderly subject who was possibly experiencing a mental health crisis; the subject, who experienced dementia, did not recognize her husband and, believing he was an intruder, had armed herself with a kitchen knife and threatened to kill him. The call came out as a possible armed “5150.” Because the subject was reportedly armed, patrol units responded first, followed approximately six minutes after by MHET. Once they had safely removed the husband from the home, officers began to patiently speak with the subject to get her to put down the knife; here, we observed various officers work patiently to establish rapport with the subject through conversations about past encounters where the subject had made officers tea and brownies, and the subject’s children and grandchildren.

Eventually, the subject put down the knife and officers safely removed her from the home. She was handcuffed and transported by patrol officers to the hospital for evaluation.

In this case, the MHET clinician stayed outside the home and collected necessary information from the husband to complete the 5150 referral. The MHET officer assisted the patrol officers, providing guidance where needed; while the MHET officer could have taken over communication

and relieved the patrol officers, she stayed somewhat behind as the subject stated that she “didn’t like” the MHET officer.

- The second case is an example of the MHET performing their ongoing case management function. The MHET checked in on a subject who had been experiencing long-term paranoia and had trouble caring for herself. On this day, after evaluating the subject and speaking at length with her family member caretaker, the MHET determined that the subject met the criteria for a hold as she had become gravely disabled. MHET personnel called for an ambulance transport. The subject was placed on a gurney and transported to the hospital for evaluation. The MHET completed the referral paperwork for the hold.

This is an example of the MHET’s value outside of regular calls for service: if not for MHET’s on-going case management, this subject may have eventually required a patrol response that would have tied up already-limited patrol resources.

- The third case involved an adult male who was behaving strangely at work and making unusual references to killing people. Supervisors wondered if he was on drugs, but he left his workplace abruptly before they could test him. He then went to his home, where he ended up in a backyard Jacuzzi area, naked and seemingly upset. A MHET response (with backup officers) ensued. After speaking with the man's mother and getting a sense of his history (which included mental health treatment and an apparent deviation from his regular medication), the MHET officer took the lead on a lengthy, methodical dialogue in which they slowly gained the man's trust and moved closer. They eventually got him water and some clothing and convinced him to leave the pool area to come inside. He was mostly calm as the officers put him in handcuffs, but then became overwrought as they approached the radio car. Officers worked together to overcome his brief resistance and agreed to provide him with a different colored shirt at his request.³³ He was eventually transported to the hospital and admitted.

³³ This willingness to make a benign accommodation was consistent with the flexibility and patience we noted from the officers in several of these encounters.

- The fourth case was originated by a call to assist the Fire Department, which had responded to the home of an autistic male who was upset, apparently hearing voices, and causing damage to the home he shared with his mother (the reporting party). Officers responded to the scene – including the MHET officer and determined that the individual met the criteria for a hold. (They also learned from his mother that he had been hospitalized for "danger to self" issues on four prior occasions.) Though the young man was reluctant, he was largely compliant with the officers, who escorted him to the hospital to eventually be admitted.³⁴
- The fifth case was also prompted by a mother whose adult son was damaging property in their home in a state of agitation. BPD officers responded initially and made the determination that the young man did not meet the criteria for a hold; because the mother was disinclined to make a criminal complaint about the vandalism, the officers left. Hours later, though, the behavior had intensified, and officers returned – including the MHET unit (which was able to get relevant history from the mother about past hospitalizations and medication). Because the young man was outside with an ax at one point, several officers responded. They engaged warily with him, and eventually persuaded him to sit on the curb, where he was placed into handcuffs without resistance. He was ultimately transported to the hospital.

Considerations Going Forward

As noted above, identified areas for the Department's consideration going forward where the responses were inconsistent with modern-day strategies in dealing with those who may be experiencing a mental health crisis; namely, transporting subjects, the appropriate deployment of resources, and providing a complete advisement to the subject

³⁴ Interestingly, this case involved nearly an hour and a half of waiting in a hallway of the hospital with a handcuffed and understandably agitated subject before a doctor finally became available. This is something the officers obviously can't control but is an interesting window into the strained resources for addressing these prevalent issues.

