



# DPA

San Francisco Department of Police Accountability

**Paul David Henderson**  
Executive Director

July 13, 2018

Hon. Thomas Mazucco, President  
Members, San Francisco Police Commission

Re: Department of Police Accountability 1st and 2<sup>nd</sup> Quarter 2018 Policy Work

Dear President Mazucco and Commissioners:

This letter discusses DPA's top four policy projects. It also provides a brief overview of DPA's 1<sup>st</sup> and 2<sup>nd</sup> Quarter 2018 policy work.

Implementing a robust review process for use of force incidents is one of the DPA's top policy priorities. In 2012, after concluding its investigation into two officer-involved shootings involving individuals in mental health crisis, the DPA recommended that similar to other law enforcement agencies, SFPD's Training Division actively participate in the review of officer-involved shooting by providing a written analysis from the time of dispatch to the conclusion of the incident that discussed the officers' training with respect to the tactical issues presented in the incident, evaluated whether the officers performed consistent with training, and made recommendations concerning training, policy and weapon related issues.

In 2015, the DPA recommended that based on best practices, SFPD's "final frame analysis" of shooting incidents be expanded to include officer tactics and decision-making that preceded the use of force. In October 2016, the Department of Justice's Collaborative Reform Initiative Assessment team found that SFPD's Firearm Discharge Review Board was limited in scope and failed to identify policy, training or other tactical considerations. The DOJ recommended that SFPD update the Firearm Discharge Review Board procedures to require "a written evaluation of policy, training, and tactical considerations of discharge incidents, specifically identifying whether the incident was influenced by a failure of policy, training, or tactics and should include recommendations for addressing any issues identified."

Consistent with best practice and DOJ's recommendations, the DPA's use of force project involves four recommendations:

1. Establish a Serious Incident Review Board to replace the current Firearm Discharge Review Board so that a broader array of force incidents is reviewed;

2. Expand the review of officer-involved shootings, in custody deaths, and other force incidents to include analysis of the policy, training and tactics that may have contributed to the incident;
3. Provide the Police Commission and the public more information about Use of Force incidents, the investigations and recommendations that result from the Review Board's consideration;
4. Create a serious incident review board working group with representatives from the Police Commission, SFPD, the DPA and community stakeholders that includes site visits to the Seattle Police Department and Los Angeles Police Department.

Enhancing services, police protocols and training for Deaf and Hard of Hearing individuals in another significant DPA policy priority. In November 2017, the DPA brought together a group of community stakeholders including deaf individuals to draft a Department General Order (DGO) on police protocols for interacting with Deaf and Hard of Hearing individuals. Meeting monthly, the working group has drafted a proposed DGO, created an officer reference guide to use during traffic stops, and identified different technologies to assist SFPD officers at the station and in the field to communicate with deaf and hard of hearing individuals. Representatives from SFPD have attended the working group and contributed to the proposed DGO and officer reference guide. To correspond with National Deaf Awareness Month in September, the DPA recommends:

1. Calendar the Proposed Deaf and Hard of Hearing DGO for Police Commission review and action in September preceded by the completion of SFPD's concurrence by the end of July.
2. Similar to the DGO 5.20 officer training video that the DPA and Language Access Working Group produced with SFPD that used paid actors and scenarios written by the Working Group, SFPD work with the Deaf and Hard of Hearing working group to produce a similar officer training video.
3. That SFPD immediately provide the Language Line application on all officers' department issued cell phones to provide American Sign Language videoconferencing and spoken interpreters, including a schedule and any training for uploading the apps to all phones, and a Department Bulletin announcing Language Line ASL and spoken language service on officers' phones.

Enhancing language access services is third policy priority of the DPA. Since 2012, the DPA has met monthly with domestic violence, sexual assault, and child advocacy service providers, language access advocates, city agencies, a Police Commissioner and the Police Department to enhance SFPD's language access services. The DPA has made recommendations to enhance patrol response to LEP & Deaf and Hard of Hearing Calls, to elevate the role and responsibilities of the Language Access Liaison Officer, to improve services at the stations, to provide bilingual officers more training, visibility and opportunities to be subject matter experts, to provide more consistency and responsiveness by the Special Victims' Unite and to enhance

the department's response to LEP complaints, law suits, and suggestions. These recommendations are detailed in the following pages.

A fourth policy project concerns ensuring that victims of domestic violence, sexual assault, human trafficking, stalking and elder abuse obtain their incident report within five days of their request as mandated by Family Code §6228. In response to a DPA complaint in addition to numerous other reported incidents where domestic violence survivors were not able to obtain their incident reports within the mandated deadline, the DPA recommends that the Police Department:

1. Implement immediately a system that provides the enumerated victims their incident report within the statutory deadline;
2. Provide information on SFPD's website about how victims of domestic violence, sexual assault, stalking, human trafficking, elder/dependent adult abuse can obtain their incident report pursuant to Family Code § 6228;
3. Monitor compliance with the statutory deadline and report to the Police Commission its compliance with the Family Code §6228 on a quarterly basis.

