

*Burbank Police Department*

ANNUAL REPORT OF THE INDEPENDENT  
POLICE MONITOR: 2020 – 2021 Review

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GROUP

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# Introduction

Since 2011, OIR Group<sup>1</sup> has served as the “Outside Independent Monitor” of the Burbank Police Department (“BPD”). This public report – in which we discuss our evaluation of BPD’s various internal review systems – is a cornerstone of that relationship. It allows us to provide the Burbank community with insight into how well BPD addresses allegations of misconduct, scrutinizes uses of force involving its personnel, evaluates vehicle pursuits by its officers, and otherwise takes steps to promote accountability and agency improvement through a range of processes.

Our monitoring function has a few different components and goals. Over the year, we are in regular communication with Department leadership regarding developing events and receive status reports on the progress of pending investigations. For deadly force incidents or in-custody deaths, we attend the Department’s Critical Incident Review Board. And we are provided complete internal agency files and records relating to the following:

- All uses of deadly force and death in custody cases (this may include review of both sworn and civilian personnel);
- All bias-based policing complaints (this may include review of both sworn and civilian personnel);
- All administrative investigations conducted by the Internal Affairs Bureau in which the subject employee holds the rank of sergeant or higher;
- 1/3 of all administrative investigations conducted by the Internal Affairs Bureau selected by OIR Group;<sup>2</sup>

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<sup>1</sup> OIR Group is a team of police practices experts that has provided independent civilian oversight of law enforcement since 2001. Led by Michael Gennaco, a former federal prosecutor and a nationally recognized authority in oversight, OIR Group has worked in jurisdictions throughout California and in several other states. It provides a range of monitoring, auditing, and investigative services that promote accountability with the twin goals of enhancing agency effectiveness and increasing public trust. Information about OIR Group’s work, and examples of its numerous reports, can be found at [www.oirgroup.com](http://www.oirgroup.com)

<sup>2</sup> Our review samples are selected at random.

- 1/3 of all citizens' complaints selected by OIR Group (this may include review of both sworn and civilian personnel);
- 1/4 of all uses of force reviews selected by OIR Group;
- All vehicle pursuits.

This level of transparency – which encompasses otherwise confidential investigative materials – allows us to assess how well BPD *itself* handles matters that deserve the attention and response of Department management at all levels. In that respect, it is meant to provide a “best of both worlds.” On the one hand, the Department retains responsibility for upholding its own standards and expectations of the Burbank community. On the other, BPD is accountable to outside scrutiny – and potential criticism – in a way that promotes the objective legitimacy of its processes and individual findings.

Our reports also feature recommendations when the individual cases we review indicate that the Department might benefit from adjustments to its existing protocols. We base them on observations that combine the inherent value of a fresh, outside perspective with our years of experience in evaluating law enforcement operations, policies, and systems. And they are intended to strengthen the quality of the Department's performance and processes in the future.

Our relationship with Burbank and its Police Department goes back to 2011, though this is our first report since the summer of 2020.<sup>3</sup> Some things have changed in that eventful time, including new faces in the offices of City Attorney and Chief of Police. The Department's body-worn camera (“BWC”) program, which was just beginning at the time of our last report, is now in full swing – and was selected by OIR Group as the topic for the first “extra” audit that is part of our scope of work and is designed to cover a different additional subject every year.

As we discuss in a separate section below, that audit suggested to us that BPD has transitioned effectively to its camera program. Officer compliance with policy expectations for use of the cameras appears to be high, and the

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<sup>3</sup> The reason for the gap stemmed in large part from the City's interest in soliciting a new “Request for Proposals” for the Auditor position, which had not been undertaken for some time. We were pleased to be again selected by the City last spring. Throughout this Report, we include references to 2020 materials that we sampled as a means of re-acclimating to BPD events prior to initiating the 2021 review.

recordings themselves have added a significant dimension to the accountability of officers and to the ability of agency supervisors to review individual incidents thoroughly.

The new camera program proved to be significant in the assessment of last year's most noteworthy single case – the first officer-involved shooting involving a BPD member since 2016. We discuss that use of deadly force – and the Department's comprehensive internal response – in detail below. For now, we note that a key piece of evidence as to what occurred was the involved officer's camera recording, which showed the actions of the armed subject immediately prior to the shooting. This evidence would not have existed at the time of our last audit cycle; the impact on transparency and accountability is obviously significant.<sup>4</sup>

As for the other core sections of this Report, we discuss our impressions of three key components of BPD's administrative review systems: investigations into alleged misconduct (both externally and internally generated), assessments of officer force, and evaluations of vehicle pursuits. We have suggestions to offer in each arena. But the core elements of these functions appear to be sound, and much of the work that is done in evaluating officer performance is of a notably high quality. This reflects well on the supervisors who are carrying out the reviews themselves, from the sergeants who methodically process each use of force to the Internal Affairs investigators whose diligence and thoughtfulness are commendable. It also reflects well on the culture of the agency and the priorities of Department leadership.

We looked at a range of misconduct cases, including all citizen complaints that featured an allegation of biased policing. That category was small by volume, and the assertions of discriminatory behavior – which ranged across a few different racial and ethnic groups – were not sustained by the evidence in any of them. Nonetheless, we discuss one case which seemed to raise interesting questions about the gap between officer and subject perception – and for which BPD's response could perhaps have been more complete. And while the eight separate cases in which a supervisor was a named subject could be viewed as concerning, importantly, the Department's willingness to pursue

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<sup>4</sup> As indicated in our prior report, we do retain concerns about BPD's body-worn camera policy that allows officers to view video/audio footage before providing a statement in a use of force or internal affairs investigation context.

these matters is important to its credibility both with the public and the rank-and-file officers of the agency.

The BPD multi-level process for reviewing force continues to be an excellent example for other agencies. BPD members would be the first to tell you that the agency is not perfect, and we naturally found instances of both officer behavior and subsequent review that we questioned or wished had been slightly different or more exacting. But the vast majority of last year's deployments (84 in all) were minor in nature and limited to low-level physical interventions such as takedowns and resisted handcuffing, and the Department continues to benefit from its own willingness to invest in the holistic review of each case for possible improvement areas as well as policy compliance.

Vehicle pursuits – and the policy that regulates them – have gone through different “eras” in the years of our affiliation with the City. This Report looks at the latest developments in this subject area, in which the balance between effective enforcement and effective risk management can be a delicate one. As of early 2021, the Department implemented its long-considered new policy guidance, and we discuss our impressions of that change and its applicability to the year's eight documented incidents. And the fact that there were eight pursuits wherein in years past, there have been zero or less than a handful is in and of itself worthy of attention.

In the past, we have appreciated – and commented upon – the cooperation and receptivity with which BPD's leadership has approached our oversight role. This year's cycle extended that dynamic. The task of compiling and sharing voluminous case files and records was especially labor-intensive this year, given the importance of BWC materials to our aforementioned audit as well as the individual incident reviews. And we had our customary number of questions and requests for clarification throughout the process. The personnel who engaged with us were uniformly polite, prompt, and responsive to each request.

As always, we hope this Report will provide insight to the Burbank community and constructive ideas for BPD as it moves forward during this dynamic period in law enforcement history.



# Officer-Involved Shooting

In March of 2021, a Burbank officer was involved in a shooting that resulted in fatal wounds to the subject. It was BPD's first deadly force case since 2016.

In those five years, state laws have changed in significant and relevant ways, as part of the reform efforts that have been directed at law enforcement nationally and with particular vigor in California. One difference is that officers' justification for using deadly force is subject to new standards in terms of the criminal justice system. Additionally, new statutes promoting increased transparency have given the public unprecedented and earlier access to information that was formerly shielded by confidentiality and officer privacy restrictions.

One of these new transparency requirements relates to the release of video evidence within 45 days of those critical incidents that result in serious bodily injury or death to the subject. While providing a cushion of several weeks for initial investigative work to be done, the new law recognizes the ways that public expectations have evolved. This is based in part on the awareness that such evidence commonly exists, as well as the heightened insistence that the police be required to release such information in these cases when the Department has used its authority in such obviously impactful ways.

The March 2021 fatal shooting was subject to this obligation, and the Department issued a detailed "Critical Incident" video in timely fashion. Narrated by a lieutenant from BPD, the presentation goes beyond the new legal requirements to put the deadly force into the context of the larger incident – a call for service that began with concerns about a young boy who had been left alone in the parking lot of a local hotel. Utilizing photographs, maps, calls to dispatch, surveillance footage, radio communications, and BWC recordings from the event, the public video provides an informative explanation of the initial facts behind the case as they were understood by the Department.

We were impressed with the thoroughness of the nearly 18-minute video, and we commend BPD for its decision to release more facts and evidence than was strictly required. In our view, agencies that have responded to new mandates as an opportunity to provide transparency and explanation – and

not as a burden to be resented – have chosen the better path. We encourage the Department to follow the approach it has taken here when addressing future incidents – even where the event proves to be more controversial, and officer performance more potentially subject to criticism.

## RECOMMENDATION 1

BPD should commit to its initial standard of addressing its mandatory critical incident releases in a way that informs and explains, beyond the minimal requirements of the statute.

The Critical Incident video ends with a description of the various investigative tracks to which the shooting was subjected, beginning in its immediate aftermath. These include the criminal investigation – which was handled jointly by BPD detectives and investigators from the District Attorney’s Office – and the Department’s own administrative review.

While the criminal case is complete and has been submitted for a prosecutorial determination as to legality, the District Attorney’s Office has yet to reach a final decision at the time of this writing.<sup>5</sup> The Department, however, has moved forward with those aspects of the process that it controls: specifically, its administrative investigation and its Critical Incident Review Board assessment.

As part of our modified scope of work, we received a copy of the Internal Affairs case materials and had the opportunity to attend the CIRB discussion, which occurred in December of 2021. We discuss our impressions below and offer some procedural observations for BPD’s future consideration.

## Incident Overview

This shooting occurred in the early morning hours of March 8, 2021. BPD’s involvement began with a call from a hotel employee who was concerned about the well-being of a young boy who had been left alone in the parking lot under unclear circumstances. Three officers initially responded. They learned

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<sup>5</sup> Unfortunately, this is not unusual in terms of a timeline.

from the boy that he was travelling with his stepfather, who was attempting to get them a different car after theirs became disabled on the freeway. One of the officers left to investigate that portion of the case, while the others remained on scene with the boy. In doing so, that officer was able to determine that the abandoned car was reported as stolen.

Soon thereafter, the stepfather returned. He was driving a different vehicle that BPD was later able to determine had also just been stolen. He pulled into the lot and summoned the boy, who moved toward the car as one of the remaining officers attempted with limited success to hold him back. Meanwhile, the other officer on scene approached the vehicle and saw that the man was pointing a gun at him. That officer fired three rounds, striking the stepfather with two and mortally wounding him. The other officer never fired, and in fact had not removed the gun from its holster.

As backup officers arrived, they were able to remove the boy from the immediate scene and develop a plan to safely approach, extract the man from the vehicle, and begin to facilitate medical aid from responding Fire Department personnel. The medical team eventually transported the subject by ambulance to the hospital, where he was pronounced dead.

The video evidence clearly showed the man pointing a gun at the officer who fired in response; that weapon was recovered at the scene. As discussed in more detail below, BPD executives determined that the deadly force had been justified and in policy. They also identified several peripheral issues that merited additional attention.

## BPD Administrative Process

### Internal Affairs Investigation

The file in this case reflected a thorough, thoughtful, and holistic investigation conducted by Internal Affairs personnel. It included formal interviews of all involved BPD officers as well as relevant civilian witnesses (including the young boy, who was accompanied by a social worker). It summarized all relevant body-worn camera recordings in meticulous detail, as illustrated by

numerous still images embedded into the final memorandum. It incorporated a significant amount of evidence from the criminal investigation. It featured a lengthy and careful analysis of the applicable policies. And, importantly, it identified a number of additional issues (beyond the use of deadly force itself) that emerged from the review and merited further Departmental consideration.

