

**ACLU OF WASHINGTON
RECOMMENDATIONS REGARDING
THE CONSENT DECREE
BETWEEN DOJ AND THE CITY OF SEATTLE**

I. USE OF FORCE POLICIES, TRAINING AND ACCOUNTABILITY PROCESSES

- A. Problem: Inadequate and Inconsistent Reporting the Use of Force.** SPD has a history of engaging in unnecessary and excessive force, due in part to deficient policies and oversight with regards to reporting uses of force.

Solution: Develop and implement a use of force policy that includes a specific policy for each weapon available to SPD officers. Policies must clearly define and describe when, how, and how much force is appropriate, and when such force will be considered deadly force. Policies must also require immediate reporting of all uses of force above un-resisted handcuffing. Suspects shall be provided an opportunity to submit to arrest before force is used unless this causes unnecessary danger to the officer or others. Officers should attempt to achieve control through advice, warnings and persuasion. Officers must be prepared to respond appropriately to rising levels of resistance, but also be prepared to immediately de-escalate the use of force, as the subject de-escalates, or comes under the officer's control. Police should encourage de-escalation, disengagement, area containment and/or surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units. Following any use of force resulting in an injury, officers shall ensure that appropriate medical aid and/or emergency medical service is rendered as soon as possible.

Policies should also address the following concerns:

1. OC/chemical spray (pepper spray)
 - a. Providing an opportunity to allow subjects to comply with a verbal warning prior to the use of chemical spray, unless such warnings would present a danger to the officer or others;
 - b. Prohibiting the use of chemical spray on a handcuffed individual in a police vehicle.
 - c. Prohibiting officers from keeping any sprayed subject in face down position, in order to avoid positional asphyxia;
 - d. Requiring officers to aim chemical spray only at a person's face and upper torso;
 - e. Regulating the number and length of bursts, as well as the distance from which they may be issued;
 - f. Obtaining the approval of a supervisor any time chemical spray is used against a crowd; and

- g. Providing an opportunity for decontamination within a reasonable period of time and appropriate medical assistance if a sprayed subject complains of continued effects following decontamination or has pre-existing medical condition that may be aggravated by chemical spray.

2. ECWs (Electronic Control Weapons – aka Tasers)

a. Deployment of ECW against Fleeing Subjects:

- i. Prohibiting a subject's flight as the sole justification for deploying ECW.
- ii. Requiring officers to consider such factors as the severity of the offense, whether the subject poses any immediate threat to the safety of the officer or others, and the ability of the officer to safely effectuate the arrest without ECW deployment.

b. Deployment of ECW against Passive or Restrained Subjects:

- i. Prohibiting ECW deployment against passive subjects.
- ii. Prohibiting ECW deployment against handcuffed or otherwise restrained subjects, unless the restrained subject is endangering the safety of the officer or others by effectively attempting to employ physical force against the officer or others;

c. Prohibiting the Deployment of ECW Against the Following Vulnerable Subjects or Under the Following Circumstances:

- i. In an environment where the subject's fall may cause substantial injury or death (e.g., an elevated location such as rooftop or building ledge; standing in or near water or other drowning hazards; or climbing a fence or wall);
- ii. Against a subject in physical control of a vehicle in motion, including a bicycle;
- iii. Against an apparently helpless person or an individual with an apparent severe disability;
- iv. Against a reasonably apparent young child or elderly person;
- v. Against a female person reasonably believed to be pregnant;

3. Batons and Flashlights

- a. Adopt a policy that states strikes to the head are a use of deadly force.
- b. Adopt a policy that a person shall be struck with a baton only when the subject exhibits active aggression and such action is absolutely necessary for the officer's safety or the safety of another person.

B. Problem: Inadequate Training on the Use of Force. SPD has a history of engaging in unnecessary and excessive force, due in part to deficient training regarding the use of force.

