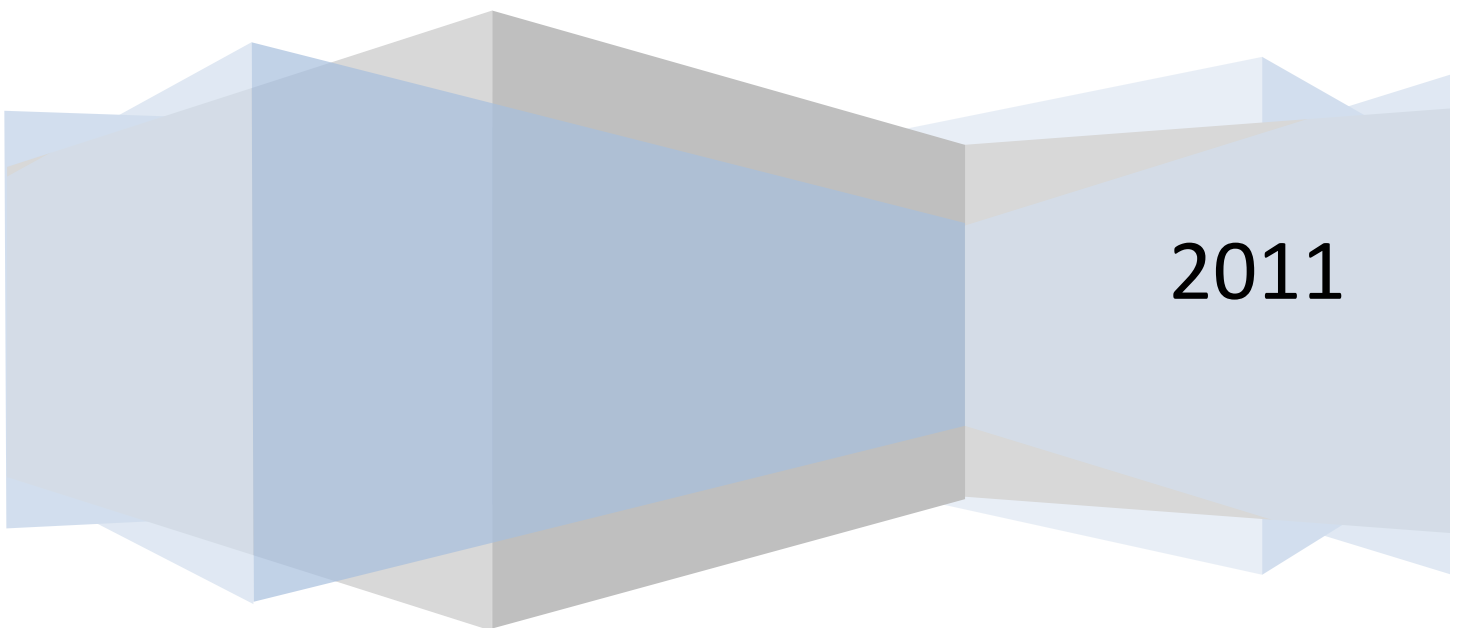


# OFFICE OF INDEPENDENT REVIEW

## 2010 ANNUAL REPORT

January 1 – December 31, 2010

Eddie J. Aubrey, Independent Reviewer



# OFFICE OF INDEPENDENT REVIEW

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## 2010 Annual Report

January 1 – December 31, 2010

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# Executive Summary

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The Office of Independent Review (OIR) produces an annual report pursuant to Resolution 2009-66. The report will help provide transparent and accurate information about the overall performance of the Department.

Although this report is titled the 2010 Annual Report, it will focus on the OIR's work between July-December of 2010 and provide a statistical overview from the entire year.

This report includes statistical information on complaints; analysis of trends and patterns; discussion of remedial action taken by the police department; and presentation of other issues, concerns, and recommendations from the OIR.

This report also identifies two "Focus Issues" which highlight matters that need an emphasis and expedited corrective action relating to officer-involved shootings and the Department's "Early Alert" system.

The five primary functions of the OIR are to (1) audit personnel investigations (complaints) including officer-involved shooting and in-custody deaths, (2) review the inquiry and complaint log, (3) monitor the "Early Alert" personnel monitoring system, (4) serve as a community resource, (5) serve as a resource for the police officers and managers.

## Audits

During 2010, the OIR has monitored 909 files stemming from inquiries, complaints, or formal internal affair investigations. Comparing inquiries and complaints (including resolved and unresolved inquiries), formal investigations, use of force, and out of policy traffic collisions with 2009, there

were marked decreases in all categories except unresolved inquiries.

There were 162 formal internal affair investigations of which 95 were citizen-generated complaints and 67 were police department-generated complaints. The police department completed investigations on 140 cases and the OIR audited 41 of them.

The primary allegation in 48 cases was excessive force and some cases had additional allegations. The OIR audited 38 of these cases and disagreed with the Department's finding in 5 cases that involved excessive force, unreasonable search, verbal threat, and poor discretion/judgment.

It was determined that 80% of the cases where the OIR disagreed with the Department's findings were cases investigated by patrol Sergeants. Further, it was revealed that most patrol Sergeants receives little to no training on how to conduct an internal affairs investigation.

A few of the other types of allegations audited included: failure to report use of force, intimidation, discriminatory treatment, unprofessional conduct, failure to provide medical attention, illegal search, illegal arrest, unlawful detention, mishandling of property, poor performance, inappropriate use of information, and failure to obey policy/procedures.

Summaries of the audits are included in the appendices of this report while the full reports were submitted to the City Manager, City Attorney, and the Police Chief. As a result of those audits, 121 recommendations were made.

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# Executive Summary

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## Inquiry & Complaint Log (ICL)

An “inquiry” is when a citizen questions or complains about the Departments policy, procedure, or service. Inquiries result from dissatisfaction with the service of an officer, such as rudeness, disrespect, unprofessionalism, traffic citation, etc. This year like all other categories, reported inquiries decreased. However, the number of unresolved inquiries increased from 153 in 2009 to 159. Two sub-groups of inquiries that represent 64.15 % of all inquiries could benefit from improved officer communication and training enhancements. Those sub-groups are officer professionalism and general responsibilities.

## Focus Issues

For this report, the two Focus Issues are: (1) officer-involved shootings/in-custody deaths, and (2) the “Early Alert” system.

(1) Officer-involved shootings (OIS) and in-custody deaths (ICD): In the 2010 Mid-Year report, the OIR identified an extremely high number of OIS/ICD cases in “open” status since 2004. At that time there were 40 OIS/ICD cases in “open” status. “Open” status means that the case has not been closed and adjudicated through the internal affairs review process. Since that report, there have been an additional 8 officer-involved shooting incidents that have occurred, bringing the total of “open” cases to 48.

After meeting with the OIR, the Department established various measures to complete the cases as quickly as possible without jeopardizing the integrity of the investigation. Those measures improved the Departments

ability to track the investigations and created accountability measures to ensure that the casework was being completed in a timely fashion. Additionally, one detective was assigned to oversee all officer-involved shootings.

Due to the Departments focus, hard work and commitment, they reduced the number of “open” cases from 48 to 27, a 43.75 % reduction. One reason cases remain “open” is because the Department follows a “Best Practice” procedure that requires the receipt of a District Attorney’s closing letter before completing their investigation. The letter provides a legal determination of whether there was any violation of law as a result of the OIS/ICD. The Department is waiting for 16 closing letters.

There were 4 officer-involved shootings that were “closed” by the Department in 2010. The OIR completed audits on 3 of the 4 cases. The OIR found that in all three cases the officer was justified to utilize deadly force in defense of his life or to arrest or prevent the escape of an armed and dangerous felon.

In one case, an officer shot at a “dangerous” violent fleeing felon. Although the shooting was justified, the OIR examines whether it was necessary to use deadly force when the subject was fleeing and did not present an immediate threat towards the officer.

Additionally, the OIR examined data from the past 10 years of officer-involved shootings to determine how better to analyze the tactical decision-making and decisions to deploy deadly force. The data revealed that 156 officers were involved in 96 shootings that resulted in 45 fatalities. Better analysis may

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# Executive Summary

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improve officer safety and reduce situations where officers are involved in shootings.

Of the 12 officer-involved shooting cases that occurred in 2010, 3 resulted in fatalities. The OIR responded, monitored and observed the scene of 8 officer-involved shootings. None of these OIS's have been completed. (Note: Audits are only conducted on completed cases.)

Summaries of the three OIS audits are included in the body of this report while the full reports were submitted to the City Manager, City Attorney, and the Police Chief. As a result of those audits, 28 recommendations were made.

(2) “Early Alert” system (EAS): This is a system that tracks performance issues of individual officers, such as traffic accidents, use of force cases, commendations/complaints, and internal affairs investigations. This information may provide insight into specific personnel patterns or collective trends. The EAS has the potential to identify officers with recurring performance issues and correcting it.

The EAS system was implemented in 2008 and generates an EAS report when an officer meets a certain number of identified performance indicators (complaints, use of force, etc.) during a specified period of time. The report is reviewed and may be forwarded to the EAS committee who will determine if intervention is necessary.

During its short 2-3 years of existence, the EAS program has had a number of internal affairs and division commanders supervising the program who have made changes to its screening processes. There were 38 EAS reports generated in

2009-2010 and only 3 were selected and presented to the EAS committee for review. None of the 3 reports that went to committee were determined to require any intervention, such as counseling or retraining.

Since permanent records are not maintained, there is no systematic way to track performance indicators or review any of the results. Therefore it is difficult to review or determine the effectiveness of the program.

## **Community Outreach Efforts**

The OIR provides the community with information and answers their questions concerning police policies. The OIR ensures that information is available to the public by various means such as: speaking at public events, talk radio, interviews, brochures and pamphlets, website presence, participating in the Mayor's Citizen's Academy, etc. Additionally, the OIR participated in a 3-part television series about the Office of Independent Review to be aired March-June 2011.

After attending numerous community meetings and speaking with citizens, the OIR is adding new ways to increase public awareness and provide additional information. The OIR can now be found on Facebook and Twitter. In addition, the OIR will publish a newsletter on a regular basis that will be available in electronic form on the OIR's website. Lastly, the OIR will publish a running activity log of audits performed that will include short summaries, findings and recommendations every quarter. The activity log of audits will be available at the publishing of this report.

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# Executive Summary

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## **In-Car and On-Person Video Cameras**

The OIR reviewed the state of in-car and on-person video cameras that can help enhance officer safety, improve accountability, and reduce liability. The Department does not have these types of cameras in operation. The overall benefit to the Department and the community is evident after reviewing a number of citizen videos from internal affairs investigations.

While auditing an excessive force investigation, a review of a nearby surveillance camera recorded video that supported the officer's report of a violent struggle with a male where the officer needed to use various force options. In another excessive force case, a nearby surveillance camera recorded video that provided evidence confirming that an officer walked up to a subject and punched him without justification. Video recordings are in place in a number of police agencies and if used properly has the ability to present unbiased facts, even considering their limitations.

## **Department Accomplishments**

The Department opened a one of a kind Criminal Justice Regional Training Center in September 2010. It provides state of the art training for law enforcement officers that allow officers to improve their skills.

Internal Affairs has developed an eight-hour course to train Sergeants on how to properly conduct an internal affairs investigation. The OIR will participate in this training, which is scheduled for early 2011.

One recommendation made from the OIR's 2010 mid-year report was to

acquire and implement a software program named "IA Pro" to efficiently handle citizen complaints, complete administrative investigations, monitor use of force reporting, and oversee the "Early Alert" personnel monitoring system. IA Pro will be implemented in 2011.

"Operation Cease Fire" was implemented to focus on violent gang members and collaborate with other government agencies, such as the federal prosecutors, to reduce violent crimes and help gang members leave that lifestyle.

## **RECOMMENDATIONS**

The following is a summary of the recommendations made by the OIR as a result of this report.

**Audit Investigations:** The OIR found that a majority of the cases audited were adequate and thorough as well as accurate and of very good quality, however, the audits resulted in 121 recommendations, 76 of them alone between July-December 2010. Due to the extensive list of recommendations, they will not be included in this summary, however, below are a few recommendations that repeated themselves from multiple audits.

It is recommended that the Department review all internal affairs investigations completed by patrol Sergeants in 2010. This recommendation is not made lightly but because of the seriousness and high percentage numbers of issues discovered by the OIR, and the potential that these cases may have negatively affected officers or citizens it seems reasonable to make this request. Additionally, after the review, the OIR would like to review the results and audit 20% of the cases.

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It is recommended that the Department provide in-depth internal affairs training to all Sergeants, including management staff above the rank of Sergeant. The training should consist of policies, procedures, protocols on how to investigate, analyze, complete, and properly review and approve internal affairs complaints.

It is recommended that investigators assure that all potential witnesses are interviewed or if not contacted, document the reason why a witness was not contacted.

It is recommended that investigators routinely canvass the area for potential witnesses or other evidence (such as video cameras) and documents their findings.

It is recommended that investigators complete their investigations in a professional manner without unduly drawing attention to specific facts in the reports that may taint or influence the investigation or another investigator, such as highlighting or underlining text.

Inquiry and Complaint Log (ICL): It is recommended that the Department closely review and evaluates unresolved inquiries to determine if or how service could be improved, methods to effectively resolve them or prevent them from occurring (such as better communication skills). The Department could then provide appropriate training and conduct vigilant quality service checks to monitor its progress.

“Open” Officer-Involved Shootings/In-Custody Deaths: It is recommended that the Department continues to focus on the cases that do not require a closing letter and request reports from other

agencies immediately after an officer-involved shooting occurs. Additionally, on a case-by-case basis, determine whether the delayed external reports are critical in closing a case for internal affair purposes, and if it is critical, determine how to proceed at that point.

“Early Alert” System: It is recommended that the EAS program is carefully reviewed, evaluated, regularly monitored and documented, and if appropriate, revised. The OIR should be notified of all alerts and meet at regular intervals with the Internal Affairs Commander and/or the Professional Standards Division Commander.

Audits of Officer-Involved Shootings: The OIR made 28 recommendations from 3 officer-involved shootings.

It is recommended that additional review, analysis and training be considered concerning the use of deadly force upon “dangerous” violent fleeing felons.

It is recommended that the administrative staff routinely examine past officer-involved shootings or other relevant history of involved officers to identify any commonalities of tactical decision-making and decisions to deploy deadly force. This examination should include specific reference and examination of any commonalities (if any) accompanied by appropriate recommendations.

It is recommended that in officer-involved shooting investigations, training staff be part of the call-out to immediately respond to a shooting scene.



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## Executive Summary

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It is recommended that the Department publish a training bulletin for each officer-involved shooting and address any issues or tactics identified from the review process.

It is recommended that investigators routinely use diagrams, "Google maps", or other appropriate photographs/sketches to obtain a permanent account of the sequential positioning of involved officers and witnesses.

It is recommended that the Department video record the scene of each officer-involved shooting scene.

It is recommended that the interview of officers and witnesses of officer-involved shootings be recorded on video in addition to the audio recording practice already implemented by the Department.

In-Car and On-Person Video Cameras:

The OIR recommends and urges the Department to continue to pursue in-car and/or on-person video camera testing and carefully consider implementation.

# I. INTRODUCTION

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The Office of Independent Review (OIR) is the first civilian oversight entity entrusted with reviewing and auditing the operations of the Fresno Police Department. Since officially beginning operations on November 30, 2009, we have established a permanent location for the office at the Civic Center Square on Tulare & M Streets. In addition to the Independent Reviewer (IR), our office is staffed with an Administrative Assistant who works at the direction of the IR to support the administrative needs of the office. The Administrative Assistant also provides customer service to constituents as they access the OIR with questions, concerns and information on the complaint process.

The Independent Reviewer has worked to establish relationships with and provide information to community stakeholders through various events and meetings. In addition to the OIR website, the IR has provided information to the community through various interviews as well as literature in partnership with Kings View Behavioral Health Youth Outreach/Engagement Program and the Fresno Police Department.

The IR submitted its mid-year report as required by Resolution No. 2009-66 and made its presentation to the Fresno City Council Members in October 2010. Although this report is titled the 2010 Annual Report, it will focus on the IR's work between July-December of 2010 and provide statistical information from the entire year.

The IR continues to attend the National Association for Civilian Oversight of Law Enforcement (NACOLE), International Law Enforcement Auditors Association (ILEAA), and continually corresponds, communicates and discusses important issues with other leaders within the civilian oversight community.

## II. OFFICE OF INDEPENDENT REVIEW

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### A. OIR Role and Guiding Principles

The primary role of the OIR is to ensure that complaints are thoroughly and appropriately investigated and that the community has trust in the process. By administering this in a thoughtful manner, the Independent Reviewer (IR) will help protect our officers by enhancing policies, procedures, and training for the Fresno Police Department and strengthen police-community relations.

#### OIR Key Principles:

- **Independence** - The Independent Reviewer (IR) exercises independent judgment, free of any real or perceived bending to the wishes of any stakeholders. Moreover, the City and the community benefit from having a “fresh set of eyes and ears.” Independence is affirmed by the open, accepting reception that the IR’s work will receive by the City’s elected and appointed officials.
- **Fairness, Integrity and Honesty** – The IR maintains impartiality in word and deed, process and results, and is candid with stakeholders and participants.
- **Transparency** – The IR provides an additional level of transparency for the police department and because of that, the IR’s work product is made available to the community, to the extent permitted by law.
- **Participation of Stakeholders** – The IR welcomes the participation of all internal and external stakeholders. Both internal and external stakeholders have access to the IR and may offer input or seek assistance.
- **Acceptance, Cooperation and Access** – The City’s administrators and managers embrace the concept of the IR’s independence by allowing the IR a degree of freedom to inquire while evaluating the IR’s work product with an open mind. The City and its staff will cooperate with the IR and provide the access necessary for the job to be well performed.
- **Obedience to Legal Constraints** – The IR follows all relevant laws and respects the rights of all stakeholders.

## **B. Functions of the Office of Independent Review**

The five primary functions of the IR are:

- To audit personnel investigations conducted by the police department internal affairs process.
- To review inquiry and complaint logs monthly to identify unresolved inquiries, identify any trends in allegations, and review whether any inquiry should have been investigated as a complaint of misconduct.
- To identify and monitor trends in the Department's "Early Alert" system, as well as demographic data on traffic stops and other incidents.
- To serve as a community resource and provide information about the IR's role, the process by which complaints are received and investigated, and answer any informal inquiries concerning police policies.
- To serve as a resource for police officers and managers for consultation regarding recommendations for changes to policies and to make presentations to newly hired police officers.

## **C. Reporting Requirements**

This report is submitted pursuant to Resolution 2009-66 that directs the OIR to prepare an annual report in addition to a mid-year report for the first two years. The annual report includes statistical information on the number of complaints by category, the categorical finding of each complaint (sustained, unfounded, not sustained, and exonerated), number of complaints where the complainant failed to cooperate in the investigation, analysis of trends and patterns, and any remedial action taken by the Department (policy changes, training enhancement, equipment modifications).

Statistics allows the Department or the OIR to make general assessments of the conduct of officers, the effectiveness of the internal investigative process, and the disciplinary actions imposed. Statistics published in this report were obtained from the Department databases. The Department has processes in place that has led the OIR to conclude that data is generally accurate.

