



City of Davis

INDEPENDENT POLICE AUDITOR
“8 CAN’T WAIT” AND USE OF
FORCE AUDIT

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Introduction

The City of Davis' Police Accountability Commission (PAC) requested that the City of Davis' Independent Police Auditor (IPA) conduct an audit to compare the Davis Police Department's (DPD) current policies with the policies publicized in the "8 Can't Wait" initiative by Campaign Zero¹ and review practices on "no knock" warrants.

This audit was conducted in two parts:

1. Policy: The IPA reviewed the current DPD policy manual to determine the degree to which current policies were aligned with 8 Can't Wait proposed policies and the use of "no knock" warrants.
2. Practice: The IPA examined seven use of force cases from 2020, including all available reports and body camera footage, to determine compliance with both DPD's own policy and the 8 Can't Wait model policies.²

By examining both policy and practice, this audit provides a deeper evaluation of the Department. Policy comparison alone only examines the written guidelines; a more complete and useful assessment of any law enforcement agency considers how the written documents are practiced in the field.

We found that DPD's current policies are generally but not precisely aligned with the goals and/or specific components of the 8 Can't Wait policy versions. To the extent there are differences between the 8 Can't Wait model and current DPD approaches, we offer explanation, clarification, and/or recommendations for attainable improvement.

We also found that, in practice, DPD officers' field performance generally aligned with policy requirements. We did, in addition, note the following:

¹ Campaign Zero is an activist organization, committed to legal system reform and reductions in police violence, that formed in the aftermath of Michael Brown's 2014 death in Ferguson, Missouri. The 8 Can't Wait initiative is one component of its broader efforts.

² DPD reported eight uses of force in 2020. The eighth use of force case is currently being evaluated by DPD's Internal Affairs because DPD Command determined that the force required additional Administrative Review.

- One officer used force in five of the seven cases reviewed and in no cases did he verbally warn the subject of the potential use of force prior to deployment.³
- In all seven incidents, the individual upon whom force was used expressed signs of being in mental health crisis or being under the influence of drugs or both.
- There is a real potential for mental health clinicians to play a role in the City's response to those in mental health crisis either through being part of the City's response⁴ or by providing insight to the Department through after-action review and briefing by those specially skilled in dealing with the mentally ill;
- The use of force documentation and review process would be improved with a change that required a more complete written account and analysis both from the officer him/herself and the documentation and analysis of the supervisory review process.

"8 Can't Wait" Overview

Within days of its occurrence, the George Floyd case became emblematic of a larger interest in aligning policing standards with new demands for restraint, fairness, and accountability. The 8 Can't Wait initiative (and the larger work of Campaign Zero) had been underway for months before Mr. Floyd's murder, but received particular attention in the ensuing weeks.

The idea behind the 8 Can't Wait campaign was straightforward: it showcased eight policies that regulate the use of force, had been implemented in part or whole by law enforcement agencies around the country, and could be adopted quickly and cost-effectively. According to Campaign Zero, the policies were statistically correlated with reductions in uses of force, including deadly force.

The 8 Can't Wait website not only listed and explained the policies but published a "scorecard" that allowed users to evaluate compliance for individual agencies across the country. In numerous jurisdictions "8 Can't Wait" became a vehicle for specific

³ The same officer used force in five of the seven cases that we evaluated. DPD reported that this officer is no longer employed by the Department.

⁴ Of course, having a mental health clinician on scene as an additional resource, while helpful, would not guarantee a different result, but if the outcome could be changed in just a small fraction of cases, it would be a positive result. Yolo County has yet to achieve 24/7 staffing for on call mental health clinicians, which is why we applaud City and County efforts to potentially increase mental health clinician staffing to assist with these calls.

accountability and calls for fast, measurable reform. Elected officials and law enforcement leaders have also engaged with the movement as one concrete component of broader reconsiderations about policing.

The 8 Can't Wait platform offers a heightened understanding of specific law enforcement policies, what differences exist, and why they matter in the effort to minimize incidents of force. In doing so, it has made agencies newly accountable to their communities and initiated a discussion on police reform.

At the same time, though, there are limitations to the project that also merit attention. As the 8 Can't Wait project gained prominence in June 2020, it also met with criticism that had different components. These included the following:

- *Challenges to Methodology:* With regard to the organization's statistical claims about the nexus between these policies and reduced uses of force, questions emerged about the soundness of the data analysis. Campaign Zero has subsequently acknowledged the legitimacy of these critiques.
- *Gaps in Actual Performance:* Critics have asserted that the existence of the policies on paper does not ensure a given law enforcement agency's actual adherence to them and is therefore insufficient as a metric of progressive policing. For example, the Minneapolis Police Department had adopted the "duty to intervene" plank of the 8 Can't Wait platform, only to have its officers fail to take action during the long minutes preceding George Floyd's loss of consciousness.⁵
- *Limitations of the Current Paradigm:* Another argument is that, by focusing attention on revisions of existing structures, the 8 Can't Wait policy reforms potentially curtail or distract from the larger, more fundamental changes that many activists seek. Campaign Zero has itself asserted recently that the "immediate harm reduction" should be understood as part of a larger strategy – one that has divestment and abolition as its ultimate goals.

Finally, it must be stressed that the "8 Can't Wait" concepts have not been adopted as a legal or industry standard for the use of force. That being said, since the promulgation of the "8 Can't Wait" model policies, scores of police and oversight agencies have been asked to consider and report out how their police agencies' current force policies

⁵ Another example is San Francisco, where Campaign Zero largely used its Department's policies as the "model." Yet, in its overall evaluation, Campaign Zero awarded the San Francisco Police Department a failing grade.

compared with the “8 Can’t Wait” policies and based on that review, a number of police agencies have changed their policies accordingly.

Use of Force Case Summaries

We reviewed seven of the eight uses of force reported by DPD in 2020. The below chart compares DPD with other police agencies regarding reported uses of force:

Agency	Calls for Service	Use of Force	Ratio
Davis Police	44,416	7	0.02%
Palo Alto	44,654	12	0.02%
Piedmont	9844	4	0.04%
Rocklin	32,467	7	0.02%
West Sac PD	59,177	26	0.05%
Walnut Creek (2019)	42,277	6	0.01%
San Francisco PD	504,213	708	0.14%
Sacramento Police (2019)	274,327	109	0.04%
Elk Grove	56,386	53	0.09%
Woodland PD	66,014	70	0.11%
State average as reported by DOJ			0.06%

While these numbers indicate that DPD’s use of force is well below the California state average as reported by the State’s Department of Justice, because there is wide variability on what each agency reports as a use of force, the comparability between police departments is helpful but not determinative. Moreover, despite efforts toward increased transparency in California, DPD and other police agencies set out in the chart above are still a minority when it comes to regularly and timely publishing use of force numbers.