Solutions:

1. Adopt a use of force continuum that identifies when and in what manner the use of lethal and less than lethal force are permitted; relates the force options available to officers to the types of conduct by individuals that would justify the use of such force; and states that de-escalation, disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements or calling in specialized units are often the appropriate response to a situation even if use of force is legally justified.
2. Require annual training on the use of force which includes and addresses the issues in (1) above.
3. Require all officers to be trained on interactions with individuals with mental health issues and individuals who appear to be under the influence of drugs and/or alcohol. Training should include instruction by mental health practitioners and address when CIT should be consulted, and how situations involving impaired subjects should be addressed when CIT cannot respond.

- C. Problem: Inadequate Investigation of Use of Force Incidents and Lack of Effective Deterrence for Unnecessary and Excessive Force.** OPA reports have noted, and DOJ confirmed, SPD has a history of engaging in unnecessary and excessive force, and when these incidents occur supervisors fail to ask for review and failed to take corrective action.

Solutions:

1. Investigate every use of force above un-resisted handcuffing and if a supervisor cannot resolve any factual discrepancies, determine the source of any injury, or determine the lawfulness of a use of force, the supervisor must refer the matter immediately and directly to his/her supervisor and to OPA. Every level of supervision thereafter should be held accountable for the quality of the first-line supervisor's force investigation.
2. Take appropriate disciplinary or non-disciplinary corrective action if supervisors become aware of potential misconduct or criminal behavior by an officer.
3. Conduct focused reviews of any officers involved in a disproportionately high number of use of force incidents to determine whether the officer needs additional training or refer the matter for a disciplinary investigation.
4. Track the prosecutorial disposition of all arrests as one tool to identify possible trends in abuse of law enforcement discretion. Expand EIS to track supervisor and precinct activity and mandate participation.

5. Adjust EIS thresholds to identify at least 3-5% of the line officer population and revise the aggregate indicator to include uses of force.

II. BIASED POLICING AND DATA COLLECTION

A. Problem: SPD Policies do not Clearly Define Biased Policing and are Inadequate to Ensure that it is not Occurring.

Policy revisions are needed to prevent biased policing and restore the trust of communities of color. Action is needed to prevent biased policing moving forward rather than debating whether it has or hasn't been present in the past. Particular attention should be given to SPD's contacts with people of color based on suspicion of minor infractions or misdemeanors (traffic stops and pedestrian encounters) and those contacts escalating to uses of force.

Solution: SPD should adopt a form of the DOJ model policy on Biased Policing, with provisions similar to those listed below:

1. Law enforcement officers should not rely on generalized stereotypes, attitudes or beliefs about the propensity of any racial, ethnic, religious, sexual orientation or national origin group to engage in unlawful activity.
2. Law enforcement officers should not consider a person's race, ethnicity, national origin, religion, gender, disability or sexual orientation in deciding which vehicles to subject to a traffic stop, pedestrian contact (defined below), search, or other post-stop action, except where officers are on the lookout for one or more specific persons who are identified or described in part by these characteristics.
3. Officers must report the following data on each traffic stop and pedestrian contact, regardless of the outcome of the contact. "Pedestrian contact" is defined as an officer-initiated stop based on suspicion of any law violation. It does not include responding to calls for assistance or social contacts in conjunction with community policing. Data that must be reported: the *officer's perception* of the race of the person stopped, reason for the stop, location, date, time and duration of the stop, name of officers involved, and disposition of the stop (action taken by officer, if any, including whether a search was conducted, whether or not the search was consensual, whether any contraband was found). [SPD can build on existing Street Check database to accomplish the data collection (DOJ Report p. 31).]
4. Compliance with the data collection system will be audited monthly by the Auditor with officers subject to negative marks on performance reviews if they fail to comply with the data collection system.
5. Supervisors and the Auditor should periodically review a sampling of in-car video tapes of stops and should take appropriate action whenever it appears that the biased

policing policy is being violated. In-car video tapes shall be used in conducting investigations of officer misconduct.

B. Problem: SPD is Perceived to Engage in Contacts with People of Color on Suspicion of Minor Infractions or Misdemeanors (traffic stops and pedestrian encounters).

Solution: Expand the List of “Lowest Law Enforcement Priority” Offenses. Seattle already has experience making marijuana possession a lowest law enforcement priority, and was able to measure that the policy was being carried out. Add offenses like DWLS, equipment violations, jaywalking and other pedestrian infractions, obstruction, disorderly, littering, and pedestrian interference to the “lowest priority” list. Monitor compliance the same way the marijuana lowest priority program was measured.