However, the OIR does not conduct governmentally approved audits of the databases for accuracy. If data entry errors were to be discovered, the OIR would immediately notify the Department in order to ensure errors are corrected.

Finally, because FPD personnel enter most data and the OIR does not audit that data on a regular basis, the OIR cannot state with absolute certainty that all published statistics are 100% accurate. Some of the data presented reflects the research and calculations of the OIR, such as some data representing aspects of the Inquiry and Complaint Log.

**D. Content of this Report**

This report reviews the first twelve-months of working operations of the OIR from January 1 through December 31, 2010 as well as the police departments' response to the mid-year report. It identifies two "focus issues" to highlight matters that need an emphasis by the Department and expedited corrective actions. It also includes a comparison of comparative data on complaint statistics during the same time period of 2009. The statistics measures cases that were initiated within each of the time periods. The report includes a statistical overview of the officer-involved shootings not only from 2009 and 2010, but officer-involved shootings that remain in open status prior to 2009. Lastly, the report outlines current issues that the OIR will continue to monitor.

**E. Response to 2010 Mid-Year Recommendations**

In October 2010, the Department and the City Manager's office were provided a copy of the 2010 Mid-Year Report that contained a total of 45 recommendations. The report included twelve audits that contained 37 audit specific recommendations and eight all-encompassing recommendations.

The Department has worked closely with the OIR concerning the recommendations made. The Department worked in concert with the OIR during the first six months addressing the needs to improve the inordinate amount of time to complete officer-involved shootings. The Department on its own initiative, made changes to their processing, accountability measures, policies, tracking, and review process. Due to their active engagement to address this issue, they were able to reduce the number of open officer-involved cases significantly by the end of 2010.

Next, the Department fully embraced the recommendation to obtain and implement the IA Pro software to improve the citizen inquiry and complaint system, while increasing accountability. One of the core components is the robust Early Alert/Early Intervention system embedded in the program. The IA Pro system will also significantly improve the internal affairs investigative process and help improve the Early Alert system, a focus issue in this report.

Lastly, the Department has carefully reviewed and considered the recommendations. The Department has recognized the value of many of the

recommendations and is engaged in the process of incorporating many of them. Department has kept the OIR updated on its progress towards the recommendations made.

The Department has demonstrated its commitment to continually improve their profession of law enforcement while also improving its internal mechanisms to strengthen its relationship with the community.

## **F. Focus Issues**

For this report, the two focus issues are: 1) officer-Involved Shootings, and 2) the Early Alert system. While other reported issues beyond the focus issues are also important, many of them are complicated and implementing improvements may take considerable time. In contrast, focus issues attempt to convey critical matters where at least some aspects of them can be corrected in a relatively short time.

### **1. Officer-Involved Shootings**

Officer-Involved Shootings (OIS) was a focus issue of the 2010 Mid-Year report. Although the Department has made great strides since the previous report, officer-involved shootings remains a great concern. The Department has improved its tracking and accountability of the investigations, provided additional oversight methods and utilized its resources more efficiently, while working with external outside agencies to reduce the lengthy delays to receive reports.

However at years end, there were still 27 out of 40 officer-involved shooting or in-custody death cases that remained open. It is recommended that the Department focus on cases that do not require a District Attorney's closing letter. The Department should continue to request reports from external agencies immediately after an officer-involved shooting to reduce any delays in receiving the reports. Additionally, on a case-by-case basis, determine whether delayed external reports are critical in closing a case for internal affair purposes, and if it is critical, determine how to proceed at that point.

Additionally, this marks the first report to review its findings from recently closed and audited officer-involved shootings investigations. A focus of the audits will review whether those shootings were justified and necessary.

### **2. Early Alert System**

The Department has an Early Alert System (EAS), which is a computer database that organizes performance history information of Department employees in timely and useful ways. The database is a system that tracks performance issues of individual officers, such as traffic accidents, use of force cases,

commendations/complaints, and internal affairs investigations. This information may provide insight into specific personnel patterns or collective trends. This enhances the Department's ability to recognize issues and to intervene as needed.

In general, systems such as this consist of four basic components: 1) Performance indicators, 2) Identification and selection process, 3) Intervention, and 4) Post-intervention monitoring. Unfortunately, the data suggests that if an officer's performance indicators alert the system, the officer rarely moves from the identification phase to the selection process.

If the officer is selected for review, his confidential file will be sent to the EAS committee. Records indicate that the committee has never sent anyone to the intervention level such as counseling or retraining. Additionally, there are insufficient records maintained to determine if the performance indicators were valid, sufficient or adequate to justify an officer's selection or non-selection for intervention.

Although the Department should be complemented for following and establishing an Early Alert system, which is recognized as a "Best Practice" in policing, this centerpiece of police accountability does not seem to be functioning effectively.

### III. FUNCTIONAL AREAS

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#### A. Audit Investigations

A primary function of the OIR is to audit personnel investigations involving: 1) use of force (including officer-involved shootings); 2) in-custody deaths; 3) collisions during pursuits that result in serious injury or death; and 4) complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation or disability. The OIR may audit any other complaints on the OIR's own initiative, as a result of citizen requests or requests made by the Chief of Police or staff.

Audit reports focus on evaluating the adequacy and thoroughness, as well as the quality and accuracy of the investigation report. In addition, audits provide an early detection of issues or concerns that allows the OIR to identify ways to improve conditions and performance. As a result of completing audits, the OIR may discover other areas of basic police operations or policy that may benefit from the OIR's observations and recommendations. It is here where the OIR can help protect our officers by enhancing policies, procedures, and training for the Department.

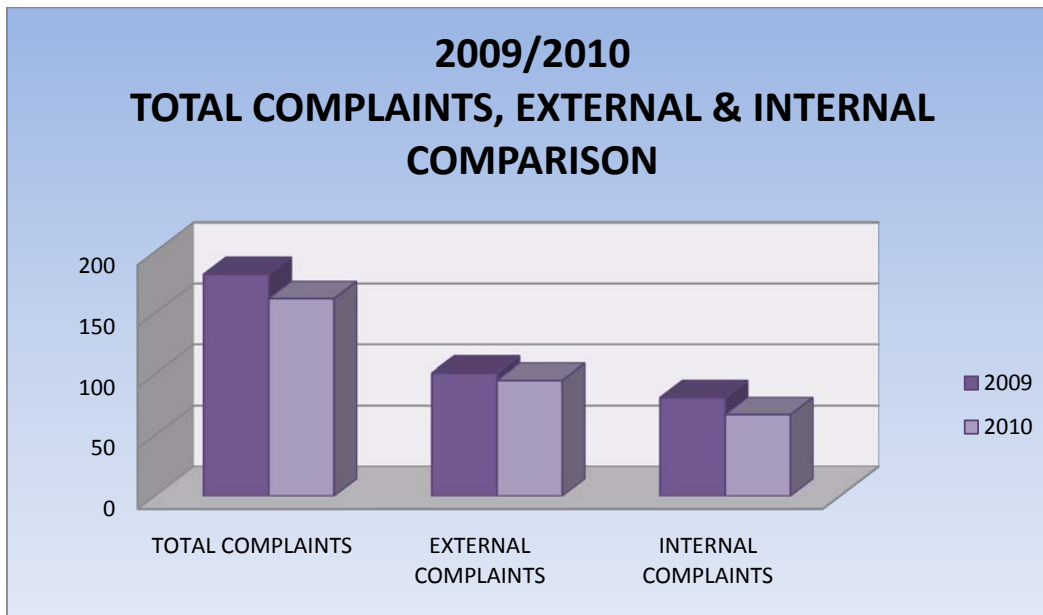
While conducting an audit, the OIR may choose to be involved in the investigation process as an observer (not an additional investigator) as soon as the investigation begins until it is completed. Once the investigation is completed, the OIR completes an audit report containing its findings and recommendations that is forwarded to the City Manager and City Attorney. The audit report is written in a manner as to ensure compliance with all personnel and confidentiality laws.

In order for the OIR to complete an audit, a complaint must be filed and the investigation must be complete. When a person files an internal affairs complaint (IA), it is reviewed by the Internal Affairs Bureau commander and assigned for investigation. The commander may assign the investigation to a Sergeant assigned to the Internal Affairs Bureau (IAB) or a Sergeant in patrol (field). The assignment decision is usually based on whether the complaint is major or minor, how complicated it appears to be, number of officers/witnesses it involves, or whether it is a high profile case. After it is assigned and the investigation is completed, the OIR may complete an audit.

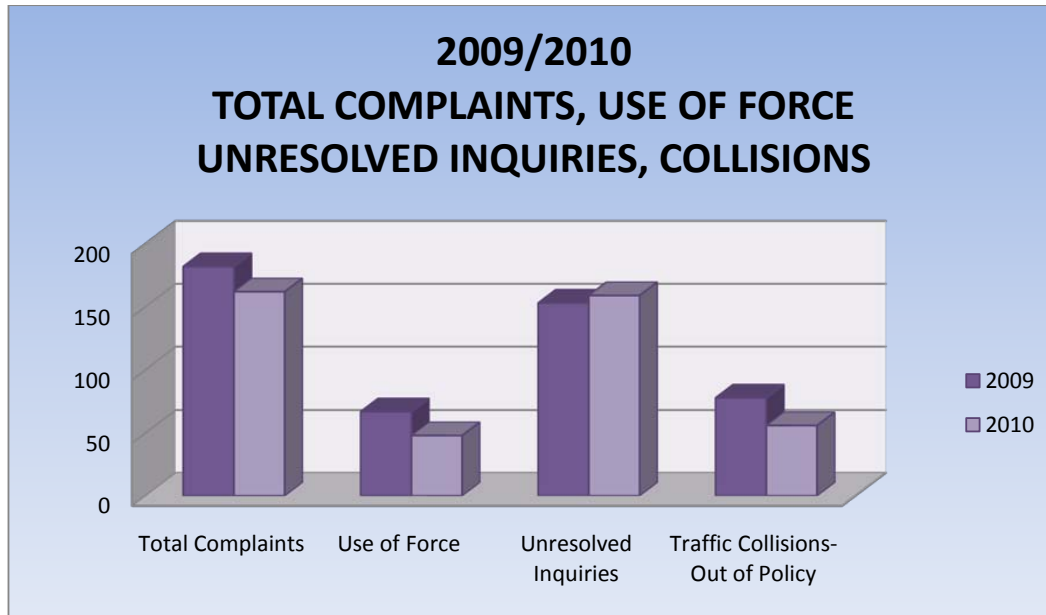


### Complaints

- Total Complaint Cases: 162 cases were filed in 2010. This was an 11% decrease from the 182 cases filed in 2009.
- Externally (Citizen) Generated Complaints: 95 cases were filed in 2010. This was a 5.9 % decrease from the 101 cases filed in 2009
- Internally (Department) Generated Complaints: 67 cases were filed in 2010. This was a 17.3 % decrease from the 81 cases filed in 2009.



The OIR has reviewed 909 individual cases as a result of internal affairs complaints and Inquiry and Complaint Log (ICL) reviews. Comparing inquiries and complaints (including resolved and unresolved inquiries), formal investigations, use of force, and out of policy traffic collisions with 2009, there were marked decreases in all categories except unresolved inquiries. (See “Inquiries and Complaints” in section “B” that addresses the increase in inquiries).

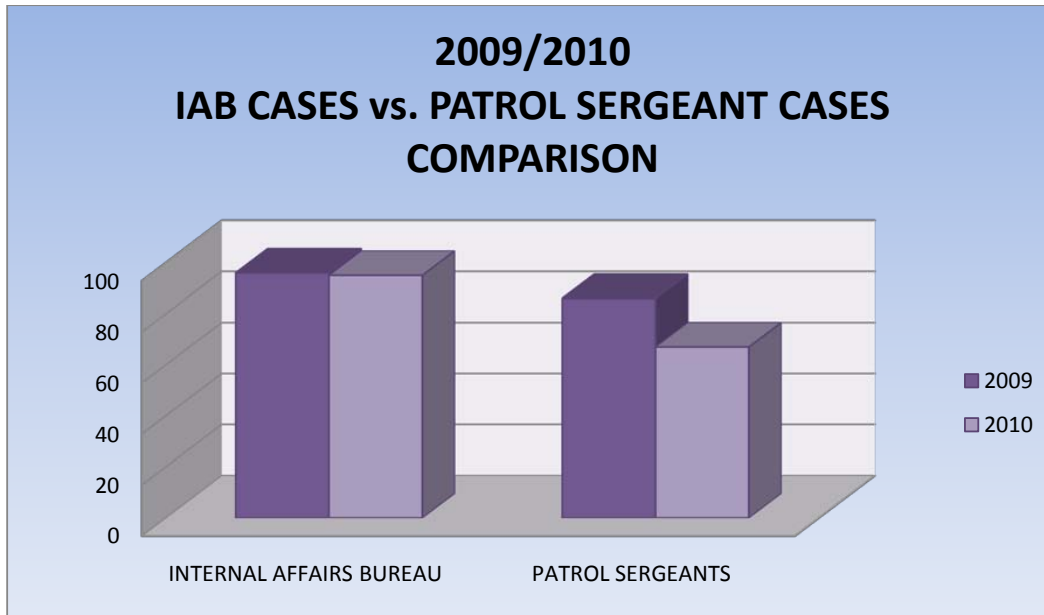


\* 1) Total Complaints: 182 declined to 162, 2) Use of Force: 67 declined to 48, 3) Unresolved Inquiries: 153 increased to 159, 4) Collisions-Out of Policy: 78 declined to 56.

The OIR conducted comprehensive and thorough audits of 41 internal affairs complaints in 2010, or 25.3 % of the 162 complaints were audited. The OIR found that a majority of the cases audited were adequate and thorough as well as accurate and of very good quality, however, the audits and review of Department policies did result in 121 recommendations.

Of the 41 cases audited, 36 or 87.8 % were cases where the OIR agreed with the findings. There were 5 or 12.2 % of the cases where the OIR either disagreed with the Departments findings or was unable to make a determination due to a compromised investigation. The OIR disagreed with the Departments finding because of poor investigative techniques, findings that were not supported by facts, an inadequate and compromised investigation, and an improper finding that was a detriment to the officer. (OIR # 1015, 1038, 1043, 1044, 1045).

Of the 41 audits completed, 29 or 70.7 % were IAB cases and 12 or 29.3 % were cases completed by patrol Sergeants in the field. However, of the 5 cases where the OIR disagreed or was unable to make a finding, 4 or 80% of them were investigated by patrol Sergeants. Moreover, patrol Sergeants handled fewer IAB investigations in 2010 (67 or 41.4% cases) compared with 2009 (86 or 47% cases).



2010: 162 cases: In 2010 - 95 or 58.6% handled by IAB / 67 or 41.4% handled by patrol Sergeants  
2009: 182 cases: In 2009 - 96 or 53 % handled by IAB / 86 or 47% handled by patrol Sergeants.

- ❖ **In light of the seriousness and high percentage of issues discovered by the OIR, it is recommended that the Department review all internal affairs investigations completed by patrol Sergeants in 2010. This recommendation is not made lightly but because these investigations may have negatively affected officers or citizens it seems reasonable to make this request. Additionally, after the review, the OIR would like to review the results and audit 20% of the cases.**

When queried, management staff indicated that most patrol Sergeants receives little to no training on how to conduct an internal affairs investigation. Their training, if any, is provided on the job by other supervisors, personally paying for it themselves, an overview at a Sergeants school, or they attended an internal affairs school because they previously was assigned to Internal Affairs Bureau. During the past six months, IAB command staff has recognized the need to provide training to patrol Sergeants to improve consistency and adequacy of internal investigations. IAB is planning to provide training for Sergeants only, but the OIR encourages the Department to train all upper level management staff.

- ❖ **It is recommended that the Department provide in-depth internal affairs training to all Sergeants, including management staff above the rank of Sergeant. The training should consist of policies, procedures, protocols on how to investigate, analyze, complete, and properly review and approve internal affairs complaints.**

Of the 41 audits completed, there were 26 new audits (excluding the 3 OIS's audited) conducted by the OIR between July-December 2010. The audits were submitted to the City Manager and City Attorney's office as well as to the Chief of Police. Summaries of the audits are located in the appendices of this report. There were a total of 76 recommendations made from the audits and review of the Departments policies. Although some were repetitive, they were pertinent to each audit and identified an ongoing issue.

- 1) Use of Force cases: There were 48 use of force cases initiated between January 1-December 31, 2010. In comparison to 67 complaints in 2009, this represents a 28.4 % decrease. Of those 48 cases, 12 were officer-involved shooting cases. Of the remaining 36 cases, internal affairs completed 31 cases in 2010 and audits of 29 of those cases were completed.
- 2) In-Custody Deaths: There were no in-custody deaths in 2010.
- 3) Collisions during pursuits that result in serious injury or death: There were 15 pursuits that occurred, three of which resulted in minor injuries and one serious injury. Eleven occurred during non-peak hours, between 10 PM and 4 AM.

There were 101 traffic collisions that occurred in 2010. Of these, 56 (55.5%) were not within Department policy, 36 (35.6%) were within Department policy, and 9 were still pending. This represents a decrease from 2009 where there were 121 traffic collisions, where 78 (64.5%) were not within Department policy and 48 (39.7%) were within Department policy.

- 4) Complaints involving alleged bias: Although there were no complaints involving alleged bias, in 2010 there were 14 inquiries concerning bias conduct. Complaints of bias involve gender, race, ethnicity, religion, age, sexual orientation or disability.

After review, 11 of the cases were resolved to the satisfaction of the complainants and 3 remained unresolved. In comparison, in 2009 there were 15 bias-based profiling cases, 8 were resolved to the satisfaction of the complainant, 6 were unresolved and the last case the complainant was uncooperative.

### **Disciplinary Actions**

In 2010, there were 245 allegations of misconduct (out of 300) adjudicated that involved 160 officers or civilian police personnel. Of those 245 allegations, 73 or 29.80 % were audited by the OIR. What follows is a table containing the Department's findings.

2010 ANNUAL REPORT

	Exonerated	Unfounded	Not Sustained	Sustained
Use of force	40	15	3	1
Force Reporting				1
OIS-DOG	13			
Arrest Authority/Procedures	4	2		
Vehicle Collision/Operations				5
Conduct Standards		1		2
Court Appearance				1
Criminal Acts/Failure to obey all laws		4	6	3
Discrimination		2		
Entry Procedures			4	1
General Responsibilities		2		8
Information Releases		1		
Insubordination		1	2	4
Conduct Unbecoming On/Off Duty		3	1	5
Prisoners-Conduct/Property/Secure				1
Pursuit Policy		3		4
Radio/MDT Procedures			2	1
Report Preparation				3
Domestic Violence		1	1	1
Sexual Harassment			1	
Sick Leave Usage		1		4
Supervisory Responsibilities			1	
Outside Employment				1
Search/Seizure Issues	15	1		
Lost/Damaged Property-Not Dept Owned		1	1	
Abuse of Authority				1
Conscientiousness				1
Failure to Provide Badge Number or Information		12		
Inappropriate Administrative Messages				2
Integrity		4	1	1
Discretion/Judgment	1	1		3
DUI Related				2
Performance			3	8
Professionalism	1	4	6	6
Failure to Provide Medical Attention	3			1
Improper Access-CLETS/Internet	1			4
Failure to Notify Supervisor	1			
<b>ALLEGATIONS AUDITED BY OIR</b>	<b>37</b>	<b>16</b>	<b>11</b>	<b>9</b>
<b>TOTAL</b>	<b>79</b>	<b>59</b>	<b>32</b>	<b>75</b>

\* The allegations are listed individually even though multiple allegations may have resulted from one complaint. (129 employees had more than one allegation lodged). Sustained dispositions resulted in corrective/disciplinary.