Of the seven cases that we reviewed:

- Types of force that were used:
 - The Taser was used in six cases;
 - Strikes to the upper torso were used in one case;⁶
 - A takedown was deployed in one case;
 - A knee was applied to the neck of a prone subject in one case.
- DPD supervisors determined, without any written analysis, that the use of force was within policy in all cases.
- Three cases involved a subject that was mentally ill, and four others involved subjects that were possibly mentally ill.
- Three cases involved subjects that were medically confirmed to be under the influence of drugs or alcohol; the four other involved subjects may have been under the influence of drugs or alcohol.⁷
- One force incident involved a male black subject; six involved male white subjects.

Case 1

DPD responded to reports that a male subject was throwing rocks at passing and parked vehicles. The officer observed the subject walking along the highway and used the patrol vehicle's spotlight to illuminate the subject. The subject reached down and picked up a large rock from the side of the highway. The officer stopped his patrol vehicle, exited, and calmly and repeatedly instructed the subject to put the rock down. The subject turned and faced the officer, puffed up his chest, yelled something that the body camera audio cannot make out, raised and started waving his arms and walked at a brisk pace directly at the officer. When the subject was approximately six feet from the officer, he motioned with his right hand behind him and to the side. It appeared as though the subject had "faked" throwing the rock behind him. One interpretation of the

⁶ Four of the six Taser deployments were by the same officer. This officer also used strikes in the seventh case. This officer is no longer with the Department.

⁷ This determination was made by the subject's self-reported drug use or the officers' evaluation.

subject's acts was that he was trying to deceive the officer into believing that he had gotten rid of the rock.

To his credit, the officer is not fooled and calmly tells the subject: "That's all I want you to do man, put the rock down." Simultaneously, the officer deployed his Taser, which brought the subject to the ground.

The subject was transported to the hospital, where it was determined that he was under the influence. The subject was booked for vandalism and resisting/obstructing a peace officer.

This use of force was found to be "in policy" by DPD supervisors.

Case 2

As a result of a court order, access to information relating to this use of force has been limited. The responding officers used their bodyweight to take the resisting individual into custody. One officer placed his knee near or on the subject's neck, above the shoulders and directly below the head.

This use of force was found to be "in policy" by DPD supervisors.

Case 3

An officer responded to a call for service at the library, where a subject was aggressively yelling at staff and patrons. When the officer entered the foyer, the subject was agitated as exhibited by the tone and volume of his voice and his body language. The officer attempted to repeatedly get the subject's attention as he was not keying in on the officer. The officer initially spoke to the subject in a calm tone, and he attempted to get the subject to move away from the library doors so they could speak outside. The officer asked the subject to lower his voice because there were "kids inside reading." The subject continued to be agitated.

The officer then stated "[Subject's first name], I need you to calm down for a minute." The subject replied to the officer, "Man, you need to stop raising your voice that's the person that needs to calm down." At this point, the subject moved toward the officer and extended his arm at the officer's chest, touching it.

The officer attempted to reach and grab onto the subject's left shoulder. The subject jerked away from the officer and started to back up, the whole time verbally protesting what was happening. The officer directed the subject to "turn around" however the

subject did not comply. The officer then attempted to grab onto the subject's shoulders from the front, however the subject slapped the officer's arms away.

The officer again directed the subject to "turn around" and again attempted to reach for the subject but the subject again slapped the officer's arms away. When the officer attempted to push the subject back towards the wall and grab onto him, he continued to physically resist. It then appeared that the officer attempted to swing the subject towards the ground, however the officer ran into a wooden bench that was behind him and the subject broke free. It was in that immediate moment that the second officer attempted to Tase the subject.

The officer's Taser deployment was ineffective. The subject took a stance with both of his hands at his sides. The officer repeatedly ordered the subject to "turn around." The subject was defiant and stated, "Don't put your hands on me." The officer continued to order the subject to "turn around" and the subject stated, "I'm not turning around." The officer then repeatedly told the subject to "get on the ground" as he pointed the Taser at the subject's chest. The red dot laser was aimed at the subject's chest. The subject told the officer words to the effect of "I'm not coming to you." The subject raised his left hand with the subject's right hand down by his side near his side/waist area. The first officer then deployed his Taser at the subject without verbal warning.

The Subject was arrested for battery on a peace officer and hate crimes (later dismissed) and transported to the hospital where he was cleared for booking.

This use of force was found to be In Policy by DPD supervisors.

Case 4

Officers responded to a call for service at a local motel. The subject, a male, had locked himself in a room, was yelling loudly, and possibly destroying property. Officers that arrived at the location discussed de-escalation and other tactics and decided to use negotiation to convince the subject to exit the room.

From the exterior walkway, officers instructed the subject to exit the room. When the subject refused officers' requests to open the door and exit the motel room, and after the subject confirmed that he was alone in the room, officers determined that they did not have additional reason to engage with the subject. Officers left the motel walkway and convened in the parking lot.

Shortly thereafter, the subject threw a television set out of the room window. The motel manager requested that officers evict the subject from the motel room. Officers engaged with the subject through the now-broken window. The subject appeared to be speaking to someone else in the room. Officers asked if there was another person in

the room, and the subject responded, “yes, shoot me now!” An officer kicked open the door and officers entered the motel room.

The subject was curled up on the bed, naked, in a prone position, laying on top of his dog. The subject expressed concern over his dog’s health and safety. Officers attempted to negotiate with the subject for several minutes with no result. Officers then decided to pull the subject off the bed. The officer pointed his Taser at the subject and warned that he would use the Taser if the subject did not comply. Two other officers grabbed the subject’s feet to pull him off the bed. The subject then reached under the mattress. The officer yelled, “he’s reaching,” and deployed the Taser.

The subject jumped to the ground beside the bed, where officers detained him. Officers threatened to use the WRAP if the subject did not stand up and comply. The subject then cooperated with officers. The subject was detained for a 72-hour mental health hold (5150 W&I) and arrested for felony vandalism and obstructing a peace officer.

This use of force was found to be “in policy” by DPD supervisors.⁸

Case 5

Officers responded to a call for service regarding a family disturbance between the subject, a male, and his grandmother. According to the caller, the subject had threatened his grandmother with a knife, threatened to kill her, was throwing out her personal belongings, and refused to leave the apartment where they both lived. Several officers arrived to the location. Some engaged with the subject, who told officers that the grandmother was lying and that nothing was wrong; the subject refused to exit the apartment, asked officers if he could “go,” and closed the apartment door.

Other officers interviewed the grandmother, her daughter, and a neighbor. These witnesses reported that the subject had previously used heroin, may have smoked marijuana, and was recently acting “badly,” including threatening to kill his grandmother.

