

January 4, 2019

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

Re: Department of Police Accountability 3rd and 4th Quarter 2018 Policy Work

Dear President Mazzucco and Commissioners:

This letter provides an overview of the Department of Police Accountability's policy recommendations concerning body worn cameras, search warrants and sexual assault survivors. It also provides a brief summary of DPA's 3rd and 4th Quarter 2018 policy work.

I. DPA's Policy Recommendations

Body Worn Camera Policy

The Department of Police Accountability (DPA) recommends that in light of several DPA investigations, the Department's Body Worn Camera (BWC) policy be amended to instruct officers that they "shall activate their BWC devices prior to initiating any investigative or enforcement activity involving a member of the public" and the "calls for service" be included among the list of enumerated activities requiring body camera activation. This suggested language is based upon Los Angeles Police Department's policy that requires BWC activation prior to investigative or enforcement activity and includes calls for service. DPA also recommends the creation of a Body Worn Camera working group with representatives from the Police Commission, SFPD, DPA, District Attorney, Public Defender and other stakeholders to evaluate the policy, including DPA's aforementioned recommendations. (See attached Recommendation for more details).

Search Warrants

The Department of Police Accountability recommends that the Department General Order 5.16 on Search Warrants be revised to require officers to show and provide a copy of the warrant to show and provide a copy of the search warrant to the occupant whose property is subject to the warrant. Although not required by state law, providing a copy of the warrant is consistent with the Department's Search Warrant Manual, Know Your Rights brochure it designed for the public (see Department Bulletin 15-151), and is consistent with the goals of community policing and procedural justice.

Services at District Stations for Sexual Assault Survivors

Based on concerns raised within the Language Access Working Group, the DPA recommends enhancing services at district stations for sexual assault victims by 1) providing sexual assault reportees privacy at district stations by requiring officers to use an interview room for interview and report-taking; 2) providing sexual assault reportees at district stations a copy of "Your Rights as a Survivor of Sexual Assault" prior to any interview or report-taking. (Penal Code section 679.04); 3) complying with Penal Code section 679.04's mandate that a sexual assault survivor may have a victim advocate and support person present during the interview and report-taking at district stations; 4) Inform a sexual assault survivor that SFPD can conduct the interview and take the report at SF Women Against Rape's office; 5) providing certified bilingual officer or employee for interview and report-taking for LEP sexual assault survivors; and 6) updating SFPD's website to provide easily located information about sexual assault survivor's rights, resources, SFPD's Special Victims Unit, and Family Code §6228's requirements that victims of sexual assault, domestic violence, stalking, human trafficking and elder abuse be provided their police report promptly.

II. DPA's 3rd and 4th Quarter Policy Work

- **Drafted a Deaf and Hard of Hearing Department General Order**

Throughout 3rd and 4th Quarter 2018, DPA met monthly with community stakeholders including deaf individuals, SFPD and Police Commissioner John Hamasaki to complete a draft Department General Order (DGO) on police protocols for interacting with Deaf and Hard of Hearing individuals. The DPA also worked with SFPD to implement DPA's July recommendation that SFPD provide the Language Line application on all officers' department issued cell phones so that officers can access American Sign Language videoconferencing and spoken interpreters more rapidly in the field. Presentation of the draft Deaf and Hard of Hearing DGO to the Commission is anticipated for early February.

- **Advocated for Timely Release of Incident Reports to Domestic Violence and Sexual Assault Survivors In Compliance with State Law**

Throughout the latter half of 2018, DPA continued to advocate that SFPD implement immediately a system to provide victims of domestic violence, sexual assault, human trafficking, stalking and elder abuse their incident report within five days of their request as required by Family Code section 6228. The DPA recommended that Family Code section 6228's requirement that the Department notify the victim of the reasons why, for good cause, the incident report is not available promptly as required by Family Code section 6228 be incorporated into Department General Order 3.16. The DPA also recommended that notification to the victim be provided in the victim's primary language consistent with Department General Order 5.20. The DPA provided SFPD suggestions to enhance its 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 and recommended monitoring the section 6228 compliance by quarterly reports from the Department to the Police Commission.