Patient Transport

MHET responds to calls in an unmarked vehicle that does not have a separate and secure rear seat area like traditional police vehicles (commonly called a “cage”). But despite having this style of vehicle, which has a regular backseat that would allow a compliant subject to move more freely, they do not regularly transport subjects. Subject transport is left to officers driving patrol vehicles.

This was the case for nine of the ten subjects in our sample: the subject was transported in the caged rear seat of the police vehicle by police officers to a facility for evaluation; in several of these cases, the subjects were transported while restrained in handcuffs that had been applied previously in the incident despite being compliant at the time of transport. This is permissible per the Department’s policy:

418.3.1 TRANSPORTATION Officers may transport patients in the patrol unit and shall secure them in accordance with the Restraint Devices Policy. Violent patients or those that are medically unstable should be restrained and transported by ambulance and ambulance personnel as approved by the Watch Commander or on-scene supervisor. If necessary, officers should consider the use of a spit mask, helmet, and/or front leg restraint to prevent the mentally ill person from self-injury.

BPD’s Restraint Devices Policy also provides discretion on the need to handcuff individuals:

306.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person’s hands to ensure officer safety. Officers should handcuff all arrestees and any person they reasonably believe warrants that degree of restraint. Officers should not conclude, however, that every person should be handcuffed.

In mental health detention situations, even when there is transport in a radio car, officers should carefully consider the need to handcuff detainees who have not been accused of a crime, either during transport or upon arrival at the hospital. Unless there is concern based on prior behavior, the officer should not automatically handcuff the detainee.

In many of these cases, we questioned the necessity of transporting the subjects in a caged police vehicle, and even when a patrol car is used to transport, of the need to keep subjects in restraints, especially in cases where the subject is being compliant and does not display intention of being resistant at the time of transport.

For example, the elderly subject in the MHET case detailed above had dropped the knife and was complying with officers who escorted her toward the police vehicle. The woman was holding a blanket, perhaps a familiar comfort item. Officers took her blanket and applied handcuffs, both of which re-agitated the subject. As the subject protested being touched and asked if she was being arrested, one officer responded that it was “the rules” to put her in handcuffs if she was going to ride in their police vehicle, and another informed her that she was not being arrested. She appeared confused. She was seated in the caged rear of the police vehicle, where she remained seated and handcuffed for the duration of the transport.

In the case involving the juvenile subject, the subject displayed considerable reluctance to ride in the patrol vehicle. This subject was violent at the onset of the call but calmed down as the officer spoke with him. But when the officers instructed him to enter the police vehicle, the subject became fearful and agitated. The subject stated that the mere thought of sitting in the rear of a police vehicle “triggered him” and “his PTSD.” To their credit, rather than force the subject into the police vehicle, officers again took time to de-escalate; they allowed the subject to sit on the curb at his request until he voluntarily was ready to be transported.

These two cases caused us to consider if an alternative means of transport might be more appropriate, especially in cases like the elderly subject who was compliant.

Some jurisdictions require that involuntary detention transports occur via ambulance. And this was what happened in one case: the elderly subject of the on-going welfare checks was transported on a gurney via ambulance. In that case, paramedics and the MHET officer successfully moved the woman onto the gurney and safely transported her to the hospital. This aligns with the intent of the commitment process: by their very nature, involuntary detentions are intended to provide transport so that medical assistance can be provided for those that are in mental health distress. These individuals are more

“patients” than anything else and are not criminal detainees. Moreover, because of different “rules”, an ambulance transport will ordinarily not require that the person be handcuffed but rather strapped to a gurney, much like a person suffering bodily medical distress would be.

Alternatively, transport in the uncaged MHET vehicle, when practicable, may be a consideration for those subjects who are fully compliant.

We recommend that the Department reconsider the practice of regularly transporting subjects in the rear of the police vehicle. If feasible, we recommend that the Department consider the possibility of transporting subjects via ambulance to the appropriate medical facility for evaluation.

RECOMMENDATION 17

BPD should reconsider the practice of regularly transporting compliant subjects of “5150 holds” handcuffed and in the rear of a caged police vehicle.