C. Problem: Biased Policing is not Properly Defined and is Inadequate to Stop Bias Policing. Recent recorded incidents seriously undermine community trust when officers are seen using racial slurs and other insults or profanity, because they make it appear that a biased attitude is acceptable by SPD.

Solutions: Revise policies and training requirements

1. Adopt policy of “zero tolerance” for abusive language (including racial slurs, insults, taunts and use of profanity) used by officers against civilians at any time the officer is on duty or in uniform, and failure to report same. Officers should expect to have to explain this and risk serious sanctions for it. (DOJ Report p. 27-28). SPD needs top-down reinforcement of the principle that the civilians are their ultimate boss and must be treated with respect at all times, even when they are not acting respectfully - effective law enforcement methods do not include verbal abuse. Audit complaints and dash cam videos to monitor this.
2. Make clear in Department policy that comments to the media regarding officer involved or other high profile incidents will not include comments on negative characteristics of civilians (e.g., “chronic inebriate,” “suspected gang-related,” etc.)
3. Increase training on implicit bias with programs that are shown by evidence to be effective.
4. Increase training on cultural competency and the history of police abuses against persons of color; involve community groups like MEDC in reviewing such training.

D. Problem: Policies Regarding “Social Contacts” do not Explain that these Must be Voluntary. (DOJ Report p. 29)

Solution: Revise Policies and Training

1. Clearly define the difference between a “social contact” and a “Terry Stop”.

2. Require that social contacts begin with asking the civilian if they want to answer questions, so they have an opportunity to refuse and don't feel "tricked" into answering.
3. Audit "social contacts" paying particular attention to certain individuals who are repeatedly questioned by police.
4. Ban questioning merely on the basis that the person is known to have a criminal history or associates with people who have a criminal history.
5. Issue directive making clear that remaining silent, refusing to answer questions, walking away (in "social contacts") are not grounds for suspicion.

E. Problem: Officers have few Incentives or Deterrents to Change Behavior and Prevent Biased Policing.

Solution: Provide incentives to compliance and clear deterrents to engaging in biased policing practices

1. Employment incentives (raises, promotion) will be linked to compliance with the expanded lowest priority program and with de-escalation. For incentives consider financial rewards, promotion points, etc.
2. Allow officers to earn incentives when they de-escalate a situation and prevent use of force, or when they exercise discretion to avoid an unnecessary contact, or report others' misconduct, or facilitate a civilian complaint, or they offer help/safety to vulnerable populations not just criminal sanctions.
3. Provide incentives for actions that show working to reduce perception of bias or special effort to protect safety of vulnerable populations (e.g. helping homeless people, or helping make the drug diversion program LEAD succeed).
4. Institute fines and bans on overtime and outside work as possible deterrents to be imposed in response to biased policing practices.
5. Adopt strong sanctions for failing to file use of force statement or failing to turn on dash cam or Taser data recording device.
6. Deter "contempt of cop" cases (police conduct driven by retaliation in response to civilian's attitude.)
7. Discipline officers and supervisors for failure to complete or completion of inadequate use of force statements, or failure to file or review them.

III. CIVILIAN OVERSIGHT

A. Problem: Seattle’s Civilian Oversight System is Confusing, Delayed and Diffused, Undermining its Effectiveness. Seattle’s civilian oversight system has failed to effectively prevent or deter police misconduct. Seattle has too many layers of process and confusion at each layer. Serious misconduct appears to escape sanction. Civilian complainants are left feeling abused by the complaint process.