As a result of sustained complaints, the Department has taken appropriate corrective or disciplinary measures. Of the 160 employees, 66 received either corrective action (36) or discipline (30). Six employees received either corrective action and/or discipline more than once during 2010. The statistical data from 2010 does not reveal any

trends. The Departments disciplinary chart is listed below.

	2009	2010
Terminations	4	4
Resignations	1	2
Retirements in Lieu of Discipline/Demotions	0	0
Suspensions	16	12
Repair Payments	0	0
Fines	4	2
Letter of Reprimand	14	10
<b>TOTAL</b>	<b>39</b>	<b>30</b>

This lists the disciplinary action taken by the Department that were adjudicated within January 1-December 31, 2010. A like-kind comparison of 2009 is also measured. The 2010 numbers may increase as further adjudications are finalized from open cases.

**B. Inquiry and Complaint Log (ICL)**

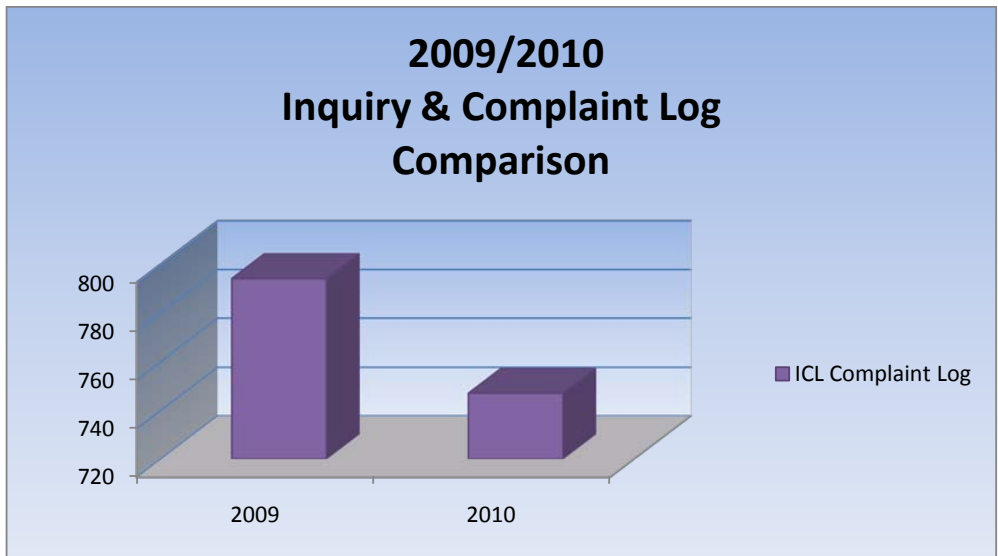
The inquiry and complaint log (ICL) is a computerized system that tracks initial inquiries and complaints made to the Department. Anytime a citizen is dissatisfied and complains about the service a police officer provides (such as rudeness, disrespect, professionalism, failure to take a report, traffic citation, etc.), that information is entered into this system. After the information is logged into this system, a Sergeant begins the investigation. All investigations are monitored and reviewed by the Internal Affairs Bureau.

The OIR monitors the ICL system on a monthly basis to identify unresolved inquiries, identify any trends in allegations, and review whether any inquiry should have been investigated as a complaint of misconduct. Every 30 days, unresolved inquiries are identified and internal affair checks on the status of each case. The OIR did not identify any inquiry that should have been investigated as a complaint.

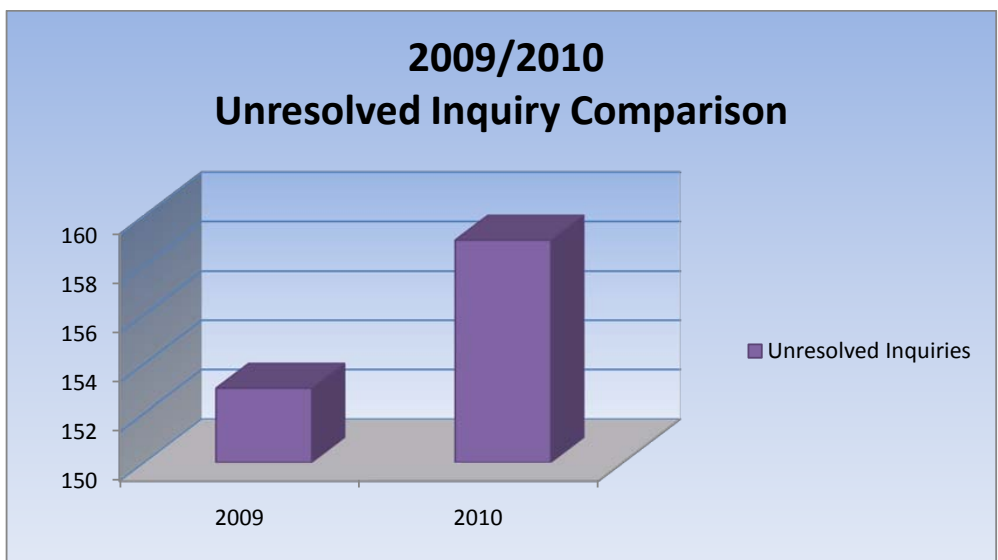
A review of the ICL system revealed 747 inquiries in 2010. This was a decrease of 5.9% from 2009 where there were 794 inquiries. These totals were obtained from the Internal Affairs Interface computer system that is the secondary database where the information from the ICL system is manually entered. The ICL information and the Interface computer database are different as noted in the 2010 Mid-Year report.

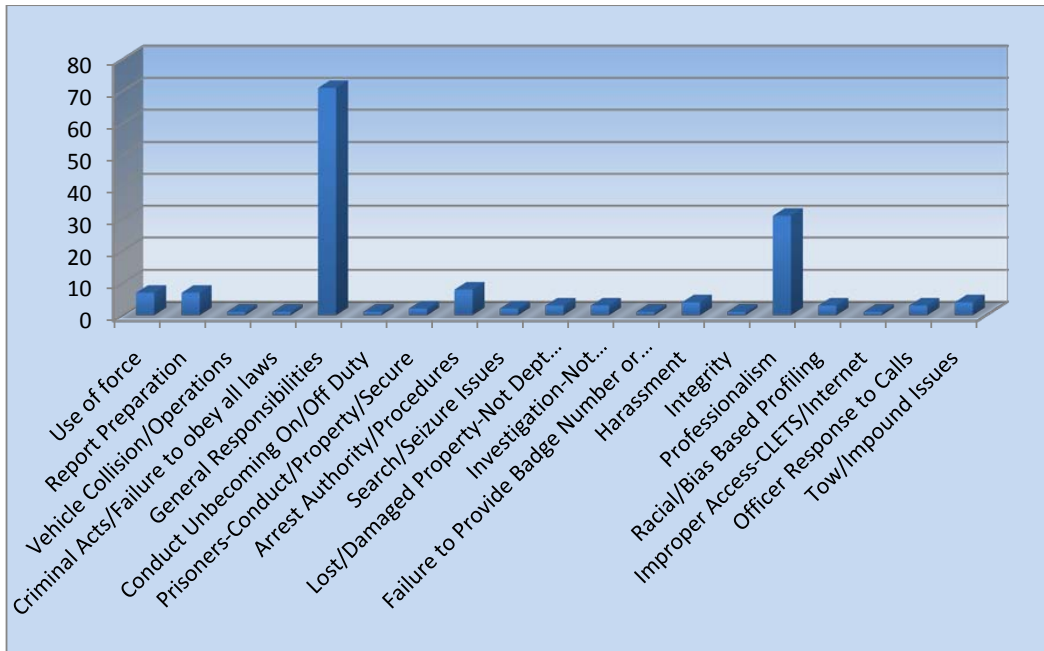
As noted from the 2010 Mid-Year report, there were significant issues concerning the systematic, accurate, and efficient measurement of how inquiries were received, how

they were completed and tracked. The Department will resolve that issue with the soon to be implemented single tracking computer system, IA Pro.



In the meantime, while reviewing the data in the system currently in place, there were no noticeable trends with one exception. There was an increase in the number of unresolved inquiries. There were 159 unresolved inquiries compared to 153 in 2009. Although this was a slight increase, when compared to the decrease in inquiries in 2010 compared with 2009 and that this was the only category that increased this year, it warrants some attention.





Unresolved Inquiries

The most significant categories that appear to be suitable for improvements are General Responsibilities (71 unresolvable inquiries) and Professionalism (31 unresolvable inquiries), which totals 102 (64.15 %) of the unresolvable inquiries out of 159. The other 17 other categories may also benefit from additional improvements, but account for far less than half of total inquiries.

- ❖ **It is recommended that the Department closely review and evaluates unresolved inquiries to determine if or how service could be improved, methods to effectively resolve them or prevent them from occurring (such as better communication skills). The Department could then provide appropriate training and conduct vigilant quality service checks to monitor its progress.**

**C. Community Resource**

As a community resource the OIR provides information and answers to any informal inquiries concerning police policies. The OIR also ensures that information is available to the public by various means such as: speaking at community events, talk radio, television, interviews, ensuring complaint brochures and complaint forms are available at public locations, providing information on the OIR’s website, and providing public accessibility at a location that promotes privacy and confidentiality. Additionally, the OIR participates in the Mayor’s Citizen’s Academy. From March-June of 2011, citizens will be able to view a three-



part television program that the OIR participated in. The program reviews how the OIR began, the role of the OIR, and answers a number of questions concerning the OIR.

After attending numerous community meetings, speaking with stakeholders and citizens, the OIR has added new ways to increase public awareness. The office will provide as much information it can within the limits of the law and the resolution to promote transparency.

The OIR can now be found on Facebook and Twitter so that citizens can get pertinent information or communicate directly with the OIR as another avenue of communication. In addition, the OIR will publish a newsletter on a regular basis that will be available in electronic form on the OIR's website. The newsletter will provide information about past and upcoming news or events, the OIR's activity, as well as other pertinent information. Lastly, the OIR will publish a running activity log of audits that will include short summaries, findings and recommendations every quarter. The first OIR activity log will be available at the publishing of this report and will encompass the entire year of 2010.

Occasionally, the OIR works as a neutral facilitator with members of the public who have issues or concerns about the police department. Citizens that call or come into the OIR's office are often anxious about the treatment of loved ones, have questions about how to navigate or seek justice, or are unhappy with the results of an investigation. Sometimes, citizens are frustrated and feel as though the result of the investigation has compounded the initial bad experience that prompted the complaint. Unfortunately, restrictions on disclosure contribute to their frustration, since complainants have no way of knowing how rigorously (or even whether) the Department's management pursued the allegations at issue.

Sometimes the OIR may not bring complete satisfaction to citizens. However, the additional explanation about the process, as well as the insight that the OIR can provide as a consequence of its independent familiarity with the case, can at least offer some assurance that the complaint was taken seriously and handled fairly. The OIR works with the Department to make sure these matters are handled appropriately and in a meaningful manner.

Although the OIR has not been fully staffed since its inception, the OIR is still committed to holding community town hall meetings and participate in as many community events as possible. In partnership with city council members, the OIR will hold town hall meetings in the future. Although, council members may host the meetings in their council districts, the meetings are open for all citizens of Fresno.

**D. Department Resource**

As a resource for police officers and managers, the OIR continues to be involved in policy discussion with the executive staff within the Department and is available to answer questions about the office and best practices. Additionally, the OIR is available to provide presentations to citizens attending the Citizens On Patrol training course.

The OIR continues to attend roll call briefings; bureau and divisions staff meetings, to continue enhancing transparency and trust of the OIR. Additionally, the OIR will participate as a resource and a presenter at the upcoming Internal Affairs 8-hour training course for Sergeants. The training will encompass protocols and procedures on internal affairs investigations.

## IV. OFFICER-INVOLVED SHOOTINGS (OIS) & IN-CUSTODY DEATHS (ICD)

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### A. Overview

As of January 2010, there were 43 officer-shooting and in-custody death cases that remained open since 2004. This was a significant and astonishing number of cases that were not completed. Also in January, the OIR began to draw attention to these cases. In April/May, this issue reached a crescendo, after the OIR and the media brought considerable attention to the forefront of the Department and the District Attorney's office. When the OIR published its mid-year report, there were 40 OIS/ICD cases open, 12 cases pending review at the district attorneys office and 28 cases that were at various stages of investigation.

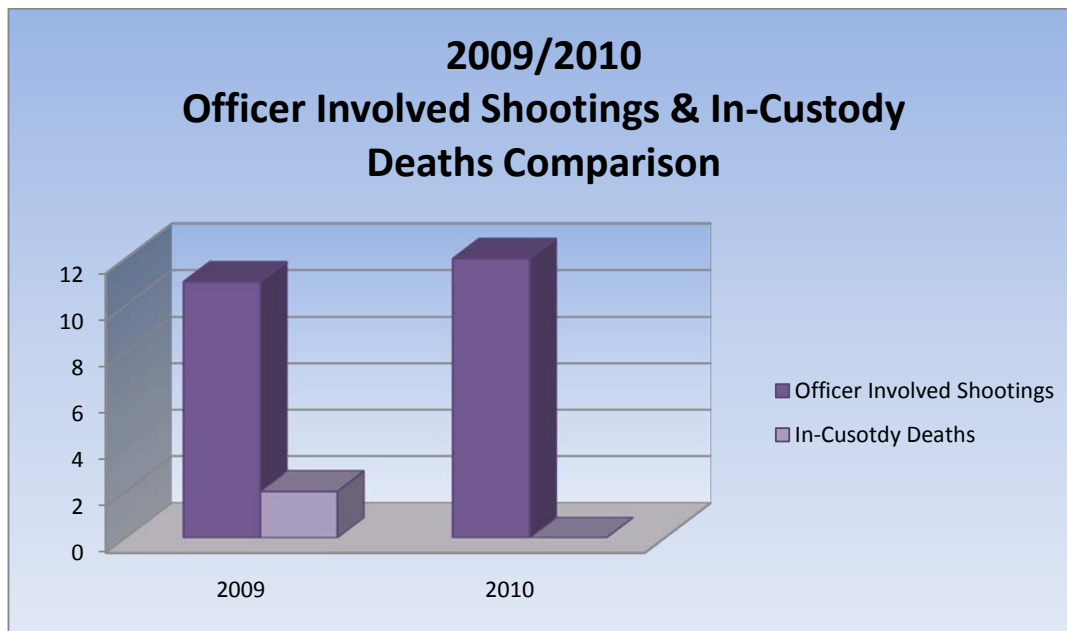
Between July-December 2010, eight additional officer-involved shootings had occurred, bringing the total OIS/ICD cases open to 48. The OIR worked closely with the Department who was amenable to openly discussing the matter. From their hard work, commitment, and collaboration with the District Attorney's office, by then end of 2010 they reduced the number of open cases from 48 to 27, a 43.75 % reduction.

The Department accomplished this by improving its tracking and accountability measures, providing additional oversight methods, and utilizing its resources more efficiently. However, there are still a large amount of cases open. The Department is unable to close many of the cases because they are following the "Best Practice" of waiting for a District Attorney's closing letter before completing their investigation. The letter provides a legal determination on the use of deadly force or death resulting from police action or custody of a citizen.

At the end of 2010, the Department was waiting for 16 OIS/ICD letters on cases that occurred prior to February 25, 2010. The Department will not receive a closing letter beyond this date because the District Attorney's office discontinued their practice to respond to officer-involved shootings to conduct an independent investigation, citing the creation of the OIR and budgetary shortfalls. The OIR is hopeful that the District Attorney's office will return to investigating officer-involved shootings as recommended by the Fresno Grand Jury Report #2 issued February 2, 2011. At this point, the Office of Independent Review is the only outside independent mechanism regularly reviewing officer-involved shootings or in-custody deaths.

**B. OIS/ICD Cases 2009-2010**

During the year of 2010, the OIR responded to eight of the twelve officer-involved shootings and there were no in-custody deaths. Compared with 2009, there were eleven officer-involved shootings and two in-custody deaths. Eight out of the twelve OIS's in 2010 resulted in a "hit" (three of which were fatalities) and in the other four shootings no one was struck.



*Officer-Involved Shooting in general is defined as the intentional discharge of a firearm by a Fresno Police officer that is objectively reasonable to protect other persons and/or the officer from death or serious bodily injury.*

*In-Custody Death in general is defined as a death of a person after taken into custody by Fresno Police officers.*

The following is the most current list of open OIS and ICD cases that are within the jurisdiction of the OIR’s review from January 1, 2009 through December 31, 2010:

**2009 OIS/ICD**

3/3/09	OIS	Yes	DA Letter/FPD Inv. Pending +
3/28/09	OIS	Yes	DA Letter/FPD Inv. Pending +
4/6/09	<b>ICD</b>	Yes	DA/FPD/Coroner Inv. Pending +
5/31/09	OIS	Yes	DA/FPD Investigation Pending +
9/22/09	OIS	Yes	DA/FPD Investigation Pending+
10/24/09	<b>ICD</b>	Yes	DA/FPD/Coroners Inv. Pending
10/27/09	OIS	Yes	DA/Fresno Sheriff/FPD Inv. Pending +
10/28/09	OIS	Yes	DA/FPD/Coroner Inv. Pending +
11/4/09	OIS	No	DA Letter

**2010 OIS/ICD**

1/7/10	OIS	No	DA Letter/FPD Investigation +
2/11/10	OIS	Yes	DA Letter/FPD Investigation +
5/20/10*	OIS	No Hit	FPD Investigation Pending
6/17/10*	OIS	No Hit	FPD Final Review +
7/16/10*	OIS	No Hit	FPD Investigation Pending
7/17/10*	OIS	No	FPD Investigation Pending
9/3/10*	OIS	Yes	FPD Investigation Pending +
9/24/10*	OIS	No	IA Investigation Pending
10/5/10*	OIS	Yes	FPD Investigation Pending +
11/10/10*	OIS	No Hit	FPD Investigation Pending
12/15/10*	OIS	No	FPD Investigation Pending
12/22/10*	OIS	No	FPD Investigation Pending

\* Indicates cases where DA Reports are not expected.

+ Case status was as of 12/31/10 and has been subsequently updated.

As noted in the “status” boxes, cases with a “+” next to them indicate that they have been updated since December 31, 2010. Those cases are awaiting a District Attorney’s letter, being reviewed by Department Staff, or have been closed.

**C. Closure Rates**

Since the mid-year report, the Department is undoubtedly reducing its closure rates of OIS/ICD cases. During this transition period, it would be an unfair representation to attempt to calculate closure rates. It would be prudent to examine the data later in 2011. Additionally, the closure rates should significantly drop since 10 out of 12 of the OIS's in 2010 will not require a District Attorney closing letter.