Concerning other DPA policy work, throughout the 1<sup>st</sup> and 2<sup>nd</sup> quarter 2018, the DPA participated in SFPD's Executive Sponsor Working Groups that addressed DOJ's Collaborative Reform recommendations concerning use of force, accountability and community policing. Concerning SFPD's Body Camera Department General Order, the DPA recommended that both the subject officer and witness officer be prevented from viewing any recordings in officer-involved shootings, in-custody deaths and criminal matters until they provide an initial statement, that criminal investigations not be deleted from this prohibition, and that DGO 10.11 explicitly prohibit officers from taking actions that interfere with proper audio and video recording such as reducing the audio function, turning off the lights/LEDs display on the BWC, or blocking the camera's view. The DPA made numerous recommendations concerning the use of electronic controlled weapons (ECW) and the process for reviewing ECW incidents which were adopted by the Police Commission on March 24, 2018.

During the 2<sup>nd</sup> quarter, the DPA in partnership with the Police Department presented its revisions to Department General Order 2.04 (Misconduct Complaints) which the Police Commission adopted on April 11, 2018. The DPA initiated DGO 2.04 revisions because the DGO had not been updated since 1994, did not accurately reflect DPA's charter mandated investigative authority, and was silent about DPA procedures for referring complaints involving criminal allegations. Key revisions to DGO 2.04 include:

- **DPA Investigative Duties:** Incorporated DPA's charter mandated duties to "investigate SFPD shootings resulting in a physical injury or death and all complaints of use of force, misconduct or failure to perform a duty except complaints proper on their face or lodged by a SFPD officer." (See DGO 2.04 (III)(A)).

- **DPA Investigative Authority Includes Off-Duty Officers Placing Themselves On Duty:** Explicitly states that DPA has investigative authority concerning complaints where officers place themselves on duty by “verbally identify themselves, displaying a department issued star or ...ID card or taking enforcement action.” (DGO 2.04 was previously silent on this topic.) See DGO 2.04 (II)(A)(8).
- **DPA Investigative Authority Includes Government Agency Complaints:** Explicitly states that DPA has authority to investigate all government agency complaints except for those lodged by law enforcement agencies. (DGO 2.04 previously stated that complaints from government and law enforcement agencies were investigated exclusively by SFPD). See DGO 2.04 (II)(A)(6).
- **DPA To Refer Criminal Allegations To SFPD And DA:** Unlike the previous 2.04 which was silent about criminal allegations, revised 2.04 includes a procedure for notifying the DA and SFPD when DPA receives a complaint that includes allegations of criminal conduct. See DGO 2.04 (III)(B).
- **Quarterly Disciplinary Board:** Each quarter DPA and SFPD will review the previous quarter’s sustained, training & policy failure cases & disciplinary trends to recommend any changes to procedures, policy & training. See DGO 2.04 (VIII).

The DPA also worked with SFPD to revise Department General Order 3.01 (Written Communications System) in response to DOJ’s recommendations to improve the timeliness of Department General Order revisions and to discontinue SFPD’s use of Department Bulletins as a workaround for the Department General Order approval process.

During the 1<sup>st</sup> and 2<sup>nd</sup> Quarters 2018, the DPA continued its language access and mental health projects through its participation in the Language Access Working Group and Crisis Intervention Team Work Group. The DPA also continued meeting monthly with a Deaf and Hard of Hearing working group that the DPA brought together in November 2017 to draft a proposed deaf and hard of hearing Department General Order.

Thank you for your continued support in advancing the policy work of the Department of Police Accountability.

Sincerely,



Paul Henderson  
Executive Director



## The Department of Police Accountability's 1<sup>st</sup> Quarter 2018 Recommendations to Implement A Serious Incident Review Board

### A. Introduction

Implementing a robust review procedure for use of force incidents is one of DPA's top policy priorities. Consistent with best practices and DOJ's recommendation concerning an expanded review of officer-involved shootings, this DPA project involves four components:

1. Establish a Serious Incident Review Board to replace the current Firearm Discharge Review Board so that a broader array of force incidents is reviewed;
2. Expand the review of officer-involved shootings, in custody deaths, and other force incidents to include analysis of the policy, training and tactics that may have contributed to the incident;
3. Provide the Police Commission and the public more information about Use of Force incidents, the investigations and recommendations that result from the Review Board's consideration;
4. Create a serious incident review board working group with representatives from the Police Commission, SFPD, the DPA and community stakeholders that includes site visits to the Seattle Police Department and Los Angeles Police Department.

### B. Background

Currently, the Firearm Discharge Review Board (FDRB) meets quarterly and is composed of SFPD personnel (Deputy Chiefs of Administrative, Field Operations, Airport and Investigations Bureau, Range master, and Risk Management Commanding officer), DPA's Executive Director and a Police Commissioner. The last four members are advisory only.<sup>1</sup> Historically, the FDRB has focused on whether the use of force was in policy.<sup>2</sup>

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<sup>1</sup>The composition, responsibilities and purview of the Firearm Discharge Review Board are established through San Francisco Police Department General Order 3.10.