Solutions:

1. Strengthen role of Auditor – increase duties of the office to include review of all major complaint categories (including prompt audit of all classifications and dispositions), review of all use of force statements and all shootings, review of data collection system described in II above, periodic review and analysis of EIS data, and audit compliance with dash cam rules and investigate failures to comply. Add staff including policy analyst, investigator(s) and support staff. Provide more frequent and more detailed public reports.
2. Auditor should keep a running record of all recommendations that have been made for improved SPD practices (from any source), and include this record in public reports. SPD should be required to respond to each recommendation of the OPA Director or OPA Auditor within 60 days, and Auditor should track whether SPD actual implements recommendations and amount of time it took to implement.
3. Make OPARB an advisory body to the Auditor.
4. Reduce number of OPA dispositions to sustained or not sustained (DOJ Report p. 39; also PARP recommended this). Delete unfounded and other disposition labels. End use of supervisory intervention as a finding that substitutes for sustained; after sustained finding made, the sanction can still include handling by chain of command or additional training but not for major violations including use of force, biased policing and honesty.
5. Adopt a discipline grid specifying which violations are the most serious and what discipline should be expected for them.
6. Improve communication with complainants and allow organizations such as the Seattle Office for Civil Rights and the Minority Executive Directors Council to assist complainants.
7. Bar OPA and IIS from commenting on validity of complaint to complainant; complainant should be treated like crime victims in criminal investigations.
8. Require OPA to update complainant every 30 days. Require OPA to use communication method of complainant’s choice (email, regular mail, phone call).

9. Adopt clear policy that officer witnesses will not be given extra weight and will not be presumed credible.
10. Implement DOJ recommendations re improvements in civilian oversight process in Appendix D of report (e.g., OPA must keep track of all complaints, supervisors must make complaint to OPA about supervisee conduct; bar no leading questions that favor the accused officer and end labor rep coaching the officer during OPA interviews).
11. Auditor should track and regularly review the outcome of all arrests paying particular attention to arrests where prosecutor failed to charge, or arrests that led to acquittals or dismissals of charges. Rate of these dispositions per officer should be measured and unusually high rate of arrests not leading to conviction should be investigated.
12. Require timely transmission of civilian complaints to OPA and speed up time it takes to do an investigation (should be max 90 days). Speed up discipline process after sustained finding by eliminating Deputy Chief's meeting with OPA.
13. Change 180-day rule which bars discipline if investigation not done w/in 180 days.
14. Conduct anonymous integrity checks with dummy complaints submitted to OPA (DOJ Report p. 39).

B. Problem: Under-classification of Serious Misconduct. DOJ Report documented this and ACLU has been concerned about it a long time, based on review of OPA monthly reports. When complaints are not labeled as serious, they may not receive the highest level of investigation and the disposition fails to deter/prevent misconduct in the future. Too often, somewhere along the chain of command, and OPA consultation with the chain of command, findings of misconduct are watered down. These practices have the effect of perpetuating a “culture of impunity” at SPD.

Solutions:

1. All use of force and biased policing and honesty complaints must be investigated by OPA, not classified as precinct-level investigation only.
2. Bar classification of biased policing complaints as “rudeness;” instead they must be classified as the more serious biased policing complaint. All witnesses must be interviewed re a biased policing complaint, and police witnesses will not be presumed more credible (DOJ Report p. 34).
3. Rule on honesty must make clear that officers who lie in police reports, warrant applications or court testimony, or who contribute to withholding evidence such as by claiming tape does not exist when it is later found, or imposing special conditions on being interviewed, have committed serious misconduct. Use of force statements and incidents should be especially closely reviewed and if officer misstated reason for use of force or disguised use of force by language in report (e.g., claiming was a struggle

when video shows it wasn't), that violates honesty rule. Repeat violations will be cause for termination. (PARP recommended most of this, and see DOJ Report p. 15.)

4. End OPA Director's practice of consulting with accused officer's supervisors before making findings (DOJ Report Appendix D). Ban OPA Director from communicating with commander and command staff prior to certifying an OPA investigation as complete, to avoid appearance of influence.
5. Limit or end situations where investigation done at precinct level.
6. Simplify system for non-OPA investigations of complaints. There should be only two categories (OPA investigations and non-OPA investigations), and there need to be clear guidelines for conducting thorough non-OPA investigations, with Auditor and Monitor strict and frequent review of these.

C. Problem: Early Intervention System Has Been Ineffective.

Solution: (See DOJ Report p. 22-23 and 38.)