**D. Conclusion**

A high number of officer-involved shootings cases have remained open for various reasons, such as the lack of internal accountability measures in the Department, incomplete case investigations, or delayed reports from offices outside the Department (Coroner, Department of Justice, District Attorney's office). Critical cases such as these weigh heavily on the lives of loved ones of the person shot, the officer involved in the shooting, the officer's family, the Department as a whole, and the communities trust in the actions of the Department.

Since the OIR began a review of the OIS and ICD system in 2010, the Department and District Attorney's office are diligently working within their organizations to address any issues that would impede with the swift closure of these cases. These agencies are cognizant of the importance of OIS and ICD cases and are working together to prevent any undue hardships.

**E. Recommendations**

Therefore, it is recommended that the Department continues to focus on the cases that do not require a closing letter and request reports from other agencies immediately after an officer-involved shooting occurs. Additionally, on a case-by-case basis, determine whether the delayed external reports are critical in closing a case for internal affair purposes, and if it is critical, determine how to proceed at that point. Lastly, given these recommendations, it is evident that the Department has made great strides to complete the investigations and close the cases without compromising the integrity of the investigation.

## V. AUDITS OF OFFICER-INVOLVED SHOOTINGS

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### I. Overview

One of the responsibilities the OIR has is to audit use of force cases, which includes officer-involved shootings. It was determined that the OIR would audit officer-involved shootings beginning from 2009. Since the OIR's inception and during the first full year of operation in 2010 those officer-involved shooting cases were not available for review because they were still open cases. Until the cases are closed, audits cannot be completed. During the first year, the OIR worked with the Department in order to expeditiously move cases to closure without jeopardizing the quality of the investigation.

Towards the end of 2010, nearly half of the cases from 2009-2010 were in the final stages of closure. During 2010, the Department closed four cases from 2009 and the OIR audited three of them. The fourth case is pending an OIR audit. Before briefly discussing the audits, findings, and recommendations, the next section will discuss the parameters in which deadly force may be used by a police officer and the Departments policy.

### B. Laws, Standards, and Policy

This section addresses and summarizes relevant sections from Federal and State laws, training standards, and Department policy concerning the use of deadly force. This review does not encompass the full entirety and breath from these areas. The OIR is merely examining relevant areas to provide a working foundation to understand this complex area.

An officer may use deadly force to protect oneself or others when the officer has the objective and reasonable belief that his life, or the life of another, is in imminent danger of death or serious physical injury based upon the totality of the facts known to the officer at the time.

Additionally, deadly force may be used to prevent the escape of a fleeing violent offender that the law enforcement officer reasonably believes will pose a significant threat of death or serious bodily injury to a member of the community or to law enforcement officers if the arrest is delayed. What follows is a more in-depth review of the standards and policy involving the use of deadly force.

**1. Unreasonable Search and Seizure:** Under the Federal Constitution, the Fourth Amendment prohibits “unreasonable searches and seizures,” and “it is the only constitutional provision at issue when law enforcement officers affect an arrest or other detention of a person.” (**Graham v. Connor, 490 U.S. 386 (1989)**). The Supreme Court has acknowledged that the right to make an arrest or investigatory stop necessarily carries with it the “right to use some degree of force” to affect it. All Fourth Amendment seizures are, by definition, forcible government actions and deadly force is by definition a “forcible seizure” under the interpretation by the Supreme Court.

**2. Reasonable Force:** California Penal Code Section 835a permits a law enforcement officer to use “*reasonable force*” to make an arrest and states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to affect the arrest, to prevent escape or to overcome resistance.”

The United States Supreme Court, under the Fourth Amendment right to remain free from any unreasonable seizure, applied an “objective reasonableness” standard to the application of force and noted it must be *fact specific*.

The Department policy reiterates the Federal and State guidelines concerning the use of force and states that, “officers shall use only the amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.” The policy further states that, “Reasonableness of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident.”

**3. Deadly Force:** The amount of force can range from very minimal and rise to the use of deadly force. But as the United States Supreme Court recognized in **Graham v. Connor**, that allowances must be made when officers “...are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” Federal and State laws indicate that:

The use of deadly force by law enforcement officers is permitted:

- A. To protect themselves or others from immediate threats of serious physical injury; and/or,
- B. To prevent escape of a person who may justifiably be characterized as “dangerous” to the officer or to the community if allowed to remain at large.

**References:** (**Tennessee v. Garner**, 471 U.S. 1 (1985); 835a PC; 196 & 197 PC; Cal.Jic.5.12, Spring 2009 Ed.; Cal.Jic.5.13, Spring 2009 Ed.; Cal.Jic.5.16, Spring 2009 Ed.; Cal.Jic.5.25, Spring 2009 Ed.)



The “dangerous” escapee is better described in the Departmental manual, as a fleeing violent offender that the officer reasonably believes will pose a significant threat of death or serious bodily injury to a member of the community or to law enforcement officers if the arrest is delayed.

**C. Audits and Recommendations**

The OIR made 28 total recommendations in the area of officer-involved shootings (OIS). Two recommendations resulted from the overall analysis of the audits of officer-involved shootings and an examination of the past ten years of officer-involved shootings. Five recommendations repeated themselves in each of the three OIS’s audited. Eleven recommendations resulted from specific facts from the audited cases.

The OIR considered the following material in its review: Internal Affairs Bureau (IAB) investigative file and investigation (including, if present, any audio recordings, photographs, diagrams, video recordings, officer and witness statements, additional related police generated reports, pertinent suspect criminal history, if relevant, IAB investigators completed investigative reports, and addenda items); and relevant Internal Affairs Management System materials of the involved officers.

The review, conclusion, and recommendations from audit reports focuses on evaluating the adequacy, thoroughness, quality, and accuracy of the investigative report. The audit reports reflect the sole review and evaluation as determined by the OIR. What follows are the OIR’s summaries, findings, and recommendations from three audited officer-involved shootings.

**OIR # 1036 OIS**  
**Incident Summary**

Officer 1 was working alone as a police officer, wearing civilian clothing and driving an unmarked police vehicle. He was on duty during daylight hours and heard a radio broadcast of an armed robbery that had just occurred at a bank. Officer 1 also heard the description of the subject.

Officer 1 drove to the area of the robbery and heard that another officer was chasing the subject on foot and the subject was holding a gun in his hand. He went to an advantageous position in an attempt to intercept the subject. The officer that was pursuing the subject said that he lost the subject and provided the subject’s direction of travel. Officer 1 realized that the subject was running towards his direction.

Officer 1 then saw the subject, matching the description of the bank robber, running next to a fence line. As the subject was running towards his direction, he got out of his

vehicle and took cover behind it. As the subject got closer to him, he took his badge that was on a chain around his neck and exposed it so that the subject could see it. Officer 1 removed his handgun and moved in front of his vehicle to an open area that did not provide any cover or concealment.

Officer 1 yelled, "Fresno Police, get down, let me see your hands" numerous times. Subject stopped running next to the fence, made eye contact with the officer, and then looked around.

Subject raised one hand up in the air and turned slightly toward the fence. Subject immediately cupped his other hand and put it into the front of his waistband. Officer 1 fired four rounds at the subject from his duty weapon. None of the rounds struck the subject. Subject then rapidly climbed over the fence, fell to the ground and ran away.

After an extensive search other officers apprehended the subject. When he was apprehended he was not in possession of a firearm. Officers retraced the subject's movements and recovered the bank money and the subject's firearm.

### **Recommendations**

1. It is recommended that when the internal affair investigator provides a conclusion to the officer-involved shooting, that the recommendation be supported by specific facts.
2. It is recommended while interviewing officers involved in shootings, that the investigator obtain detailed and specific facts related to the officer's justification for continuing to discharge his firearm.
3. It is recommended that the Internal Affairs Investigator assure that all proper documentation, evidence, and records are within the file received from the officer-involved criminal investigator prior to beginning the internal affair investigation.
4. Although the use of deadly force in this case clearly falls within the law and Departmental guidelines, it is recommended that additional review and analysis be conducted concerning tactical considerations of purposefully exposing oneself from behind cover and concealment.

### **OIR # 1047 OIS** **Incident Summary**

Officer 1 & 2 were in uniform, driving a marked black-and-white police vehicle. Officer 1 was the driver while Officer 2 was the passenger officer. The officers were on duty during the hours of darkness.

Officers received a radio call of a disturbance to respond to a residence where a subject (identified by name, clothing description, and date of birth) was armed with a Glock handgun. The caller said that subject had been involved in an argument, had the handgun in his waistband, and was a gang member.

The officers arrived and heard a heated argument inside the residence. Other officers arrived and began setting up a perimeter around the residence. As they were setting up a perimeter, Officers 1 & 2 stood by a covered fence and watched the front of the residence. Officer 1 had his firearm in one hand and utilized a flashlight on his gun for lighting.

A few moments later, the subject began to walk out the front door of the residence. This subject matched the description of the subject described from the radio call. As he walked out, he subject made a, "bap, bap, bap", sound with his mouth numerous times.

The subject walked to the gate of the fence and opened it. Officer 1 identified himself as Fresno Police and told the subject to show his hands. The subject looked at the police officers, appeared startled, and said, "Oh fuck". The subject turned and ran back towards the front door of the residence. Officer 1 followed by Officer 2 gave chase of the subject.

Officer 1 saw that while subject was running towards the residence, subject reached towards his waistband with both hands as he reached the apartment door. During the chase, Officer 2 broadcasted that they were chasing the subject. After subject entered the residence door, he attempted to slam it shut behind him.

Officer 1 used his foot to kick the door open and prevent it from shutting. Officer 1 entered the residence and had a clear line of sight of the subject running from him in the large living room towards the kitchen area. Officer 1 again identified himself as a police officer and ordered him to stop. Subject continued running away from the officer.

Subject's hand was at his front waistband and he began to turn toward Officer 1. Officer 1 could see the subject looking back at him. Officer 1 said at this point it appeared that the subject ran into a female standing in the room. As the subject bumped the female, she spun around from the collision and simultaneously Officer 1 fired two rounds at the subject. One round struck the subject and he fell to the ground. As the subject fell, he heard a heavy object hit the floor where the subject fell. Officer 1 then saw a Glock handgun on the floor. A round also struck the female who the subject had collided with.

Both persons were treated and later released from the hospital for their gunshot wounds. The female refused to provide a statement about the incident.

The subject provided a statement stating that prior to the officer arriving, he had argued with 4-5 males in a vehicle in front of his residence. The subject said he later went inside the residence and was involved in an argument when he heard something outside. The subject thought the males he argued with earlier had returned, so he went outside. When he got to the gate he saw two guns pointed at him and he ran back inside. When he was inside the residence he heard, "Police, get down" and the female (subject's girlfriend) grabbed him as he heard the "popping" sound of gunfire.

It should be noted that another witnesses saw subject with the handgun in his waistband earlier in the evening and one witness saw the handgun in the subject's waistband when the officer shot him.

### **Recommendations**

1. It is recommended that all issues of use of force are examined, reviewed, summarized and evaluated when applied intentionally or unintentionally, particularly in officer-involved shooting incidents when a shot strikes a person unintentionally.
2. It is recommended that when potential evidence of a criminal investigation is identified, that it be examined for evidentiary value or if not timely, then it should be examined at a later point. If it is determined that the potential evidence is not of value, it should be documented in the investigation.

### **OIR # 1037 OIS** **Incident Summary**

Officer 1 was on duty in uniform, driving a marked black-and-white police vehicle. Officer 1 was working alone when he observed a vehicle commit a traffic violation during daylight hours.

Officer 1 pulled behind the subject vehicle. He activated his emergency lights and the vehicle immediately pulled over. Officer 1 exited his vehicle and began walking towards the subject vehicle.

Subject vehicle immediately accelerated away and Officer 1 ran back to his vehicle to pursue the vehicle. As Officer accelerated forward he informed dispatch of the situation and observed a large dust cloud ahead in the vicinity of the subject vehicle.

As Officer 1 went through the dust cloud, he saw a vehicle that had been involved in a collision with the subject vehicle. Officer 1 saw the subject vehicle now had collided with a six-foot chain link fence on the dirt area of the right shoulder and was now facing directly toward Officer 1's vehicle and oncoming traffic. Officer 1 stopped his vehicle facing towards the subject's vehicle and blocking part of the street.

The subject began to climb out of the driver's window that was against the fence and climbed onto the roof of the vehicle. The subject had a plastic bag in his left hand and a black object in his right hand. Officer 1 exited the driver's door and ordered the subject to show his hands.

At this time, Officer 1 observed his patrol vehicle to be rolling forward as it was not in park. He immediately stepped partially into the vehicle, stepped on the brake and placed it into park.

As the officer got back out of the vehicle, he saw the subject on top of the roof of his car with both hands on the fence. The plastic bag was still in his left hand and he identified the black object in his right hand as a handgun. The handgun was pointed in the direction of Officer 1's vehicle.

Officer 1 ordered the subject to drop the gun twice. As the subject was holding the fence he was holding the gun in his right hand. The subject took his right hand (that was holding the gun) off the fence and pointed the gun at Officer 1 in a sideways manner. Officer 1 said it appeared that the subject was manipulating the gun trying to fire it at him. Officer 1 squatted behind his vehicle and fired one round at the subject missing him. Officer 1 heard a vehicle behind him screeching its tires and rolled on the ground to avoid being hit by oncoming traffic.

Officer 1 looked up and saw that the subject was on the other side of the fence and running through the empty lot. Officer 1 advised dispatch of the incident and chased the subject on foot paralleling the subject and the fence line.

As Officer 1 closed the distance on foot he saw the subject run in front of a large and expansive dirt embankment. The subject was headed towards an area of buildings occupied by residential and business community members. Officer 1 fired an additional round at the subject, missing him. Officer 1 lost sight of the subject, holstered his weapon and broadcasted pertinent information to set up a perimeter to search for the subject.

With the assistance of other officers, the subject was found hiding nearby. The subject did not possess a handgun at the time of his arrest. The subject admitted to running from the police but denied possession of a gun. An independent witness saw the subject running in the dirt lot holding a handgun.

### **Recommendations**

1. Although the use of deadly force in this case clearly falls within the law and Departmental guidelines, it is recommended that additional review, analysis and training be considered concerning the use of deadly force upon a "dangerous" fleeing violent felony offender.

2. It is recommended that investigators carefully review synopsis statements to assure that they contain all salient and critical factors from the original recorded statements or interviews.
3. It is recommended that when only using an audio recording device, when an interviewee physically demonstrate an action, that the interviewer describes the action so that it is captured on the audio recording.
4. It is recommended that all pertinent documents, diagram sketches, and other information are part of the internal affair file.
5. It is recommended that investigators refrain from asking leading questions or questions that have the answer within it.

#### **D. Audit Findings**

Utilizing the standards and policy described above along with federal and state laws, standards and training from the California Peace Officer Standards and Training (P.O.S.T.), the OIR finds that in all three cases that an officer with similar training and experience as the officer would believe that subject posed a substantial risk of serious bodily injury or death. The officer was justified to utilize deadly force in defense of his life or to arrest or prevent the escape of a suspected felon.

#### **E. Global Recommendations**

Global recommendations are recommendations that are more universal in nature and apply to all officer-involved shootings. Sometimes global recommendations are driven by fact, best practices or systemic concerns. What follows are two discussions; the first reviews the “necessity” to use deadly force at “dangerous” fleeing felons, and the second discusses the need to routinely exam an officers history for prior officer-involved shooting incidents to identify any commonalities of tactical decision-making and decisions to deploy deadly force.

#### **OIR # 1037 OIS**

- 1. Although the use of deadly force in this case clearly falls within the law and Departmental guidelines, it is recommended that additional review, analysis and training be considered concerning the use of deadly force upon “dangerous” violent fleeing felons.**

Each case should be reviewed based on its own merits, specific facts unique to that case, and the totality of circumstances. Those factors should be balanced with the objectively reasonable and necessary standard to immediately arrest or prevent the escape of a suspected felon reasonably believed to be a substantial risk of serious bodily injury or death to others. The crux of the analysis is whether the use of deadly force was: 1) justified and 2) necessary based on the subject's actions at the time of the shot and the totality of the circumstances.

Shot 1 was fired as the subject posed as an immediate lethal threat towards the officer when the subject pointed his firearm at the officer. This use of deadly force was justified and necessary to prevent serious bodily injury or death of the officer.

Shot 2 was fired as the subject was fleeing after he posed as a lethal threat of serious bodily injury or death towards the officer. The officer used deadly force to prevent his escape and arrest him because he reasonably believed the subject was a substantial risk of serious bodily injury or death to the occupied business and residential community he was running into.

This use of deadly force is justified and within Department policy, but a review and analysis of the totality of the circumstances should be considered to determine whether it was necessary to use deadly force when the subject was fleeing and did not present an immediate and imminent deadly threat towards the officer.

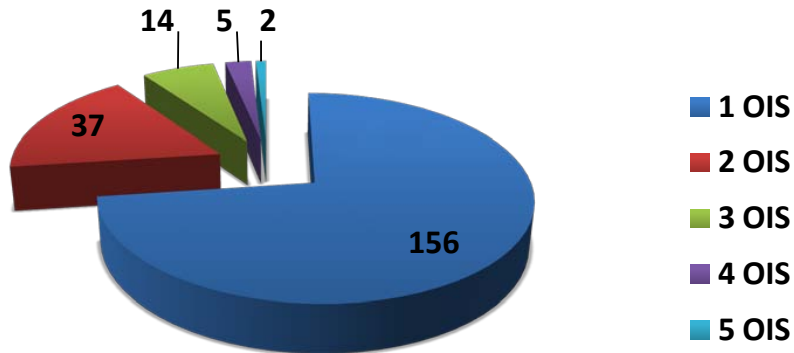
Prior to the officer taking the second shot, it is difficult to predict what the subject would have done if allowed to escaped which is the reason the law permits and justifies the use of deadly force in these situations. However, pre-thinking potential tactical options that are flexible based on the fluid factual circumstances of each fast-paced incident, availability of law enforcement officers at or responding to the scene, and facts known to the officers are just a few considerations that can be analyzed and reviewed that may assist each officer in the decision-making to use deadly force in these situations.

**2. It is recommended that the administrative staff routinely examine past officer-involved shootings or other relevant history of involved officers to identify any commonalities of tactical decision-making and decisions to deploy deadly force. This examination should include specific reference and examination of any commonalities (if any) accompanied by appropriate recommendations.**

Although none of the officers involved in the three audit reports were involved in a prior officer-involved shootings (OIS), a review of Fresno Police Officers involved in shootings from January 2000-2010, revealed that from 96 officer-involved shooting incidents, 214 officers fired their weapons resulting in 45 fatalities. From those 214 officers, there were: 156 officers involved in one OIS, 37 officers involved in two OIS's, 14 officers involved in three OIS's, 5 officers involved in four OIS's, and 2 involved in five OIS's. The

number of shootings an officer may have been involved with may be related to a high-risk job assignment (such as any member in SWAT), high profile or dangerous unit assignment, or other factors and by itself is not indicative of an issue of concern.

### Number of Officers Involved in Shootings



(96 shootings between 2000-2010)

This recommendation also supports the OIR’s related recommendations that training staff respond to each officer-involved shooting scene and that the Department publish training bulletins for each officer-involved shooting. The training staff will benefit from on-scene observation to provide analysis of tactical decision-making and decisions to deploy deadly force. This will assist the administrative staff as part of their review process and to provide pertinent information to publish a training bulletin to address any issues or tactics identified.