<https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14802-DGO3.10.pdf>

<sup>2</sup>After observing the FDRB's discussion of an officer-involved shooting that raised communication issues between dispatch and the shooting officer, DOJ's assessment team commented that "the FDRB singularly focused on whether the shooting incident was within SFPD policy. Considering the current emphasis on de-escalation and other alternatives to the use

After reviewing several SFPD officer-involved shooting investigative files and attending a FDRB meeting, the Department of Justice's Collaborative Reform Initiative Assessment team found that the FDRB was limited in scope and failed to identify policy, training or other tactical considerations.<sup>3</sup> DOJ recommended that SFPD update the Firearm Discharge Review Board procedures to require "a written evaluation of policy, training, and tactical considerations of discharge incidents, specifically identifying whether the incident was influenced by a failure of policy, training, or tactics and should include recommendations for addressing any issues identified."<sup>4</sup>

DPA has long advocated for a more robust FDRB review process. In 2012, after concluding its investigation into two officer-involved shootings involving individuals in mental health crisis, DPA recommended that similar to other law enforcement agencies, SFPD's Training Division actively participate in the FDRB by providing a written analysis from the time of dispatch to the conclusion of the incident that discussed the officers' training with respect to the tactical issues presented in the incident, evaluated whether the officers performed consistent with training, and made recommendations concerning training, policy and weapon related issues.<sup>5</sup> Although SFPD subsequently included a representative from the Police Academy on the FDRB, DPA's recommendation that the Training Division provide a written analysis was never adopted.

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of deadly force, this narrow focus is inappropriate. The FDRB should determine what policy, training, communication, and tactics contributed to the use of force incident. Rather than reiterate a finding of within policy, the FDRB has the opportunity to determine if alternative options would have resulted in de-escalating or resolving the incident without harm or injury to the officer or individual. A good review process is one in which police departments pay attention to the officers' and involved persons' behaviors immediately before the firearm discharge. The FDRB did not give adequate consideration to these factors." See COPS Office. 2016. *An Assessment of the San Francisco Police Department*. Collaborative Reform Initiative. Washington, DC: Office of Community Oriented Policing Services, pages 21-22, hereinafter (DOJ's Assessment of SFPD).  
<https://ric-zai-inc.com/Publications/cops-w0817-pub.pdf>

<sup>3</sup>**DOJ Finding 11 The Firearm Discharge Review Board Is Limited In Scope And Fails To Identify Policy, Training, Or Other Tactical Considerations.** The FDRB is a good practice but has devolved to essentially determining whether the shooting officer's actions were consistent with policy. However, several other layers of authority also conduct this determination. The FDRB is better served following its policy mandate to ensure that the department is continually reviewing its training, policy, and procedures as they relate to officer-involved shooting incidents. See DOJ's Assessment of SFPD, page 43.

<sup>4</sup>DOJ's Assessment of SFPD, page 43.

<sup>5</sup>[http://sfgov.org/dpa/sites/default/files/Documents/Office\\_of\\_Citizen\\_Complaints/OCC\\_2012.pdf](http://sfgov.org/dpa/sites/default/files/Documents/Office_of_Citizen_Complaints/OCC_2012.pdf).

In 2015, DPA recommended that based on best practices, SFPD's "final frame analysis" of shooting incidents be expanded to include officer tactics and decision-making that preceded the use of force. DPA recommended this change in light of the California Supreme Court's decision in *Hayes v. San Diego* (2013) 57 Cal.4<sup>th</sup> 622 which ruled that tactical conduct and decisions preceding an officer's use of deadly force are relevant considerations in determining whether the use of deadly force is reasonable.<sup>6</sup> Although SFPD never responded to the DPA's 2015 recommendations, the DPA incorporated, and the Commission adopted, the *Hayes* standard in SFPD's 2016 revised Use of Force policy. Nonetheless, FDRB's procedures have yet to be amended to consider the tactical conduct and decisions preceding an officer's use of force.

As a member of the Police Commission's Electronic Control Weapon (ECW) working group, the DPA spearheaded the effort to create an ECW review board policy that incorporated best practices and addressed DOJ's criticisms of the Firearm Discharge Review Board. The DPA recommended a comprehensive review board that would review not only the most serious incidents involving tasers but would also provide random sampling review of less serious cases to monitor compliance with the ECW policy. Based on best practices and consistent with review procedures of other law enforcement agencies such as Seattle and Los Angeles Police Departments, the DPA recommended that the review board evaluate de-escalation, tactics, decision-making, supervision, investigation, and equipment issues in addition to whether the use of force complied with Department policy. The DPA also suggested detailed data collection provisions to enable comprehensive analysis of the weapon's use, effectiveness and trends and to foster policy and training recommendations. The overwhelmingly majority of DPA's ECW Review Board recommendations were incorporated into the Electronic Control Weapon Review Board policy (DGO 5.02) that the Police Commission adopted on March 14, 2018.<sup>7</sup>

Concurrent with its work on the ECW Review Board, the DPA has continued to work with SFPD to draft a Serious Incident Review Board policy. The Serious Incident Review Board will replace the Firearm Discharge Review Board, the In-Custody Death Review Board, and the Electronic Control Weapon Review Board and provide one review board that evaluates a greater number of use of force incidents.