After these interviews, officers determined that they would arrest the subject for Elder Abuse and Criminal Threats. The arresting officer reported that he then told the subject he was under arrest and that he used his Taser on the subject when he declined to follow his orders to raise his hands, the officer’s concern that the subject might be armed with a knife, and his apparent reach to the front of his waistband area. The

⁸ Since this incident occurred in the early morning hours, a mental health clinician would not have been available to respond as Davis does not have mental health professionals available around the clock.

Taser did not incapacitate the subject, but the on-scene officers were able to successfully bring the subject into custody.

The subject was then transported to the hospital for medical attention.

This use of force was found to be “in policy” by DPD supervisors.

Case 6

Officers responded to a call for service regarding an individual, possibly under the influence, loitering in a front yard holding a wooden board. Two officers arrived at the location and observed the subject, a male, seated near the front door of the home. The subject was holding a piece of a 2x4 wooden board with metal protruding from the end of the board. The subject seemed to be hallucinating, repeating that the officers were “hunting him” and “touching him.” The subject began to walk along the yard toward a chain-link fence.

The officers removed their Tasers from their holsters and repeatedly instructed the subject to drop the wooden board. Officers spent a considerable amount of time (approximately 15 minutes) attempting to communicate with the subject, however due to the subject’s mental health status and/or being under the influence of drugs and/or alcohol, any attempt to communicate with him was not successful. For example, at one point officers told the subject that they would holster their Tasers if the subject dropped the board.

Additional officers arrived to the scene. The officers formed a semi-circle around the subject, who now had the chain-link fence behind him. The subject became agitated and paranoid. The subject attempted to walk away from the officers while still holding the board, moving toward Officer 3 who was standing to the subject’s left. Officer 1, without warning, deployed his Taser.

The Taser prongs appeared to attach to the subject’s shirt. The subject became more agitated and removed his shirt. Officer 2 immediately deployed his Taser, causing the subject to flail, drop the board, and fall to the ground. The subject was arrested for misdemeanor loitering and being under the influence of a narcotic. He was transported to the hospital for medical treatment, cleared, and booked.

This use of force was found to be In Policy by DPD supervisors.

Case 7

Officers responded to a call for service regarding a physical altercation between two transient males. Four officers responded and engaged with the subject, a male, who

was upset and agitated. Officers reported that the subject smelled of alcohol and appeared to be intoxicated and was, at intervals, taking a fighting stance.

Two officers attempted to de-escalate the situation by speaking to other transients at the location and ignoring the subject's rants and air punches. The subject began to walk away from the officers. Officer 1 followed the subject and instructed him to stay where he was. The subject turned toward Officer 1 with his fists balled up as if to strike the officer. Officer 1 extended his arm and instructed the subject to "stop it" and "knock it off." At the same time, Officer 2, who was standing behind and to the right of Officer 1 stated, "dude, do it again" and deployed his Taser.

The Taser struck the subject, who turned away from the officers. Officer 1 used a takedown technique to bring the subject to the ground and handcuff him. The subject was arrested for assault on and resisting/obstructing a peace officer.

When Officer 1 attempted to place the subject in the police vehicle, the subject resisted and attempted to bite the officer's arm. He later kicked at the windows of the police vehicle. Officers removed the subject from the police vehicle, placed him in the WRAP device, and returned him to the police vehicle.

The subject was transported to the hospital where he was cleared for booking.

8 Can't Wait Model Policies

#1: Ban Chokeholds and Strangleholds

Campaign Zero's model use of force policy with regard to neck holds is a straightforward, outright and unqualified prohibition:

NECK HOLDS PROHIBITED. Law enforcement officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, chest compressions, or any other tactics that restrict oxygen or blood flow to the head or neck.

Policy Evaluation

The current DPD Use of Force Policy prohibits the use of any neck holds:

Policy and Procedure 3.05-A. H. Carotid Control Hold/Neck Restraint Prohibited. Due to the potential for inflicting unintended serious bodily injury, officers shall not use chokeholds, strangleholds, Lateral Vascular Neck Restraints, Carotid Restraints, chest compressions, or any other tactics that restrict oxygen or blood flow to the head or neck.

This update was made in June of 2020. The California legislature banned the police use of neck holds commencing January 1, 2021.

DPD's current policy complies with the 8 Can't Wait model policy on neck holds.

Practical Evaluation

As noted above, in one use of force, a DPD officer may have acted in a manner inconsistent with the thrust of the 8 Can't Wait model policy. As noted above, in Case 2, an officer placed his knee on the back of the neck/upper shoulder area of a prone yet resistive subject while attempting to restrain the individual.⁹

We note that this case occurred before the new DPD policy prohibiting neck restraints was enacted¹⁰ and, more notably, before the murder of George Floyd, which brought

⁹ As previously noted, this officer is no longer with the Department.

¹⁰ The update to DPD policy was made in June of 2020, shortly after the murder of Mr. Floyd.

attention to the issue of placing knees and/or bodyweight on the neck, and subsequent changes to state law banning all neck holds.

#2: Require Warning Before Shooting

Citing the San Francisco Police Department policy as a standard, the 8 Can't Wait language from its model deadly force policy reads as follows:

VERBAL WARNING: The law enforcement officer shall issue a verbal warning, when feasible, and have a reasonable basis for believing the warning was heard and understood by the individual at whom the warning is directed prior to using deadly force against the individual.

Policy Evaluation

The current DPD Use of Force Policy is reflective of the idea behind the recommended approach. It imposes an affirmative obligation to issue a warning before using force. However, the DPD policy does not expressly require a verbal warning before use of deadly force:

Policy and Procedure 3.05-A.I.D. Command Presence, Verbal Persuasion, Warnings, and/or Lawful Orders. Command presence, or assuming control of a situation or person through an announced and/or uniform appearance, can be an effective tool in resolving a situation without having to resort to using force. Likewise, using verbal persuasion, a component of de-escalation, to gain voluntary compliance can also be beneficial in resolving a situation without having to resort to using force. Both techniques should be considered and used when feasible. Verbal persuasion alone, the preferred option, as opposed to issuing a lawful order, may not always work in resolving all situations. In these instances, an officer may issue a lawful order to a person in order to accomplish a legitimate law enforcement purpose. [...]

In order to provide the individual with a reasonable opportunity to voluntarily comply, when feasible, officers will make reasonable efforts to identify themselves as a peace officer, unless it's obvious, shall tell a person they are under arrest and issue a verbal order to submit to their authority, ***including providing a warning that force may be used***, prior to using force.

Further, the DPD Use of Force policy discusses verbal warnings and advisements as a de-escalation strategy (see also #3 below).

Policy and Procedure 3.05-A.III.A.3.a. Communication - Using communication intended to gain voluntary compliance, such as: Verbal persuasion; Advisements and warnings (including conducted electrical weapon spark tests to explain/warn prior to application).