Police officers are trained in the academy that they must be aware of surrounding objects (cover) that may be used as protection. Officers are to be ready to use cover when necessary and the use of cover continues to be a basic tactical consideration. Additionally, officers are trained to use cover because they are vulnerable to potential harm when approaching a subject. **OIR # 1036 OIS** is one example that may benefit from a tactical analysis of the officer purposefully exposing himself from behind cover and concealment to confront an armed subject.

It is critically important to learn from past shooting incidents to determine whether tactics may be improved, evaluate decision points to use deadly force, and to effectively use this information to train other officers concerning encounters where deadly force may be used. Such learning and knowledge can help improve officer safety and reduce the situations where officers are involved in shootings thereby reducing the loss of life and civil



litigation.

### **Other Global Recommendations**

3. It is recommended that in officer-involved shooting investigations, training staff be part of the call-out to immediately respond to a shooting scene.
4. It is recommended that the Department publish a training bulletin for each officer-involved shooting and address any issues or tactics identified from the review process.
5. It is recommended that investigators routinely use diagrams, “Google maps”, or other appropriate photographs/sketches to obtain a permanent account of the sequential positioning of involved officers and witnesses.
6. It is recommended that the Department video record the scene of each officer-involved shooting scene.
7. It is recommended that the interview of officers and witnesses of officer-involved shootings be recorded on video in addition to the audio recording practice already implemented by the Department.

### **F. Conclusions**

This section only encompasses three shootings from the past two years. While the OIR found that the use of deadly force was justified and that these investigations were thorough and accurate, and the quality was good and adequate, there are areas of improvement that can be made. The Department has been very open and transparent in sharing information with the OIR and is amenable to recommendations that the OIR may have. As additional officer-involved shootings are closed and audited, they will provide an even clearer picture of the Department’s quality of work.

## VI. EARLY ALERT SYSTEM

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### A. Overview

One of the roles and responsibilities of the OIR is to identify and monitor trends through the “Early Alert” system (EAS). The OIR will have access to the “Early Alert” system, as well as demographic data on traffic stops and other incidents, to identify and monitor trends. Properly implemented, the Department’s EAS system has the potential for identifying officers with recurring performance issues and correcting their performance. After review of the limited information available, it appears that the EAS system is in need of Departmental review, evaluation, regular monitoring and, if appropriate, revision, as it does not seem to be functioning effectively.

The intent of the EAS is to develop a positive, confidential, and non-disciplinary means of intervention for employees with potential performance problems. Systems like the EAS are recognized as a best practice in policing. In 2001, the Commission on Accreditation for Law Enforcement Agencies (CALEA) adopted a standard requiring all large agencies to have such systems in place. The Department is an accredited member of CALEA.

In 2008, the Department established the EAS system and Internal Affairs Bureau was tasked with maintaining the EAS database. The database tracks significant and noteworthy categories of individual employees, such as traffic accidents, uses of force, commendations/complaints, and internal affairs investigations. This information may provide insight into specific personnel patterns or collective trends.

In general, systems such as this consist of four basic components: 1) Performance indicators, 2) Identification and selection process, 3) Intervention, and 4) Post-intervention monitoring.

In step one, when an officer meets the EAS threshold number of certain identified performance indicators during a specified period of time the Division Commander is alerted to the officer. Step two of the system is the identification and selection process. This is where an EAS report is prepared for review for the Professional Standards Division Commander. The review by the Commander is part of the identification process to determine whether the officer’s behavior warrants it to go to the EAS committee.

The identification process is a critical area where the performance indicators are reviewed and compared with other factors such as legitimate explanations that caused the alert in the first place. For example: a rash of gang-related activity in a neighborhood that

involved the officer in a number of difficult arrests requiring the use of force; an officer assigned with his canine alerts the system because his K-9 is involved in use of force incidents; or an officer assigned to a high risk/profile unit requiring proactive enforcement. Then there are other factors that may skew the numbers such as an officer in a high crime area and an officer in a low crime area have the same number of complaints, but the officer in the low crime area may in fact have a more serious performance problem than the officer in a high crime area.

If the Commander determines the officer's behavior warrants further review, the file (with all personal identifiers removed) is sent to the EAS committee. The EAS committee is comprised of three members who meet to discuss the report's content and the need for intervention (step 3). If selected for intervention, then a meeting with the affected officer is arranged. An agreed action plan may be prepared and provided to the member. However, the Department does not maintain a copy of the plan, any written document regarding the EAS review and does not track the officer's progress or failure to follow the plan. The Department does not utilize step 4 of post-intervention to monitor the officer for a period of time after the intervention.

Because this is a non-disciplinary means of intervention of potential performance problems, the Department does not maintain a systematic tracking system to maintain the statistics or results of EAS. The only tracking of the system is an annual evaluation of the EAS program by the Professional Standards Division Commander and the Fresno Police Officers Association (FPOA) to evaluate the overall effectiveness of the program. The review, along with recommendations for improvements are submitted to the Chief of Police.

## **B. Current Status**

The data from the annual evaluation of the EAS program indicates a lack of consistent staff management of the program, changes and refinements were made in the screening process after the first year, there is no systematic permanent and documented tracking of performance indicators that led up to the alert, and the system that does not appear to have a meaningful identification and selection process.

Since its inception in 2008, the EAS program has had two Internal Affairs commanders and two Division Commanders within a 2-3 year time period of this new program. Additionally, during that time frame, there were further refinements made in the screening process of incidents that attributed a reduction in the number of EAS alerts in the first year of the program. That is not necessarily indicative of an ineffective system and may have been more of an adjustment of the program.

Thereafter in 2009, there were 15 EAS reports generated for review and in 2010 there were 23 EAS reports generated for review. From those 38 EAS reports in two years, only 3 were selected and provided to the EAS committee. Of the 3 reports that went to committee, it was determined that none of them required intervention.

Since permanent records are not maintained, there is no systematic tracking of the statistics or results from any review. Therefore it is difficult to review the EAS process. At this point, the OIR is unable to determine the effectiveness of the EAS program to identify officers with recurring performance problems.

### **C. Recommendations**

Therefore, the OIR recommends that the EAS program is carefully reviewed, evaluated, regularly monitored and documented, and if appropriate, revised. During the review, the OIR should closely monitor and provide suggestions for improvements. The OIR should be notified of all alerts and meet at regular intervals with the Internal Affairs Commander and/or the Professional Standards Division Commander. The Department should acquire and implement IA Pro, the premier in “Early Alert” system/Early Intervention programs, as soon as possible.

Potential areas of improvement could consist of using peer officer comparisons of any number of performance indicators of past employees to determine if there are any commonalities or trends observed from those performance indicators; re-evaluate the identification and selection process; have regular meetings between the Internal Affairs Commander, Professional Standards Division Commander, and the OIR; record keeping of performance indicators affecting officers but not keep records of the content of any intervention as that should remain confidential; consider implementing post-intervention methods (step 4) to monitor the officer’s performance for a specified period of time; and if possible, maintain consistency and stability at the staff level to oversee the EAS program.

Although EAS programs are complex administrative mechanisms that require an enormous investment of management attention; properly structured, implemented, and monitored, it has the potential for identifying officers with recurring performance problems and correcting their performance. At the same time, it may help to instill improved accountability within the Department.

## VII. COMPLAINT PROCESS & CONFIDENTIALITY ISSUES

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### A. Complaint Process

The complaint process is an important part of community policing and building trust. The citizen complaint process is a means by which the Department can hold itself accountable to the people it serves; by listening to and investigating their complaints and where appropriate, disciplining officers guilty of misconduct. Even when complaints are not sustained, citizens want an opportunity to be heard and treated in a respectful manner. The starting point for an open and accessible complaint procedure involves an effort to publicize the process and inform citizens about how to file a complaint and how to stay informed of the process.

Citizens are able to make an inquiry regarding the operational policies or procedures resulting from an encounter with the police department. Or they may file a complaint to report misconduct or improper job performance by police personnel. In both cases, a Sergeant will contact the complainant within two business days. Upon completion of the investigation, the department will re-contact the complainant and advise of the status and whether the investigation will extend beyond 30 days. The complainant will be informed of the results upon completion of the investigation.

The OIR will monitor the progress of the case as it goes through the investigative process and be available to the complainant should they call upon the OIR.

### B. Confidentiality Issues in Reporting

The privacy rights of peace officers pursuant to the Public Safety Officers Procedural Bill of Rights (California Government Code 3300 *et seq.*) have generated significant controversy in the thirty years that they have been part of state law. Originally passed in the 1980's, the laws recognize that the very nature of officers' work makes them more likely to be targeted in various ways, and warrants the protection of confidentiality for their employment records. Unfortunately, law enforcement's unique place in society and the power that officers possess makes their accountability a matter of critical public interest and necessitates more transparency, not less.

The OIR model of civilian oversight tries to mitigate some of the tension between the competing values of privacy and transparency. The OIR model allows access to the Department's investigations, decision-making process, and records.

The City Council resolution that allows the OIR to directly report to the City Manager allows the OIR to preserve confidentiality while reviewing information that is generally blocked from outside scrutiny. In this way, the OIR serves as the eyes and ears of the public in an area that would normally not be accessible. However, it does so in a way that protects the privacy to which the individual officers are entitled. While avoiding disclosure of identifying information, the OIR can comment about the effectiveness of the Department's process, and can influence that process by expressing concerns or criticisms. The OIR attempts to make a positive contribution while working within the limitations of the current system.

## VIII. ACCOMPLISHMENTS

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The OIR has only been in place for over a year but during that time the OIR has been able to observe the men and women of the Fresno Police Department. The OIR finds the members of the Department are professional law enforcement officers that exude service and integrity. Officers and support staff perform their jobs with pride and understand the critical nature of their profession. Police management realizes the value to provide current and relevant training so that they may perform their jobs more proficiently. All members of the Department work tirelessly to protect lives and keep community members safe. Below, the OIR highlights just some of the Departments accomplishments in the past six months.

### **A. Fresno Police Department Criminal Justice Regional Training Center**

The Criminal Justice Regional Training Center opened in September 2010. It is a one of a kind criminal justice training facility that provides state of the art training for law enforcement officers and other officers in central California. The center contains “smart” classrooms, seven firearms ranges, a tactical training building, sniper tower, Emergency Vehicle Operations Course (EVOC), padded mat room for defensive tactics and control hold training, and vehicle driving and use of force simulators.

One Lieutenant, two Sergeants, ten training officers, and two civilian staff members staff this facility. The center provides Fresno Police Officers top notch training and allows the training staff to place officers in nearly realistic conditions. Officers also attend the Perishable Skills Program every two years that is mandated by the Peace Officers Standards and Training (P.O.S.T.). The training consists of reviewing and updating perishable skills such as arrest and control techniques, driver training/awareness or driver simulator, and tactical firearms or use of force simulator.

It is important to provide updated and relevant training to officers as laws constantly change, while new and improved training emerges. This allows officers to perform their jobs proficiently and provide the community the excellent service.

### **B. Internal Affairs Training Course**

When a citizen makes a complaint with the police department and that complaint results in a formal internal affairs complaint, the Internal Affairs Bureau (IAB) reviews the complaint. If the complaint is a major complaint, requires extensive investigation, or is a high profile case, Sergeants assigned to IAB investigate the complaint. If the complaint is categorized as a minor complaint, the complaint will be assigned to a patrol field Sergeant.

Although patrol Sergeants may have had some training on the job, there was no formal departmental training provided to train patrol Sergeants on how to conduct an internal affairs investigation. However, all IAB Sergeants attend an extensive training course when assigned to IAB.

Therefore, IAB has developed an eight-hour course to train Sergeants how to properly conduct an internal affairs investigation. The OIR will participate in the training and answer questions Sergeants may have on the OIR's role and issues with internal affair complaints. The training is scheduled for early 2011.

### **C. IA Pro**

IA Pro software system was a recommendation that the OIR made in its 2010 Mid-Year report. This system provides an array of tracking and accountability measures as well as providing a superb tool to support Internal Affairs investigations and the "Early Alert" system. The Department wholeheartedly embraced this recommendation and along with City official's support, this system will be implemented at Fresno Police Department in 2011.

IA Pro is the leading Professional Standards/Internal Affairs software used by law enforcement agencies across the USA, Canada, New Zealand and Australia. IA Pro assists public safety agencies in identifying potential problems early on, so that proactive action can be taken. IA Pro ensures the most efficient handling of citizen complaints, administrative investigations, use-of-force reporting, and other types of incidents, while providing the means to analyze and identify areas of concern.

### **D. Operation Cease Fire**

The Department initiated "Operation Cease Fire" mid-year 2010. The program works in conjunction with probation, federal prosecutors, the courts, and the police department to notify and specifically target violent gang members. It notifies gang members, especially those more violent or leaders in gangs, that their continued criminal activity would not be tolerated. It allows gang members to stop their violent behavior or accept severe consequences in the federal criminal justice system.

The program has been successful in Fresno. Before launching Operation Ceasefire, the Department investigated 31 murders. Following, there was a two-month period of time where there were no murders and 13 murders for the rest of the year. This type of collaborative and innovative enforcement action is an example of effective partnership and progressive strategies utilized by the Department.



## IX. ISSUE OF INTEREST

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### A. In-Car and On-Person Video Cameras

It has been more than 20 years since Rodney King stepped out of his car and onto video. That video became a catalyst in recording police activity. However, now police departments all over the country, from Los Angeles to Berkeley, Seattle to Houston, New York to Dallas, are taking advantage of video recordings and have been installing video cameras in police cars for a number of varying reasons. LAPD was one of the more recent adopters of in-car cameras, initially installing 300 in south-central Los Angeles last year. Initially, departments were implementing the technology for officer safety because officers were being assaulted at alarming rates and they were involved in traffic accidents while performing their duties. The Fresno Police Department does not have in-car or on-person video cameras in operation.

Another emerging issue was racial profiling in policing. Having both video and audio records of traffic stops are extremely useful to investigate any incident(s) regarding racial profiling. However, a study by the International Association of Chiefs of Police (IACP) and the Department of Justice (DOJ) in 2004 found that in-car camera videos provided other values to police agencies including:

- Enhancing officer safety
- Improving accountability
- Reducing liability
- Simplifying incident review
- Enhancing new recruit and in-service training (post-incident use of videos)
- Improving Community/Media perceptions
- Strengthening police leadership
- Advancing prosecution/case resolution
- Enhancing officer performance and professionalism

Fresno Police Department (FPD) is investigating the use of video cameras, specifically “vid-mics” (short for video microphone) which are video units that officers wear while on duty. FPD was testing one brand of “vid-mics” and received mixed results, as some of the units were defective or malfunctioning. FPD is now researching the “vid-mics” that San Jose is using and is hoping to begin limited testing. Since this type of equipment can be costly, the Department is looking at funding through grants from the federal government, which is similar to the grants that DOJ provided to agencies to implement in-car video cameras throughout the country.

The OIR applauds the Department for researching video recordings and encourages them to continue their research and testing as it can only help to enhance officer safety, improve accountability, reduce liability, and improve community perceptions.

Video recordings have assisted internal affairs investigators and the OIR in reviewing cases that had video evidence. In one case a nearby surveillance camera recorded video that supported the officers report of a violent struggle with a male where the officer needed to use multiple force options. (That officer was found not to have used excessive force. **OIR # 1007**). In another case, a nearby surveillance camera recorded video that provided evidence confirming that an officer walked up to a subject and punched him without justification. (That officer was found to have committed excessive force and was disciplined by the Department. **OIR # 1021**). But video recordings can only provide a limited, single perspective, and sometimes only a small portion of the entire incident that may not fully explain what occurred.

However, the overall benefit to the Department and the community is clear. Additionally, the availability of video evidence for criminal prosecutions can be an effective tool. Video evidence, also referred to as the “silent witness”, if used properly by law enforcement, has the ability to present unbiased facts. Therefore, the OIR recommends and urges the Department to continue to pursue in-car and/or on-person (vid-mic) video camera testing and carefully consider implementation.

## APPENDICES

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### i. RECOMMENDATIONS

What follows are 76 recommendations made from the OIR's review period covering July-December 2010. There were a total of 45 recommendations from January-June 2010, bringing the total number of recommendations made by the OIR for 2010 to 121.

#### Officer-Involved Shootings

**The OIR made 28 total recommendations in the area of officer-involved shootings (OIS) as a result of this report. The first recommendation resulted from the examination of all open OIS cases. The second recommendation resulted from auditing three OIS cases and an examination of the number of OIS's that have occurred in the past ten years. The next five recommendations repeated themselves in each of the three audit reports. Lastly, the last eleven recommendations resulted from specific facts from each audits.**

1. It is recommended that the Department continues to focus on the cases that do not require a closing letter and continues to request reports from other agencies immediately after an officer-involved shooting occurs. Additionally, on a case-by-case basis, determine whether the delayed external reports are critical in closing a case for internal affair purposes, and if it is critical, determine how to proceed at that point.
2. It is recommended that the administrative staff routinely examine past officer-involved shootings or other relevant history of involved officers to identify any commonalities of tactical decision-making and decisions to deploy deadly force. This examination should include specific reference and examination of any commonalities (if any) accompanied by appropriate recommendations.
3. It is recommended that in officer-involved shooting investigations, training staff be part of the call-out to immediately respond to a shooting scene.
4. It is recommended that the Department publish a training bulletin for each officer-involved shooting and address any issues or tactics identified from the review process.
5. It is recommended that investigators routinely use diagrams, "Google maps", or other appropriate photographs/sketches to obtain a permanent account of the sequential positioning of involved officers and witnesses.

6. It is recommended that the Department video record the scene of each officer-involved shooting scene.

7. It is recommended that the interview of officers and witnesses of officer-involved shootings be recorded on video in addition to the audio recording practice already implemented by the Department.

**\*\*The remainder of the recommendations are different and distinct from each other and are listed below.**

8. It is recommended that when the internal affair investigator provides a conclusion to the officer-involved shooting, that the recommendation be supported by specific facts.

9. It is recommended while interviewing officers involved in shootings, that the investigator obtain detailed and specific facts related to the officer's justification to continuing to discharge his firearm.

10. It is recommended that the Internal Affairs Investigator assure that all proper documentation, evidence, and records are within the file received from the officer-involved criminal investigator prior to beginning the internal affair investigation.

11. It is recommended that additional review and analysis be conducted concerning tactical considerations of purposefully exposing oneself from behind cover and concealment.

12. It is recommended that additional review, analysis and training be considered concerning the use of deadly force upon a fleeing violent felony offender when the offender is not presenting an immediate and imminent deadly threat towards the police officer.

13. It is recommended that investigators carefully review synopsis statements to assure that they contain all salient and critical factors from the original recorded statements or interviews.

14. It is recommended that when only using an audio recording device, when an interviewee physically demonstrate an action, that the interviewer describes the action so that it is captured on the audio recording.

15. It is recommended that all pertinent documents, diagram sketches, and other information are part of the internal affair file.

16. It is recommended that investigators refrain from asking leading questions or questions that have the answer within it.

17. It is recommended that all issues of use of force are examined, reviewed, summarized and evaluated when applied intentionally or unintentionally, particularly in officer-involved shooting incidents when a shot strikes a person unintentionally.