- **Suggested Revisions to Department's Procedures For Awards Arising from an Officer-Involved Shooting**

During the latter half of 2018, the DPA provided suggested revisions to the Department's awards Department General Order. First, to maintain the integrity of the investigative and disciplinary process, the DPA recommends that both the DPA and IAD have concluded their OIS investigations before the Awards Committees consider an award nomination that arises from an OIS. Second, to ensure that officers are awarded for exemplary conduct throughout the OIS incident, the DPA recommends that the findings from the Firearm Discharge Review Board and Department of Police Accountability's investigation be provided in the nomination materials to the Awards Committees.

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

Sincerely,



Paul Henderson
Executive Director

4th Quarter 2018 Department of Police Accountability Recommendation To Amend the Body Worn Camera Policy to Include “Calls For Service”

Currently, the Department’s Body Worn Camera (BWC) policy, Department General Order 10.11, requires officers to activate their BCWs during certain activities such as detentions, arrests, traffic and pedestrian stops, vehicle pursuits, searches and consensual encounters where the member suspects that the citizen may have knowledge of criminal activity as a suspect, witness, or victim. The policy does not require officers to activate their BWC for “calls for service.” Nor does the policy instruct the officers to activate their BWCs devices prior to initiating any investigative or enforcement activity involving a member of the public.¹

A significant portion of Department of Police Accountability complaints have involved violations of the Department’s Body Worn Camera policy. Over half of DPA’s sustained cases for 3rd quarter 2018—nine of seventeen—involved violations of DGO 10.11. The DPA has investigated several cases where officers did not activate their BWCs during an officer’s investigation and BWC evidence would have assisted significantly in determining the merits of the case. In an officer-involved shooting, where the officer was responding to a call for service at one location and flagged down for assistance as he exited his vehicle, the officer turned on his BWC after using lethal force. Had he been required to activate his BWC when responding to the call for service, the entire encounter would have been captured. In another case, the complainant alleged that the officers failed to investigate his report of being assaulted at a bar. The officers acknowledged responding to a call regarding a possible assault and battery and stated they did not turn on their BWC because they alleged that complainant did not report a crime and did not appear to be a victim of a battery or assault. In another case, an officer was dispatched to an “A” priority call for an assault and battery (240) and did not activate his BWC until the middle of taking the suspect’s statement. The officer asserted that he had not yet determined whether or not a crime occurred. The failure to activate one’s BWC or to activate only the last segment of an incident undermines transparency, accountability, and confidence in the Department.

The Los Angeles Police Department (LAPD) and Alameda County Sheriff’s Office (ACSO) have BWC policies that require officers to turn on their BWCs prior to initiating contact for calls for service. DPA recommends:

1. DGO 10.11 be amended to include “calls for service” among the enumerated law enforcement actions that require BWC activation.
2. DGO 10.11 be amended to include the instruction that “officers shall activate their BWV devices prior to initiating any investigative or enforcement activity involving a member of the public.”
3. Creation of a Body Worn Camera working group with representatives from the Police Commission, SFPD, DPA, District Attorney, Public Defender and other stakeholders to evaluate the policy, including DPA’s aforementioned recommendations.

¹ On December 18, 2018, the Department issued a Department Bulletin that instructed officers to begin recoding while enroute and prior to arriving on scene, “when responding to calls for service with a potential for law enforcement activity or any of the mandatory recording circumstances.” (See DB 18-256). This DB does not define a “potential for law enforcement activity.” Expanding the current list to include calls for service and include the instruction that “officers shall activate their BWV devices prior to initiating any investigative or enforcement activity involving a member of the public” would resolve this vagueness.

3rd Quarter 2018 Department of Police Accountability Recommendation For Officers To Provide A Copy of the Search Warrant to Occupant When Executing A Warrant

Background

The Department of Police Accountability investigated a complaint involving the execution of a search warrant. The investigation determined that the occupant requested to see a copy of the search warrant and none was provided. The officers stated they were not required by law to show or provide a copy of the warrant.

The SFPD Search Warrant Manual specifies, “[o]nce entry is made into the location, the officer(s) should show the original search warrant to the occupant(s), then give the occupants(s) a copy.” The Department’s General Order on Search Warrants (DGO 5.16) which has not been updated since 1997 does not include the Search Warrant Manual’s instruction that officers show the original search warrant to the occupant and give the occupant a copy.