The Use of Force policy discusses “warnings” and/or “advisements” when discussing some approved force options. Most relevant to this review, the DPD policy regarding use of the Taser, or, as termed in their policy, the “Conducted Electrical Device” (CED), requires officers to give a verbal announcement prior to using the Taser as follows:

Use of Force 3.05A.G.2. *Verbal and Visual Warnings*

Unless it would otherwise endanger the officer’s safety or is impractical due to the present circumstances, a verbal announcement of the intended use of the CED shall precede the application of a CED device in order to:

- *Provide the individual with a reasonable opportunity to voluntarily comply.*
- *Provide other officers and individuals with warning that a CED may be deployed.*

Further, DPD’s policy requires that officers document the warning (or why a warning was not given): “The fact that a verbal and/or other warning was given or reasons it was not given shall be documented in any related reports.”

We did note one area where DPD’s policy does not align with the model policy. The model policy specifically prohibits warning shots, stating, “Law enforcement officers shall not fire warning shots under any circumstances.” We noted that the DPD policy does allow warning shots in specific circumstances and as a last resort:

Policy and Procedure 3.05-G.2. Warning shots or shots fired for the purpose of summoning aid are highly discouraged, a last resort, and shall not be discharged unless the officer reasonably believes that they appear necessary, effective, and reasonably safe under the totality of the circumstances.

The firing of warning shots is inherently dangerous, particularly in an urban environment. If the shots are fired into the air, at some point the bullet loses momentum, falls at a high rate of speed, and is a potentially deadly projectile. If the shots are fired into the ground, the bullet may well ricochet in an uncontrolled way, again creating the possibility that an unintended target may be struck.

While DPD's current policy highly restricts the use of warning shots, the better contemporary practice is to prohibit their use.

Practical Evaluation

As mentioned above, the same officer deployed his Taser in four of the six Taser incidents (Cases 1, 3, 6, and 7). This officer did not give a verbal warning that he intended to deploy the Taser before any of these deployments, nor, contrary to DPD policy, did he document in his reports the reasons warnings were not given.¹¹ In Case 1, we noted that the situation escalated rapidly, perhaps preventing the officer from issuing a verbal warning of impending Taser use. But in Case 7, the same officer yelled, "dude, do it again!" at the subject while unholstering his Taser, and then deployed the Taser when the subject continued to move toward his partner, without warning the subject of his intent to use the Taser.

In Case 6, all the responding officers pointed their Tasers at the subject for a long(er) duration while attempting to de-escalate verbally but none issued a verbal warning of possible Taser use. Eventually, the same officer noted above deployed his Taser without warning the subject of his intent to do so.

This is seemingly a case of one officer no longer with the Department who consistently did not provide warnings of his intent to deploy his Taser rather than a Department-wide concern. As evidence of this conclusion, we note that, in the two other Taser deployments reviewed (Cases 4 and 5), two different officers issued verbal warnings prior to using the Taser.

As noted above, our review shows that with the notable exception of an officer no longer with the Department, DPD officers are aware of the obligation to provide a verbal warning prior to deploying force whenever practicable.

For the reasons noted above, we suggest that DPD amend its Use of Force policy to prohibit the use of warning shots.

RECOMMENDATION 1

DPD should amend its Use of Force policy to prohibit the use of warning shots.

¹¹ The supervisor(s) who reviewed the reports of the involved officer should have returned the reports to the officer and requested that, consistent with DPD policy, he provide a written explanation for why warnings were not given.

#3: Require De-escalation

“De-escalation” is a term that applies to a range of techniques, tactics, and approaches that are intended to reduce the need for physical force by limiting the conditions that lead to active conflict. In recent years, greater emphasis has been placed on peace officers’ skills in crisis communication, recognition of a subject’s relevant physical or mental health factors, and tactical positioning that creates time and distance for safer engagement. The goal is to enhance both officer and subject safety. While these tactics have long been taught in standard peace officer training programs, the more recent emphasis on “de-escalation” reflects a change in mindset and a growing recognition that having legal authority does not absolve officers of a need to avoid physical interventions where possible. And, increasingly, the long-encouraged principles of de-escalation are moving into the realm of policy *requirements* that will influence how uses of force – including deadly force – are judged.

The Campaign Zero model use of force policy has several components. It cites the San Francisco Policy as exemplary in key respects:

SFPD General Order 5.01 I. C. Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident, and to increase the likelihood of voluntary compliance. Officers shall, when feasible, attempt to understand and consider the possible reasons why a subject may be non-compliant or resisting arrest.”

Policy Evaluation

DPD recognizes the various principles of de-escalation throughout training and policy. DPD also addresses de-escalation directly throughout its Use of Force policy, even creating a unique section for de-escalation specifically:

Policy and Procedure 3.05-A.III.A DE-ESCALATION. De-escalation is the process of using strategies and techniques intended to decrease the intensity of the situation. It involves acting to stabilize a situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain voluntary compliance of individuals, when feasible, and thereby reduce or eliminate the necessity to use physical force or higher levels of force. It is important to note that de-escalation is not static; it is fluid and can be started, paused, restarted, or stopped at any time. It is also important to note that while these guidelines should be used, they are not so rigid as to not allow officers to make quick judgments and to “think outside the box” in finding ways to peacefully resolve any conflict.

And its Mental Health Commitments Policy (**Policy and Procedure 2.19-C**) states that “any officer handling a call involving an individual who may qualify for a W&I § 5150 commitment should consider, as time and circumstances reasonably permit [...] Conflict resolution and de-escalation techniques.”

Several of DPD’s training updates include the concept of de-escalation. Most relevant is their 2020 POST training module on de-escalation specifically, “De-Escalation: Strategies and Techniques for California Law Enforcement.” But DPD includes de-escalation in other training as well. For example, DPD’s training on disability awareness (Disabilities Awareness for Patrol) discusses using de-escalation when dealing with this community. DPD’s training on tactical communications expressly identifies how to effectively communicate using language for de-escalation (Tactical Communication Update). DPD also uses the 2020 POST “Use of Force Standards and Guidelines” for training, which includes sections on de-escalation, stating, “Officers shall utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when safe and feasible to do so.”

In short, the department seems cognizant of the contemporary emphasis on de-escalation as an approach to resolving encounters without reliance on physical force.

The model policy also suggests that requiring officers to document any de-escalation efforts in their incident reports would encourage officers to reflect on their actions in a way that may help them independently recognize what they did well, and what they might have done differently. Further, given the department’s emphasis on de-escalation, as set out in its policies, a supervisor or higher-level executive performing a rigorous review of a force incident should include a full dissertation and assessment of any efforts officers made to de-escalate. Such an exacting analysis would allow the department to determine whether alternative strategies could have been deployed short of using force and to identify ways to use the incident as a learning opportunity to better prepare officers for future similar challenges.