In February 2018, as part of its best practice research, the DPA arranged a two-day visit to the Seattle Police Department. DPA chose Seattle Police Department as a study site because it is nationally recognized as an emerging leader in police reform. During the last two years it has implemented a new use of force policy and investigative policies and review board procedures and systems for supervision and accountability in response to the U.S. Department of Justice (DOJ)'s consent decree that found SPD had engaged in a pattern or practice of excessive force and likely discriminatory policing.<sup>8</sup> The DPA invited SFPD to join the DPA in its meetings with

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<sup>6</sup> [http://sfgov.org/dpa/sites/default/files/OCC\\_2015.pdf](http://sfgov.org/dpa/sites/default/files/OCC_2015.pdf).

<sup>7</sup> <https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/SFPD%20draft%20ECW%20Appendix%20031418%20FINAL%20%28clean%20copy%29.pdf>

<sup>8</sup> <https://www.justice.gov/crt/investigation-documents>

Seattle Police Department's Use of Force Unit, Crisis Intervention Team, Force Investigations Unit, and Policy and Audit Division. The DPA also arranged to observe firsthand SPD's Force Review Board hearing which involved several hours of dynamic discussions among board members who analyzed each case from the dispatch call to incident conclusion and evaluated officer decision-making, de-escalation skills, tactics, supervision, use of force, the quality of the force investigation, and equipment issues.

In 2010 when the DPA recommended that SFPD implement the Memphis Police Department model of Crisis Intervention team (CIT) program for police response to crisis calls, the DPA, Police Commissioners, and SFPD representatives visited the Memphis Police Department and the Los Angeles Police Department's Mental Health Unit to observe first hand these programs and to meet with these Department's subject matter experts. During the weeks that followed these trips, the DPA worked with the Police Commission and the Police Department to bring together a team of mental health professions, community advocates, and city agencies to spearhead the CIT program.<sup>9</sup> The DPA suggests using the same collaborative model, including site visits to both the Seattle Police Department and the Los Angeles Police Department.

Different though similarly robust, LAPD's Board of Police Commissioners subject their most serious force cases to a review process that results in a detailed public report. LAPD's Board of Police Commissioners review and make findings in what they term "categorical use of force" cases that include officer-involved shootings. The Board of Police Commissioners analyze and make factual findings concerning 1) the officer(s) exhibition of a weapon; 2) tactics and decision-making preceding the use of force, and 3) whether the use of force was reasonable. The reports provide the Commission's reasons for its conclusions.<sup>10</sup> Because of the significant role that the appointed Police Commissioners play in analyzing categorical use of force cases involving LAPD officers, the DPA recommends a site visit to LAPD.

### **C. DPA Recommendations**

Consistent with best practices and incorporating many of Seattle Police Department's and LAPD's reforms, DPA recommends that the Serious Incident Review Board policy include the following provisions:

1. Create a serious incident review board working group with representatives from the Police Commission, SFPD, the DPA and community stakeholders that includes site visits to the Seattle Police Department and Los Angeles Police Department.

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<sup>9</sup> For more information about this collaborative process, see The Office of Citizen Complaints 2011 Annual Report, pages 21-22.

[https://sfgov.org/dpa/sites/default/files/Documents/Office\\_of\\_Citizen\\_Complaints/OCC\\_2011.pdf](https://sfgov.org/dpa/sites/default/files/Documents/Office_of_Citizen_Complaints/OCC_2011.pdf)

<sup>10</sup> [http://www.lapdonline.org/categorical\\_use\\_of\\_force](http://www.lapdonline.org/categorical_use_of_force)