In short, the investigation was exceptional. It included high-level issue identification and persuasive, in-depth analysis, and it provided Department leadership with a strong foundation for the Critical Incident Review Board's consideration of the case.

## CIRB Presentation

In keeping with BPD protocols for the review of all uses of force, the completed case was submitted to panelists in preparation for the meeting. This was supplemented at the actual meeting by a multi-media presentation and discussion that OIR Group representatives attended. The Chief, Captains, IA personnel, and a "peer-member" officer-level representative were in attendance – as were the two primary officers for the initial factual overview and then a later summary of findings at the end of the meeting.

The group concurred that the use of deadly force had been reasonable and justified, and we noted a robust conversation about a full range of elements that were involved in the case. These included the effectiveness of dispatch communications, the radio traffic that surrounded the event itself, the tactics and decision-making of the non-shooting officer, the performance of officers who arrived subsequently to the scene (including a supervisor who took swift action to remove the boy, and later directed the extraction of the subject and preservation of the crime scene with considerable effectiveness), the equipment issues that arose, and the mechanics of the subsequent investigation at the scene and beyond.

While these topics were notable in their own right, they also illustrated the value of BPD's established approach to incident review. The use of deadly force itself was obviously and appropriately the focal point. But the BPD process recognizes that tactics, communication, supervision, training, equipment, policy, and accountability are each potentially influential in critical

encounters. Accordingly, each offers learning opportunities – and the Department is committed to identifying and responding to them.

Several interesting insights had emerged from the thorough initial investigation into the shooting. These were presented and discussed in further detail at the meeting. One noteworthy issue was a problem with the shooting officer's BWC – he apparently attempted to turn it back on immediately before the use of deadly force but did not. However, a responding sergeant was in the process of arriving with the light bar of his vehicle activated – and BPD's camera technology system includes this as a backup prompt for the activation of officers' cameras within close proximity. It engaged the shooting officer's camera in time to capture the key moment of the encounter.

In the aftermath of that near malfunction, and in recognition of the importance of relevant evidence and the potential for a physical error or oversight by the officer in a high stress encounter, the Department began to actively utilize an additional option: namely, a device that automatically deploys the cameras when officers remove their weapons from their holsters.

Additionally, several "action items" emerged for follow-up during the meeting itself, each of which we found to be worthwhile and reflective of an admirable rigor. They included the following:

- The panel recommended targeted training for the witness officer, whose limited control of the young boy seemed to complicate the encounter.<sup>6</sup>
- The panel recommended a commendation for the sergeant who arrived in the immediate aftermath of the shooting and took effective control of the scene.
- The panel recommended formal documentation of a young officer's error in the aftermath of the shooting: he had retrieved the subject's

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<sup>6</sup> This individual was one of the agency's few reserve officers – essentially a volunteer who has gone through a full training program and has full law enforcement powers, but whose experience is relatively limited. Questions about the adequacy of current training and preparation for reserve officers, and whether adjustments were needed, emerged during the CIRB discussion.

gun from the vehicle for safekeeping but should have left it in place for purposes of the investigation.

- The panel recommended further inquiry into the performance of communications personnel regarding the radio traffic and dissemination of information during the event.

## Issues for Consideration

### Timeliness of Officer Interviews

The administrative investigation into the incident began immediately, and key interviews – including with the witness officer – occurred within hours of the deadly force encounter. However, the interview of the shooting officer did not occur until four days later. This implicated the relevant BPD policy, which directs the administrative investigator to “make every effort” to conduct the interview before the end of the involved officers’ shift.

As noted in the CIRB discussion, that same policy also recognizes applicable qualifications to the “same day” interview guidance. It lists sample “compelling factors” that would justify delay (including, for example, physical wellness concerns or number of hours already worked), and also makes clear that “under no circumstances” should the administrative process interfere with the criminal investigation into the matter.

Here, a combination of these considerations was applicable. The shooting had occurred in the last scheduled hour of the officer’s fourth consecutive day of 12-hour shifts, and he had already been held over for several hours after the shooting when the decision was made to send him home. As importantly, the officer was apparently undecided at first as to whether he would provide a

*voluntary* statement to the criminal investigators of the incident,<sup>7</sup> and deference to that process also influenced BPD's initial decision to wait.<sup>8</sup>

The officer ultimately declined to give a statement in the criminal investigation, and the administrative interview was scheduled, but then it did not occur for four days. Thus, any argument that the officer was too tired to give a compelled statement on the date of the incident did not explain why he did not provide a statement on day two. And as a result, the "end of shift" expectation clearly set out in BPD policy was instead supplanted by four days of delay before the officer's detailed explanation as to why he chose to use deadly force was finally pursued. Despite this gap, the process, as it played out here, was found by the CIRB to be consistent with the policy exceptions that excused the delay. We disagree.

Accordingly, we encourage BPD to revisit its protocol and its interpretation of expectations in an effort to promote the acquisition of timely statements from officers in deadly force incidents. Our view is that, with very rare exceptions, a "before end of shift" statement is important to investigative integrity. It is consistent with best practices and reduces the likelihood of any outside influence that would, even unintentionally, compromise the purity and accuracy of the officer's account.

We also recognize that a voluntary criminal statement is helpful to the District Attorney's analysis, but our general experience is that the decision to provide it is a straightforward one that does not tend to change over time – thus lessening the value of waiting indefinitely. Accordingly, we think BPD can and should consider refining its policy and/or developing a stricter interpretation of the exceptions in order to lessen ambiguity and promote the prompt acquisition of involved officer statements when reasonably possible.

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<sup>7</sup> An officer who is involved in a deadly force incident is, of course, entitled to the same rights as anyone else whose conduct is subject to possible criminal prosecution – including the Fifth Amendment right not to make statements or answer questions about the matter. This is in contrast to his or her *obligations* as an employee to answer administrative questions when ordered to do so, under penalty of possible job loss. However, those compelled statements are shielded from the criminal review process and cannot be used against the officer.

<sup>8</sup> It cannot be argued that taking a statement from the officer on the day of the incident would in any way "interfere" with the criminal investigation.

## RECOMMENDATION 2

BPD should re-examine its policy on administrative interviews after an officer-involved shooting (and/or its interpretation thereof) to promote more definitively the “same day” acquisition of a statement from involved personnel.

Our second concern about the interview process relates to the current policy that allows for officers to view their own recordings of the incident prior to being questioned. We wrote about this issue at some length in our most recent report, which was released in the summer of 2020.

At that time, we expressed our concerns about BPD’s plans in this regard for its then-impending BWC program. We described our preference for a protocol that takes a “pure” statement first, based solely on the officer’s state of mind and direct recollection, and then allows for the officer to view the recording and supplement his original testimony as needed. In our view, this is the approach most consistent with investigative best practices, as well as the one most likely to inspire public confidence in the legitimacy of the investigation itself.<sup>9</sup>

Without belaboring those earlier remarks, we stand by our advocacy of a different approach than the one BPD adopted – and utilized in the investigation of this incident. Law enforcement agencies are split on this question. We hope the Department will remain open to revisiting its existing policy in this regard.

## RECOMMENDATION 3

BPD should consider working with the labor association and reviewing the approach of other agencies in considering a possible revision to its “view first” approach to allowing officers to watch BWC recordings prior to being questioned about their involvement in a deadly force incident.

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<sup>9</sup> The counterargument is that the opportunity to review does not change the independent evidentiary value of the recording itself, but it *does* afford officers the opportunity to avoid inadvertent inaccuracies that could heighten their exposure to criminal and civil liability. We find this counter-argument insufficient to trump the greater interest in investigative integrity.



## Format of the CIRB

We have been consistent in our high regard for BPD's Critical Incident Review Board process, which we have seen develop over the years into a model that we encourage other agencies to emulate. Our experience in attending the session that discussed the officer-involved shooting reinforced those perceptions. We did, however, have a question about the decision to encourage the attendance (in a non-speaking role) of the involved officers for the presentation of the underlying facts. This does not usually occur in the "regular" CIRB meetings, which are held several times each year and generally cover a small number of less significant force cases.

While the officers' presence did not have an apparent effect on the presentation or the subsequent analytical discussion (for which they were excused from the room), it did seem to have the *potential* to be awkward or constraining. This would be particularly true in the context of an incident that was more controversial or problematic than this one happened to be. Just as importantly, the "upside" of their direct involvement was not readily apparent to us. While the appropriateness of their receiving feedback and being familiar with identified issues is clear, we think this could be accomplished in a variety of forums other than the meeting itself. For example, an attendee at the CIRB could be assigned to provide a detailed briefing to involved officers setting out the issues, analysis, and any training concerns in a setting more conducive to learning.

### RECOMMENDATION 4

BPD should reconsider its practice of inviting involved officers to attend Critical Incident Review briefings, so as not to complicate the candid presentation of facts and/or the panel analysis and instead instituting a process whereby a CIRB attendee is tasked with providing involved officers feedback after the meeting.

# Review of Misconduct Investigations

The administrative discipline process of any police agency is critical to its operational effectiveness. For many members of the public, this translates into the ability (and willingness) of an agency to fire officers for serious misconduct that undermines community trust. However, while that component is indeed crucial, it also applies to only a small percentage of the allegations that emerge from year to year – including those that are sustained as opposed to disproven or inconclusive. This means that the goals of the process – and the metrics for measuring whether it “works” in a given department, must be understood more broadly.

Ideally, internal discipline will be a mechanism for reinforcing standards, setting expectations, deterring misconduct, identifying it when it occurs, and correcting it as needed. This often happens in the context of *internally* generated investigations, of which the public is often not aware.<sup>10</sup> But when a public complaint initiates the process, expectations about accountability and investigative legitimacy naturally take on new significance.

With this in mind, our audit of BPD’s discipline process looks at both its internal rigor and its public face: the extent to which it facilitates the lodging of complaints and works to ensure the perception and reality of their careful review. We have noted strengths in the past that continue to be reflected in this most recent evaluation. These include the resourcefulness with which investigators gather evidence and the meticulousness with which the Department pursues the large-scale, complex matters it must occasionally confront. As we discuss below, we also continue to be impressed with the notification letters that BPD sends out at the conclusion of complaint cases – they exemplify an earnest effort to personalize and to “show the work” that went into reaching the given result. And we are pleased to note that

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<sup>10</sup> Per the data that BPD makes available on its website, the Department opened 41 new misconduct investigations in 2021. 28 began with citizen complaints, with the remaining 13 coming from within the agency itself.

challenges in the timely completion of investigations seem to have been overcome.

In all, as the following sections explain, we found BPD's administrative investigations to be thorough, fair, and effective in meeting the objectives of the discipline system. The quality of work produced by Internal Affairs is generally excellent; particularly noteworthy is the written clarity with which sometimes complex analysis is set forth and explained. And the Department appears to have moved effectively into a new era by using BWC to enhance investigative efficiency and conclusiveness.

Two of the more substantial cases we reviewed (one from 2020 and one from 2021) involved supervisory-level misconduct and resulted in one or more allegations being sustained. Apart from the skill and thoroughness of Internal Affairs personnel reflected in these complex investigations themselves, both show the Department's ability to handle a challenging task effectively: namely, the appropriate pursuit of accountability when concerns arise about management level shortcomings as well as those of line-level officers.

Moreover, and while this was not uniformly true (in part because many of the cases we reviewed did not lend themselves to such a step), the investigations at times reveal one hallmark of a constructive discipline process that we especially appreciate: a willingness to go beyond the issues of whether alleged misconduct occurred, and policy was violated. In one case, for example, a protestor at one of the City's COVID demonstrations was pepper sprayed by a counter-protestor. He spoke with an officer while being treated at the scene by medics and became very angry upon realizing that the officer had a different perspective on both the severity of the crime at issue and the possibility of the complainant's own culpability.

Based largely on the undisputed evidence captured by the officer's recording of the event, the complaint itself was not substantiated in terms of a policy violation. However, as he walked away from the complainant at the end of their contentious exchange, the officer apparently found it hard to resist making a remark over his shoulder to the effect that he didn't care what the man thought.