18. It is recommended that when potential evidence of a criminal investigation is identified, that it be examined for evidentiary value or if not timely, then it should be examined at a later point. If it is determined that the potential evidence is not of value, it should be documented in the investigation.

### **Audit Summaries**

**Each audit report received its own recommendations independent from other audit reports. The recommendations were based upon the facts and review of that particular incident. There were a total of 44 recommendations made. However, there was a pattern of recommendations that were discovered which repeated themselves. A review of the case audits revealed that 4 recommendations repeated themselves in multiple various audits. Those recommendations were:**

1. In light of the seriousness and high percentage of issues discovered by the OIR from internal affairs investigations completed by patrol Sergeants in 2010, it is recommended that the Department review all internal affairs investigations completed by patrol Sergeants in 2010. This recommendation is not made lightly but because these investigations may have negatively affected officers or citizens it seems reasonable to make this request. Additionally, after the review, the OIR would like to review the results and audit 20% of the cases.
2. It is recommended that the Department provide in-depth internal affairs training to all Sergeants, including management staff above the rank of Sergeant. The training should consist of policies, procedures, protocols on how to investigate, analyze, complete, and properly review and approve internal affairs complaints.
3. It is recommended that investigators assure that all potential witnesses are interviewed or if not contacted, document the reasons why a witness was not contacted.
4. It is recommended that investigators routinely canvass the area for potential witnesses or other evidence (such as video cameras) and documents their findings.

5. It is recommended that investigators complete their investigations in a professional manner without unduly drawing attention to specific facts in the reports that may taint or influence the investigation or another investigator, such as highlighting or underlining text.

**\*\*The remainder of the recommendations are different and distinct from each other and is listed below.**

6. It is recommended that the Department review current and proposed training to provide additional communication skills to diffuse and/or prevent unnecessary physical contact.

7. It is recommended that the Complainant be notified of any significant changes in the investigation, such as the re-assignment of the investigation, identify the new investigator and how to contact him, and if relevant, provide the investigator an opportunity to contact the Complainant to ascertain if there was any additional new information concerning the case.

8. It is recommended that after an investigation is completed and recommendations are made, any subsequent review that changes or dissents from each IA findings are fully supported by facts and explained in a thorough, reviewable and systematic manner. Additionally, a more careful, thorough, and accountable method should be implemented to prevent any mistakes or miscommunications.

9. It is recommended that any report of use of force be documented in some fashion, even if it does not reach the level of “reportable” use of force as defined by the Department that would necessitate a Use of Force report to be completed.

10. It is recommended that the “Use of Force” report be reviewed and appropriately updated or augmented with information that should focus on actions of the officer prior to the use of force, such as: tactics and conduct.

11. It is recommended that after Internal Affairs Bureau makes its recommendation and subsequent amendments changing their findings are made, those changes should be reviewed and approved by the Chief of Police, staff member one level higher, or appropriate designee.

12. It is recommended that the Department review whether a “Sternum” rub (used to arouse alertness) is an appropriate method and if so, when it should be used.

13. It is recommended that investigators maintain regular 30-day contact with the Complainant to keep them abreast of the status of the investigation.

14. It is recommended that when there is an ancillary allegation of misconduct against a Department member, that the allegation be immediately identified and investigated in a timely fashion. A checklist that included a review of ancillary allegations would be helpful for the investigation.
15. It is recommended that a record of audio recordings or other evidence be properly documented and identified by location stored.
16. It is recommended that command staff conduct a more timely review of completed IAB investigations to prevent inordinate delays to close the file.
17. It is recommended that a computerized program, checklist, or other form of review be implemented to assure that original allegations are not overlooked during the review of the field investigation or a careful review of the complainants written allegations.
18. It is recommended that the Department review and emphasize training to secure and handcuff subjects as soon as practicable and safe to prevent an on-going struggle or additional use of force applications.
19. It is also recommended that the Department review and train officers concerning the use or non-use of techniques that include placing the officers arm around a subjects neck from behind similar to a “carotid artery” control technique without the neck compression.
20. It is recommended that the Department provide additional clarification and explanations specifying what force was/was not in policy or describe how a force option ended up being used. This can clarify the result of the Department’s investigation so that it is clearly communicated with the CP.
21. It is recommended when the Department knows there is a video recording(s) of an incident being investigated that it is immediately obtained for review and used in the investigation. Additionally, if video evidence is obtained after all interviews are completed, the investigator should also indicate whether or not witnesses were or were not re-interviewed and why.
22. It is recommended that investigators provide an in-depth summary of the salient facts from video evidence and provide an evaluation as to its evidentiary value.
23. It is recommended that supervisors that are assigned internal affairs investigations obtain basic training on how to conduct an internal affairs investigation, which includes interview procedures and techniques.

24. It is recommended that investigators refrain from including facts/information not known to the officer at the time of the incident to support their conclusion.
25. It is recommended that the Department review, enforce and follow protocols concerning the appropriate conduct and representation by the Fresno Police Officer Association (FPOA) legal representative during Internal Affairs interviews.
26. It is recommended that when reviewing the statements of witnesses, that any conflicting or differing statements be reported, evaluated, and resolved to accurately determine what occurred.
27. It is recommended that a more rigorous and accountable review process occur with Internal Affairs investigations completed by field supervisors.
28. It is recommended that a standard form or checklist be used to document standard information that should be required in each internal affair investigation. Examples of information that should be included are; date of assignment, investigative activity and dates, date of completion and submission.
29. It is recommended that investigators be provided training and/or refresher training, on a regular basis, concerning the analysis, classification and disposition of allegations.
30. It is recommended that investigators obtain additional training concerning appropriate interviewing techniques, specifically when interviewing Complainants about their complaints that do not stray into an interrogation or questions concerning the criminal investigation arising from the incident.
31. It is recommended that at the point of assignment, staff management determines and identifies any potential conflict of interest concerns with the supervisor assigned to investigate the complaint and take appropriate action to prevent it.
32. It is recommended that management staff (Lieutenants and above) attend the 8-hour training course provided by Internal Affairs Bureau that the Sergeants are now required to attend.
33. It is recommended that internal affairs maintain a more rigorous and efficient method of tracking and accountability of internal investigations to assure that they are completed timely and that witnesses or evidence are not lost due to a delay in the investigation.
34. It is recommended that major cases of alleged misconduct be handled by Internal Affairs Bureau and not assigned to field Sergeants to investigate.



35. It is recommended that investigators assure that all digital recordings are included as part of the investigatory file.

### **Early Alert System**

1. The OIR recommends that the EAS program is carefully reviewed, evaluated, regularly monitored and if appropriate, revised. During the review, the OIR should closely monitor and provide suggestions for improvements. The OIR should be notified of all alerts, and meet at regular intervals with the Internal Affairs Commander and/or the Professional Standards Division Commander. Implement as soon as possible, IA Pro as this software program is the premier in “Early Alert” system/Early Intervention programs.

### **In-Car and On-Person Video Cameras**

1. The OIR recommends and urges the Department to continue to pursue in-car and/or on-person (vid-mic) video camera testing and carefully consider implementation.

### **Inquiry and Complaint Log (ICL)**

1. It is recommended that the Department closely review and evaluates unresolved inquiries to determine if or how service could be improved, methods to effectively resolve them or prevent them from occurring (such as better communication skills). The Department could then provide appropriate training and conduct vigilant quality service checks to monitor its progress.

## ii. AUDIT SUMMARIES

### OIR 1013

#### Incident Summary

Officers responded to a call of a fight at a residence. When the officers arrived, witnesses who lived at the residence allowed the officers to enter house. While inside the house the officer's were met by Complainant. Complainant's clothing was disheveled and she had been crying. Officers heard noises and running water in the bathroom.

The officers advised Complainant of the need to conduct welfare check in the house and Complainant said they had no right. Officers advised her to maintain her distance and not to interfere or she would be arrested. Officers walked down the hallway to the bathroom and they saw another person who was injured and bleeding. Complainant walked down the hallway towards the officers and began yelling obscenities at the officers and demanded they leave. Officer 1 grabbed Complainant by the arm and escorted her down the hallway and out the front door.

Officer 1 placed his hand on Complainants shoulder, pushing her down into a chair. Complainant suddenly stood back up and began walking back into the house. Officer 1 grabbed Complainant by the arm and placed it behind her back while forcing her against the wall. Officer 1 handcuffed Complainant. Although Complainant alleged that the officer grabbed and pulled her outside and then slammed her against a wall, there was an independent witness across the street that witnessed the event. The witnesses' statements corroborated Officer 1's statements. The witness also indicated that he generally does not like the police but in this case Officer 1 "was not aggressive or abusive" and he respected Officer 1 for handling the arrest as a professional.

The OIR concluded that the force used by Officer 1 was within Department policy and procedures.

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### OIR 1014

#### Incident Summary

Officers were dispatched to a stabbing that had just occurred. While one officer was using crime scene tape to establish a restricted perimeter, Officer 1 saw Complainant interviewing a witness inside the restricted area. While Officer 1 was speaking with another witness, he told

Complainant, who was standing 5 feet away, to leave the scene and he did not comply. Officer 1 stopped speaking with his witness and walked over to Complainant. He advised him to leave again but Complainant refused to comply.

Officer 1 grabbed Complainant by the back of his arm and began to escort him out of the crime scene. As they walked out, Officer 1 said that Complainant struck him in the center of his chest. Complainant said that he pushed Officer 1 because he was making him walk too fast. Officer 1 then grabbed Complainant's arms and handcuffed him. Complainant said that Officer 1 pulled his arms up high behind his back. While placing Complainant into the back of the patrol car, both Officer 1 and Complainant said it was difficult to maneuver him into the rear seat because he is a large man (6'1", 240 lbs.) and due to his age he was not very flexible. Complainant said he received the injuries to his arms while being placed into the car.

After Complainant was placed in the car officers saw that Complainant had blood around his wrist areas where the handcuffs were and bruises on his arm. At that time, Complainant informed officers that he had a skin condition that causes his skin to break easily and bleed.

The OIR concluded that the force used by Officer 1 was within Department policy and procedures.

- 1. It is recommended that the Department review current and proposed training to provide additional communication skills to diffuse and/or prevent unnecessary physical contact.**
  - 2. It is recommended that investigators refrain from highlighting or underlining text from statements or other documents in the investigative files as that may unduly direct attention to information that could taint the recommendation or evaluation by other investigators or staff personnel.**
  - 3. It is recommended that the Complainant be notified of any significant changes in the investigation, such as the re-assignment of the investigation, identify the new investigator and how to contact him, and if relevant, provide the investigator an opportunity to contact the Complainant to ascertain if there was any additional new information concerning the case.**
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## OIR 1015

### Incident Summary

Officer 1 investigated a family dispute and subsequently arrested Complainant (CP) for public intoxication. Officer 1 described CP as extremely intoxicated. While booking CP at the jail facility, Officer 1 was completing paperwork and CP who was seated on a bench made a disrespectful comment towards another officer he believed was inappropriate.

Officer 1 began walking towards him and told him to be quiet. CP stood up and the officer believed CP was shouting at him and as he was getting close to him, he believed CP was coming towards him. The jail video does not support Officer's claim that CP was shouting or coming towards the officer.

Officer 1 grabbed CP's arm and the back of his hair or back of neck (CP's hair covered his neck) while escorting him around the corner from the booking area. He placed CP with his back to the corner and ordered him to sit down twice within 2 seconds. CP did not comply and Officer 1 used a "leg sweep" to bring him to the ground. CP complained that his leg was broken.

Jail staff approved CP to be booked into jail. Later, jail staff was involved in a physical struggle with CP and the nurse rechecked CP again. It was noted that CP's leg was swollen and not broken. Officer 1 said he reported the use of force to his Sergeant and that CP complained of a broken leg but he believed it was not broken. The Sergeant said that Officer 1 did report the "leg sweep" but did not recall if he advised him if there were any injuries or that there was a possible broken leg.

1. The OIR concluded that the force that Officer 1 used was within Department policy and procedures.
2. The OIR concluded that there was not a preponderance of evidence to prove or disprove that the officer failed to report a use of force to his supervisor.
3. The OIR concluded that medical treatment was provided and Officer 1 acted within Department policy and procedures.
4. The OIR concluded Officer 1 used poor discretion and judgment.

The OIR's findings for allegation 2 and 4 were dissimilar than the Department's final findings.

**1. It is recommended that after an investigation is completed and recommendations are made, any subsequent review that changes or dissents from each IA findings are fully supported by facts and explained in a thorough, reviewable and systematic manner. Additionally, a more careful, thorough, and accountable method should be implemented to prevent any mistakes or miscommunications.**

**2. It is recommended that any report of use of force be documented in some fashion, even if it**

does not reach the level of “reportable” use of force as defined by the Department that would necessitate a Use of Force report to be completed.

3. It is recommended that the “Use of Force” report be reviewed and appropriately updated or augmented with information that should focus on actions of the officer prior to the use of force, such as: tactics and conduct.

4. It is recommended that after Internal Affairs Bureau makes its recommendation and subsequent amendments changing their findings are made, those changes should be reviewed and approved by the Chief of Police, staff member one level higher, or appropriate designee.

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## OIR 1016

### Incident Summary

Officers 1 & 2 responded to a radio call to check the welfare of a juvenile. Officers arrived, explained why they were there, and CP directed officers to the back bedroom. Officers saw a juvenile who was in a push up position, sweating and whose arms were shaking. CP said he would speak with Officer 1 but the juvenile had to stay in that position.

Officer 2 spoke with the juvenile and tried to convince him to stand up while Officer 1 spoke with CP in the living room. CP said he was not beating his child and they needed to leave. He yelled at the child numerous times to stay in the push up position and quickly made his way towards the bedroom. Officers told him he needed to go back to the living room and to stop interfering.

CP refused and officers told him he was under arrest for interfering. They attempted to arrest CP by grabbing his arms but he stiffened them and flexed them forward preventing officers from handcuffing him. The officers struggled with CP and an officer’s baton fell to the floor. The officers were unable to place CP’s hands behind his back. Another juvenile who was very angry came in the room and said that last time it took 12 officers to take his father down. Officer 1 advised CP multiple times that he would use a taser if he didn’t stop resisting and CP said, “Go ahead. That has no effect on me.”

Officer 2 used his taser twice in “drive stun” mode taser, but it appeared that it was malfunctioning or was weak because it had no affect on CP. Officers contained CP in the living room until other officers arrived. CP admitted that he resisted arrest and that the officers are lucky to be standing because he is a black belt.

Officer 2 was the primary officer handling the call and did not complete a required report documenting that the alleged child abuse was unfounded.

Officers advised CP of Department's policy to provide medical treatment and CP refused any treatment saying he was not injured.

The OIR concluded that the force used by Officers 1 & 2 was within Department policy and procedure. The OIR also concluded that all officers complied with the offering of medical treatment. Lastly, the OIR concluded that Officer 2 failed to document an unfounded child abuse case.

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## OIR 1017

### Incident Summary

Officer 1, working alone, stopped a vehicle for a traffic violation that contained 4 individuals including CP who was a passenger and appeared to be sleeping. Officer 1 believed all occupants were members of a street gang and the area the officer stopped the vehicle was a high crime and gang area. Officer 1 requested backup officers to assist. Officer 1 rubbed CP's sternum to awaken him and CP immediately opened his eyes and was angry. Officer 1 saw that CP was very nervous and had a rapid pulse. When Officer 1 identified CP as an absconding parolee for a violent crime, he became very upset.

Officer 1 pulled CP out of the car and handcuffed him. While walking CP to the patrol vehicle, he placed his feet on the ground, pulling away from the officers and attempted to kick officers. CP was placed on his stomach and was still kicking at officers. Officer 1 & 2 restrained CP by lying on top of him and holding his legs down with their hands. Officer 3 used leg restraints to bind his legs. While CP was on the ground, he turned his head from side to side causing numerous self-inflicted abrasions to his face.

CP was transported by EMS personnel to the hospital and was restrained with 4-point restraints by EMS personnel. While at the hospital, CP continued to yell at medical personnel and refused treatment. Officer 1 was aware that CP was a three-strike candidate and believed that CP may have been under the influence of a narcotic. Officer 1 briefed Officer 4 of the circumstances as Officer 4 relieved him from duty at the hospital. Officer 1 also advised Officer 4 that CP had tried to undo his handcuffs and Officer 4 should use extreme caution with CP.

After CP was released from the hospital, Officer 4 walked him out to the patrol vehicle. CP was still in handcuffs and was placed against the patrol vehicle. CP pushed himself back into the officer, knocking him backwards and ran from the scene. Officer 4 chased CP and deployed the taser on him. The taser was effective and with the assistance of hospital security regained control of CP. CP admitted that he ran because he knew he was a third striker and going to prison for life.

CP alleged that the officers hit, punched, and kicked him during the struggle. None of the occupants of the passenger vehicle stopped could provide any detailed information about the incident after Officer 1 stopped them.

The OIR concluded that the force used by Officers 1-4 was within Department policy and procedures. The OIR also concluded that Officer 1 did not threaten unlawful bodily injury.

**1. Although the “Sternum” rub used by Officer 1 was effective to wake CP, it is recommended that the Department review whether this method to arouse alertness is an appropriate method and if so, when it should be used.**

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## OIR 1018

### Incident Summary

Officer 1 saw a vehicle stopped in the middle of the roadway. After lawfully stopping the vehicle, driven by a male witness, he noted that CP was the passenger and appeared to be passed out. Officer 2 arrived at the scene to assist.

As Officer 1 investigated the driver for DUI, CP woke up and she continually interrupted the interview with the driver. It appeared that CP was very intoxicated and her clothing was disheveled. CP started to get out of the car and Officer 1 told her to remain in the car. CP did not comply. CP used profanity and yelled at Officer 2 who was near the passenger door. CP was flailing her arms around, stumbled while she walked, and leaned against the car to maintain her balance. There was a strong odor of an alcohol beverage coming from her breath and person.

Officer 2 attempted to arrest CP for public intoxication. Officer 2 grabbed her right arm, she pulled away and he regained his grasp. CP kept trying to pull away when Officer 1 approached and grabbed her other arm. After officers handcuffed CP, she went limp and all her body weight went down. Officers lowered her to the ground and although she was conscious, officers summoned EMS due to her actions and intoxication. EMS arrived and they decided to take her to the hospital. Officer 1 said that he did not complete documentation of CP’s arrest for intoxication or proper release/citation.

After CP was transported to the hospital, it was discovered she had a fractured arm. CP did not receive a status letter concerning the investigation for 60 days.

The OIR concluded that the force used by both officers was within Department policy and procedures. The OIR also concluded that Officer 2 failed to properly document the release of CP.

**1. It is recommended that investigators maintain regular 30-day contact with the Complainant to keep them abreast of the status of the investigation.**

## **OIR 1020**

### **Incident Summary**

Officers arrested CP 2 for the crime of battery and he was seated handcuffed behind his back on the street curb. The handcuffs were double-locked, meaning that the handcuffs were locked and could not be tightened without a key.

Officer 1 was standing in front of him reading him his rights when suddenly, CP 2 stood up directly and close to his face. CP 2 cursed directly at the officer. The officer believing he was going to be assaulted stepped back, grabbed CP 2 by the arm and Officer 2 grabbed him by the hand and pushed him on the shoulder down to a seated position on the ground.