2. Categorize use of force incidents according to seriousness and type of review:
  - Type I force to include actions that cause transitory complaints of pain or intentional pointing of a firearm, electronic control weapon (taser) or extended range impact weapon (ERIW). Type I uses of force should be screened by a sergeant and reviewed by a unit/division dedicated to reviewing all use of force incidents.
  - Type II force to include force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great bodily injury. Examples may include use of an Electronic Control Weapon (taser), OC spray, impact weapon, ERIW. Type II uses of force should involve a sergeant's response to the scene to collect evidence and witness statements and review by Chain of Command and a unit/division dedicated to reviewing all use of force incidents. For ECW incidents involving injuries other than those caused by probe removal or resulting in superficial abrasions, analysis by Serious Incident Review Board.
  - Type III force to include force that causes or is reasonably expected to cause great bodily injury, loss of consciousness or death, and includes impact weapon strikes to the head. Type III force should involve a sergeant's response to the scene, investigation by a Force Investigation Team, and analysis by the Serious Incident Review Board.
3. Create a Force Investigation Team that investigates all Type III use of force incidents and any use of force incident in which a supervisor believes there was misconduct in the use of force. This team could be an expansion of SFPD's current Officer Involved Shooting Investigation Team.
4. Create a Force Review Unit to ensure that all uses of force are thoroughly and critically reviewed, trends and patterns identified, and any corrective action, including changes in policy, training, and equipment are addressed through the appropriate units and divisions.
5. Provide a comprehensive review of Type II and III Use of Force Incidents by the Serious Incident Review Board that analyzes the case from the call for service (whether dispatched or officer-initiated) until the conclusion of the incident and addresses the following areas:
  - Whether the officer's tactic and decision-making were consistent with policy and training;
  - If safe and feasible, whether the officer took reasonable steps to de-escalate prior to using force;
  - Was the officer's use of force reasonable, necessary and proportional;

- Was a supervisor on scene prior to force being used and if so, did the supervisor provide tactical guidance and support;
  - Was the force investigation thorough, timely and complete;
  - Did Chain of Command identify any deficiencies in training, performance, equipment or policy;
  - Did the Serious Incident Review Board identify additional issues not identified by Chain of Command;
  - Individual officer training recommendations;
  - Department training recommendations;
  - Department policy or procedure changes or clarifications;
  - Equipment issues;
  - Any trends or pattern regarding policy, training, equipment or tactics.
6. Include for review by the Serious Incident Review Board a random 10% of Type I cases to ensure quality control.
7. Require the Serious Incident Review Board to provide a written report that addresses the above-mentioned topics. A copy of this report that removes identifying information concerning the officers shall be provided to the Police Commission and made available to the public through SFPD's website.



## DPA's 1<sup>st</sup> Quarter 2018 Recommendations to Improve Services for Deaf and Hard of Hearing Individuals

### A. Background

In November 2017, the Department on Police Accountability brought together a group of community stakeholders including deaf individuals to draft a Department General Order (DGO) on police protocols for interacting with Deaf and Hard of Hearing individuals. The DPA initiated this project because of DPA complaint investigations involving deaf complainants in addition to concerns about raised within the Language Access Working Group about deaf domestic violence survivors receiving inadequate services.

Based on best practice research, the working group has drafted a proposed DGO, created an officer reference guide to use during traffic stops, and identified different technologies to assist SFPD officers at the station and in the field to communicate with deaf and hard of hearing individuals. Representatives from SFPD have attended the working group and contributed to the proposed DGO and officer reference guide.

In May 2018, the DPA and Commander David Lazar met with Chief William Scott to brief him on the progress of the Deaf and Hard of Hearing working group, to request authorization for funding for videoconferencing through officers' cell phones for America Sign Language interpreters and an officer training video to accompany the roll-out of the Department General Order.

The Deaf and Hard of Hearing Working Group continues to meet monthly and is ready to commence work on drafting officer training scenarios. In light of September being National Deaf Awareness month, the DPA suggests that adoption of the DGO and roll-out of the training occur in September.

### B. DPA Recommendations

1. Calendar the Proposed Deaf and Hard of Hearing DGO for Police Commission review and action in September preceded by the completion of SFPD's concurrence by the end of July.
2. Similar to the DGO 5.20 officer training video that the DPA and Language Access Working Group produced with SFPD that used paid actors and scenarios written by

the Working Group, SFPD work with the Deaf and Hard of Hearing working group to produce a similar officer training video.

3. That SFPD immediately provide the Language Line application on all officers' department issued cell phones to provide American Sign Language videoconferencing and spoken interpreters, including a schedule and any training for uploading the apps to all phones, and a Department Bulletin announcing Language Line ASL and spoken language service on officers' phones.

## The Department of Police Accountability's 1<sup>st</sup> Quarter 2018 Recommendations to Enhance SFPD's Language Access Services

### A. Introduction

Since 2012, DPA has met monthly with domestic violence, sexual assault, and child advocacy service providers, language access advocates, city agencies, a Police Commissioner and the Police Department to enhance SFPD's language access services. DPA created this Language Access Working Group after advocates for domestic violence victims addressed the Police Commission about cases in which language barriers compromised the accuracy of incident reports and the quality of police assistance. Testimony also included a domestic violence victim's unsuccessful attempts at two different police stations to obtain language assistance to file a domestic violence report. Since 2012, DPA has spearheaded the Language Access Working Group's work on numerous projects including the writing, filming and editing of an officer training video entitled "Detecting and Overcoming Language Barriers,"<sup>1</sup> drafting a Department Bulletin on common indicators when an interpreter is needed<sup>2</sup> and procedures for translating statements in an incident report<sup>3</sup>, and adding language access data collection to the incident report writing template.