Though it didn't seem egregious from our perspective, particularly in light of the officer's overall handling of an angry individual, the investigation flagged the issue. More importantly, it identified a corrective action in terms of counseling for the involved officer and a broader "briefing training" to address the importance of "managing emotions" during stressful encounters.

In a different case, the issue that emerged was procedural. A motorist, who had been involved in a collision with a juvenile on a scooter, filed a complaint several months after the incident. He was frustrated that he had been served with a requirement to re-test for his license (with the result that it had been suspended for several months) when the party at fault in the collision turned out to be the young boy when the traffic investigation was finalized. The investigation showed how the responding officer's initial impressions had, with some justification, focused on the complainant. But, after exonerating the officer of the complaint, the investigator also looked at mechanisms for better reconciling the relevant DMV paperwork in similar future instances of significant case updates.

The ability and inclination to treat the complaint process as a potential feedback loop to enhance both individual officer and Departmental performance are elements of a discipline system that maximizes the benefit of formal review. We commend BPD for those traits within its existing system.

## Timeliness

As part of the statutory rights that govern administrative investigations into police officer misconduct in California, law enforcement agencies are limited to a one-year window from the time of discovery if they intend to issue discipline in any given case. We have written in prior reports – and with some consternation – about BPD's failure to meet this deadline in some its cases. While the reasons have not been uniform, the consequences were: an inability to render discipline in at least instances where it would have been applicable, and a larger concern about the efficiency of the process. While compliance with "statute of limitations," as it is known, should obviously be a goal to effectuate accountability in that most basic of ways, we have also advocated for timeliness for other reasons as well. These include not only the

substantive effectiveness of the investigation (in terms of availability of evidence, recollection of witnesses, etc.) but also the usefulness of the process as a corrective measure for officers who have deviated from expectations. Certainly, the passage of months does little to persuade the average complainant that his or her concerns are being taken seriously.

In the aftermath of the identified issues in our most recent reports, BPD has seemingly rectified this problem. BPD has committed to a quarterly tracking system that involves a formal printout of pending cases and timelines. This creates an added level of accountability for both investigators and management in terms of ensuring appropriately prompt resolution. We have been given access to these reports on a periodic basis, and they appear to be a simple way of keeping pending misconduct issues from “slipping through the cracks.”

In fact, we were often struck by how quick the turnaround was in several of the cases we looked at.<sup>11</sup> And in the cases that took longer to resolve, an awareness of the timespan – and an explanation – was overtly a part of the written memo of the case. We hope the Department will maintain the focus on this investigative attribute.

## Notification Letters

One of the ways the BPD process distinguishes itself is in the care and attention it devotes to providing individual members of the public with notification at the conclusion of complaint cases. State law requires police agencies to inform complainants of case outcomes – but also restricts the amount of detail that can be provided (due to the confidentiality protections to which officers are entitled under the same set of laws). In many agencies, this can be a source of frustration to people who have been aggrieved enough to submit a complaint in the first place:

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<sup>11</sup> In many instances, the availability of body-worn camera recordings to establish what occurred appears to have streamlined the process – another benefit of the new program.

weeks or months of waiting culminate in a brief notice that has little information to distinguish it from a form letter.

BPD has taken pains to make these letters more meaningful. Going beyond the required minimum while still remaining consistent with the confidentiality rules, the Department's letters provide specific facts that reflect the effort involved in addressing them. They summarize the complaint itself, describe the particular investigative steps that were taken, and share the outcome – often with accompanying explanation or analysis.

We doubt that every complainant is completely satisfied, especially when the ultimate result differs from their expectations and genuine sense of mistreatment. (And, notably, the complaints we reviewed were overwhelmingly found to lack evidentiary support.) At the very least, though, letters should show to the extent possible that complaints have been understood and taken seriously. BPD invests unusual care into accomplishing this, and the results are impressive.

## Major Investigations

In past audit reports for the City of Burbank, we have noted the thorough, meticulous, and comprehensive approach that BPD takes to large, complex investigations – which often involve allegations of serious misconduct. While the *need* to tackle such matters because of flawed officer behavior is never welcome, the *ability* to do so is significant to agency credibility and legitimacy. In the years of our association with the city, BPD has met this challenge repeatedly, and to its credit. We saw examples of the same phenomenon in preparing this Report.

In one 2020 case that we reviewed, a male supervisor's awkward and inappropriate interactions with a range of female employees came to the Department's attention. As the case progressed, additional narratives emerged, some of which dated back several years and were of heightened seriousness. (The worst of them seemed to come from the man's time as a field training officer – when he had direct authority on patrol over new female Department members.) This was inherently troubling. On the other hand, the

investigation addressed each one with rigor and built a compelling case that eventually resulted in the separation of the supervisor from the agency.<sup>12</sup>

A more recent case involved allegations that BPD officers at multiple rank levels had willfully mishandled domestic disturbance calls involving a former member of the Department. The female complainant alleged that officers had ignored a temporary restraining order that, in her view, compelled them to arrest her husband when they responded to the family home and found him present. Instead, they had taken a report and escorted him from the premises – only to have him allegedly return to the location repeatedly in the following hours. (This generated additional calls for service, but the officers never located the man again.) She maintained that this had been both poor police work and an outgrowth of preferential treatment that officers were giving to a former colleague.

Several employees were implicated in the ensuing investigation, including the responding officers, their direct supervisor, and the Watch Commander during the shift in question. The investigation was multi-faceted, in part because the particular allegations were best understood in the context of multiple calls for service in the same location – all of which were reviewed and considered.

While there proved to be significantly more nuance to the situation than the framing within the woman's original allegations,<sup>13</sup> there was also validity to the core idea that an arrest should have occurred. This was the conclusion reached by the investigation after a detailed and thoughtful analysis. While the claims of preferential treatment were not sustained, the shortcomings in decision-making led to findings that several involved officers (including at the supervisor level) had violated policy. This was addressed in a constructive

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<sup>12</sup> If it didn't at the time, we urge BPD command staff to use this case to reflect upon a larger consideration of the harassment dynamics that sometimes befall women officers, who remain a small percentage of police forces nationally as well as in Burbank.

<sup>13</sup> For example, the woman had apparently invited the man back to the home on several occasions during the period of the restraining order (including on the day in question), and there was ambiguity as to whether he had been properly served with notice. The case, which was submitted to prosecutors for a filing decision, was rejected.

way, with the involved parties accepting responsibility and recognizing where performance had fallen short.

The notion that officers give special advantage to their peers – or even former co-workers – when it comes to enforcing the law against them is insidious when it comes to public confidence and is the underpinning for state law “mandates” for domestic violence arrests when certain criteria are met. BPD’s original handling of this case in the field may have fallen short in significant ways, but its willingness to address the matter effectively is an important corollary to the story.

## Biased Policing Allegations

Out of concern for the obvious significance of discrimination claims, any citizen complaints that allege bias (as part or all of the complaining person’s grievance with BPD) have been automatically included in our review of the year’s misconduct investigations. This has been the practice for several years. It has been our sense throughout that time that BPD treats such matters with the appropriate level of concern and works to go beyond the surface level of the incident to see if *patterns* of officer behavior might lend credence to individual claims that arise.

For example, an allegation of profiling in a traffic citation context will include an assessment of the particulars of the questioned stop but will also prompt a review of *other* tickets written by the involved officer, to look for disproportionalities in the applicable pool of drivers.) Such a survey could lend credence to the finding that the officer’s enforcement philosophy was not influenced by discriminatory intent (or could raise further questions for the Department to explore).

In one of the cases that we reviewed for this cycle, a Hispanic woman alleged that her son had been “singled out” for a street sweeping citation because of his race. The ensuing investigation established that the parking officer not only had begun to write the ticket before seeing the relevant individual but had issued other citations at the same time on the same block. This refuted the allegation more convincingly than just the simple denial by the officer himself.



The Department identified only five applicable cases from 2021 (as well as three from our 2020 sampling), and these featured a range of complainant races/ethnicities. None were sustained, and we concurred with these outcomes. Clearly, these statistical realities reflect well on the Department's performance.<sup>14</sup>

Still, throughout police-community relations on a national scale, the issue of bias remains a sensitive one. This is in part because of *sincere* gaps in perception that do not get bridged in an atmosphere of antagonism or defensiveness.

One of the cases we looked at seemed to us to be illustrative of this phenomenon. A black man in his fifties was stopped just after merging on to the freeway because his truck did not have the proper license plates. It turned out that the truck was also not registered. What ensued was a somewhat lengthy detention in which officers ran his information through their computer system. The man, who was cooperative but clearly unhappy from the outset, became contentious when he was asked after about 10 minutes to step out of his vehicle. He considered this both unusual and unwarranted – and suspected that his race was animating a different type of treatment than an otherwise cooperative driver would receive behind a Vehicle Code violation. He said he felt unsafe and asked for a supervisor to come to the scene.

This seemed to offend the backup officer, who engaged the man in dialogue while his partner continued to process the violations. In a manner that was polite and perhaps well-intentioned, but that nonetheless struck us as condescending, the officer insisted that they had every right to ask him to get out of vehicle, and that his race had nothing to do with the decision-making.

Ultimately, they cited him and allowed him to leave – even though, as they pointed out, they had every right to impound the truck because of its long-expired registration. He signed the ticket, thanked the officer, and drove off – and submitted his complaint shortly thereafter.

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<sup>14</sup> The Department also posts an informative summary of its annual bias-based policing cases.

The Department found – correctly – that the officers had a legal basis for stopping the driver. The investigation also determined that the officers’ interest in having him step out of the vehicle was both permissible and not motivated by discriminatory intent.<sup>15</sup>

It is difficult to argue with this conclusion. The circumstances were strange enough to merit further inquiry by the officer, and the request to step out was arguably a reasonable instance of erring on the side of caution. To the handling officer’s credit, he was also flexible enough not to press the issue, and in fact to exercise his discretion in the man’s favor to a significant extent.

Still, having watched the BWC recordings of the encounter, the complainant’s sincere confusion and frustration over the request to leave the vehicle also resonates with us. It was also clear that the mildly scolding dismissal of his concerns did little to enhance his perspective on the event.

Moreover, in a rare example of a notification letter from BPD that missed the mark, the Department explained the stop’s justifications at some length, described the request to exit the vehicle as a legitimate safety concern (due to the location of the stop on the freeway), and reminded the man that the officers had done him a significant favor by not impounding the car. The letter then pointed out that the complainant had said, “Thank you,” and told the officers to “have a good evening” before leaving, as if that somehow nullified any claim to unjust treatment.

We describe this in detail to the extent it struck us as an interesting example of one factor in the ongoing strain in police relations with the Black community: namely, the understandable but ultimately unhelpful belief by the police that being “right” is the same thing as being truly “effective” in handling encounters such as this one. We recognize that there was nothing egregious and much to appreciate about the officers’ decision-making here. We also recognize that a percentage of complainants is unreasonable, antagonistic, and/or

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<sup>15</sup> The officers’ acknowledged failure to summon a supervisor to the scene was resolved as “Not sustained,” based on the reasoning that the man’s request had been stated as a pre-condition for his exiting the vehicle. Because they decided not to force that issue, they believed the supervisor’s presence was not necessary. While that analysis makes some sense, it does not answer the question about whether it nonetheless might have been *advisable* to call for a sergeant to respond.

disingenuous. But this did not seem to be one of those cases. It would have been interesting to see how a different, more understanding approach to the man's concerns might have influenced the experience.

We encourage BPD to keep pushing in its efforts to find "teachable moments" in those complaints that occasionally emerge over racial bias, and to stay focused on the latest training and teaching regarding this issue.

# Review of Force Incidents

As we describe in our 2019 report, the Department has an extensive force review process that it uses very effectively to ensure accountability and “quality control” whenever even minor force is deployed. We have commended the process in the past, and the 2021 cases show a similar level of thoroughness and thoughtfulness: BPD’s reviews include a multi-phased scrutiny, insightful analysis, and a broad scope that looks at the *totality* of each encounter for elements to reinforce or amend.