The Department’s brochure “Protecting Our City, Knowing Our Rights: Frequently Asked Questions About Warrants, Searches and Seizures” informs that public that when their home has been searched, they should receive a “copy of the judge’s order to search (if a warrant search), SFPD follow-up form with a report number, and a receipt (return) listing any items seized.” (See Department Bulletin 15-151.)

Even though California law does not require officers to provide a copy of a warrant (see *People v. Calabrese* (2002) 101 Cal.App.4th 79, 85; *Nunes v. Superior Court* (1980) 100 Cal.App.3d 915, 936), SFPD’s Search Warrant manual recommends that officers show and provide a copy of the warrant to the occupant whose property is subject to the warrant. Providing a copy of the warrant is consistent with the goals of community policing and procedural justice. As emphasized by the President’s Task Force on 21st Century Policing, “People are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do...The public confers legitimacy only on those they believe are acting in procedurally just ways.”¹ Additionally, the Department’s brochure to the public informs the public they will be provided a copy of the warrant.

Recommendation

The DPA recommends that DGO 5.16 be revised to require officers to show the original search warrant and provide a copy to the occupant whose property is subject of the search warrant.

¹ Final Report of the President’s Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services. 2015, pages 9-10.



3rd Quarter 2018 Department of Police Accountability Recommendations To Enhance Services At District Stations for Sexual Assault Survivors

Introduction

Since 2012, the Department of Police Accountability has chaired a Language Access Working Group comprised of domestic violence, sexual assault, and child abuse service providers, language access advocates, city agencies, and Police Commissioner and the Police Department to address on-going language access, sexual assault and domestic violence concerns. Advocates 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. (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).

Following the April 2018 hearing before the Board of Supervisor's Public Safety Committee on the treatment of sexual assault survivors, DPA attended monthly meeting with representatives from the District Attorney's Office, the Police Department, the Sexual Assault Response Team, the Office of the Medical Examiner, San Francisco Women Against Rape and the Domestic Violence Consortium and presented these recommendations at the July 2018 meeting.

Recommendations

To enhance services at the district stations for sexual assault survivors, the Department of Police Accountability recommends the following:

At District Stations

1. Provide sexual assault reportees privacy at district stations by requiring officers to use an interview room for interview and report-taking.
2. Provide sexual assault reportees at district stations a copy of "Your Rights as a Survivor of Sexual Assault"¹ prior to any interview or report-taking. (Penal Code section 679.04)
3. Comply with Penal Code section 679.04's mandate that a sexual assault survivor may have a victim advocate and support person present during the interview and report-taking at district stations.

¹ See SFPD Department Bulletin 18-082 that announced the Sexual Assault Rights card (SFPD form 540).
<https://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/Transparency/A%2018-082%20Assembly%20Bill%20No.%201312%20Sexual%20Assault%20Victims%20Rights.pdf>

4. Inform a sexual assault survivor that SFPD can conduct the interview and take the report at SF Women Against Rape's office².
5. For Limited English Proficient (LEP) sexual assault reportees at district stations, use a certified bilingual officer or employee for interview and report-taking. If a certified bilingual officer or employee is not available, use a Language Line interpreter. All communication with the LEP sexual assault survivor should be in the survivor's primary language, including preliminary information about the anticipated wait time for an officer or in person interpreter.

SFPD Website

Provide on SFPD's website easily located information about sexual assault survivor's rights, resources, SFPD's Special Victims Unit, Family Code §6228's requirements that victims of sexual assault, domestic violence, stalking, human trafficking and elder abuse be provided their police report within 5 days unless the agency informs victims of the reasons why, for cause, the 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, and Police Commission Resolution 16-28³ that provides for SFPD's biannual reports about its collection and analysis of sexual assault kit evidence and notification to sexual assault survivors of testing results.

²In July 2017, DPA, SFWAR and SFPD arranged a system where SF WAR can call SFPD's Operations Bureau and an officer will respond to SF WAR's office to take a non-emergency report from a survivor.

³ <https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/PoliceCommission-ResolutionNo16-28.pdf>