In addition to these accountability measures, requiring officers to fully document de-escalation efforts in their reports also would give the DPD the opportunity to positively reinforce conflict resolution skills and affirm personnel who have the capability and temperament to handle difficult situations without resorting to force. Because most departments do not encourage or require report-writing on force-avoidance efforts, those efforts often go unnoticed and personnel with the skill and mind-set to defuse situations go unrecognized. Accordingly, we recommend the DPD supplement its comprehensive force reporting policies to include a requirement that personnel fully document all efforts to de-escalate a situation, including the warnings given.

Practical Evaluation

To their credit, the officers that we observed in this force audit spent, where practicable,¹² extensive time attempting to negotiate, calm down, or simply listen to the subjects, who, while uncooperative, were not initially aggressive or combative; in most cases, the subjects were either in an apparent mental health crisis and/or under the influence of drugs and/or alcohol. In Case 4, officers spent over thirty minutes using various de-escalation tactics on a subject who had barricaded himself in a motel room. In Case 5, officers spent over 40 minutes talking with a subject who refused to exit his grandmother's apartment. In some cases where there was no immediate threat to safety, officers even left the area to give subjects an opportunity to comply or resolve the situation or because police intervention was not required.

DPD's policy, as well as best practices, suggest that there is no "time limit" to de-escalation tactics if the circumstances of the incident remain the same. DPD's Use of Force Policy explicitly requires officers to take time to "attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution" and to "Avoid or minimiz[e] physical confrontation, unless reasonably necessary (for example, to protect someone, or stop dangerous behavior)." (**Use of Force 3.05A**)

We commend the involved officers for taking time in these incidents. But we also noted that, despite these lengthy encounters, officers eventually went "hands-on" with some subjects, seemingly **only** because they ran out of, or were not effective in, their de-escalation tactics, not in response to a change in the subject's behavior.

And in at least one of these cases, when the officers' actions turned from negotiation to enforcement, the subjects reacted in an aggressive and combative way that resulted in force:

- In Case 4, the motel room case, the subject, who was seemingly mentally ill and/or under the influence of drugs, was curled up on a bed. When attempts to negotiate with him stalled, officers decided to grab his legs to pull him off the bed. At this point, the subject became combative and reached under the bed mattress, and officers deployed a Taser to subdue him.

DPD's Use of Force policy goes on to explicitly instruct officers how to manage potential mental health incidents and in Crisis Intervention, as follows:

¹² For example, in Case 1, events escalated to use of force immediately without practicable opportunity for de-escalation.

3.05A. Crisis Intervention – Officers should also consider that taking no action or passively monitoring the situation may be the most reasonable response to some incidents, especially where there is no threat of harm to others;

Take into account the person’s mental, emotional, physical state and potential inability to understand commands or to appreciate the consequences of their action or inaction, as perceived by the officer.

And the policy instructs officers to “call extra resources or officers to assist, such as CIT, Mobile Crisis, or officers trained in deploying less-lethal options” when dealing with a potential mentally ill individual or a mental health crisis.

But in at least two cases, DPD could have engaged in additional written analysis to determine whether there were other de-escalation techniques that could have been more effective and whether the officers might have called for special resources to assist:¹³

- In Case 3, the officer repeatedly instructed a mentally ill subject to “calm down.” This repeated instruction eventually angered the subject, who retorted, “no, you calm down!” while approaching the officer while waving his hands.
- In Case 6, officers responded to a hallucinating subject. This subject repeatedly stated that he thought that the officers were dead and were hunting him, while speaking other incoherent thoughts. The subject was holding a wooden board, which the subject moved from hand to hand and, at one point, used as if it was a telephone. Several officers unholstered their Tasers and pointed them at the subject. This apparently heightened the subject’s perception of being “hunted.” The officers attempted to negotiate, promising that they would put away their Tasers if the subject dropped the board, and later agreed with the subject’s ramblings. But they also continued to close in on the subject physically, and the subject became increasingly paranoid in his speech and mannerisms.

In each of these cases (2, 3, 4 and 6), a mental health professional may have been able to engage with these subjects in a more effective way, keeping the subject and the public safe and potentially reducing the need for force. Certainly, the mere insertion of a mental health clinician will not be a panacea that will defuse all situations and one

¹³ We recognize that depending on the time and/or day of occurrence, mental health professionals and other special resources may not be available to assist responding officers. In that circumstance, it would be helpful for DPD to document the limitations on available special resources in order to demonstrate a need for increased deployment of special resources.

must balance the threat presented to non-sworn individuals before determining whether and how to take advantage of their special skill sets.

In sum, DPD officers seem cognizant of the contemporary emphasis on de-escalation as an approach to resolving encounters without reliance on physical force. Based on our audit of real challenges faced by DPD last year, the additional consideration that the City has already committed to finding more optimal ways to deal with individuals in mental health crises seems consideration well deserved.

We also recognize that the question of whether and when to dispatch a non-sworn mental health professional to a call will be a work in progress. So that all gain a better sense for this determination, after any use of force involving individuals who display evidence of being in a mental health crisis, DPD should debrief the incident with a mental health clinician to obtain input on whether such presence might have been able to assist in stabilizing the situation short of physical force.

RECOMMENDATION 2

DPD should debrief with a mental health clinician any use of force involving persons believed to possibly be in mental health crises to consider potential advisability and efficacy of dispatching a mental health professional to assist in future similar circumstances.

#4: Exhaust Alternatives Before Shooting

The Campaign Zero model policy includes a requirement that the “law enforcement officer has exhausted all reasonable alternatives to the use of deadly force, including de-escalation, other reasonable means of apprehending the subject, defending themselves or others...” as one of several precursors to an authorized shooting. Specifically, the model policy states:

[L]aw enforcement officers shall NOT use deadly force against another person unless ALL of the following conditions are met:

- The law enforcement officer has an objectively reasonable belief that deadly force is necessary to protect themselves or another person from a subject who is posing a current, active, and immediate threat of death AND;
- ***The law enforcement officer has exhausted all reasonable alternatives to the use of deadly force, including de-escalation, other reasonable means of apprehending the subject, defending themselves or others*** AND;

- The law enforcement officer objectively reasonably believes that using deadly force would not unnecessarily endanger innocent people;

Policy Evaluation

DPD's current policy regarding use of deadly force captures the spirit of this requirement, though it does not explicitly state that officers *must* exhaust all alternatives. Following new California state law requirements, the DPD policy is very specific as to when deadly force may be used. Deadly force can only be used "to defend against an imminent threat of death or serious bodily injury to the officer or to another person" or "to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended."