1. Include in EIS information on shootings, all other uses of force, searches and seizures, internal and civilian complaints (with particular attention to complaints re use of force, biased policing, and honesty), criminal charges against officers, civil suits alleging officer misconduct, other misconduct allegations, disciplinary actions, non-disciplinary remedial actions, training history, and number of arrests, pedestrian contacts (defined above) and traffic stops of persons of color.
2. The EIS must identify "warning flags" that trigger a supervisor being required to review the performance of a particular officer (e.g., where the officer has a specified number of misconduct investigations or a specified number of uses of force in a designated time period).
3. EIS must be reviewed by supervisor every 2 months and response by supervisor is required within 1 month of detecting red flag. Whenever there is a red flag, supervisor must check EIS on that officer every month after action taken, for 12 months, to determine if action has resolved the issue that led to the red flag. In each situation of a red flag, supervisor must document what action was taken and this should be audited.
4. Auditor needs to regularly check that the EIS is being used by supervisors to identify officers with red flags.
5. Performance reviews and promotion recommendations must include EIS data.
6. EIS participation by all sworn personnel must be mandatory.

IV. MONITORING, REPORTING, AND IMPLEMENTATION

A. Selection of a Monitor

1. The DOJ and the City shall jointly select a Monitor with police accountability expertise, who shall review and report on the City and the SPD's implementation of the Consent Decree.
2. In the interest of expediting the selection and contracting process for the Monitor, the City and the DOJ shall be exempt from local contracting procurement regulation and all such regulations shall be considered waived for this purpose.
3. The Monitor may request to be allowed to hire or employ such additional persons or entities as are reasonably necessary to perform the tasks assigned to him or her by the Consent Decree. The monitor must submit a notification to the City and the DOJ, stating the reasonable necessity for the employment and a proposal for their use. If the City and the DOJ agree to the Monitor's proposal, the Monitor is authorized to hire.

B. Duties of Monitor:

1. The Monitor shall be an agent of the Court and subject to the supervision and orders of the Court. The Monitor shall not, and is not intended to, replace or take over the role and duties of any City or SPD employee. The Monitor may not modify, amend, diminish or expand his or her duties under the Consent Decree.
2. The Monitor shall track the substantial compliance of the City and the SPD in implementing the Consent Decree. The Monitor shall provide the parties technical assistance regarding compliance with the Consent Decree and may recommend policy changes directed toward compliance. In monitoring the implementation of the Consent Decree, the Monitor shall maintain regular contact with the parties. The Monitor shall have the authority to identify issues of concern and alert DOJ to them. The Monitor shall periodically review the Auditor's work to ensure that it promotes compliance with the Decree.
3. The Monitor shall have full access to all documents reasonably necessary to conduct compliance reviews. The Monitor may make recommendations to the parties regarding measures necessary to ensure full and timely implementation of the Consent Decree.

C. Reporting by Monitor:

1. The Monitor, within 120 days of selection, shall file a public report detailing the City's compliance with and implementation of the Consent Decree. The Monitor shall continue to file quarterly public reports until the City and SPD have been in substantial compliance with the Consent Decree for two years.

2. DOJ and the City shall have an opportunity to identify and correct factual errors in Monitor reports.
3. The City and the SPD shall provide the Monitor and the DOJ with full and unrestricted access to all SPD and City staff, facilities, and documents (including databases) that are relevant to evaluate compliance with the Consent Decree, except any documents protected by the attorney-client privilege and/or work product doctrine.
4. Should the City decline to provide the Monitor or the DOJ with access to a document based upon on attorney-client privilege and/or the work product doctrine, the City shall provide the Monitor and the DOJ with a log describing the document.

D. Length of Monitoring Period.

The Monitoring Period shall be a minimum of 3 years. The decree should ensure that there are at least 2 years of Monitoring after substantial compliance has been found.

E. Community Involvement:

1. The Monitor must periodically meet with the MEDC Taskforce and other interested stakeholders. The MEDC Taskforce shall also have an opportunity to review training modules prior to their adoption.
2. Publication of the Monitor's compliance reports must include posting on the City's public website and include a mechanism to receive public feedback on line.
3. The Monitor must annually present his findings concerning compliance with the consent decree to the SPD and the community in settings which allow officers and the community to ask questions and comment on the findings.

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