

The Department of Police Accountability's 1st 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.¹ Historically, the FDRB has focused on whether the use of force was in policy.²

¹The 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>

²After 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.³ 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.”⁴

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.⁵ 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.

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>

³**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.

⁴DOJ’s Assessment of SFPD, page 43.

⁵http://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.4th 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.⁶ 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, 2018.⁷

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.⁸ The DPA invited SFPD to join the DPA in its meetings with

⁶ http://sfgov.org/dpa/sites/default/files/OCC_2015.pdf.

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

⁸ <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.⁹ 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.¹⁰ 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.

⁹ 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

¹⁰ 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.