Further, in the introduction of the use of force policy (**Policy and Procedure 3.05-A**), DPD details the reasonable alternatives to use of force as follows:

When officers are called upon to detain or arrest a person who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should, if feasible, consider tactics and techniques that may persuade the person to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely. Therefore, to the extent that it is feasible, there is time, and without compromising law enforcement priorities under the circumstances (e.g., unnecessarily creating further risk of harm to the officer or others) officers will use alternatives including, but not limited to, tactical communication, crisis intervention, tactical repositioning, strategic disengagement and/or de-escalation techniques, consistent with this policy and their training, to avoid or reduce the need for the use of physical force or higher amounts of force (see Crisis Intervention & De-escalation for further guidance).

This appears to be a situation in which the department's policies do reflect the animating principles of this Campaign Zero standard.

Practical Evaluation

None of the cases that we reviewed involved the use of deadly force. As such, and thankfully, we did not evaluate the field practice of this specific policy.

#5: Duty to Intervene

The Campaign Zero model policy (reportedly patterned after the current SFPD policy) requires officers to intervene when they believe another officer is using or about to use unnecessary or excessive force and must report the incident to a supervisor.

DUTY TO INTERVENE AND REPORT. All law enforcement officers must intervene when they reasonably believe that a law enforcement officer is using or is about to use unnecessary or excessive force in violation of this mission, and must report the incident to a supervisor. Failure to report incidents involving the use of unnecessary or excessive force will result in disciplinary action.

Policy Evaluation

DPD's current policies regarding duty to intervene are explicit. DPD goes beyond the model policy to specifically call out a supervisor's responsibility to intervene and to prevent retaliation from adherence to this policy. The related policies are as follows:

Rules and Regulations. 7.21 SUPERVISORY/MANAGERIAL RESPONSIBILITY. Supervisors/Managers have an affirmative duty to stop or prevent improper conduct, if there is a realistic opportunity to intervene.

Policy and Procedure 3.05-A.I.F. Duty to Intercede & Report Excessive Force. Any officer present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a person shall, when in a position to do so, intercede to prevent the use of such excessive force. Intercession should occur before a situation escalates to the use of the unnecessary or excessive force and may include verbal commands and/or physical restraint.

Officers shall, as soon as practical, report potential excessive force to a supervisor when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.

No member may retaliate, in any form, against another member who intercedes in or reports a violation of this policy, or who cooperates with an investigation into a possible violation of this policy.

We also note that DPD uses the 2020 POST “Use of Force Standards and Guidelines” for training, which includes the standards for duty to intervene and report as follow:

STANDARD #9: Officers shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, considering the possibility that other officers may have additional information regarding the threat posed by a subject.

STANDARD #10: Officers shall report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of the information known to the officer at the time of the use of force.

Practical Evaluation

We noted that, in each use of force incident reviewed, DPD officers worked collaboratively. For example, in Case 4, the case at the motel room, officers worked collaboratively to formulate a plan, initially questioning each other about the need to enter the room or otherwise engage with the subject. This collaboration, communication, and development of a plan was commendable.

#6: Ban Shooting at Moving Vehicles

The Campaign Zero model policy provides the following guidance on shooting at moving vehicles:

MOVING VEHICLES.

- Officers shall not discharge a firearm at or into a moving vehicle unless the occupants of the vehicle are using deadly force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and shall attempt to move out of the path of a moving vehicle.
- Moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, SHALL NOT be justification for discharging a firearm at the vehicle or any of its occupants. An officer in the path of an approaching vehicle shall attempt to move to a position of safety rather

than discharging a firearm at the vehicle or any of the occupants of the vehicle. [Philadelphia PD Policy]

- Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.
- Officers shall not discharge a firearm from his or her moving vehicle. Shooting accurately from a moving vehicle is extremely difficult and therefore, unlikely to successfully stop a threat of another person.

Policy Evaluation

The DPD policy on shooting at moving vehicles currently states:

Policy and Procedure 3.05-A.I.G.3 Moving Vehicles. Shots fired at the occupants of a moving vehicle are rarely effective and are quite dangerous because of the increased likelihood of causing collateral damage and/or unintended injuries to bystanders.

Officers may not shoot at any part of a moving vehicle in an attempt to disable the vehicle nor intentionally target a moving vehicle.

An officer may only discharge a firearm at an occupant of a moving vehicle when the officer believes the vehicle or occupant poses an imminent threat of death or serious bodily injury to the officer or any person and the officer has no reasonable alternative course of action to prevent death or serious bodily injury. When feasible, officers will move out of the path of an approaching vehicle instead of discharging their firearm at any occupants.

The model policy prohibits an officer from shooting into a moving vehicle unless the occupants of the vehicle are using deadly force and instructs that the moving vehicle itself cannot be the basis for an officer shooting. DPD's policy fulfills the spirit of the first part of the model policy language but contradicts the second: DPD's policy states, "when the officer believes that **the vehicle** or occupant poses an imminent threat of death." While not entirely aligned with the 8 Can't Wait proposed policy, current DPD policy provides sufficient guidance to officers on the inadvisability of shooting *at* moving vehicles.

As noted above, the 8 Can't Wait policy also provides restrictions on shooting *from* a moving vehicle. DPD does not provide guidance to its officers on this issue and should do so.¹⁴

Practical Evaluation

None of the cases that we reviewed involved shooting at moving vehicles.

RECOMMENDATION 3

DPD should revise current DPD policy to restrict shooting *from* a moving vehicle.

#7: Require Use of Force Continuum

Also among the 8 Can't Wait standards is a requirement that agencies "Establish a Force Continuum that restricts the most severe types of force to the most extreme situations and creates clear policy restrictions on the use of each police weapon and tactic."

The model policy states that agencies use force that is "reasonable, proportional, and necessary" and outlines three specific levels of force, as follows:

REASONABLE, PROPORTIONAL, AND NECESSARY FORCE. Law enforcement officers shall use physical force only when it is objectively reasonable, necessary, and proportional to effectively and safely resolve a conflict. Force may only be used if and only if doing so is aligned with the Department's mission of preserving life and minimizing physical harm.

LEVELS OF FORCE. Officers shall strive to use the minimum amount of force necessary to accomplish a lawful purpose, including levels of force lower than the level of threat. Officers shall not, under any circumstances, use a level of force higher than the level of threat.

- **Low Level Force.** The level of control necessary to interact with a subject who is or displaying passive resistance or active resistance. This level of force has a low probability of causing injury and includes physical controls such as control holds and other weaponless techniques.

¹⁴ The California Attorney General has also advised law enforcement agencies to provide guidance to its officers on this issue: "All agencies should also prohibit officers from discharging a firearm from their moving vehicle, providing only for exceptions that require such actions to end an imminent threat to human life." See <https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts>.