In 2021, the Department recorded 84 cases involving a total of 269 unique force applications.<sup>16</sup> We sampled nineteen of these cases and reviewed the totality of the case file, including all body-worn and in-car camera footage. Of these, four were Taser deployments (two of which also included a takedown) and the remainder were uses of physical force, such as control holds, takedowns, or team takedowns; none of the force used resulted in serious injuries to the subject that required hospitalization. While tactical issues were identified and debriefed in every 2021 case, none of the uses of force themselves were found to be out of policy.

We also conducted a “mini-audit” of 2020 force cases. In that audit, we sampled ten cases that were directed to our attention by BPD because of their distinctive circumstances. Four of these were K-9 bites, four were Taser deployments (one of which also included the use of OC spray), and two were uses of physical force. Notably, one of the Taser deployments was found to be out of policy for tactics (as opposed to the legitimacy of the force itself) when an officer engaged in a foot pursuit of a subject around “blind” corners; the CIRB noted that potential officer safety concerns of engaging in a foot pursuit outweighed the need to apprehend the subject. The remainder were found to be in policy.

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<sup>16</sup> The count of use of force **applications** is higher than the count of use of force **cases** because most cases involved more than one force application, such as an incident where one officer deployed a Taser while other officers performed a team takedown. Each application is counted as a unique, reportable use of force. We discuss this again in the section below, “Physical Force.”

The Department also continued to make effective use of its Critical Incident Review Board (“CIRB”) process to carefully analyze use of force incidents in their totality. Once the handling sergeant compiles the initial package of reports and evidence and conducts his or her own assessment according to established criteria, each case then goes to a lieutenant for additional review and “insights.” The updated investigation is then submitted to a panel of Department executives, who often include subject matter experts if the incident warrants it.

As we have reported in previous years, CIRB members not only discuss the use of force itself, but also identify what we previously referred to as “collateral issues” related to tactics or operations. For example, in an incident involving an intoxicated subject and possible domestic violence, the CIRB engaged in a detailed discussion of topics such as failures in team takedown tactics, the importance of maintaining a “tactical advantage” in positioning, officer safety, and the transportation of the arrestee. The CIRB recommended debriefing all of the involved officers. Other cases looked at the safety and tactical soundness of foot pursuits that preceded the apprehension of a fleeing subject.

Overall, Department personnel continue to exercise their authority in controlled and justified ways. And yet, as we have commented in the past, these incidents are worth examining from a holistic perspective with an eye toward improvement; this is an approach that the Department has embraced wholeheartedly. Indeed, we consider it likely that there is a direct correlation between the low number of force policy violations and the thoroughness of BPD’s managerial scrutiny and follow-through when incidents do occur.

It is with that intent that we present the following items for the Department to consider in its on-going efforts to improve.

## Physical Force Options & Training

Over the duration of our engagement with the Department, we have noted that a large percentage of the annually reported uses of force are classified as some kind of physical force, or what the Department formally calls “Type-3”

and “De minimis” force.<sup>17</sup> These are commonly used to resolve instances ranging from minor non-compliance to low-level resistance.

In 2021, 81% of the total reported uses of force involved application of these physical force options. Of the 269 total reported uses of force:

- 119 were physical control techniques, such as wristlocks, commonly used to control a subject who refuses to submit to handcuffing, for example
- 80 were takedowns, the physical act of bringing a subject to the ground through the use of various control and/or grappling methods
- 20 were impact strikes using hands or feet <sup>18</sup>

When they are used correctly, these force options can quickly and effectively resolve an incident without needing to resort to any additional force and without significant injury to the subject (in some cases, minor injuries might occur, such as pain or bruising). But incorrect or ineffective applications of these force options can result in officer safety concerns and escalate the encounter, necessitating the use of additional force, more officer involvement, or prolonged encounters that may increase the risk of injury or result in less desirable outcomes.

In both our 2020 and 2021 samples, the majority of cases that we reviewed involved these types of force. And while the incidents ultimately had successful outcomes, we did note challenges with some uses of these physical force options. We highlight these here not to criticize officer behavior

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<sup>17</sup> These types of force are described as follows:

*De Minimis Force* – Physical interaction meant to separate, guide, and/or control that does not cause injury, but may cause temporary transient pain (e.g., wristlock). These very brief and inconsequential encounters require notification to a supervisor, documentation in police reports and on the Watch Commander Log.

*Type 3 Use of Force* – Classified as a use of force that does not rise to the level of a Type 1 or Type 2 use of force, but results in a complaint of an injury, causes an injury, or could reasonably be expected to cause an injury

<sup>18</sup> To contrast, BPD reported one use of a firearm, one use of a 40mm less lethal, three uses of “other instruments,” seven uses of OC spray, and 14 uses of the Taser. Twenty-four “uses of force” were uses of restraint devices, such as The Wrap used to restrain a subject’s legs if s/he is kicking.

or needlessly call out tactics that the Department has already identified and debriefed. Instead, it is in recognition of the value of Department-wide training and practice that is directed at those low-level but high frequency techniques that seem likeliest to be needed on a regular basis.

As an example, we highlight the use of the “takedown,” which accounted for 30% of the total uses of force and made up the majority of our 2020 and 2021 case samples. In some cases, one or two officers performed a successful, quick, and effective takedown.

But in two of the 2021 cases,<sup>19</sup> we observed a seemingly high number of officers engage in largely unsuccessful team takedowns. In one case, the high number of officers involved created more confusion than success, as officers struggled to grasp and control various body parts; in response, the previously passively non-compliant subject became somewhat combative as he struggled against the large number of officers on his person. In the other, the officers failed to gain compliance from the subject, resulting in deployment of the Taser; all officers were debriefed, and one received training on subject control.

The number of officers needed and the effectiveness of performing a takedown is situational, depending on the relative size of the subject to the officers and subject’s state (e.g., intoxicated, physically resistant, etc.). But we noted that, in these cases, it took four or more officers to take down what initially appeared to be a passively non-compliant subject.

Moreover, aside from officer safety and subject injury concerns, the optics of a “pile of officers” grappling with a subject, whether such an option is “justified” or not, causes consternation for community members. In this age of increased public scrutiny, a quick and effective use of physical force followed by placing the subject in a preferred position (e.g., on his side, seated, or in the back of a police vehicle) is obviously preferable.

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<sup>19</sup> Later, we discuss other ineffective uses of physical force in the context of removing subjects from their vehicles, a distinctly different set of circumstances. There, too, we advise that the Department consider more training.

These force options are perishable skills – if not practiced routinely and as a team, they are hard to execute properly, especially in high-stress situations. Nonetheless, and remarkably, BPD officers only receive four hours of hands-on training every two years after their initial training at the Academy. While some officers train individually and on their own time, their personal training may not be directly applicable to law enforcement. (In fact, some of the techniques that are taught, like the use of arm bars and neck restraints, may directly conflict with department policies and recent changes to state law prohibiting their use in a public safety setting).<sup>20</sup>

This is not unique to Burbank officers. It speaks to the fundamental challenge in modern-day policing of balancing sufficient training (including the blocks that are required by state standards) with the need to have officers on the street and to otherwise meet limitations in staffing and other resources. These problems are commonly experienced in agencies throughout the country.

But there is a growing movement towards the prioritizing of increased, repeated hands-on training in these force options to reduce risk and increase officer and civilian safety. We highly encourage the Department to evaluate its current physical force option training. When possible given budgetary and time constraints, the Department should consider engaging in more robust and frequent hands-on training of these force options to reduce risk and increase officers' effectiveness in the field. And it is imperative that this training also integrate concepts of de-escalation as a critical first option intended to avoid the use of force altogether. Ideally, the officer exposed to such a training regimen will be able to use de-escalation techniques to avoid going hands on but be adept at lower-level force options should attempts at de-escalation fail.

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<sup>20</sup> As oversight practitioners generally interested in policing matters nationwide, we have been tracking a self-initiated, social media movement by officers from different jurisdictions calling for more hands-on training by using the hashtag “#BJJMakeltMandatory” and publicizing clubs and gyms that teach the tactics of Brazilian JiuJitsu (“BJJ”), among others, for law enforcement. We caution that these “off-site” trainings, while possibly effective, are not ideal for agencies as they cannot control the methods trained, the quality of instruction, and the adherence to Department policy. A preferred option would be to create the training in-house or contract for the training through a specific, reputable vendor so that critical non-force strategies such as de-escalation can be integrated into the training.



## RECOMMENDATION 5

BPD should evaluate its current physical force options training with an eye toward increasing the frequency and time spent on hands-on tactical practice, incorporating de-escalation techniques and non-force options into any curricula.

## RECOMMENDATION 6

BPD should consult with other agencies, both locally and nationwide, to explore and potentially pursue new models of training for physical force options, especially those that effectively incorporate de-escalation techniques.

# Removing Subjects from Vehicles

Two cases in our 2021 sample and two cases in our 2020 sample involved one or more officers removing suspects who were possibly armed from within vehicles. In three of these four cases, the attempts put officers at a significant tactical disadvantage.

In one of these cases, a failed attempt to remove an intoxicated suspect from his parked, but running, vehicle resulted in the subject slamming on the accelerator in reverse, causing the officer to become stuck between the car door and the roadway, lose his footing and nearly be dragged under the moving vehicle. (This encounter eventually led to a vehicle pursuit). In another, officers, including a K-9 unit, conducted a felony stop. Rather than follow the protocol for these types of stops, one officer decided to go “hands-on” and remove the subject from the vehicle. This resulted in a “tug-of-war” in close quarters between the officer and a felony subject who was possibly armed.

In the third case, the officers engaged a subject on the passenger side who refused to exit the vehicle. Two officers deployed OC spray into the vehicle, which had an adverse effect on at least one officer but did not seem to deter the subject. Again here, officers engaged in a “tug-of-war” with the subject

from both the driver and passenger sides of the vehicle and through an open sunroof, eventually deploying a Taser to subdue the subject. When they again attempted to remove the subject, the Taser wires became tangled and caused a brief distraction and confusion. In this case, at least one officer reported that he “knew it would be unsafe for [him] to reach any further into the vehicle.”

In each of these cases, the CIRB conducted an extensive debrief of the incident for training purposes but found the incidents to be in policy.

In CIRB reviews of these incidents and subsequent discussions with Department leadership, the Department acknowledged that attempting to pull a subject from a vehicle is a “high-risk intervention” that is not advised. In fact, Policy 470.2, “Reaching into Vehicles,” states:

*While this tactic may be necessary in some limited situations, reaching into an occupied vehicle can be very dangerous and is discouraged by this department. Based on the potential hazards, officers are very likely to expose themselves to physical harm, including great bodily injury. Additionally, officers may place themselves in a serious tactical disadvantage that could unnecessarily escalate the situation. A critical consideration when assessing such a course of action is the possibility that the suspect is in possession of a firearm or other weapon.*

*Prior to contacting a driver or suspect, officers should formulate a tactical plan and maintain a position of advantage. The primary objective in any tactical plan is to control the movement of the occupants and the vehicle. Officers should not allow the occupants to compromise their tactical advantage.*

The Department reported that in some instances it would be possible, and preferable, to treat these like “barricaded suspect” calls. In some cases, the Department advised that officers consider a “tactical retreat” – moving away from the vehicle, seeking cover, and formulating a plan – rather than continue to engage the subject.

Further, and as listed in the Department’s policy, officers should carefully evaluate the totality of the circumstances, and ensure that solid planning,

back-up, and communication are in place before attempting to remove a subject from a vehicle.

When these guidelines are followed, the risk of pulling a subject from a vehicle may be reduced and an effective outcome can be achieved; we reviewed one incident in which proper planning and safe tactics were used to remove an intoxicated female from her stopped vehicle. In that case, after several minutes of talking to the female, the officer distracted the female, swiftly grabbed her arm, and removed her from the vehicle. In this case, circumstances and officer tactics aligned to make the tactic effective: the vehicle was stopped, and the officer was larger in stature and strength than the female, he communicated clearly with backup officers directly behind and around him, and he used a swift control hold to grab her arm and successfully remove her.