RECOMMENDATION 18

BPD should consider the possibility of transporting subjects of “5150 holds” via ambulance to the appropriate medical facility for evaluation.

RECOMMENDATION 19

Even when the decision is made to transport a “5150” subject in a radio car, officers should carefully consider the necessity of handcuffing detainees during transport or at the hospital.

Deployment Count

While the Department’s policy does not limit the number of officers who may respond to a call for service, we noted that these calls often resulted in a high officer deployment count. In most of the patrol incidents, for example, we observed seven or more officers respond to the scene. And these officers all remained on scene even after the scene was secured and/or the MHET unit arrived. These incidents often were also lengthy, as officers made

commendable efforts to slow down and de-escalate the situation.³⁵ In some cases, some responding officers did not have an immediately obvious role in the incident's resolution; in the case of the elderly subject with the knife, for example, several officers simply stood on the porch or yard while one supervisor and one officer negotiated with the subject.

Moreover, in at least three cases, the large officer count exacerbated the subject's behavior; in the case of the juvenile subject, for example, the subject repeatedly yelled for officers to "back off" and that there were "too many officers" "looking at [him]." When officers backed away, the subject calmed down and was able to be detained.

We acknowledge that the initial calls for service were, in at least four cases, for potentially or confirmed armed and violent subjects. These types of calls typically benefit from a higher officer deployment, both from a resource and safety perspective. But once a scene is secured, we recommend that the Department consider a protocol to release officers from a call, especially when the MHET responds to take over the time-consuming administrative components of these calls.

RECOMMENDATION 20

BPD should consider creating a protocol to release officers from a call when their service is no longer required, especially when the MHET responds to take over the time-consuming administrative components of these calls.

Complete Advisement

The Department's policy and the state statute requires that subjects are fully advised of what is happening. Per the statute, the person detaining a subject for a 5150 hold shall advise the person of:

1. The officer's name and agency.

³⁵ By BPD's internal calculations, the average commitment "call for service" lasted more than two hours in 2022 (though not all responding officers were involved for the duration of the incident).

2. The fact that the person is not under criminal arrest but is being taken for examination by mental health professionals.
3. The name of the facility to which the person is being taken.

The statute also advises that, if a person is taken into custody from their home, they must be advised of their right to take approved personal items, make a phone call, and turn off appliances.

This was not always followed completely or in a timely fashion. Sometimes, the advisement was not applicable; in the case of the elderly subject who was gravely disabled, she merely understood that she was being taken to “the doctor;” her caregiver was present and was provided the relevant information. But in a few of the cases we reviewed, officers applied handcuffs before giving the advisement regarding criminal arrest and only provided it after the subject protested about “being arrested.” And, in some cases, there seemed to be a delay in communicating where the subject would be transported.

This resulted in confusion and at times frustration on the part of the subjects who, although experiencing a mental health crisis, wanted to know what was happening and where they were going.

We recommend that BPD provide additional training on these advisements, especially for patrol officers, so that subjects know what is happening and where they are being taken. BPD should also clarify the policy regarding advisements to more clearly define when in the incident the advisements should occur (e.g., if practicable, before applying handcuffs).

RECOMMENDATION 21

BPD should provide refresher training on the advisements required when placing a subject on a 5150 hold, especially for patrol officers, so that subjects know what is happening and where they are being taken.

RECOMMENDATION 22

BPD should clarify the policy regarding advisements to more clearly define when in the incident the advisements should occur (e.g., if practicable, before applying handcuffs).

We conclude with a moment from one of the ten recent incidents we assessed. In one of these calls for service we reviewed, the MHET unit was on-duty but temporarily unavailable, and patrol officers were left to handle the initial interactions with a suicidal young woman. The MHET officer arrived about an hour into the call and began by meeting with one of the handling officers for a debrief of what had been happening. After listening for several minutes and recognizing the suitability of the approach that had already been taken, she said to the patrol officer, "See? You don't even need us." Smiling, he assured her that they did. They went on to collaborate with the clinician in identifying an appropriate placement option.

It was a show of mutual regard that reflected well on the culture of the agency. And, like many of the other moments from the cases we reviewed, it showed BPD's recognition that mental health solutions are inextricable from effective policing in our current environment.