- **Intermediate Force.** This level of force poses a foreseeable risk of significant injury or harm, but is unlikely to cause death. Intermediate force will only be authorized when officers are confronted with active or assaultive aggression and an immediate threat to the safety of officers or others. Certain force options such as OC spray, impact projectiles, and baton strikes are intermediate force likely to result in significant injury.
- **Deadly Force.** Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject's vehicle.

Policy Evaluation

DPD policy regarding use of force requires personnel to use the lowest level and amount of force needed to resolve a situation (**Policy and Procedure 3.05-A.I-IV**). The use of force policy lays out an escalating scale of force that begins with crisis intervention, de-escalation and pain compliance and ends with deadly force. Consistent with the 8 Can't Wait recommendation, the policy then defines each level of force and sets out restrictions on its use and procedures to follow after each use of force.

DPD goes beyond the model policy: "When feasible, officers should endeavor to do everything reasonably possible to avoid unnecessary use of force, and minimize the force that is used, while still protecting themselves and the public."

For purposes of this Report, we also reviewed DPD's specific policy on use of the Taser, or, as termed in their policy, the "Conducted Electrical Device" (CED). While the Taser is not specifically referenced in "8 Can't Wait," the Taser policy serves to inform our evaluation of the six cases where DPD officers deployed the Taser. It is as follows:

3.05A – G. Conducted Electrical Device A conducted electrical device (CED) is intended to control a violent, or potentially violent person, while minimizing the risk of serious injury to everyone involved in an incident. The use of a CED on a person is capable of causing significant pain and/or discomfort to the affected person. As with any use of force, the need to immediately incapacitate an individual must be weighed against the risk of causing an unintentional injury. Therefore, the use of the CED is permissible only when there is a strong interest that compels the employment of such force and when in compliance with this policy. [...]

3. As with any law enforcement equipment, the CED has limitations and restrictions requiring consideration before its use. The CED should only be used

when the operator can safely approach the individual within the operational range of the CED.

a. Properly equipped and trained personnel may use a CED device when circumstances indicate the application of the CED is reasonable to subdue or control:

1. A violent or physically resisting individual, or

2. A potentially violent or physically resisting individual if:

a. The individual has verbally or physically demonstrated an intention to violently or physically resist; and

b. Other available options reasonably appear they would be ineffective or would present a greater danger to the officer or the individual involved.

For the purposes of this provision, violent means there is a threat or overt act of an assault, through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

For the purposes of this provision, physically resisting means the subject is making physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

Mere flight alone from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.

Practical Evaluation

In five of the cases that we reviewed, the force used seemed commensurate and proportional to the risk level posed by the subject at the time that force was deployed. As we noted above, however, in some of these instances, the officers' use of low-level force on subjects escalated the situation, moving the subject's behavior from resistance to aggression (and necessitating a higher level of force to control the situation). Had the officer continued to utilize de-escalation techniques or had mental health practitioners been available to assist, these situations may not have escalated into a use of force situation.

In two of the seven cases, DPD should have conducted additional evaluation to determine whether the force used was commensurate with the threat level presented and was the “least force necessary.” Particularly:

- In Case 3, an officer deployed a Taser on a mentally ill subject who walked toward his partner officer. At the time of **that first** deployment, the subject had reached his hand to touch his partner officer’s chest warranting the use of the Taser.

However, prior to the **second** use of the Taser the subject stated, "you don't put your hands on me" while showing both of his empty hands. The first officer then unholstered his Taser and repeated, "get on the ground" while pointing his Taser at subject. The subject, confused, stated, "what did I do?" The officer responded, "you got in my face." The subject shook his head, as if confused, and looked down to the ground. At this point, the first officer deployed his Taser, which took the subject to the ground. DPD should have further considered whether there was a sufficient level of threat to the officer at the time the second deployment to justify a Taser deployment.

- In Case 5, involving a reported domestic dispute, the subject exited his grandmother’s apartment after talking to officers for over 40 minutes. The officers commanded the subject to turn around, but the subject did not comply. One officer warned that he would Taser the subject. The subject repeated, "do not Tase me," several times and asked, "what am I under arrest for?" Without further notice or action, the officer deployed his Taser. Later, the subject asked, "what did I do?" The officer replied, "you didn't listen to me." In short, because there is no written analysis by the Department that sets out the rationale for its finding that the use of force was within policy, we were not able to discern the bases for the “in policy” findings. For the reasons set out below, we advocate for a more detailed force review process whereby the supervisor reviewing force incidents is assigned to produce a written analysis regarding the propriety of the force and surrounding circumstances, including detailing any efforts at de-escalation.

#8: Comprehensive Reporting of Force

The 8 Can’t Wait standards include a policy to “[r]equire officers to report each time they use force or threaten to use force against civilians. Comprehensive reporting includes requiring officers to report whenever they point a firearm at someone, in addition to all other types of force.”

The model policy states:

REPORTABLE USES OF FORCE. To promote transparency and accountability of actions involving the use of force against civilians, law enforcement officers shall report any use of force involving physical controls when the subject is injured, complains of injury in the presence of officers, or complains of pain that persists beyond the use of a physical control hold. Officers shall also report any use of force involving the use of personal body weapons, chemical agents, impact weapons, ECWs (i.e. Tasers), vehicle interventions, K-9 bites, and firearms. Additionally, officers shall report the pointing of firearms or ECWs (i.e., Tasers) at a subject.

The model policy also expressly requires officers to include specific information in his or her incident report, including:

- The subject's action allegedly necessitating the use of force, including any threat presented by the subject.
- Efforts to de-escalate prior to the use of force; and if not, why not;
- Any warning given and if not, why not;
- The type of force used;
- Injury sustained by the subject;
- Injury sustained by the officer or another person;
- Information regarding medical assessment or evaluation, including whether the subject refused.
- The supervisor's name, rank, star number and the time notified.

A final clause of the Campaign Zero model policy states: "Each law enforcement officer must submit a report without coaching or assistance from other law enforcement officers present during the incident." This is not currently an element of DPD policies. We believe that making independent reporting a formal requirement would be beneficial.¹⁵

Policy Evaluation

While the DPD policy on reporting force is comprehensive from the supervisor level up the chain of command, it is lacking detail and instruction for the reporting officer

¹⁵ This would not apply to a situation in which a field training officer is reviewing reports of a trainee.

him/herself as to how force is to be documented. The DPD policy simply states, “Any use of force shall be documented promptly, completely and accurately in a regular police report.” (**Policy and Procedure 3.05-A.VI. Reporting Procedures**) This single line lacks the detail and guidance for a complete use of force report set out by the 8 Can’t Wait proposed policy.