CP 2 became angry and began to yell saying the officers had no right to touch him. He began rolling around on his stomach and back, twisting his handcuffed wrists and kicking his legs. Officers stood CP up and placed him into the back seat of the patrol vehicle. CP 1 was nearby yelling at the officers and called 911 asking for a supervisor.

Officer 3 (supervisor) arrived at the location and spoke with CP 1. Officer 3 then spoke to CP 2 who said his handcuffs were too tight. Officer 3 then adjusted the handcuffs and did not notice any injuries on his wrists. He then went back to speak with CP 1 who told him to stay away because he was afraid of the officer. Officer 3 went to his patrol vehicle and called his supervisor about the unusual behavior. CP 1 claimed that Officer 3 stepped in front of his car and put his hand on his gun.

The OIR concluded that the force used was within Department policies and procedures. The OIR concluded that Officer 3 did not act unprofessional.

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## **OIR 1021**

### **Incident Summary**

Officer 1 and a security officer had previously investigated three individuals (one of which was CP) for a possible theft charge. The three individuals were released and advised to leave the property. Later, citizens reported that the same individuals were urinating in public and loitering in the parking lot. Officer 1 and the security officer responded to the loiterers location in the parking lot.

Upon arrival, Officer 1 removed his taser and held it in one hand. Officer 1 approached CP and used his other arm (forearm) to strike CP in the face. CP stumbled backwards and Officer 1 struck him on the head with the hand holding the taser. CP fell to the ground and Officer 1 handcuffed him.

Officer 1 claimed that when he approached he saw CP's hands lowering to his waist area and he

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believed there was a potential threat. Officer 1 said a strike was the most readily force option available. He also claimed that the alleged strike to CP's head was when he attempted to grab him around the neck area to take him to the ground because he feared for his safety, as there were two other individuals there also.

The parking lot video recording of the entire incident contradicted Officer 1's claims.

Officer 1 reported the use of force and wrote a report on the incident. Within Officer 1's report, he described the first strike, but did not describe any portion of the second strike/grab.

The OIR concluded that Officer 1 used unreasonable force and was outside the scope of the Department policies and procedures. The OIR also concluded that Officer did not properly report the use of force.

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## OIR 1022

### Incident Summary

Officer lawfully stopped a pedestrian for a crime during the hours of darkness where there was limited area lighting. During the interaction, subject fought with the officer. The officer requested emergency assistance with a combative subject. During the struggle, CP saw the struggle and decided to help. Officers 1 & 2 responded to the location only knowing that the officer was requesting emergency assistance with a combative person.

Upon arrival, officers could only see CP on top of the officer who was lying face down on the ground. Officers could not see the actual subject underneath the officer, because the officer was on top of him. As officers approached, believing that CP was the combative subject, Officer 1 tried to separate CP from the officer. Officer 1 dropped down on CP's body with his knees and pulled him away from the officer. After Officer 1 accomplished pulling CP away from the officer on the ground, the officer on the ground told them that he was not the subject. That is when they could see the combative subject underneath the officer on the ground. The combative subject was taken into custody and Officer 1 immediately apologized to CP for believing that he was the combative subject.

An ancillary allegation of misconduct was identified at the time of the incident but was never followed up. Additionally, an audio recording and photographs were taken at the time of the incident and were not within the investigatory file.

The OIR concluded that the force used by Officer 1 was not unreasonable and was within Department policy and procedures.

**1. It is recommended that when there is an ancillary allegation of misconduct against a Department member, that the allegation be immediately identified and investigated in a timely**

**fashion. A checklist that included a review of ancillary allegations would be helpful for the investigation.**

**2. It is recommended that a record of audio recordings or other evidence be properly documented and identified by location stored.**

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**OIR 1023**

**Incident Summary**

Officers served a search warrant at a residence by knocking on the door, identifying themselves, demanding entry, and ordering everyone inside to get on the ground. Officers were dressed in tactical uniforms (tactical vest with a cloth police badge on the front and "Police" on the back). Occupants of the house demanded to see the search warrant and during this conversation, officers could hear other residents moving back and forth in the residence. Officers entered the residence believing their safety was being compromised.

After entering, officers saw a male subject 6'4", 340 lbs. standing in a fighting position with his fists clenched. The subject used CP 1 as a shield placing her between him and the officers. Two officers grabbed the subject and ordered him to the ground. He refused and attempted to pull away from the officers. The officers brought him to the ground and another officer assisted in handcuffing the subject who had now stopped struggling with the officers.

It was during the struggle with the male subject that CP 1 grabbed one of the officers. Officer 1 grabbed her and pushed her away. CP 1 then punched Officer 1 in the chest and the officer pushed her back towards the wall. CP 1 came towards Officer 1 again and bit the officer on the arm. Another officer and he grabbed her arms, brought her to the ground and handcuffed her.

There were a total of 5 people inside the residence that were detained. An officer provided CP 2 with a business card and a Notice of Search Warrant that contained his name and badge number.

After the investigator completed the investigation, command staff did not review it for two months. Although the field supervisor identified allegation #4, it was never formally investigated by internal affairs.

- 1. The lawfully issued search warrant was properly executed and served by the officers and was within Department policies and procedures.**
- 2. The force used by the officers upon the subject and CP 1 was within Department policies and procedures. There was no evidence of unreasonable force by officers upon CP 2 or CP 3. There was no evidence of any unprofessional conduct by any officer.**
- 3. The officer did provide name and badge number information to CP 1 as required by Department**

policies and procedures.

4. There was no evidence of any unprofessional conduct by any officer. (Allegation not reviewed by IAB but originally alleged.)

**1. It is recommended that a more timely review of completed IAB investigations be conducted.**

**2. It is recommended that a computerized program, checklist, or other form of review be implemented to assure that original allegations are not overlooked during the review of the field investigation or a careful review of the complainants written allegations.**

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## OIR 1024

### Incident Summary

A business was having on-going problems with loiterers and the police was patrolling the area to address the issue. The location has a number of signs indicating “No Trespassing” and business rules. Officer 1 saw a group of individuals outside the business loitering and advised them to disperse. CP used profanity towards the officer and the group then went inside the business.

Later, officer 1 arrested two males for trespass in the business. Officer 1 saw CP and advised her she was required to leave and she ignored him. After advising CP of the rules of the business and that she was loitering, she had to leave, CP said you can’t make me leave and used profanity. Officer 1 advised her she was under arrest twice and had to go outside.

CP refused and Officer 1 grabbed her by her arm and she pulled away saying don’t touch her. Officer 1 grabbed her by both arms and walked her out the door. Once outside she flailed her arms and began to pull away. Many other patrons of the business came outside encircling them. Officer 1 estimated that the group outside was approximately 60 people in size.

Officer 1 then put his arm around her collarbone and right arm around her stomach from behind in a bear hug fashion. He asked for assistance and tried to tell her to calm down. CP continued screaming and cussing as the spectators yelled and cussed at the officers. Eventually, CP calmed down enough that Officer 1 only needed to hold CP’s arm.

Officer 2 arrived and grabbed one of her arms and they walked her to a patrol car. Officers lost grip of her and Officer 2 placed his arm around her neck in a firm grip from behind and pulled her to a patrol car. Officer 2 said although his arm was around her neck, it was below her chin to control her head and he did not choke her. Officer 1 saw Officer 2’s arm around the neck and it appeared that CP was choking. Officer 1 told Officer 2 that CP looks like she is choking.

The officer moved her to the patrol car, bent her down on the trunk attempting to grab her hand. Officer pushed her cheek to turn her head sideways to anchor her head and control her movements. Officer 1 was able to handcuff one wrist and advised Officer 2 to let go and that he had her. Officer

2 did so and Officer 1 used a leg sweep to bring her to the ground where she was handcuffed.

Officers tried to put her in the patrol car but she used her feet to prevent them from doing so, but eventually they were able to place her in the vehicle.

Three subsequent video recordings of portions of the incident were obtained as part of this investigation. The third (and more comprehensive) video was obtained after all officers/witnesses were interviewed.

1. The OIR finds that Officer 1 did not make an unlawful arrest.
2. The OIR finds that the use of force by Officer 1 was within Department policies and procedures.
3. The OIR finds that the use of force by Officer 2 was within Department policies and procedures. Additionally, the OIR finds that while the initial use of force was within guidelines, the alleged “choking” was not intentional and appears to be a result of CP’s resistance or other factors from the officer’s use of force application.

**1. It is recommended that the Department review and emphasize training to secure and handcuff subjects as soon as practicable and safe to prevent an on-going struggle or additional use of force applications.**

**2. It is also recommended that the Department review and train officers concerning the use or non-use of techniques that include placing the officers arm around the subjects neck from behind similar to a “carotid artery” control technique without the neck compression.**

**3. It is recommended that the Department provide additional clarification and explanations specifying what force was/was not in policy or describe how a force option ended up being used. This can clarify the result of the Department’s investigation so that it is clearly communicated with the CP.**

**4. It is recommended when the Department knows there is a video recording(s) of an incident being investigated that it is immediately obtained for review and used in the investigation. Additionally, if video evidence is obtained after all interviews are completed, the investigator should also indicate whether or not witnesses were or were not re-interviewed and why.**

**5. It is recommended that investigators provide an in-depth summary of the salient facts from video evidence and provide an evaluation as to its evidentiary value.**

**6. It is recommended that supervisors that are assigned internal affairs investigations obtain basic training on how to conduct an internal affairs investigation, which includes interview procedures and techniques.**

**7. It is recommended that the investigator documents to what extent that the investigator made to canvass the area for potential witnesses or other evidence (such as video cameras).**

## OIR 1025

### Incident Summary

Officers stopped CP for a traffic violation while she drove her vehicle. CP did not immediately yield and pull over but did finally stop. Officer 1 approached the driver's door he saw CP had a firearm on her hip. Officer 1 removed his weapon and held it down to his side. CP said she was a security guard and reached for her handgun. Officer 1 pointed his weapon at her and ordered her to put her hands on the steering wheel.

Officer 1 opened the door, grabbed her arm and asked her to step out of the vehicle. CP did not move. Officer 1 pulled slightly on her arm and she complied. CP put her hands on her head and the officer asked her to interlace her fingers, but she did not. Officer 1 placed one of her hands on top of the other, lifted her right elbow while Officer 2 retrieved the firearm and removed her entire gun belt. While Officer 1 was holding her hands, it felt like she was pulling them down, but he maintained a grip of her hands on her head. Once CP was outside the vehicle, Officer 2 could see she was wearing a shirt with a security guard insignia on it.

CP put her hands down and Officer 1 escorted her by the arm and placed her in the patrol vehicle while he conducted his investigation. Officer 2 had placed the gun belt on the hood of the patrol car.

While CP was in the patrol car she was on her cell phone. Officer 2 saw this and told her she could not use her cell phone. Officer 2 asked her for the phone and she handed it to him. He placed it on the hood with the other property. After CP was cited, she was released and Officer 2 saw her take all her property, including her cell phone and place it on the front passenger seat of her vehicle.

The OIR concluded that the force that Officer 1 used was within Department policies and procedures and that Officer 1 never handled CP's cell phone. Additionally, the OIR concluded that the officer's actions were within Department policies and procedures and there is not a preponderance of evidence to prove or disprove any mishandling of CP's property.

**1. It is recommended that investigators refrain from underlining text from statements or other documents from the investigatory file as that may unduly direct attention to information that could taint the recommendation or evaluation by other investigators or staff personnel.**

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## OIR 1026

### Incident Summary

Officers were dispatched to a residence concerning a loud party. The caller advised officers that the

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location had gang affiliations. A check of the residence revealed that a subject they were familiar with lived there and was on felony probation. His condition of probation was that he was subject to search and seizure at that location.

Officers saw CP and the juvenile subject, who was holding a beer can in the backyard. CP and the subject spoke briefly and the subject went inside the house. Officers briefly spoke with CP who was stumbling, leaning against the wall and fence and appeared to be intoxicated. Officers advised her of the reason for their contact and of the probation search they were going to conduct.

Officers went to the back door, stopped and announced "Fresno PD." After getting no response, they entered into the living room. CP followed the officers and continued to yell that they had no right to enter. Officer 1 told CP numerous times to stop interfering and sit on the couch otherwise she would be arrested. While Officer 2 searched the bedroom, Officer 1 again advised CP of their right to be in the residence, while she sat on the couch.

Officer 1 located subject hiding under some clothes and ordered him out. After hearing Officer 2 give multiple commands for the subject to come out, he walked back into the room and saw subject walking out of the closet.

Officer 1 then saw CP follow him down the hallway. CP was waving her arms around and yelling at him to leave as she approached him. Officer 1 ordered CP twice to get on the ground, but she refused, and continued approaching him. Officer put his hand on her shoulder and turned her around. As she turned around, she began to fall and Officer 1 grabbed her as her upper body hit the wall as she went to the ground. While Officer 2 was handcuffing the juvenile subject, CP kicked Officer 1 while he handcuffed her. CP said that both officers struck her in the hallway. CP had a cut on her forehead area.

The OIR concluded that the search was conducted within Department policies and procedures. The OIR also concluded that the force used by Officer 1 was within Department policies and procedures and that Officer 2 never used any force upon Complainant.

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## OIR 1027

### Incident Summary

A lone officer saw two individuals loitering in a posted no loitering area. The individuals matched the description of recent armed robbery individuals. After the officer stopped them, he ran a check to see if CP was wanted. While doing this, he saw CP continually reaching towards his waist area and pant pocket. In order to search CP, the officer grabbed him but he pulled away from the officer's grip and ran.

As CP was running he made furtive movements to his waist and pockets. CP tripped over an object and fell to the ground. Officers ordered him to show his hands and he refused. CP again reached

into his pocket. Officer 2 deployed his taser but the taser was ineffective and CP still would not show his hands. Officer 1 then kicked CP's arm and punched him 2-3 times on the shoulder to get him to show his hands while other officers attempted to grab his legs because he was kicking at the officers. CP showed his hands and was handcuffed.

The investigator made reference that CP had warrants for his arrest but the officer did not know that at the time force was used.

The OIR finds that Officers did not use unreasonable force upon Complainant and acted with Department policies and procedures.

- 1. It is recommended that investigators or reviewers refrain from marking any police or investigatory reports within the file.**
- 2. It is recommended that investigators refrain from including facts/information not known to the officer at the time of the incident to support their conclusion.**

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## OIR 1028

### Incident Summary

Officer 1 was driving a marked police vehicle and wearing his police uniform. Officer 1 observed CP holding a beer can and loitering in a parking lot of a known drug area. Officer 1 saw CP give the beer to another person and attempt to hide himself behind another individual. There were a total of four individuals loitering in that area. Officer 1 also indicated he had observed CP with the group loitering in that area for a period of time and previously had been asked by the manager of the business to enforce the loitering laws due to the high crime, prostitution, and narcotic activity that occur there.

Officer 1 pulled into the parking lot and asked to speak with CP. CP ran on foot into the rear of the parking lot. Officer 1 broadcasted this information and drove to the rear of the location pursuing CP. He loses sight of CP but later sees CP resurface in the parkway. Officer 1 called out to CP and told him to stop. CP runs and the officer gives chase in the car with his lights and siren on.

As CP is running, Officer 1 sees him looking back at him and reaching into his pocket. Officer 1 drives up behind him and CP stops running. Officer 1 gets out of the car and takes the less lethal shotgun with him. Officer thought CP was going to surrender, but CP turned reached into his right front pocket and began turning toward the Officer 1.

Officer 1 feared that CP was possibly reaching for a weapon and fired two less lethal rounds striking CP. CP continued to run and was later apprehended.

In this case, the Fresno Police Officer Association legal representative was present during the interview of Officer 1. A careful review of the audio recording revealed that the legal

representative provided a monologue of opinions and arguments in support of Officer 1. In fact, the legal representative spoke on 4 different occasions for 3 minutes, 41 seconds, 1 minute and 10 seconds, and 30 seconds totaling 5 minutes and 21 seconds. During that time, he only asked only one question that was directed to the investigator questioning why this was a complaint investigation in the first place.

The OIR finds that Officer 1 properly detained CP within Department policies and procedures. The OIR finds that Officer 1 used force that was reasonable within Department policies and procedures.

**1. It is recommended that the Department review, enforces and follow protocols concerning the appropriate conduct and representation by the Fresno Police Officer Association (FPOA) legal representative during Internal Affairs interviews.**

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## OIR 1034

### Incident Summary

Incident 1: Officer 1 saw CP drive his vehicle and park in a no stopping/tow zone. CP leaned over and spoke with a female through the passenger window. Traffic was backing up behind CP's vehicle. Officer 1 pulled behind CP's vehicle in his marked police vehicle and CP did not move. Officer 1 then pulled around and alongside CP and advised him he was in a no stopping zone and pointed at the no stopping sign. CP acknowledged the officer and said he would remember next time. CP continued speaking with the female and Officer 1 told him he needed to move the vehicle now. While CP spoke with the female, he made a derogatory remark about the officer. Officer 1 directed CP to pull into the parking lot and CP refused.

Officer 1 activated his emergency lights and pulled CP over. As he approached the vehicle, CP's window was rolled up and locked his door. Officer 1 asked him to roll the window down and CP refused. CP cracked his window open an inch to slide his license, registration, and insurance to him. Officer 1 walked back to his patrol vehicle and completed the citation and re-approached CP who was still seated in the drivers seat. CP still refused to open the door or roll down the window. Officer 1 knocked on the window, attempted to open the driver's door and knocked on the top of the doorframe.

Statements from the two witnesses in CP's vehicle were similar to Officer 1's statement except they described Officer 1 as upset, angry and "crazy".

Officer 1 called for a supervisor. After the supervisor arrived, he spoke with CP who said that Officer 1 was acting unprofessional. CP admitted he was rude and angry and apologized for his behavior. CP admitted he locked the door and rolled up his window because he was afraid of what the officer might do.



Incident 2: Citizen called for Officer 1 because of two rival street gangs at the location he had authority and jurisdiction. Officer 1 advised the groups to leave the area and told them why they needed to leave. A male in one of the groups said he was not going to leave. Officer warned him to leave or he would be subject to arrest. The male said he was not going to leave and was subsequently arrested.

It was only after the arrest and obtaining the male's parental contact did he learn that the male was CP's son. Officer 1 spoke to CP on the phone and explained the circumstances of his son's arrest and CP thanked him for taking care of it.

The citizen that called the police said Officer 1 was not angry, but calm and professional. The citizen said that CP's son was angry and defiant.

The OIR concluded that there is not a preponderance of evidence to support that Officer 1 treated CP discourteously during incident 1. The OIR concluded that Officer 1 did not falsely arrest or discriminatorily treat CP during incident 2 and acted within Department policies and procedures.

**1. It is recommended that when reviewing the statements of witnesses, that any conflicting or differing statements be reported, evaluated, and resolved to accurately determine what occurred.**

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## OIR 1035

### Incident Summary

Officers were dispatched to a residence concerning a loud party. Upon arrival, officers observed bright lights and heard loud music approximately 6-7 houses away from the house in question.

There were numerous persons coming and going into the party. Officer 1 contacted CP, who appeared to have been drinking alcohol, and advised him of the numerous calls about the loud party. Officer 1 asked that the party be closed. Two other residents came out and they were asked shut the party down. The two individuals left and returned telling Officer 1 that they would not shut down the party.