While the CIRB did conduct tactical debriefs related to the tactically unwise decision of extracting individuals from vehicles, recognizing the potential peril to officers and subjects alike, we did not see any Department-wide “action items” coming out of the issue identification. More significantly, we did not see the CIRB explicitly consider the “Reaching into Vehicles” policy and express consideration of whether the actions of the involved officers were consistent with policy expectations. In situations where officers extract (or attempt to extract) individuals by reaching into vehicles, BPD should determine whether the tactic violated the policy specifically discouraging that tactic at both the initial force review and subsequent CIRB process.

#### RECOMMENDATION 7

When officers reach into vehicles, in addition to determining whether the force was within policy, BPD should determine whether the tactic conformed with its “Reaching into Vehicles” policy.

#### RECOMMENDATION 8

BPD should regularly train to its policy on “Reaching into Vehicles” and develop tactical scenarios designed to demonstrate to officers the potential danger of the tactic to officers and civilians.

## Prone Subjects

In the post-George Floyd era of policing, the issue of keeping subjects in a prone position for a prolonged period is one that merits particular attention. First, we commend the Department for immediate and responsive modifications to its use of force policy in this respect and especially for including a discussion of “positional asphyxia”<sup>21</sup> (**Policy 300.3.1**) and the duty to intervene in its updated force policy as now required by recent changes in state law.

Here, we highlight three cases involving subjects being placed in a prone position that warrant a closer look, both from the standpoint of positive policing and potential concern.

In the first case, we observed a subject, who was possibly intoxicated or mentally ill, become uncooperative and walk away from the officers. The officers used a takedown to physically move a subject to the ground, where officers kept him in a prone position for approximately two minutes after he was controlled. The officer holding the subject repeatedly asked, “are you alright, man?” and the subject responded, “yes.” Here, the officer’s continual checks of the subject’s physical state are commendable, though we question the rationale for keeping him prone for this duration of time. When back-up units arrive, another officer instructed the first to roll the subject into his side and, eventually, stand him up.

In the second case, which we discussed above as an example of a flawed team takedown, the body-worn footage of the incident showed one officer who seemed to be holding the subject’s head against the ground. We reviewed this officer’s Incident Report. There, the officer reported that he held the

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<sup>21</sup> “Positional asphyxia” occurs when someone’s position prevents the person from breathing adequately. People may die from positional asphyxia accidentally when the mouth and nose are blocked or where the chest may be unable to fully expand. In the law enforcement context, position asphyxia may occur when a subject is positioned face-down, bent forward (as may occur with a body restraint device), or otherwise restrained in a manner that prevents effective breathing.

subject's head "close to the ground" so that the subject "would not injure himself by banging his head on the concrete." From the video footage, it was unclear if this was done to prevent the subject's face from hitting the ground during the takedown or because the subject was attempting to self-harm. Either way, while the officer may have been well-intentioned, the optics of holding the subject's head to the concrete were eye-catching and not ideal.

Finally, we conducted a review of a Taser case involving a subject in a prone position. This case is notable for the officer's initial troublesome knee placement, a partner's "intervention," the officer's immediate correction at his partner's instruction, and the specific language used by the subject.

In this case, two officers responded to a call of domestic disturbance at a hotel and learned that the subject had a warrant for his arrest. When they attempted to detain him, the subject became combative and struck one officer in the face. A struggle occurred and the subject was able to flee. One officer used a leg sweep to takedown the subject, but the subject grabbed for his legs, attempting to pull the officer down. His partner, who was several feet away, deployed the Taser twice, which subdued the subject enough to control him in a prone position with his cheek against the asphalt.

In viewing the body-worn camera, we observed the first officer who had been hit hold the back of the subject's neck, keeping the subject face-down. A back-up officer arrived and handcuffed the subject. At this point, the subject began to yell that he could not breathe. The handcuffing officer responded, "you are fine," as the initial officer seemed to place his knee on the back of the subject's upper shoulders and lower neck area.

A partner officer then appropriately instructed the first officer to move his knee further down/lower on the subject's back, which the officer did immediately. Meanwhile, the subject continued yelling, "I can't breathe" and kicked his legs as the officers responded, "you are fine" and "relax." Eventually, officers applied a front leg restraint. The officers then placed the subject in a seated position and later on his side as the subject continued to allege that he could not breathe.

Meanwhile, another man began to film the incident on his cell phone camera.

This was a difficult encounter. The subject had struck an officer, fled, and continued to fight after he had been taken down by a leg sweep and the Taser. Officers were justified in controlling the subject on the ground and later applying the leg restraint. And, when made aware of his knee placement, the officer quickly adjusted his position. At the same time, the subject, while being held prone, was yelling a phrase that is now sadly memorialized: “I can’t breathe.”

We encourage the Department to carefully evaluate cases that involve placing a subject in a prone position for a duration of time. Especially in these cases, the Department should train officers to articulate the rationale for keeping the subject in the prone position in their Incident Reports and address any considerations given to the possibility of positional asphyxia. While the cases discussed above occurred prior to the new direction in State law on positional asphyxia, during its force review and the CIRB process, BPD should expressly consider on a forward-going basis whether the actions of its officers violate law and policy with regard to the new legal requirements. The Department should also provide remedial training and counseling when appropriate to ensure the officers use proper techniques to control subjects, especially those in a prone position.

#### RECOMMENDATION 9

BPD should develop new scenario-based training on the new state law relevant to prevent positional asphyxia.

#### RECOMMENDATION 10

BPD should train officers to explicitly articulate any rationale for keeping the subject in the prone position in their Incident Reports, and expressly address their considerations of positional asphyxia.

#### RECOMMENDATION 11

BPD should ensure that the force review and CIRB process expressly consider in relevant cases whether officers’ actions were in compliance with new law and policy relating to cautions against positional asphyxia for restrained subjects.

# Use of Profane Language

Over the years of our work in Burbank, a recurring theme is that officers sometimes resort to profanity in the context of overcoming resistance or otherwise seeking to achieve subject compliance. We know the Department's executive team has recognized the issue in the past and devoted attention to addressing it. While this latest group of cases showed some progress in this regard, we nonetheless noted enough individual examples to prompt a reinforcement of our past commentary on the subject.

We know from experience that profanity is hardly unique to BPD, that officers are human and can experience stress and high emotion like the rest of us, and that limited and rare instances of profane language need not necessarily be cause for alarm. At the same time, we remain convinced that it clashes with public expectations when it does occur, and in ways that deserve consideration and potential course correction.

Depending on the context, the cursing comes across as unprofessional and/or uncontrolled – neither of which is an optimal image for contemporary law enforcement. We saw instances of both in our review of these materials.

Apart from the human factors noted above, another reason why profanity endures in law enforcement is because it is sometimes framed as a “tactic”: a calculated effort to project the sort of earnest intensity that will prompt the subject to recognize the need for compliance. There is a colorable argument to this claim – and we are aware of at least one large agency that frames its language policy to accommodate it in a limited way. The concern, though, is that the exception soon swallows the rule – that it becomes easy to excuse or even disregard instances of profanity by simply defaulting to that framing of the officer's intentions.

In our 2020 and 2021 samples, we noted several instances where officers used profanity during an incident. Most often, the use of profanity occurred when officers were in heightened states or high-adrenaline situations; for example, after being struck by a subject in one case, an officer yelled, “what the f\*\*k do you think you're doing?!”

Other uses, however, occurred in lower-stakes situations where the use of profanity was not only unnecessary but also potentially escalated the incident; in one case where a detained subject was believed to have placed drugs into his mouth, the officer commanded, “open your f\*\*king mouth,” which seemed to make the subject even more resistant. And, finally, some officers use profanity in mere conversation with subjects, as in one incident where officers informed an arrested subject, “the phone call happens after we get your fingerprints and s\*\*t” and “in Federal [jail] you would be f\*\*ked.”

In another case, a frail and elderly man who had just been released from the station jail was wandering in the restricted police parking area. Two officers roughly escorted him out, including with a gratuitous profanity,<sup>22</sup> only to see him return moments later (at which point he was taken to the ground and re-arrested). The callousness of the officers in dealing with a troubled individual seemed unfortunate; adding to our disappointment was that none of the review materials addressed their demeanor or language use.

To its credit, the Department is generally more cognizant of these issues. The CIRB identified and discussed any use of profanity in nearly all the cases we reviewed, and the resultant action items included counseling of the “offending” officers. In fact, after one 2020 case, the CIRB formally recommended that the Department conduct Department-wide “tactical language” training because of the frequency of profanity use. That training was initially scheduled for June of 2020 but was postponed because of pandemic-related restrictions.

Since that time, the Department has engaged in scenario training for both supervising officers and Field Training Officers and is exploring the use of a COPS Bureau training program that directly addresses the use of profanity using case studies and video clips.

But for all of the Department’s efforts, the use of profanity has become so pervasive in everyday operations that we observed some officers use the terminology “tactical language” in their written Incident Reports (as in, “I used tactical language to control the subject”). This suggests that officers are aware of their use of profanity and perhaps attempting to explain or excuse its use for “tactical purposes.” When we raised this concern with the Department

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<sup>22</sup> “Don’t ever walk in a “f\*\*ing police station.”



leadership, the Department asserted that the phrase “tactical language” is not defined in any policy, nor is use of profanity an explicitly endorsed method to be used to gain compliance. But perhaps officers must be made aware of this more routinely. And, when BPD identifies the use of that phrase in Incident Reports or other review memoranda, it should address the language directly by sending the report back for correction.

This trend of reliance on “tactical” rationales for force extended to the higher levels of the Department as well: including the CIRB. We read one Watch Commander’s memo in which the supervising officer reviewing a case stated that the use of profanity “served a tactical purpose to assert control.”<sup>23</sup>

In at least two other cases (admittedly involving dynamic encounters), the CIRB at least made note of the “provocative” language deployed by one or more of the involved officers – but were content to chalk it up to the tactical justifications afforded by subject recalcitrance. We were not in complete agreement with these assessments, either of the subject’s level of defiance or the officers’ level of strategic intent (as opposed to simple anger or agitation). While neither of the episodes was egregious, we advocate that the CIRB and the other supervisory reviewers sharpen their focus on this issue and hold officers to a professional standard.

#### RECOMMENDATION 12

BPD should remain focused on promoting professional language and providing briefing, training, and counseling that will encourage officers to remain conscious of the very limited instances in which profanity should be considered tolerable.

#### RECOMMENDATION 13

BPD should instruct supervisors to return any report for correction that uses the phrase “tactical language.”

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<sup>23</sup> We introduced this case above in “Removing Subjects from Vehicles.” The officer here used profanity when struggling with the felony subject in the back of the vehicle.

Despite the above, BPD reports that progress is happening. The Department reported that their worst “habitual offenders,” whom they identified using both the internal Early Intervention System and through observation, are getting “better.” The Department began issuing Commendations to officers who exhibited professional communication in incidents as a way to reinforce professional behavior over profanity.

## Force Review Process

Finally, we turn to BPD’s internal review of these force cases. As we stated at the onset of this section and frequently in past reports, the Department’s commitment to a detailed and holistic review of incidents is remarkable. Here, we highlight two aspects of the internal force review process that the Department should consider: the Department’s handling of the tactical side of a force incident and the documentation and consideration of the use of de-escalation tactics in force incidents.

## Findings for Tactics

While nearly all the force cases are found to be in policy, the Department routinely engages in debriefs and/or specific training for the involved officers. When trends are identified, like the widespread use of profane “tactical language” by officers, the Department engages in Department-wide training.

It was, in fact, because the Department focused on the tactical side as a unique part of a force incident that we recommended a change to their internal force review process in 2019: rather than have one finding for an entire incident, we recommended that the Department consider tactics and force as two distinct categories, each one with its own set of findings. So, while the force might be within policy, the tactics leading up to or after the force might be found to be out of policy.