### B. DPA's 2017 LEP Recommendations

Following Chief Scott's meeting with the Language Access Working Group in April 2017, the DPA made the following recommendations:

#### 1. Interpreter Training for Certified Bilingual Officers

It is well established that being an interpreter requires skills and training beyond bilingualism. To ensure that certified bilingual officers receive interpreter training, Department

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<sup>1</sup> The officer training video can be viewed at <http://www.youtube.com/watch?v=i8qY1zi0tzc>. The Department of Justice has included it on its LEP resources website. (<http://www.lep.gov/resources/resources.html#>.)

<sup>2</sup> See Department Bulletin 16-107, <https://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentBulletins/sfpd-db-16-107.pdf>

<sup>3</sup> Pursuant to Department Bulletin 15-171, officers are now required to ensure that written statements and other documents in a foreign language are translated into English prior to filing an incident report and booking the document into evidence.

General Order 5.20 (Language Access Services for Limited English Proficient (LEP) Persons) specifically requires the Department to provide interpreter training for certified bilingual officers on interpreting techniques, roles, terminology, and ethics in accordance with confidentiality and impartiality rules. (See DGO 5.20 (II) (E).). The Department has not provided interpreter training for its certified bilingual officers, despite repeated recommendations from the Department of Police Accountability and the Language Access Working Group since DGO 5.20's adoption in 2007. The DPA recommends that SFPD immediately develop interpreter training or alternatively, hire an outside agency to provide bilingual officer interpreter training. Interpreter training for bilingual officers should include assessment on interpretation skills to ensure information retention. In January 2018, a small number of SFPD officers attended a train-the-trainer session on interpreter training which a member of the Language Access Working Group had coordinated with a nationally renowned trainer to provide. SFPD is slowly providing interpreter training for its bilingual officers, a requirement that SFPD has neglected to fulfill since DGO 5.20 was passed in 2007.

## **2. Re-Certification of Bilingual Officers**

Language proficiency is a perishable skill. Currently, once an officer passes the Department of Human Resource's test for language proficiency, the officer is forever entitled to bilingual pay and is considered a "qualified bilingual officer" for the purposes of Department General Order 5.20. The Police Department does not have any recertification requirements. The absence of a recertification procedure is inconsistent with best practices. The lack of recertification potentially jeopardizes the quality of an officer's interpretation which, in turn, can undermine the investigation and prosecution of cases and negatively impact an officer's ability to communicate with a victim, suspect, witness or community member. The DPA recommends that SFPD:

- Implement a system of language proficiency recertification that requires retesting of all bilingual officers every 2-3 years;
- Include a requirement of recertification of language proficiency in the 2017-2018 labor contract with SFPD officers; and
- Either obtain DHR's assistance or hire an outside contractor to provide recertification every 2-3 years.

Reportedly SFPD negotiated recertification of bilingual officers in its most recent contract with the San Francisco Police Officers' Union. The exact details have not yet been provided to the Language Access Working Group.

## **3. Advanced Officer and Field Officer Training Should Include LEP Scenarios**

Department General Order 5.20 states that the Department will provide periodic training on its LEP policies, including how to access in-person and telephone interpreters and how to work with interpreters. DGO 5.20 states that it shall conduct such trainings for new recruits, at in-service training and at roll-call at least every two years. (DGO 5.20 (III)(N)). The two-hours of DGO 5.20 training for recruits is not POST certified. DGO 5.20 updates and language access

issues are not included in advanced officer or field officer training. The DPA recommends that SFPD:

- Incorporate language access training into the Field Training program and advanced officer curriculum;
- Include language access issues & requirements in all training modules and written materials; and
- Obtain Police Officer Standard Training (POST) certification for current DGO 5.20 training.

#### **4. Language Services at Stations**

Spanish-speaking and Cantonese-speaking domestic-violence survivors have reported significant wait times for language assistance to file a report at certain stations and instances where LEP victims/reportees have been told to come back later or have sent to other stations. LEP victims/reportees have also reported encounters with Police Service Aides at the stations who do not use language assistance to explain wait times or when a bilingual officer will be available to take a report. LEP reportees and service providers have repeatedly shared their concerns with the Department that many stations are not welcoming or user friendly which is further exacerbated when language assistance is not readily provided. Additionally, there is no privacy in the district station lobby where reportees often need to provide sensitive information about themselves and the nature of an incident.<sup>4</sup> (For further discussion of domestic violence, immigration and language access concerns involving SFPD, see the Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement (July 2016), pages 20-21). The DPA recommends that SFPD:

- Provide easily accessible information in multiple languages at each station that explains procedures such as how an LEP individual can file a report, talk with a bilingual officer, and obtain other police services;
- Prominently post that language services are free and available and include this information in district station newsletters;
- Require stations to identify the top language needs of the community in which the station is located and provide an incentive system so that stations are able to staff the stations with bilingual officers and Police Services Aides who speak the languages most needed;
- In each station and to the public, prominently post when bilingual officers and Police Service Aides are available and the language they speak;
- Conduct an audit using LEP reportees to evaluate the effectiveness of language access at all of the stations and implement improved accessibility where needed.

