



323-821-0586
7142 Trask Avenue Playa del Rey, CA 90293
OIRGroup.com

Independent Police Auditor Report

Complaint Regarding DPD Detention of Complainant and Response to Calls for Service

July 2020

**Report by: Michael Gennaco
Independent Police Auditor
City of Davis**

Introduction

In February 2019, the Independent Police Auditor (“IPA”) received a complaint from a Davis resident about the way the Davis Police Department (“DPD”) has responded over the years to issues that she had with her teenage son. Those concerns included the complainant’s having been detained – wrongfully, she maintained – after being involved in a dispute with her son, as well as perceived flaws in DPD’s responses to requests for service about her son’s misconduct. Specifically, the complainant alleged the following:

- A DPD officer who responded to a call for service advised the complainant to stop calling for assistance and squealed her tires as she left the call.
- A dispute she had with her son resulted in her being inappropriately detained.
- DPD had a slow response to a call for service in which she reported her son being out of control and armed with a knife.

IPA had initial conversations with the complainant. At first, the complainant expressed an interest in resolving her issues through the City’s restorative justice program rather than having them pursued by DPD as a formal administrative investigation. However, she later declined after learning that she would need to sign a confidentiality agreement. After the complainant withdrew from that alternative process, DPD conducted an internal affairs investigation into her allegations. The Department ultimately found them to be not sustained.

IPA reviewed the results of DPD’s investigation and the available underlying materials.¹ What follows is a discussion of the allegations complained of, the DPD investigation, and IPA’s analysis and conclusion.

The Complainant’s Years’ Long Difficulties with Her Son and Her Allegations Regarding DPD

During her DPD interview, the complainant catalogued the difficulties she has experienced with her son over the years. When he became a teenager, the son’s defiance and unruly behavior grew increasingly problematic. She tried various corrective actions

¹The DPD investigation and IPA review were hampered by the non-existence of any video/audio evidence. All video and audio files from officers’ body cameras are downloaded to a server at the Davis Police Department. However, a search of the DPD database was not able to recover any video/audio evidence of the incidents at issue. This is because the relevant events occurred 5-7 years ago and were presumably purged as part of DPD’s routine and periodic efforts to clear storage space.

to no avail. The son was caught with marijuana several times, was placed on diversion through DPD and was eventually placed on formal juvenile probation. Ultimately, the son was expelled from school. The complainant sent her son to a camp-style program to correct his behavioral problems, but it was ineffectual. Her son repeatedly threatened her, damaged property, and continued to engage in other illegal and anti-social behavior.

The complainant called DPD numerous times to assist with her son's misconduct. She expressed frustration that responding officers did not pursue matters more aggressively and subject her son to greater enforcement action. As an example, and for general context rather than as a component of her complaint, she referenced an occasion in which her son was caught with a bag of marijuana. According to the complainant, and to her disappointment, DPD's response was simply to seize the marijuana but not to arrest her son.

With regard to the specific complaints against DPD, the complainant described a 2013 DPD response to a particular call for service. Her son had shattered a glass door by punching it, and pieces of the glass had struck the complainant in the face who was positioned nearby. But when DPD arrived, the investigating officer did not arrest her son for his assault of her. On the contrary, the officer allegedly finished the call by advising the complainant not to call the police again about her son, and then "squealed" her tires as she drove off – as if in a gesture of dismissal or contempt.

In 2015, the complainant was herself detained after another conflict involving her son. In that incident, the complainant was in the car with her son and arguing with him. According to the complainant, at some point her son grabbed her laptop computer and got out of the car. The complainant said that her son then jumped on the hood of her car and threw the laptop at the windshield. The complainant said she then drove from the scene.

When police arrived to investigate the incident, they eventually detained her for striking her son with her car. The complainant felt that officers wrongly believed her son's account over hers.

The complainant also included another incident from later in 2015. She said that, on this occasion, her son was at home, angry and under the influence of drugs. The complainant said that she at her house in the company of two friends, and that she called the police and told the dispatcher that they had sequestered themselves in a room for their safety because of her son's conduct. The complainant said she told the police that her son had a knife and was high on methamphetamine. The complainant kept calling the police to respond but was told that she needed to be patient because of a shift

change. The complainant said that by the time the police finally arrived, her son had driven away while under the influence of drugs.