As a result of our 2019 recommendation and subsequent conversations with Department leadership, BPD accepted this recommendation. BPD updated its internal force review tracking form, called the “CIRB Worksheet,” and review process, to include additional findings categories. As we understand it, the

new categories were meant to allow the CIRB to issue findings in two areas: tactics prior to the incident and tactics during the incident (e.g., the use of force). The worksheet modification allowed the CIRB to find the use of force *itself* to be in policy while also finding the tactics *leading up the force* to be out of policy (and issuing possible training or discipline).

We have only limited evidence of the change in this sample: the CIRB only used this option in one 2021 case, the foot pursuit described above, where the CIRB found the force (deployment of the Taser) to be in policy, but the tactics leading up to the force (the foot pursuit) to be out of policy.

In some cases, we noted that the CIRB walked a fine line between formally finding tactics to be “out of policy,” which carries a disciplinary consequence, and finding them to be “in policy – training required.” This was the case, for example, for the 2020 incident that we highlighted in the “Removing Suspects from Vehicles” section, above; in that case, one officer’s tactical decision to go hands-on with a felony subject, rather than follow the operational plan to wait for a Marshal’s Office Task Force and perform a felony stop, resulted in a dangerous tug-of-war with a possibly armed subject that placed himself, fellow officers, and the subject in potential harm’s way.

Though they led to outcomes that were not optimal, these actions were *technically* permissible per policy, and the CIRB determined that they were in policy with training required. We find this approach to be a reasonable one, insofar as it balances the lack of with the recognition that corrective measures are warranted.

But we did observe at least one case where the Department did not use this option in the manner that we expected: the CIRB recommended training only when the officer’s actions were seemingly out of step with the plain language of policy.<sup>24</sup> In this case, a supervisor conducted an administrative interview of an in-custody robbery subject who had not yet been issued his Miranda rights. Per the Department’s policy **300.8**:

*Supervisors conducting a Use of Force investigation interview of a suspect in-custody should ensure that the suspect has been*

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<sup>24</sup> We discuss other cases in our review of Vehicle Pursuits section, below.

*admonished of their Miranda rights before conducting the Use of Force interview. If a Miranda admonition was not previously given to the suspect by the arresting officer(s) or detective(s), the supervisor investigating the Use of Force should provide the admonishment before the interview.*

While the CIRB recommended a training debrief for all involved officers, they did not find this specific oversight to be out of policy, asserting that the scene was confusing, and that the supervisor assumed that the other agency's officers had issued Miranda rights. Again, the CIRB opted for remediation through training rather than through the more formal "out of policy" finding.

We encourage that the Department evaluate these cases with an eye toward future case reviews.

#### RECOMMENDATION 14

BPD should continue to evaluate its force review process and specifically consider more frequent use of the option of finding tactics to be out of policy where relevant.

## Documentation and Consideration of De- Escalation in Force Incidents

Following the summer of 2020, Departments nationwide heeded calls for reform to their policies and practices; one of the more notable models came from Campaign Zero, which published eight model policy recommendations called, "8 Can't Wait."<sup>25</sup> BPD responded in a public-facing way, by immediately publishing an infographic on their website and explaining the

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<sup>25</sup> The 8 Can't Wait initiative is the work of Campaign Zero, an activist group committed to legal system reform and reductions in police violence. The idea behind the 8 Can't Wait campaign was to showcase eight policies that regulate the use of force, had been implemented in part or whole by law enforcement agencies around the country, and could be adopted quickly and cost-effectively. According to Campaign Zero, the policies were statistically correlated with reductions in uses of force, including deadly force.

considerable alignment that already existed between longstanding BPD policy and the campaign's focal points. New state legislation also addressed police practices in relevant ways, including a new ban on use of the carotid control hold and other neck restraints.

One of the eight promoted policies emphasized the requirement to incorporate de-escalation tactics in all encounters, and especially before using force, whenever possible.<sup>26</sup> Moreover, Senate Bill 230, enacted in response to concerns about use of force following the George Floyd murder, required agencies to adopt de-escalation guidance in policy and training. In response to new state law requirements and in keeping with the "8 Can't Wait" recommendations, BPD expressly instructed officers to consider de-escalation techniques prior to using force when feasible:

*300.1.2 GENERAL PRINCIPLES [...] (a) When appropriate and as safety permits, officers should use de-escalation techniques in order to reduce the need for force and should de-escalate the use of force as resistance decreases, while staying in control.*

While the expectation set out in Department policy requires officers to consider de-escalation techniques, requiring officers to document any de-escalation efforts in their incident reports would reinforce the emphasis in a concrete way, and would make it routine practice for officers to consider each incident through that lens. The Department's CIRB force review process should also formalize the rigorous assessment of de-escalation efforts as part of its standard approach. These steps would enhance the breadth of the BPD's already impressive review mechanism.

Requiring officers to fully document de-escalation efforts in their reports also would give the Department the opportunity to have better data for when de-escalation methods have been considered (at least in the use of force context), positively reinforce conflict resolution skills and affirm personnel who have the capability and temperament to handle difficult situations without resorting to force. Because most departments do not encourage or require

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<sup>26</sup> "De-escalation" is a term that applies to a range of techniques, tactics, and approaches that are intended to reduce the need for physical force by limiting the conditions that lead to active conflict.

report-writing on force-avoidance efforts, those efforts often go unnoticed, and personnel with the skill and mind-set to defuse situations go unrecognized.

Accordingly, we recommend that the Department supplement its comprehensive force reporting policies to include a requirement that personnel fully document all efforts to de-escalate a situation. We further recommend that the CIRB process be amended to require CIRB to consider whether involved officers of force incidents appropriately considered de-escalation alternatives before resorting to force.

### RECOMMENDATION 15

BPD should amend policy or issue a training bulletin advising to require that all officers detail in writing the circumstances surrounding their use(s) of force to include any efforts to de-escalate prior to the use of force; and if no de-escalation techniques were deployed, an explanation for why none were deployed.

### RECOMMENDATION 16

BPD should revise its CIRB force review policy to require the Board to expressly consider and document whether de-escalation techniques were deployed prior to moving to force options and if not, whether it would have been appropriate to consider them.

# Review of Vehicle Pursuits

The Department's challenges with vehicle pursuits, both operationally and in policy – are ongoing. From 2013 to 2019, the Department saw a marked reduction in the number of vehicle pursuits, possibly the result of an updated, restrictive policy released in 2013. To the extent that the decrease in pursuit activities defined “success,” we reported, the 2013 policy had been successful.

But the 2013 pursuit policy was also perceived to be overly complex, lengthy, and prohibitively limited for officers in the field. And it resulted in nearly all Vehicle Pursuit cases being called “out of policy,” even when they only lasted a matter of seconds.

In 2019, the Department sought to create a revised pursuit policy, one that simplified (and limited) the reasons for engaging in vehicle pursuits while also giving greater discretion and latitude to officers in the field. A Working Group was tasked with the job of revamping the policy but faced delays and challenges. A large uptick in vehicle pursuits in 2020 and one particularly complicated “out of policy” pursuit involving officers and supervisors prompted the Working Group to finalize a new policy, which was released in February of 2021.

In this section, we discuss the pursuits that occurred before the policy change, discuss the February 2021 policy changes in more detail and use the new policy to evaluate the post-policy 2021 Vehicle Pursuit cases.

## Pursuits Pre-Policy Change

The Department reported a large increase in vehicle pursuits in 2020. It had a total of 16 – considerably more than the handful that was characteristic of our prior audit years. The first two months of 2021 continued this trend with 5 more before the new policy was finalized and implement.

The Department shared with us its view that this uptick was circumstantial and that the 2020 numbers were an outlier: the pandemic had people taking more risks, exploiting the unique circumstances and civil unrest to engage in more

crime and eschew curfews. We are somewhat skeptical of these non-data driven rationales as providing full explanations for why police-initiated vehicle pursuits dramatically increased in the City. Interestingly, and perhaps in reflection of this phenomenon, 13 of the 16 were found to be in policy, whereas in prior years the very few pursuits that did occur were usually not.<sup>27</sup>

After looking at only a small sampling of the 2020 cases, we saw the review packages for all five pursuits that occurred in January and February of 2021, before the long-developing new guidelines were finally implemented. Each of these was found to be in policy. At the same time, though, these incidents seemed to reflect the need for more clarity and further Departmental attention. While the pursuits technically met the criteria for *initiating* a pursuit per the 2013 policy, the subsequent tactics and decision-making in the field were questionable in our view, including reckless driving and excessive speeding beyond the pursuit guidelines. We determined that at least two of these could have been found to be out of policy for speeding alone, and one exceeded the number of units allowed in a pursuit.

The BPD review process captured some of the same concerns, even if it fell short of a formal “out of policy” disposition. The CIRB engaged in lengthy discussions of these early 2021 pursuits and typically at least one Board member dissented from the official finding for the incidents. Importantly, all of the involved officers at least received some form of remedial training and/or debrief.<sup>28</sup> And, almost all of the CIRB discussions cited the impending official release of the new policy, noting that officers in the field needed more explicit guidance *and* greater leeway in the field.

We also observed officers using terminology that would later be officially released in the new policy, such as referring to the possibility of “going into

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<sup>27</sup> Of the three 2020 cases that found policy violations (and which BPD shared for our review), each involved suspected DUI drivers or so-called “reckless” driving – behavior that was not particularly unique to the COVID era. These pursuits were found to be out of policy because they did not meet the criteria for a pursuit and/or involved driving over the speed limit guidelines.

<sup>28</sup> As we have often noted over the years, BPD’s commitment to holistic review means that a constructive intervention often emerges from the process, even if the “bottom line” decision is that no formal violations of policy occurred.



Tracking Mode” (see below). It was as if the Department was in an odd holding pattern in early 2021, knowing of the changes to come but not yet officially authorized to use them.

## Policy Changes and Pursuit Findings

In our review of the updated 2021 policy, we noted that the new policy does indeed limit the reasons to engage in formal pursuits. However, we were concerned that the new policy is no less complicated than the 2013 version; the “simplified” policy is a net two pages *longer* and has several new scenarios for officers to consider. The Department shared this concern in discussions with us, acknowledging that the new policy is still not ideal from an “end-user” perspective and that they are consistently training officers on the appropriate times and methods to engage in pursuits.

But beyond the complexity of the policy document itself, we were particularly interested in how two specific policy changes might play out in the field and, moreover, if these had an impact on the subsequent review and evaluation of pursuits. These were the addition of “pursuit-like” activities, such as addition of an assessment period and a “Tracking Mode,” and replacement of explicit maximum speed criteria with “Balance Test” guidelines.

It is important to note that our evaluation here is based on a small sample size: only three of the eight 2021 pursuits happened after the new policy was implemented. This significant reduction in the last several months of the year – and marked drop off from 2020 numbers – seems to suggest that the new policy has been influential on the total count. As we note below, more complex questions relate to the clarity of the new guidance, as well as whether the recent reduction in formal cases is consistent with effective decision-making in the field – as opposed to simply the altered parameters of BPD formal scrutiny.

### Tracking Mode

The first of the major changes are new activities that are “pursuit-like” but are now authorized under the new policy without the same restrictions or

procedural obligations for officers in the field. These allow officers to engage in an “assessment period” and “Tracking Mode,” neither of which are considered formal pursuits, and neither of which have an apparent limit to their speed or duration.<sup>29</sup> The Department reported that these were added to give officers greater latitude in the field, providing officers an opportunity to evaluate a situation before broadcasting a formal pursuit.

The Department’s view is that the previous lack of such an assessment period led to short pursuits being found “out of policy,” primarily (or solely) because they did not immediately meet the criteria for a pursuit – and not because they were otherwise problematic. BPD’s leadership has decided that allowing greater initial latitude eliminates this dynamic without implicating the sort of safety concerns and risk factors that animate the core concerns about pursuit activity.

This makes sense on some level. But these new authorized activities have yet to eliminate all the confusion as to the applicable criteria.