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<sup>4</sup> For further discussion of domestic violence, immigration and language access concerns involving SFPD, see the Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement (July 2016), pages 20-21.

[https://sfdistrictattorney.org/sites/default/files/Document/BRP\\_report.pdf](https://sfdistrictattorney.org/sites/default/files/Document/BRP_report.pdf)

## **5. Dispatching Bilingual Officers to The Scene**

DGO 5.20 states that officers "shall provide oral interpretation services to LEP persons they encounter in the following order of preference unless deviations are required to respond to exigent circumstances." The priority is direct communication by a qualified bilingual officer, followed by a qualified civilian interpreter and last by a telephone interpreter. (DGO 5.20 (III)(D) Order of Preference.) Department General Order 5.20 requires SFPD's Language Access Liaison Officer to work in conjunction with Department of Emergency Management (DEM) "to establish a system that immediately identifies LEP calls and promptly dispatches language assistance, preferably with a bilingual officer speaking the needed language." (DGO 5.20 (III)(O)(1)(5)).

In 2009, Department of Police Accountability recommended a communication system that would enable 911 dispatchers to immediately identify the location and availability of bilingual officers to respond to LEP calls for service. For several years, DPA in partnership with the Language Access Working Group worked with SFPD and the Department of Emergency Management to design and implement such a system. Although this system was to become operational in April 2013, it has never been fully implemented. When DEM dispatchers identify a LEP caller, instead of relying upon the system that identifies an available certified bilingual officer, many dispatchers continue to put out a request for a bilingual officer and wait for a volunteer to respond. This approach is inefficient and does not comply with the system of dispatching available bilingual officers immediately as required under DGO 5.20. DPA recommends that SFPD:

- Work with DEM to fully implement the dispatch procedure in which dispatchers identify and dispatch immediately an available bilingual officer to respond to a LEP call for service.
- Explain the new dispatch procedure to SFPD officers through a Department Bulletin.
- Once implemented, monitor compliance under the new procedure through an audit.

## **6. LEP Data Collection and Analysis**

DGO 5.20 states that officers "shall provide oral interpretation services to LEP persons they encounter in the following order of preference unless deviations are required to respond to exigent circumstances." The priority is direct communication by a qualified bilingual officer, followed by a qualified civilian interpreter and last by a telephone interpreter. (DGO 5.20 (II I)(D) Order of Preference.) DGO 5.20 requires the Department to collect and report on data including the number of calls for service, contacts and investigations involving LEP persons where an incident report was required and the manner in which interpretation services were provided. (DGO 5.20 (III)(O)(2-3)).

Department of Police Accountability in partnership with Language Access Working Group recommended and worked with SFPD to add LEP data collection to the incident report writing system. This data collection will enable the Department to assess language needs and analyze the extent to which language services are being provided by bilingual officers, civilians or telephone interpreters. Mandatory LEP data collection was announced on February 26, 2016



via a Department "A" Bulletin (16-029 LEP Data Collection Crime Data Warehouse) and became effective on March 16, 2016. The Department has accumulated over a year's worth of LEP data though not yet reported publicly upon this data.

Upon the recommendation of Department of Police Accountability and in partnership with the Language Access Working Group, in 2016 the Department required all officers to view the training video "Detecting and Overcoming Language Barriers" and to complete an on-line survey about language access services and training. SFPD has not yet analyzed and reported upon this data. DPA recommends that SFPD:

- Analyze and report upon the LEP data collected through the Crime Data Warehouse from March 2016-2017.
- Analyze and report upon the data collected through the on-line survey about language access services and training.

### **C. DPA's 2018 LEP Recommendations**

While DPA and the Language Access Working Group had advanced some of its LEP project during the last year, the group recently met with Chief Scott on May 8, 2018 to discuss the following recommendations:

#### **1. Patrol Officer Response to LEP & Deaf and Hard of Hearing Calls**

- Provide fiscal approval for immediate roll out of language line application on officers' phones to provide spoken language and ASL interpreters
- Prioritize and develop implementation strategy (downloading app, department bulletin, training, computer at window at every station to access video interpreter
- Prioritize SFPD-911 dispatch system that identifies and sends bilingual officers to LEP calls

#### **2. Elevate the Role & Responsibilities of Language Access Liaison Officer**

- Hire a new language access liaison officer and expand position to include deaf & hard of hearing services & implementation of Deaf and Hard of Hearing DGO
- Coordinate with community liaison officers
- Provide an analyst to review LEP data re: LEP calls for service, bilingual officer response, LEP staffing needs, response time for LEP call for service and bilingual officer

#### **3. Stations: Improving Services**

- Post bilingual officer & staff availability at stations, on website & in newsletters
- Designate language liaison officer to work with community liaison officers at each station who develop LEP subject matter expertise & are a resource to station & surrounding community & provide 5.20 roll call training (including LEP scenarios)
- Provide a marquee for information/reports etc.
- Interview reportees/victims in private