More broadly, the complainant said that some of the DPD officers who were dispatched to respond to her son's offenses over the years acted like they were not taking things seriously and were dismissive of her concerns and struggles. The three highlighted allegations are the most serious examples of this pattern.²

During her initial meeting with IPA about the process and her options, she explained that she had not filed contemporaneous complaints about these concerns because dealing with her son consumed most of her time and energy. A recent experience of being questioned about her own record when she returned from abroad had triggered the complainant's lingering feelings; it was this experience that provided the impetus to formally complain about these past events.

Allegation 1: Officer Failed to Arrest Son, Was Dismissive of Complainant and Advised Complainant Not to Call Police (2013)

According to the DPD police report, two officers were dispatched to the complainant's home for a disturbance. According to the report, the son was taking a shower when the complainant began accusing him of using marijuana. The argument escalated and the son punched the glass bathroom door, causing it to shatter. A piece of glass struck the complainant, causing her nose to bleed. When interviewed, the son admitted punching the door but claimed he did not intend to injure the complainant. The son told police he suffered from bi-polar disorder and had anger control problems. The son said he punched inanimate objects such as walls or doors to release his anger. The complainant also reported to officers that she did not believe her son intended to injure her.

The son suffered serious injuries to his hand. In fact, he was treated by paramedics and taken to the hospital. The police report indicated that the complainant wanted her son arrested and sent to juvenile hall or for them to take him on a "5150" hold³. The officer indicated on the police report that she advised the complainant why she believed that, under the circumstances, she could not proceed as requested and instead forwarded the matter to juvenile probation for review.

² The DPD investigative report contained numerous other police reports of calls for service involving alleged misconduct of the complainant's son.

³ This is a reference to the Welfare and Institutions Code section that authorizes temporary involuntary detainment of individuals who have been deemed to be gravely disabled and/or a danger to themselves or others. Before WIC 5150 can be actualized, the officer must make a probable cause finding that the criteria have been met.

A review of the available information does not refute the legitimacy of the responding officers' decision-making. There was no evidence that the son's conduct was an effort to intentionally injure the complainant; importantly, the complainant herself admitted as much to police. Even if the officers had decided to arrest the son, his status as a juvenile would have resulted in his being issued a citation and immediately being released back to his home. Instead, the son's trip to the hospital for medical attention actually provided a useful opportunity for tempers to cool and for the complainant and son to recalibrate. As for the prospect of a 5150 welfare hold, there was insufficient evidence that the son met the requisite criteria for such an action.

With regard to the complainant's allegations that one of the officers advised her to stop calling the police about her son and then deliberately squealed her tires as she was leaving the residence, had this conduct been proven it would have violated DPD's courtesy policy. It also would have fallen below Departmental expectations on how to appropriately handle a call for service. However, the investigation, including interviews with the responding officers, did not produce corroborating evidence.

Allegation Two: Detention of Complainant⁴

According to the police report, the complainant and her son were in her car when an argument ensued. The complainant told her son to get out of the car. When he did and began walking, the complainant struck her son with the front of her vehicle and drove home.

The police report indicated that when officers arrived, the son told them that the complainant had struck him with her vehicle after he got out of the car. Police also located three independent witnesses who observed the complainant strike her son with the front of her car. The witnesses said that before striking her son, the complainant made a U-Turn and drove on the wrong side of the street to align her car with where her son was.

When interviewed by police, the complainant admitted to leaving the scene and purposely driving her car at her son in order to scare him. The complainant denied actually striking him with her vehicle and said her son had jumped up on the hood of the car to make it appear as if she had struck him.

⁴ When the complainant registered her concerns, she also requested an expungement of her record since the District Attorney did not file charges. Based on that request, DPD issued a Certificate of Detention. As a result, all records indicating that the complainant was arrested were deleted, and the relevant documentation now shows that the complainant had been detained only.

According to the report, the officers noticed damage to the complainant's car and the complainant said that most of the damage existed prior to the incident, but thought a crack in the windshield appeared to be new. At that point, the complainant advised the interviewing officer to "just take her to jail".

A review of the evidence available in this case indicates there was probable cause to detain the complainant. Three witnesses supported the son's account that he was intentionally struck by his mother's car. The complainant admitted to police driving her car in the direction of the son to scare him, which at least would have constituted an attempted assault. And the complainant acknowledged that there was recent damage to her car's windshield that she had not noticed before.

The fact that the District Attorney ultimately chose not to file charges in this case is of no moment in assessing the viability of her subsequent complaint against DPD. The standard for prosecution is different than the detention standard, and includes additional considerations that would not intrinsically reflect on the legitimacy of the officers' actions. Accordingly, though understandably cited by the complainant, this later development in this case does not change the analysis with regard to whether the detention itself was justified.