The first case after the new policy was enacted exemplifies this. In that case, the officers initiated a formal pursuit of a “reckless driver.” One minute into the pursuit, they broadcast that they were “just in Tracking Mode” because they had correctly realized that they did not meet the criteria for a formal pursuit. But, while the pursuit was technically “terminated,” the officers followed the subject for nearly 6 miles and for 7 minutes at high speeds, and other officers joined in. We noted confusion in the proper execution of Tracking Mode; some officers who joined the incident drove “Code-3” (with lights and sirens) at higher speeds while others followed at a safer distance and speed. The incident ended with the subject crashing. That pursuit was appropriately found to be out of policy because it did not initially meet the criteria for a formal pursuit and had “excessive” speeds and “improper application of Tracking Mode.”

Officers also transitioned from a formal pursuit into Tracking Mode in the second and third cases after the new policy. In those cases, officers opted to transition into Tracking Mode when pursuit speeds became too fast. These were both found to be in policy because they met the criteria for a formal pursuit and the officer “terminated” the formal pursuit and used reduced speeds when pursuit speeds became unsafe.

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<sup>29</sup> “Tracking Mode” is when an officer must terminate a pursuit for safety but can still follow the suspect vehicle, either “Code-3” (with lights and sirens) or without. Officer must do so “at reduced speed” and “out of the suspect line of sight.”

The transition from formal pursuit into “Tracking Mode” allowed the officers in these three cases to “terminate the pursuit,” yet track (and eventually apprehend) subjects.

These cases prompted the larger question: “Is Tracking Mode markedly different than a formal vehicle pursuit to the point where the new distinction is justified?” In these limited examples, Tracking Mode (when used as intended) seemed to result in safer outcome for officers, the subject, and community than if the officers had continued to engage in a “formal pursuit” at high speeds. But the first example is less clearly so, and points to the importance of continued training on the new policy.

We will continue to review the use of Tracking Mode and assessment periods to learn if use of these options results in overall safer outcomes. However, doing so may be difficult because, per the new policy, if these cases do not result in or from a formal pursuit, they may not be classified and evaluated as “vehicle pursuits.” The Department (and, as a result, OIR Group) may be missing an opportunity to formally track and, more importantly, evaluate the totality of “pursuit-like” police actions.

#### RECOMMENDATION 17

BPD should remain vigilant during this transitional period as to the use of “Tracking Mode,” in terms of both volume and individual episodes, to ensure that the spirit of the new approach is understood and followed by officers utilizing this option.

## Pursuit Speeds & Balance Test

The updated policy replaced specific guidelines for maximum pursuits speeds with a “Balance Test,” a series of considerations for safely initiating and continuing a pursuit, including speed.<sup>30</sup> While this change was concerning

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<sup>30</sup> Per policy, a Balance Test is: “an ongoing decision process to evaluate the risk of initiating, continuing, or terminating a pursuit. If the threat to public or officer safety is greater than the need for immediately apprehending the suspect, the pursuit should not be initiated or it should be terminated.”

upon first read of the new policy, use of the Balance Test may prove to be more effective than strict speed guidelines, both in the field and for evaluation.

Our “mini-audit” of 2020 cases and review of early 2021 cases revealed that the CIRB did not always apply the old policy’s speed guidelines when evaluating pursuits, even when the case file noted speeds in excess of the policy’s listed maximum speed. And we were troubled by commentary in one case suggesting that, even though the officer exceeded maximum speeds, she was doing so “responsibly” to apprehend what she thought at the time was a felony subject.

Conversely, all three cases after the new policy were evaluated using speed as part of the Balance Test. For example, the first case after the new policy was found to be out of policy due in part to excessive speeds; that is, the risk of driving at those high speeds exceeded the need to apprehend the subject. In that case, unlike the cases described above, the Balance Test was used to evaluate the totality of the incident, including speed, to find it out of policy.

Additionally, we noted more awareness of speed in the field: officers in the second and third cases self-terminated the pursuit when speeds became too fast and/or the subject’s driving too reckless for safety, citing the Balance Test.

We remain cautiously optimistic about the effectiveness of the Balance Test. And the Department reported that, in daily Roll Call, it regularly and consistently cautions officers against “over-driving,” reminding them that in-car GPS systems track speeds.

## Body-Worn Camera Audit

As part of our annual audit, OIR Group, in collaboration with the Department and at the request of the City, selects a “high-profile” topic for review and evaluation. Since 2015, we have evaluated the Department’s email communications. This protocol originated in the emergence of problematic emails associated with the work account of a former BPD executive. In response, BPD developed a protocol to ensure that employees were using the email system appropriately and in alignment with policy; OIR Group was

assigned the task of auditing the leadership team, while agency supervisors handled the lower rank levels.

We noted a significant improvement from year to year – to the point where all ranks of the agency were showing near-perfect compliance. Indeed, even the minor deviations from that trend tended to be technical rather than substantively concerning.

Our takeaway from the experience was twofold: first, that the Department's internal audits (as well as our own contributions at the level of management accountability) are a worthwhile exercise in reinforcing the agency's standards across a range of potential subjects, and second that BPD's widespread, well-established adherence to email policy meant that turning to a new topic was warranted for this new report cycle. Our updated scope of work with the City provided us with additional flexibility in this regard.

With these principles in mind, we chose to conduct an audit of the Department's new body-worn camera ("BWC") program in this year's audit cycle. At the time of our last report, BPD had just launched its expansive new technology program. In December of 2019, the Department contracted with well-known manufacturer Axon to establish a new comprehensive body-worn camera program with support of the City Council. Axon equipped all officers with new body-worn camera devices and related equipment, such as new Tasers that will activate the body-worn camera when unholstered with the safety off, as well as 32 In-Car cameras to be installed in the Department's fleet. The footage is uploaded and managed in a cloud-based evidence management system, which allows multiple users to upload, view, tag, and share footage.

This initiative was significant, but it also reflected a responsiveness to widespread public expectations – in Burbank as well as throughout national policing. As video capabilities have become more sophisticated and commonplace in recent years, the idea has taken hold that law enforcement can and should make itself more transparent and accountable by recording its enforcement activities in real time. Burbank's adoption of a BWC system aligned it with progressive departments across the country.

However, as we discussed in our 2019 report, the new body-worn camera program in Burbank or any other jurisdiction would only be as successful as its implementation. We noted past BPD challenges related to proper activation and retention of recorded audio evidence,<sup>31</sup> as well as, (as we discuss in greater detail above in our review of the officer-involved shooting), concerns over allowing officers to view their footage after critical incidents but before an administrative interview. It was with these and related considerations in mind that we turned our attention to this topic.

As with the email audits of the past, BPD conducted its own evaluation in an effort to see how its new program was working. Below, we discuss our independent “quality control” assessment of this Department-driven review, as well as our additional efforts to gauge the success of BPD policy and procedure.

## Methodology

The intent of our audit was to evaluate the Department’s body-worn camera program along several categories of interest:

- A “quality control” assessment of the Department’s own audit of its body-worn camera program
- Compliance with Department **Policy 453: Use of Body Worn and In-Car Camera**, especially as related to activation and retention: timely activation and uploading, appropriate use of muting functions, and accurate tagging within the evidence management system
- The activities and behaviors captured in the body-worn camera footage themselves (e.g., commendable behavior and/or potential misconduct)
- How police activities captured on video footage aligned with related case documentation (e.g., did the Incident Report as authored by the officer align with what we saw on the video?)

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<sup>31</sup> Prior to this update, the Department had been using audio-digital recording devices since 2012.

- The Department’s identification, review, and remediation of any misconduct related to body-worn camera use

We decided to conduct a three-part review to accomplish this evaluation. First, we did an “audit of the Audit:” we selected and reviewed a sample of the body-worn camera clips reviewed by the Department in its semi-annual body-worn camera audit to determine its accuracy.

Second, we looked at the Department’s handling of those issues with non-compliance that it happened to identify in the regular course of its supervisory review process.

Finally, we conducted our own “mini-audit” of body-worn camera use. We wanted to evaluate the totality of body-worn camera use from start to finish of a case.<sup>32</sup> We sampled five cases that resulted in arrests and involved multiple officers in the response, and we reviewed hours’ worth of body-worn camera evidence and related reports to assess the recordings along different criteria.

Ultimately, and as discussed below, we are pleased to report that the Department is effectively using its new technology. Moreover, the incidents that we reviewed showed professional, constructive, and effective policing that aligned with Department policy in the general sense as well as the camera-specific one.

## Review of Department BWC Audit

As part of the updated body-worn camera program, the Department established a semi-annual internal audit of all body-worn camera footage to ensure that the device was being used in accordance with policy. The most recent of these was released in December of 2021.

The Department randomly selected 35 videos from the relevant time period for its review. The Department determined that “all videos conformed to

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<sup>32</sup> This was in addition to the extensive amount of recorded evidence that we looked at in conjunction with the other subject areas covered in this Report.

Department standards.” This is an impressive outcome that, from our vantage point, is both credible and noteworthy for a few reasons.

First, as noted above, we selected a random “sample of the sample” in an effort to “trust but verify” the Department’s own initiative. Our experience dovetailed with the Department’s own findings: the five videos that we chose conformed both to the specific requirements in Policy 453 and to Department policies generally, and in that respect validated the conclusions BPD reached.

Next, we wish to affirm the Department’s inclination to devote management resources to this type of extra scrutiny of officer performance. As with any organization, one way for a police agency to show its priorities and emphasize its expectations is by checking to ensure compliance with the things it cares about. BPD’s commitment to this labor-intensive process shows a commendable recognition in the attention that its new BWC program deserves.

It also seems to be the case that BPD officers are comfortable with the technology and see it as an asset to their work rather than something to resent or be defensive about. Our experience across various jurisdictions over the course of recent years has shown an evolution in this regard. Some of the programs we have evaluated for other agencies date back to 2014, at a time when the “newness” of the concept engendered some hesitancy among officers – and a relatively significant level of noncompliance with policy expectations. But as time has passed, the growth of BWC programs has promoted greater familiarity, recognition of benefits, and a related level of acceptance.

Burbank’s officers appear to have adjusted well to the concept, and without the growing pains we have noted in other places. Some of this may be due to several years of experience with audio recorders that provided a baseline of experience for the Department’s personnel. If this is also attributable in part to the recency with which the City adopted the camera technology (compared to some other local agencies), it is nonetheless a positive and noteworthy thing.



## BWC Non-Compliance

In our 2019 and prior reports, we reported our concern with the Department’s “tepid” managerial response to officers who had failed, in one way or another, to properly use their digital audio recording devices. In that report, we recommended:

*“BPD leadership needs to emphasize its high standards for compliance, [which] should include graduated accountability measures that reinforce to officers the importance of consistent, effective deployment of the new technology.”*

Part of this audit, then, was to determine if the Department had taken on our recommendation – and with the additional curiosity that came from our experience in other jurisdictions as to the transitional period that BWC programs have sometimes required. Specifically, we sought to learn how the Department is identifying, reviewing, and remediating any deviations from policy related to use of body-worn cameras.

In discussing this issue with BPD management, we were told that non-compliance with BWC policy re-activation and other obligations has proven to be a relatively rare phenomenon. And the aforementioned semi-annual audits have apparently corroborated this assertion. While credit is due to the officers themselves, the factors noted above perhaps account for the success of the transition.

As for those identified instances in which problems did arise, the Department explained to us that it has based its response in part on the distinction between accidental lapses and intentional ones. Obviously, the former category is less worrisome – if still deserving of some level of intervention so as to reinforce expectations, document the event, and ensure that repeated behaviors are deterred. BPD has such a protocol, and it has employed documented counseling sessions that fall below formal discipline but could be used as a basis for sterner measures in the future.

We noted this choice in one case from our use of force case sample.

In that force case, the CIRB chose to debrief an officer who did not initially activate his body-worn camera at the onset of the encounter. The officer did not activate his camera until later in the incident, when the subject had already been detained and was being questioned.

Our understanding is that few of these inadvertent shortcomings have been identified as even a “first offense.” We have no reason to dispute this anecdotal account of overall compliance. However, given the critical nature of the BWC program to evidence-gathering and agency expectations, it might behoove BPD to keep a tally of the overall number of such incidents as an additional means of tracking performance.