#### **4. Bilingual Officers: Training, Visibility, Subject Matter Expertise**

- Provide certified officers with a bilingual pin—similar to CIT, FTO pins
- Provide schedule for DGO 5.20 mandated bilingual officer training
- Provide LEP training & skill opportunities (language classes to increase/maintain language proficiency, encourage subject matter expertise, POST teacher certification)
- Officer bilingual testing to recruits at Academy
- Develop & implement strategy to increase the number of bilingual officers

#### **5. Special Victims' Unit: Need for Consistency and Responsiveness**

- Non-permanent and revolving door approach to SVU captain undermines community trust
- SFPD's noncompliance with Family Code §6228 10-day deadline for providing incident reports to survivors of domestic violence, sexual assault, stalking, human trafficking, and elder abuse continues to be very problematic
- Recommendation to institute procedures for wrongful arrest of DV survivors (Penal Code secs 851.6 & 851.8)

#### **6. Department Strategy & Response to LEP Complaints, Law Suits, Suggestions**

- Provide an analyst to review LEP data re: LEP calls for service, bilingual officer response, LEP staffing needs, response time for LEP call for service and bilingual officer
- Command staff review & response to LEP complaints, law suits, suggestions
- Lessons learned from wrongful arrest of DV survivor (SF civil law suit settlement) needs to be incorporated into training curriculum

#### **7. Additional Action Steps**

- Chief's Video Message on LEP & Deaf & Hard of Hearing services
- Authorization for Deaf/Hard of Hearing training video
- Re-film introduction to DGO 5.20 training video with current Chief

In June, Chief Scott produced a video message for officers that emphasized the importance of using an interpreter when interviewing LEP individuals and encouraged bilingual officers to become certified.

Historically, a Police Commissioner attended the monthly meetings of the Language Access Working group and helped advance the group's projects. The DPA requests the Commission to continue this important tradition of having a Police Commissioner attend the monthly Language Access Working Group meetings to maintain the Police Commission's active participation in advancing this working group's policy projects.



## **DPA's 1<sup>st</sup> Quarter 2018 Recommendations to Provide Victims of Domestic Violence, Sexual Assault, Stalking, Human Trafficking and Elder Abuse Their Incident Reports In Compliance With Family Code §6228.**

### **A. Background**

During DPA's monthly Language Access Working Group meetings in 2017 and 2018, several community stakeholders raised continuing concerns that despite their written requests to SFPD, domestic violence survivors could not obtain their incident reports in a timely manner. During 2017 and 2018, Bay Area Legal Aid also discussed with SFPD their inability to obtain on behalf of more than 20 domestic violence survivors they represented incident reports in a timely manner. Incident reports are critical to domestic violence survivors' family law cases. Without the incident report, domestic violence survivors and their legal representatives are unable to prepare for court hearings, conduct investigation and subpoena officers and comply with trial deadlines.

In 2017, the DPA received a complaint that included an allegation that the named officer refused to provide her with a copy of the supplemental incident report that she requested pursuant to Family Code §6228. The named officer stated she denied the complainant's request because it involved an ongoing, open investigation. The DPA found that the failure to provide the complainant the incident report was a result of a policy failure.

California Family Code § 6228 states that victims of domestic violence, sexual assault, stalking, human trafficking or elder abuse shall receive a copy of the incident report no later than 5 working days after request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available, in which case the incident report shall be made available to the victim no later than 10 working days after the request is made. The Family Code does not exempt open investigations from law enforcement's mandatory duty to provide the victim an incident report within 10 working days.

The Legislature enacted California Family Code §6228 in 1999 for domestic violence victims "to provide an expedited and affordable method for obtaining these important reports" so that victims can pursue other legal avenues such as a restraining order to increase their safety. This law was expanded to include victims of sexual assault, stalking, human trafficking and elder abuse in 2016.

When the Family Code §6228 was expanded to include victims of sexual assault, stalking, human trafficking, and elder/dependent adult abuse, SFPD issued Bulletin 17-101. This Department Bulletin stated that “Law enforcement must provide, without charge, copy of incident report to victims of sexual assault, stalking, human trafficking, elder/dependent adult abuse, or to victims’ representatives.” The Department Bulletin did not notify officers of their duty to provide an incident report to enumerated victims, including domestic violence victims, within 5 days unless with notice and good cause, no later than 10 days.

The DPA, Bay Legal, and other community stakeholders have had numerous and ongoing discussions with SFPD to address compliance with Family Code §6228.

**B. DPA’s Recommendations**

The DPA recommends that the Police Department

1. Implement immediately a system that provides the enumerated victims their incident report within the statutory deadline;
2. Provide information on SFPD’s website about how victims of domestic violence, sexual assault, stalking, human trafficking, elder/dependent adult abuse can obtain their incident report pursuant to Family Code § 6228;
3. Monitor compliance with the statutory deadline and report to the Police Commission its compliance with the Family Code §6228 on a quarterly basis.