Making BPD's Policy Manual More User Friendly

Several years ago, the California legislature required that all police agencies place their policy manual on-line and accessible to the general public. BPD is in compliance with this dictate but in our continual research of policies, we note that there is neither a table of contents nor index for those policies. As a result, an uninformed reader may struggle finding specific provisions in a manual that is over 1100 pages long. And members of BPD may struggle quickly locating a policy provision without a table of contents or index to assist. In order to make the manual more user friendly, BPD should create either a table of contents and/or index.

RECOMMENDATION 23

BPD should create a table of contents and/or index to its on-line policy manual.

BPD Accomplishments

Our practice in recent years has been to supplement our evaluation of the Department's various review systems by showcasing some of the agency's own initiatives. The goal of "continuous improvement" has always been a hallmark of effective policing, and the current era of reform has heightened public expectations in this regard. Accordingly, it is encouraging to note the ways in which BPD's leadership has sought to innovate and bring new programs to the organization and the City itself.

One example of this is a new program for mitigating the dangerous reality of drug overdoses. The BPD jail has equipped itself with the medication naloxone, which is recognized as an effective emergency means to offset overdose symptoms. The jail also provides educational opportunities and other resources to desirous detainees, and offers them access to naloxone upon release. This is a part of a broader policy movement to take a more therapeutic approach to addressing this societal problem.

The Department also took a concrete step to strengthen police-community relations by sponsoring a formal program that matched BPD members with representatives from the community. The different phases of interaction were facilitated by a third-party and meant to establish dialogue – in both directions. While the concept of "citizens' academies" and other information-sharing initiatives have long been in existence, the more recent trend is to ensure that a more *reciprocal* sharing of perspectives is part of the agenda, and to include new – and perhaps even skeptical – voices from the community. BPD's initial efforts in this regard will ideally be followed by additional forays into this important area.

BPD also focused attention on an aspect of its responsibilities that is central to the daily experience of the City's residents: traffic safety and enforcement. The Department's different education campaigns (including one in conjunction with school district officials, and several on-line safety videos) connected with community members through a range of platforms and media. In our view, this constitutes a worthwhile, pro-active response to issues that are less "high profile" but certainly impactful to the average person.

The Department also made us aware of its inaugural "Gun Buyback" event. This strategy of incentivizing the public to reduce the number of weapons in circulation has been a regular feature of gun safety initiatives in other jurisdictions for several years. Burbank's first such event helped raised public awareness and, more concretely, led to 58 firearms being surrendered in exchange for gift cards.

Lastly, and importantly, BPD leadership maintained its emphasis on employee wellness by updating and enhancing existing programs in this arena. It added a "Peer Support Team" concept (with relevant training for volunteers), the Department continues to features training programs and resources that address the physical and mental wellbeing of all BPD members.

Each of these steps goes beyond the demanding "daily routines" of a law enforcement agency, and does so in ways that are thoughtful and constructive. We commend BPD for prioritizing these programs, and look forward to seeing what next year's innovations will be.

Conclusion

We end by taking a step back from the particulars of the preceding pages, and reiterating a point that has emerged in past reports. Though outside oversight of police is more commonplace than when we began our relationship with the City of Burbank several years ago, regular and formal scrutiny by a third-party monitor remains the exception.

"Getting into the weeds" of these different processes is, of course, our regular practice – and the City's expectation. The hope is that the mention of specific examples and the inclusion of specific technical recommendations will enhance the effectiveness of the relevant systems in the future. And we have been fortunate in that our relationship with BPD leadership over the years has been marked by receptivity and constructive dialogue. We like to think that our careful scrutiny, our experience with a range of agencies, and our knowledge of best practices has contributed to a strengthening of BPD operations – not only at the margins but in terms of developing some of the strongest internal review systems that we know of.

That said, it should be noted that the shortcomings we identify and the suggestions for improvement that we make are, in a way, "good problems" to have. They are not about overhauling dysfunctional (or non-existent) accountability measures, or about exposing a harmful culture, or repairing deep distrust within the community. Instead, they are refinements to approaches for which we already have a high regard, and which seem to be contributing to effective operations.