As noted above, DPD uses the 2020 POST “Use of Force Standards and Guidelines” for training, which includes a standard for use of force reporting as follows:

STANDARD #12: An agency shall provide comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including agency reporting use of force incidents to the Department of Justice as specified. [...] The use of force should be documented promptly, accurately and completely in a written report, describing the facts and circumstances surrounding the incident and factors that may have led to the officer’s decision to use force. An agency’s policy should address possible outcomes for substantial omissions or misrepresentations in reporting.

To its credit, and consistent with the 8 Can’t Wait model policy, DPD’s policy specifically requires officers to report pointing a firearm at someone: “The pointing of a firearm at a person shall be documented in a regular police report and will be reviewed by a supervisor for compliance with this policy.” (**Policy and Procedure 3.05-A.VI. Reporting Procedures**)

Practical Evaluation

We noted that, in practice, the DPD use of force reporting process would benefit from more comprehensive documentation from involved and witness officers. Moreover, the lieutenant responsible for determining the legitimacy of the force should include a force analysis that sets out the bases for finding that the force was within policy and discussing any other attendant issues, including tactics and attempts at de-escalation, if any.

DPD’s current use of force reporting and review process requires that all officers document their uses of force on a checkbox-style “Use of Force Report” form. This form asks about any injuries and/or medical treatment of the officer and subject, requires a very short summary of the force, and a list of available evidence (e.g., body-worn camera footage). A sergeant reviews this form and advises a lieutenant, who signs the form, reviews available evidence and makes a preliminary finding on the use of force. If there is any indication that the force or tactics are out of policy, the report is sent to Internal Affairs for a formal investigation. If it is determined to be in policy, the report is sent up the chain of command for final disposition.

Additionally, we have been advised that all officers involved in the force incident, even those found to be in policy, receive a tactical debrief from a lieutenant and up to three use of force instructors.¹⁶ If needed, this tactical debrief is given Department-wide or incorporated into the Department's standard training.¹⁷

These reports and the process as currently outlined were completed for every incident that we reviewed. But we noted areas for improvement. First, while all officers completed the check-box form, some also reported additional details through other reporting mechanisms. But these reporting mechanisms were not consistent across all cases and, in all cases, were distinct from the Use of Force form. For example:

- Some officers included force details in their arrest or incident Reports.
- Some officers wrote supplemental reports that detailed the circumstances of the use of force including summaries of interviews of witnesses and/or reporting parties.

Second, even when officers engaged in lengthy encounters and deployed various de-escalation techniques, officers seldom detailed the specific actions taken to de-escalate, instead simply reporting, "I used de-escalation" or "we discussed de-escalation." We did note that one officer did successfully detail de-escalation actions, stating that the officer "used a calm and steady voice" and "deflected anger [...] by speaking with the other subjects seated nearby."

Moreover, as noted above during our discussion of Taser use, there is currently no requirement or mechanism for supervisors to prepare an analysis of why the force was within DPD policy or training expectations. Any use of force incident demands careful and analytical review of whether the force option was consistent with the threat level presented. In addition, the supervisory review should consider issues of policy, equipment, training, de-escalation, and supervision to determine whether other aspects of the Department's response to the incident could have been improved. Finally, the supervisor should be advised of the need to consider actions that are deserving of follow-up, whether they be referral to an administrative investigation, policy development, training refreshers, or other remedial options. Such a holistic review will ensure that the agency takes advantage of any learning opportunities with the overarching objective of reducing use of force on a going forward basis.

¹⁶ There is no apparent documentation of the topics covered in the tactical debriefing. We suggest that such a document be prepared and maintained.

¹⁷ None of the force used in the cases that we reviewed apparently resulted in Department-wide training.

To accomplish these goals, DPD's standard Use of Force checkbox-style form should be revised to include features that should be considered in reporting and evaluating force:

- Requirement that involved officers detail all the circumstances of the use of force, including tactics, the subject's actions at the time of force and detailed description of observations establishing the threat level presented by the subject
- Documentation of verbal warnings or lack thereof (e.g., verbal warning prior to using the Taser)
- Detailing any de-escalation techniques used or lack thereof, and why
- Supervisor's analysis and evaluation
- Final disposition/determination and other potential remedial actions
- Date, topics trained, training officers, involved officers, and other discussion during the tactical debrief.

Finally, we noted that the supervisor evaluating the use of force was often present at the scene and, in at least two cases, directly involved in the incident, when force was deployed. In such situations, DPD should require that the force incident be reviewed by an uninvolved supervisor.

RECOMMENDATION 4

Consistent with the 8 Can't Wait recommendation, DPD should amend policy to require that all officers detail the circumstances surrounding their use(s) of force to include at minimum:

- The subject's action allegedly necessitating the use of force, including any threat presented by the subject.
- Efforts to de-escalate prior to the use of force; and if not, why not;
- Any warning given and if not, why not;
- The type of force used;
- Injury sustained by the subject:
- Injury sustained by the officer or another person;
- Information regarding medical assessment or evaluation, including whether the subject refused.

- The supervisor’s name, rank, star number and the time notified.

RECOMMENDATION 5

DPD should amend its use of force review policy to require supervisors entrusted with review of force to include in that review a written analysis of the propriety of the force, efforts at de-escalation, consideration of equipment, policy, training, and supervision issues and writing an action plan for any appropriate remediation.

RECOMMENDATION 6

DPD should amend its use of force review policy to require that any force review be undertaken by a supervisor not involved in the use of force event.

RECOMMENDATION 7

DPD should add to its force reporting policies a requirement that personnel write their supplemental reports independent of any assistance or collaboration with others.

Additional Reform Proposal: No Knock Warrants

About No-Knock Warrants

A “no-knock warrant” is a search warrant that authorizes police officers to enter a premises without first knocking and announcing their presence or purpose prior to entering the premises. In California, courts do not authorize the use of “no-knock warrants.”

Rather officers are required to knock and announce their presence and purpose before executing a search warrant. They must wait a reasonable amount of time before forcing their way into a home. There are some exceptions to this rule, including the one most frequently cited – the presence of “exigent circumstances,” which typically involves situations where police believe evidence may be destroyed, or subjects may either flee or arm themselves if given notice of officers’ presence.

Policy Evaluation

DPD's policy related to warrant service explicitly states that officers will adhere to the Knock-and-Notice requirements of the Penal Code as follows:

PRE-PLANNED WARRANT SERVICE & PROBATION/PAROLE SEARCHES

Policy and Procedure 2.65-C I. Knock and Notice. Members executing warrants and/or conducting probation/parole searches will adhere to State and constitutional requirements regarding knock and notice and, when required prior to forced entry, announce their presence and provide the residents a reasonable opportunity to allow entry (Penal Code §§ 844 and 1531).

This policy also states that it is "intended to be used in conjunction with **PP 2.48-C, Operations Planning and Deconfliction Policy.**" That policy details planning and conducting high-risk operations.