Allegation Three: Late Response to Call for Service

No police report was prepared for this incident. However, the investigation located the call record for this request for service:

6:41 pm: Reporting Party: Son was arrested for drugs and is not supposed to be driving.

6:42 pm: DPD officer aware of call and advised the call could pend.

6:57 pm: Reporting Party: Advised that she and another person were in the bedroom with door closed. Son not attempting to enter at this time.

6:59 pm: Reporting Party: Could not advise what son said but she was fearful for her life.

7:07 pm: Husband of friend of Complainant: Called and said complainant's son was under the influence of drugs and armed with a knife.

7:09 pm: Three officers were assigned to respond to address.

7:24-7:27 pm: Officers arrived at address. Son no longer at address.

At least 43 minutes elapsed between the initial call and officers arriving on scene. After additional information was received about the son being armed with knife, it was still another 17 minutes before the first officer arrived.

The investigation found that two of the three officers who eventually responded to this incident are no longer with DPD. The officer still with the Department had no recollection of the incident, which had occurred six years earlier.

There is a large gap of time between when the call was placed and when officers finally arrived at the residence. To the extent this delay is problematic, a portion of the fault is ameliorated by the fact that the information about the son having a knife was not received until 26 minutes into the call. However, once the information about a weapon was introduced, the remaining 17 minutes before officers arrived on scene was certainly less than ideal as a response time.

Still, the question of whether that span now comprises a basis for any formal accountability is a separate one. Again, the passage of several years and the non-existence of any video/audio evidence make it difficult to assess whether the delayed response is problematic – or whether extenuating circumstances existed that might account for the late response.

IPA Analysis and Conclusion

The complainant has had to struggle with a very unfortunate and difficult matter. Her son had a pattern of escalating juvenile delinquency and other behavioral issues. Progressive corrective actions (counseling, informal diversion, probation) were all tried to no avail. Records show that the son was also seen by DPD's Youth Intervention Specialist. In addition, the complainant herself also tried "camp" style programs to correct her son's behavior.

Regarding the complainant's desire for DPD to take more aggressive enforcement action, contemporaneous juvenile justice precepts have moved away from "lock down" facilities and the punishment as deterrence model. In fact, even if DPD had wanted to pursue more traditional measures such as confinement, the facilities that formerly housed juveniles to address the sorts of behavior at issue are no longer even available and haven't been for some time.

The DPD investigation was thorough, and it sufficiently addressed the complainant's more specific allegations and reached reasonable outcomes. It was hampered by the delay in receipt of the complaint and the routine purge of video/audio recordings that might have provided influential evidence as to the particulars of these encounters.

The first allegation that the complainant's son should have been arrested when he struck and shattered a glass door is not supported by the available evidence, and in fact is refuted by specific aspects of the contemporaneous report. The allegation that one of the responding officers advised the complainant to stop calling the police about her son and then squealed her tires as she left the residence is not corroborated and therefore could not be sustained.

The second allegation regarding DPD's decision to arrest the complainant is also not supported by the available evidence. As detailed above, there was corroboration to the son's statement that the complainant had intentionally struck him with her car. This included the testimony of independent witnesses, the corresponding damage to the vehicle, and the complainant's own contemporaneous statements to DPD.

The third allegation regarding delayed response time is concerning, especially the seventeen-minute delay after dispatch was advised that the son had procured knives. By the time police arrived, the son had left the residence. However, the investigation into a years-old event was limited in its ability to explore the reasons for the officers' delay in responding.

Accordingly, the decision by DPD not to sustain any of the allegations is reasonable and supported by the available evidence.

In part because of the passage of time, IPA believed (and still believes) that the concerns raised by complainant could have been better addressed by using the City's alternative dispute resolution process. In that forum, the complainant could have advised and informed DPD representatives about the difficulties she faced with her son's repeated delinquency and how she felt that the entire juvenile justice and social services systems had not served her and her son well. In turn, DPD could have raised with the complainant – in a non-threatening forum facilitated by a skilled and neutral mediator – the challenges law enforcement faces and the limited options it possesses to deal with a troubled juvenile.

Ideally, in such a forum both parties could benefit from the insights of the other, and from the opportunity to be heard and understood. IPA intends to re-engage with the complainant to see whether the use of a restorative justice process might still be helpful as a means of constructively addressing the unfortunate experiences of the past.

IPA has no formal recommendations with regard to this incident.