As always, our hope is that this Report will add transparency and public understanding to these important BPD processes. And we hope our recommendations – and the Department's consideration of them – will make the agency better. But we also take this opportunity to acknowledge that the City's commitment to a progressive, responsive Police Department is being reflected in the work that is done by BPD each day.

Recommendations

RECOMMENDATION 1

BPD should adhere to its 60-day commitment for completing investigations, or to its approval and notification protocols for those cases that require additional time.

RECOMMENDATION 2

BPD should continue to promote strategies for empathy, dispassionate explanations, and de-escalation in situations that may have a racial subtext in the perception of subjects.

RECOMMENDATION 3

BPD should re-evaluate its strategy for imposing consequences for preventable collisions and for incentivizing officers to comply with policies relating to driving safety, including the seat belt requirement.

RECOMMENDATION 4

BPD should clarify policy to reflect that a kick to the head be considered deadly force and not to be used unless the deadly force threat levels are met.

RECOMMENDATION 5

In its force review process, BPD should add a metric requiring express evaluation of the actions of on-scene supervisors to consider whether they performed their supervisory roles consistent with Departmental expectations.

RECOMMENDATION 6

BPD should determine why involved supervisors are completing force reviews in contravention of Department policy.

RECOMMENDATION 7

BPD should ensure that careful attention be placed on the review of any Taser use in drive stun mode to ensure that it meets the limited exceptions set out in policy.

RECOMMENDATION 8

The Department should evaluate its training related to use of the Taser to ensure that officers use the appropriate mode (probe or close contact) to achieve NMI, and not use drive stun mode except in the limited circumstances dictated by policy.

RECOMMENDATION 9

BPD should ensure that Taser deployments for purposes of apprehending fleeing subjects are scrutinized to ensure that the totality of circumstances meets the Department's policy threshold for justified force, including examining whether the use was for "mere flight".

RECOMMENDATION 10

BPD should reinforce the necessity set out in policy to provide a warning regarding Taser use to ensure appropriate accountability when officers deviate from expectations in this regard.

RECOMMENDATION 11

BPD should evaluate incidents where the leg restraint device is applied for risk of positional asphyxia and, where a risk is identified, debrief/retrain officers on the application of the device.

RECOMMENDATION 12

BPD should provide refresher training on the reporting requirements for use of the front leg restraint device.

RECOMMENDATION 13

BPD should amend policy or issue a training bulletin advising that all officers detail in writing the circumstances surrounding their use(s) of force to include any efforts to de-escalate prior to the use of force; and if no de-escalation techniques were deployed, an explanation for why none were deployed.

RECOMMENDATION 14

BPD should revise its CIRB force review policy to require the Board to expressly consider and document whether de-escalation techniques were deployed prior to moving to force options and if not, whether it would have been appropriate to consider them.

RECOMMENDATION 15

BPD should develop a review protocol that provides at least some level of reporting and scrutiny when officers engage in "pursuit-like" driving behaviors in circumstances that don't evolve into actual, formally scrutinized vehicle pursuits.

RECOMMENDATION 16

BPD should revisit the new latitude that its policy provides officers for pursuits that enter the freeway and otherwise leave BPD jurisdiction and should consider adding standards that would ensure officer decision-making is aligned with Department preferences for these scenarios.

RECOMMENDATION 17

BPD should reconsider the practice of regularly transporting compliant subjects of “5150 holds” handcuffed and in the rear of a caged police vehicle.

RECOMMENDATION 18

BPD should consider the possibility of transporting subjects of “5150 holds” via ambulance to the appropriate medical facility for evaluation.

RECOMMENDATION 19

Even when the decision is made to transport a “5150” subject in a radio car, officers should carefully consider the necessity of handcuffing detainees during transport or at the hospital.

RECOMMENDATION 20

BPD should consider creating a protocol to release officers from a call when their service is no longer required, especially when the MHET responds to take over the time-consuming administrative components of these calls.

RECOMMENDATION 21

BPD should provide refresher training on the advisements required when placing a subject on a 5150 hold, especially for patrol officers, so that subjects know what is happening and where they are being taken.

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