Officer 1 observed several under-age persons in the backyard who were in possession of beer. Officer 1 asked CP for his identification so that he could issue a citation to him. CP refused to produce any identification, turned around and started to walk away.

Officer 1 grabbed him by his left arm and CP quickly turned around with clenched fists. Officer 1 advised CP he was under arrest. Officer 1 grabbed CP's other arm and handcuffed him behind his back without any further incident. Officer 1 walked CP to his patrol car and CP said he recently had surgery on his arm and he was in discomfort. Officer 1 used another pair of handcuffs to attach to

the first pair to make them longer and relieve any potential tension.

There were three other civilian witnesses and other officers that observed the incident and their statements concurred with Officer 1's statement.

The OIR concluded that Officer 1 did not use unreasonable force and acted within Department policy and procedures.

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## OIR 1038

### Incident Summary

Officer 1 responded to assist other officers in the apprehension of a car-jacking subject. After the car-jacking subject stopped their vehicle, he was taken into custody. The subject was in one patrol car and while officers moved him to another patrol car, he became verbally and physically resistive with officers.

At this point, CP who was at the scene began walking towards the subject. Officer 1 told her to step away from subject. CP protested the arrest by yelling at the officers. While CP yelled at the officers, the arrested subject began to struggle more violently. CP continued to get closer to the subject and Officer 1 continually advised her to step back or she would be arrested.

Officer 1 said that CP clenched her fists, yelled a profanity at him and was moving toward him. Officer 1 warned her again, but she continued forward. Officer 1 grabbed her by her arm to arrest her. As CP began to struggle, two other officers grabbed her arms and handcuffed her. The other officer statements concurred with Officer 1's statement.

CP said she was attempting to calm the subject down. Officer 1 kept her away and finally she gave up, used a profanity, but not towards the officer and started to walk away. That is when the officer grabbed her by the arm and handcuffed her. Another witness, who was standing at a distance, said that when CP went over to calm the subject down, he saw one officer put her in handcuffs for no apparent reason. He said he did not hear CP cuss or argue with the officers.

The investigator did not provide any facts to support his conclusion except for a single conclusory opinion. The investigation was reviewed and approved by the investigators supervisors.

The OIR concluded that Officer 1 did not use unreasonable force and acted within Department policy and procedures. This finding differs from the Department's conclusion.

**1. It is recommended that additional training be provided to field supervisors to reinforce the proper protocols and procedures to properly complete an Internal Affairs investigation.**

**2. It is recommended that a more rigorous and accountable review process occur with Internal Affair investigations completed by field supervisors.**

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**OIR 1039**

**Incident Summary**

Officers 1 & 2 were dispatched to a residence concerning a residential robbery alarm. While driving to the location they were advised it was a domestic disturbance and not a robbery. Upon arrival, Officers spoke with a witness (wife) and she advised them that her husband was drunk and angry. Officer 1 had previous contact with CP who had been drinking and fired a BB gun at his neighbor's house.

Officers contacted CP who was holding a garden hose and spraying a dirt pile in driveway. CP was standing next to an axe and appeared intoxicated. Officers asked CP to put the hose down and speak with them. CP yelled profanities at them and tried to spray them with the water hose. After repeatedly advising him to drop the hose, he did so and started walking towards the officers

Officers advised him several times to stop walking towards them and turn around so that they could search him but he did not. Officers backed up in the driveway and continually told CP to stop and turn around, but CP continued to walk up to them. Officers backed up against a car and when CP got within arm's reach, Officer 1 grabbed him by the arm, turned him around and brought him to the ground with a leg sweep. While on the ground, CP struggled with officers, but they were able to handcuff him.

Officer 1 brought CP to his feet and escorted him to the patrol car while Officer 2 went to speak with the witness. When Officer 1 and CP arrived at the patrol vehicle, CP pushed up against Officer 1, then attempt to pull away from him. Officer 1 pulled CP to the ground to prevent his escape. CP was thrashing his legs around, trying to get up. Officer 2 came to assist and they used a "hobble"-restraining device to secure his legs and placed him in the vehicle.

CP said he had been drinking heavily and had consumed 17 beers. CP and his wife had been arguing and went outside to cool down. CP said he saw the officers and walked towards them, but could not remember everything they were saying. He believes they were telling him to stop but does not remember. He remembers the officer taking him to the ground, handcuffing him, and the officer slamming him against a car and he fell back on the ground.

CP has video cameras for security purposes and the video supports the officer's statements of CP walking towards them and officers taking CP to the ground. The cameras did not have an angle to view the second incident at the patrol vehicle.

The OIR concluded that the Officers did not use unreasonable force and acted within Department policy and procedures.

## OIR 1040

### Incident Summary

Officer 1 responded to a radio call of an officer requesting immediate assistance with a large crowd surrounding officers and the victim of a shooting at a party. The crowd was hostile, yelling and screaming, and emotional about the shooting that had occurred. Officers were attempting to maintain a perimeter of a crime scene and a safe area for medical personnel to provide medical treatment for the victim of the shooting.

Officer 1 said that the crowd would continually try and push towards the victim. Officers made numerous verbal commands ordering the crowd to stay back. CP was a loud and boisterous member of the crowd and attempted to push past Officer 1. Officer 1 put his hand in front of him in the air numerous times and told her to stay back. Each time he did, CP slapped his hand out of the way telling him not to touch her. Believing that CP may be a friend of the victim he continued to tell her to stay back. As she continued to attempt to get past, he advised her to stay back or she would be arrested.

CP continued to try to get by and Officer 1 grabbed her left arm by the wrist, placed it behind her back and moved her to the trunk of a parked car. Officer 1 advised her she was under arrest. He leaned her over the trunk and ordered her to put her other hand behind her back. After a number of commands, CP finally complied and she was handcuffed. Officer 1 attempted to place CP in a patrol vehicle and she refused but after a few commands she complied and was placed in the vehicle.

CP said that Officer 1 grabbed her and leaned her over the car and twisted and raised her arm high in the air behind her back in a rough manner. CP also said that Officer 1 placed her in the patrol car in a rough manner.

Officer statements concurred with Officer 1's statements. Independent witnesses statements described the scene similarly as the officers. Witnesses heard many commands made to the crowd to stay away and although they did not witness the arrest, they said that all of the officers acted professional and did not do anything inappropriate.

The OIR concluded that Officer 1 did not use unreasonable force and acted within Department policy and procedures.

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## OIR 1041

### Incident Summary

Officers responded to a disturbance involving CP who was honking her vehicle's horn, pounding on apartment doors with her cane, and screaming that she was having a brain hemorrhage. Officers arrived and found her lying on the ground. When officers contacted CP she was very agitated and verbally abusive towards officers.

Officer 1 spoke with CP and conducted a mental health evaluation and determined that she met the criteria for a psychiatric hold. Officer 1 called for an ambulance while two other officers waited. Once the ambulance arrived, EMS personnel assisted CP to her feet. At this point, CP attempted to strike Officer 1 with her cane and the cane was taken away from her. CP walked to the ambulance gurney but walked passed it into the street.

Officer 1 grabbed her by her arm and directed her back to the gurney. CP attempted to pull away and attempted to bite him, but he avoided the assault and continued to walk her to the gurney. CP sat in the gurney and was transported to the hospital.

The statements of the two other officers and two EMS personnel concurred with Officer 1.

The OIR concluded that Officer 1 did not use unreasonable force or act unprofessionally. Officer 1 acted within Department policy and procedures.

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## OIR 1042

### Incident Summary

Officer 1 observed a vehicle parked in a parking lot in the early morning hours. The area has recently had a high number of vehicle thefts and burglaries. Officer 1 saw CP in the driver's seat and a male passenger in vehicle. Officer 1 used his spotlight to illuminate the area and walked up to speak with CP. Officer 1 did not use any emergency lights or block the path of the vehicle. Officer 1 recognized the passenger as someone who previously used drugs. Officer 2 arrived at the scene.

A check of the male passenger revealed felony warrants for his arrest. The male passenger was asked out of the vehicle and was arrested. Officer 1 saw CP conceal a green bag near the center console. When asked CP denied concealing anything and gave Officer 1 permission to search the area.

Officer 1 recovered a bag containing illicit narcotics and paraphernalia from the console area. Officer 1 advised CP she was under arrest and Officer 1 was able to handcuff one of her hands. CP struggled, pulled away, and punched Officer 1 in the face. Officer 2 came over to assist. Officers took her to the ground and while still struggling with her; CP stabbed Officer 1 once with her keys, causing a puncture wound to his leg. While officers had CP on the ground, they were able to pull

her other arm behind her back and handcuff her. Officer 2's statements concurred with Officer 1's statements.

CP said although she was with the male passenger to use illegal narcotics, she did not give Officer 1 permission to search her vehicle. CP admitted that she did struggle to prevent the officers from handcuffing her. CP said she did not strike or stab the officer. CP said that when she realized her vehicle was being towed, she became upset. Officers then pulled her up from a seated position and at least six officers jumped her and that caused injuries to her. After the officers "beat" her, she was taken to the hospital.

There was no documentation indicating if the male passenger was contacted or what attempts were made to contact him. Additionally, there is no documentation to indicate when the case was assigned to an internal affairs supervisor and it took four months to complete this field internal affair investigation. Lastly, the dispositions reached were not fully supported by appropriate facts.

The OIR concluded that Officer 1 did not use unreasonable force or conduct an unlawful search. Officer 1 acted within Department policy and procedures.

- 1. It is recommended that the investigator assure that all potential witnesses are interviewed or if not contacted, document the reasons why a witness was not contacted.**
- 2. It is recommended that a canvas of the immediate area for potential witnesses or video cameras are routinely conducted and documented.**
- 3. It is recommended that a standard form or checklist be used to document standard information that should be required in each internal affair investigation. Examples of information that should be included are; date of assignment, investigative activity and dates, date of completion and submission.**
- 4. It is recommended that field supervisors be provided additional training on internal affairs investigations.**

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## OIR 1043

### Incident Summary

Officers went to the residence to arrest a subject listed on a felony warrant who lived at the location. Prior to arrival, Officer 1 checked determined that the warrant subject was on active probation. Upon arrival, CP opened the door and stood to the side of doorway, approximately 3-5 feet from the open door. Officers advised CP that they were there looking for the warrant subject.

CP said the subject was not there. Officers requested permission to enter the resident to see if the

subject was there. CP told them “No”. Officers advised her that because the subject in question was on active felony probation that they had a right to enter. CP told them she did not think it was right.

Officers stepped into the residence and CP stepped back from the door and walked over to the couch with Officer 1. CP was upset about the entry into her residence. Officer 2 searched for the warrant subject and he was not at the location.

CP said that the officers pushed the door open causing the door to strike her stomach. CP was 8 months pregnant at the time of this incident. Officers asked if CP wanted to speak with their supervisor or make a complaint and she did not respond.

Officers reported that they did not make any physical contact with CP or touch the door. CP later sought medical attention for pain to her stomach. It was later determined that the warrant subject was not on active probation.

Unreasonable Force: The OIR concluded by a preponderance of evidence that there was insufficient evidence to sustain the allegation of unreasonable force and that the officers acted within Department policy and procedures.

Unreasonable Search: The OIR concluded that officers did conduct an unlawful search and did not act within Department policy and procedures. This finding is dissimilar than the Department's finding.

Allegation Not Originally Alleged: The OIR concluded that the “Allegation not originally alleged” of “conscientiousness” did occur.

**1. It is recommended that investigators be provided training and/or refresher training, on a regular basis, concerning the analysis, classification and disposition of allegations.**

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## OIR 1044

### Incident Summary

Officer 1 saw CP drive a vehicle that committed a traffic violation. Officer 1 who was in uniform, working alone and operating a marked police vehicle stopped CP. Officer 1 stopped CP and Officer said that CP immediately exited his vehicle and quickly walked towards him. Officer 1 had just exited his vehicle and he ordered CP numerous times to get back into his vehicle. CP refused and used profane language to tell the officer he had no reason to stop him.

Officer 1 said, as CP got closer to him, he grabbed him by the arm, turned him around and handcuffed him. CP continued to use profane language towards the officer, protesting the officer's actions. Officer 1 conducted a pat down search of CP and did not find any identification. CP refused to identify himself. Officer 1 had CP sit on the curb while he searched the interior of his

vehicle for CP's identification.

As Officer 1 searched the vehicle, CP reached into his front pocket and retrieved a cellular phone to call someone. Officer 1 went over to obtain the cell phone and CP refused to release it. Officer 1 rolled CP over on the grass and removed the cell phone from his grasp. CP was struggling to move and officer 1 placed his knee on CP's back holding him down and asked for another officer to assist him. CP was later cited and released.

A supervisor responded to the scene and CP said he was not injured and he described the incident on the curb.

CP said that he got out of his vehicle and was standing next to his vehicle with his keys in his hands when Officer 1 ordered him to get back into the vehicle numerous times, but he did not. CP said that Officer 1 walked up to him and grabbed him by the arm, twisting his arm behind his back. CP attempted to pull away from Officer 1 but he was able to handcuff him. CP admits to using profane language to protest the stop and handcuffing.

CP said while he was sitting on the curb, his cell phone rang and he answered it. Officer 1 came over, grabbed him by his neck and rolled him face down on the ground. Officer 1 placed his knees on CP's neck and back and called for assistance.

After reviewing the digital recording of the interview, the investigators asked multiple questions in rapid fire succession, alternated asking questions between them both, incorrectly restating facts while asking leading questions, failed to clarify important allegations that CP made, asked multiple questions, did not allow CP to finish or completely answer questions or explanations. Additionally, investigators then asked questions concerning the admission of the crime CP was cited for.

The OIR concluded by a preponderance of evidence that there was insufficient evidence to sustain the allegation of unreasonable force and that the officer acted within Department policy and procedures. The OIR's finding differs from the conclusion of the Department.

- 1. It is recommended that additional training be provided to field supervisors to reinforce the proper protocols and procedures to properly complete an Internal Affairs investigation.**
- 2. It is recommended that investigators, officers, or staff personnel refrain from highlighting any section within the internal affairs files.**
- 3. It is recommended that investigators obtain additional training concerning appropriate interviewing techniques, specifically when interviewing Complainants about their complaints that do not stray into an interrogation or questions concerning the criminal investigation arising from the incident.**



**OIR 1045**

**Incident Summary**

**Incident 1:** Officers were dispatched to CP's residence to check the welfare of a female in the residence. CP had a history of substance abuse and there was a viable and dangerous "officer safety" issue presented by CP. Numerous officers arrived at the residence and neighbors provided additional information concerning the location. Officers used the public address system and after making numerous announcements and knocking on the door, CP exited the front door.

Based upon officer's investigation, an emergency protection order was issued against CP that ordered him to stay away from the residence and the female. A security officer at the location locked and secured the residence. CP was transported and booked at the jail. The supervisor at the scene was the internal affairs Sergeant who ultimately investigated this complaint. CP was later released from the jail and a few days later returned to the residence in violation of the protection order. CP claims that when he returned, the residence was not locked or secured.

**Incident 2:** A few days later from the above incident, Officers were dispatched to the same location because CP was in violation of the protection order. Officers 1 and 2 responded to the location along with a Sergeant, who was the same supervisor who ultimately investigated the first incident as well as this incident.

Offices arrived and found CP drinking beer at the front door and in violation of the protection order. Officers said that CP threw his beer down, clenched his fist and took a fighting stance. Officers grabbed him by the arms and took him into custody. CP was very intoxicated and unsteady on his feet. Two other officers arrived and placed CP in the back of Officer 1 & 2's patrol vehicle. Those two officers attempted to speak with CP, but CP yelled and screamed claiming police brutality.

While Officer's transported CP to the jail, CP began to strike his head against the cage of the patrol vehicle with such force that the car shook. CP continued yelling about false arrest, police brutality and that the devil was going to kill them. One block away from the jail, Officer 1 pulled over to the curb, removed CP from the backseat, holding him down on the ground. CP kept banging his head on the pavement and Officer 1 attempted to prevent him from injuring himself. Officer 1 placed his knee on CP's shoulders and used both hands on the back of CP's neck to hold his head still. CP continued to grind his face into the pavement. Officer 2 stood by to make sure CP did not get into the street. The Sergeant who was at the initial scene arrived at their location and observed CP on the ground, yelling about the devil and that everyone was going to die. Eventually CP calmed down and they placed him back into the vehicle and transported him to the jail.

While at the jail, jail personnel refused to book him because he said that he was the devil and wanted to kill himself. A mental health hold was placed on CP.

Management staff assigned this case to an investigator that was the supervisor on the scene of both alleged incidents and used his own observations to determine the outcome of an allegation. The conclusions by the investigator were not supported by independent facts, salient questions were not asked, and interviews were not completed or addressed of all witnesses. Internal Affairs

Bureau assigned this investigation to the Sergeant 2 days before he went on a 3-week leave and after he returned, all total, it took 6 months to complete the investigation.

The OIR was unable to make any conclusion as to any allegations made by CP due to the inadequate and compromised investigation.

- 1. It is recommended that at the point of assignment, staff management determines and identifies any potential conflict of interest concerns with the supervisor assigned to investigate the complaint and take appropriate action to prevent it.**
- 2. It is recommended that management staff (Lieutenants and above) attend the 8-hour training course provided by Internal Affairs Bureau that the Sergeants are now required to attend.**
- 3. It is recommended that all witnesses are identified and interviewed. If witnesses are not interviewed the reasons should be documented.**
- 4. It is recommended that internal affairs maintain a more rigorous and efficient method of tracking and accountability of internal investigations to assure that they are completed timely and that witnesses or evidence are not lost due to a delay in the investigation.**
- 5. It is recommended that major cases of alleged misconduct be handled by Internal Affairs Bureau and not assigned to field Sergeants to investigate.**

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## OIR 1046

### Incident Summary

Officers had executed a search warrant for a residence that included a search of a vehicle at the location. CP arrived at the location when an officer was searching the vehicle in question, which she claimed was hers. An officer explained their legal authority to search pursuant to a search warrant. CP told the officers not to search her vehicle. CP demanded to see the search warrant and officers advised her that the resident would receive a copy of the warrant. CP was yelling and animated which attracted a crowd. Officers requested additional officers to assist.

Officers advised her she would need to move away from the car. She refused and said she was not going to move. Officers advised her two more times and she refused. Detectives came from inside the residence to the officer and the officer told her to move to the sidewalk or she would be arrested to which CP replied, "Try and arrest me."

Officer 1 placed his hand on her arm and attempted to escort her out of the search warrant location. CP began yelling, screaming, and flailing her arms wildly. Another officer observed this and came over and grabbed her other arm. CP began kicking at the officer and the other officer told Officer 1 to take her to the ground to get control and avoid injury. They brought her down to the

grass and handcuffed her.

CP admitted that she refused to leave the area because the officers would not answer her questions. CP agreed that when they told her to leave again, she refused and they grabbed her by her arms. CP said it was unnecessary to "slam" her on the ground and handcuff her.

Audio recordings of the officer interviews were not in the Internal Affairs file.

The OIR concluded that Officer 1 did not use excessive force and acted with Department policies and procedures.

- 1. It is recommended that investigators assure that all digital recordings are included as part of the investigatory file.**
- 2. It is recommended that other witnesses who were at the incident be identified and interviewed. If they are not interviewed, references should be made indicating why they were not interviewed.**