### RECOMMENDATION 18

Apart from its individual documentation of unintentional lapses related to BWC use, BPD should supplement its semi-annual audit program by tracking the number of otherwise identified failures to properly engage the recordings as required by policy, with the goal of ensuring that overall compliance levels remain high.

As for the intentional choices by officers not to activate, the Department opened formal investigations into three separate incidents in 2021 and sustained formal allegations of BWC policy violations in each. The final resolution of those cases (in terms of disciplinary consequences and potential appeals) remains pending.

On the whole, we are pleased by BPD’s assurances that the program is working as intended in the field, and we are largely persuaded by our own independent evaluations that there is legitimacy to this claim. One exception is in the arena of “muting” the microphone function on the cameras at different points during a call for service; we discuss that below in the context of our own assessment of five arrests that we reviewed. We hope the Department will remain vigilant in its supervisory monitoring of this important resource.

## OIR Group Audit: Arrest Cases

We selected five arrest cases and reviewed them from start to finish. Three of these were misdemeanors and two were felonies:

- A husband called from a separate location to report that he had been in a domestic altercation with his wife in which she had been physically assaultive. Officers reported to the residence, spoke with the (extremely cooperative) woman at some length, determined that an arrestable crime had indeed occurred, and took the woman into custody without incident.
- Officers responded to the location of a retail store after being summoned by store security. Two individuals who were accused of shoplifting a large amount of material had fled on foot after being contacted. One person was apprehended nearby, brought back to the store for identification, and arrested. The officers also recovered the stolen materials from a vehicle that was abandoned in the parking lot.
- An officer conducted a late-night traffic stop on a vehicle that passed by without license plates. There were three men inside, and the ensuing investigation determined that the car was not properly registered and that it held contraband of various kinds. One man was on probation and one on parole. Multiple officers and a supervisor eventually responded. After an extended on-scene investigation and questioning of the involved individuals, two were arrested and one was cleared to leave.
- In response to reports of a possibly intoxicated man in a parking garage, an officer conducted a DWI stop on a man seated in his running car. After conducting a lengthy field sobriety test where the man “blew” well beyond the legal limit, the officer arrested the man and transported him to jail.
- Officer conducted a late-night traffic stop of a man riding his bicycle without an illuminated front headlight. When the man admitted that he was on parole for drug trafficking, the officers searched him and found a pipe and methamphetamine. The man attempted to negotiate with the officers, asking them to break the pipe and let him go with a citation. After patiently explaining that they could not do so, the officers arrested him and transported him to jail without incident. In this case, the officers appropriately deactivated the visual recording of their body-worn cameras when they conducted a strip search of the man in the jail facility.

Our overall impressions were consistent with the Department's findings in the more extensive review that it conducted (and that we corroborated by reviewing a subset of the relevant materials). Procedurally, each individual officer appeared to engage his or her camera at an appropriate point in the call for service, leave it running through the duration of the encounter, and upload the data into the system promptly. Substantively, the recordings portrayed a high level of professionalism and thoroughness as the officers dealt with different phases of each incident.

We did note two issues:

The first is that we did not observe any officers record or report the reason for muting their devices during an incident. While we did not perceive any malicious intent behind this conduct when it occurred,<sup>33</sup> the officers did not technically comply with the relevant Department policy. **Policy 453.4** states:

*“Members shall document [...] any instance where the recorder malfunctioned or the member deactivated or muted the recording, prior to the completion of the contact. Members should include in any report, the reason for deactivating or muting the recording. If a report is not completed, the member should record a statement at the conclusion of the contact explaining the reason for the deactivation or muting.”*

Additionally, section **453.7.1** details the concept of muting as follows:

*If the BWC and/or ICC equipped vehicle is used during an enforcement situation and it becomes necessary to discuss issues or concerns related to privacy or officer-safety with another member or supervisor, the device may be stopped or muted. The intention to stop or mute the recording should be noted by the member verbally such that it is recorded by the BWC before the deactivation if practicable. When the aforementioned conversation has ended, the member should reactivate the camera promptly and the member shall note verbally that the*

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<sup>33</sup> The concern about muting, of course, is that officers are thwarting the goals of transparency by expressing problematic intentions or observations in unrecorded, conspiratorial asides with their colleagues. While it is difficult to know if this was the case for the instances that we observed in or review, the relevant episodes and their aftermath did not create obvious reasons for suspicion.

*recording has continued. The member may instead or additionally explain the circumstances of an incomplete recording in a related police report if it is not practicable to verbally declare their intention to stop or mute the recording.*

While instances of muting were not widespread in the examples we surveyed, they did occur on occasion – and were not documented in the accompanying reports as required. Nor was the “privacy or officer-safety” justification readily apparent in every instance where muting was noted. Additionally, we saw more than one example of an officer muting a microphone, and then leaving it off (perhaps inadvertently) for several minutes after the initial conversation with a partner officer had ended.

Based on these observations, we recommend that the Department consider a Department-wide training and frequent Roll Call reminders on this specific policy requirement.

#### RECOMMENDATION 19

BPD should reinforce its policy expectations regarding the muting of microphones during recorded encounters, and direct training as needed regarding the circumstances in which muting is considered appropriate, focusing on the need per policy to document the reason for the decision to mute.

Second, we noted a repeated equipment concern with the use of Axon’s flexible magnetic mount: the body-worn camera fell off its mount in several force incidents. The disadvantage here is obvious: in one of the situations where officer scrutiny is at its highest, the recordings are compromised to the point of ineffectiveness. We recommend that the Department evaluate the effectiveness of the magnetic mount and consider other available mount options.

The CIRB alluded to this concern in a 2020 use of force review, stating that the Uniform Committee had been tasked with review of body-worn mount options, but we did not see any report back from the Committee. We encourage the Department to continue to evaluate and seek better solutions to this on-going issue.

## RECOMMENDATION 20

BPD should continue to evaluate its existing camera mount equipment and pursue alternatives that would lower the rate at which cameras are dislodged in a physical encounter.

Finally, an observation worth noting: this specific aspect of our Report preparations offered us the opportunity to review “everyday policing” in Burbank. As auditors and oversight practitioners, we often are called to review critical incidents, allegations of misconduct, or uses of force; these events, like those that become high-profile news stories, are often controversial and newsworthy because they show policing in a concerning or even negative light. We recognize that they merit the attention they receive, both internally and externally: accountability and potential reform are components of a strong agency’s commitment to continuous improvement.

But such events constitute only a fraction of the thousands of calls for service an agency like BPD handles each year. In studying these lower-key (if occasionally complicated) encounters, we had a unique chance to see BPD officers conducting themselves in a more “everyday” fashion. Our sense after doing so was that their professionalism and dedication in a range of contexts deserves acknowledgment.

We saw officers expend considerable effort in speaking with and offering services to a family dealing with mental illness. We observed a newer officer execute a drug arrest under the careful and patient guidance of his supervisor. We noted an officer adjust an arrestee’s handcuffs several times to mitigate that person’s complaints and defuse some of the tension from an inherently unpleasant situation. We recognized the thoughtfulness and sensitivity with which officers handled a misdemeanor domestic violence case. We saw officers painstakingly conduct an automobile search, and then patiently explain the steps of their lengthy on-scene investigation to the individuals who had been detained. We followed the various phases of a shoplifting investigation that coordinated effectively with both store security and third-party witnesses.

The kind of solid, careful police work we observed in this context may not be spectacular, but it is a significant community asset nonetheless.<sup>34</sup> We hope the Department's leadership is reinforcing the effectiveness of its personnel in handling their daily responsibilities in this fashion.

Further, because this type of everyday policing provides a more holistic, at often positive, view of policing, we encourage the Department to consider sharing these stories and related body-worn camera footage, when appropriate, with the public. This type of communication may go a long way to advance community-police relations.

#### RECOMMENDATION 21

BPD should consider sharing the stories and related video footage of “everyday policing” in the City as a way to educate and inform its community.

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<sup>34</sup> The absence of *un*professionalism also merits a mention. In our work with other agencies – and at times in the audio recordings from BPD officers we've heard in the past and in other categories of this year's review – we have noted episodes of profanity, discourtesy, or other suboptimal approaches to dealing with the public. This was not an issue in the hours of material we evaluated for this BWC audit project.

# BPD Accomplishments

At a time of transition for American policing, BPD has shown both a willingness to be responsive to new expectations *and* a commitment to generating its own initiatives in accountability and community outreach. These are positive indicators that we are pleased to mention as part of our own spotlight on BPD's performance.

In 2020, the Department faced many of the same challenges as law enforcement agencies nationwide. Pandemic restrictions limited their interaction with the public – to prevent the spread of Covid-19, the Department closed its front lobby and suspended many in-person events like “Coffee with a Cop” and recruitment fairs. And, in the summer of 2020, the City faced several days of protest and calls to defund law enforcement.<sup>35</sup> The Department navigated these challenges effectively – including its presentation in response to the “8 Can't Wait” policy initiatives that we discussed above. BPD took the opportunity to explore its own relevant policies and provide explanations to the public about how they align with the movement's standards and goals.

To its credit, the Department entered 2021 with big goals for technological and professional advancements. First, it implemented two major long-term technology projects: transitioning to the Federal Bureau of Investigation's “National Incident-Based Reporting System” (NIBRS) and launching a new application to effectively collect and report data for the State of California's “Racial Identify and Profiling Act” (RIPA). These two initiatives provide increased data transparency and better tracking at the state and national levels.

Apart from keeping up with the heightened levels of transparency, data capture, and policy modification that are evolving under state law, BPD continued its own commitment to high standards in the form of its voluntary – and successful – relationship with the Commission on Accreditation for Law Enforcement Agencies (CALEA). The audit process sponsored by CALEA

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<sup>35</sup> Unlike the civil unrest in other cities, the marches in Burbank were largely peaceful and did not result in a large police response.



requires that participating agencies comply with nearly 400 standards ranging from use of force policy, responses to mental health, and community engagement efforts. The audit found the Department to be in 100% compliance with these standards during the 2021 reaccreditation.

As pandemic restrictions eased, the Department re-engaged with its community. It hosted or participated in many City events, such as a Halloween Trunk or Treat intended to reach out to local elementary school children. And it used creative policing and community partnerships to address a chronic crime concern: theft of catalytic converters. It resumed the kind of Department-wide, in-person training that had been suspended during the COVID-19 crisis. And, in a challenging time for the profession, the Department also hired 15 police recruit or officer positions and 7 non-sworn personnel.

These and other programs have generated a sense of confidence and safety in the City of Burbank: in 2021, the Department's biennial community study showed that residents feel safe in the City and are confident in the Department's ability to address and handle their public safety needs.

# Conclusion

When any reasonably complex system (or set of systems) is subjected to close scrutiny, shortcomings of various kinds and ideas about future improvements will inevitably emerge. This Report reflects that principle in a couple of ways.

First is with the light it attempts to shine on the close scrutiny that the Burbank Police Department provides internally through its various review mechanisms. We consider the multiple examples we saw of investigative rigor, issue spotting, and corrective action to be signs of a high-functioning police agency – even when the underlying officer performance left something to be desired. BPD’s commitment to upholding standards and ensuring appropriate accountability appears to be consistently deep across several key topic areas. The Department’s regular level of investigation and review undoubtedly frames officer expectations and contributes to effective performance in the field.

Second, of course, is through the findings and recommendations of our Report itself. Our audit entailed dozens of hours of review into investigative materials of various kinds produced by BPD since our last cycle was completed in 2020. Naturally, we spotted specific individual instances in which we questioned how something was handled, or disagreed with a given decision, or would have approached an issue in a different way. Those moments provided the impetus for the critiques and the recommendations that we feature above. We look forward to the Department’s response, and trust that it will uphold its prior practice of considering each recommendation thoughtfully and making the adjustments it sees as beneficial.

Nonetheless, if the quality or nature of a police agency’s identified “problems” is one way to evaluate its overall well-being, the people of Burbank should be assured by the fundamental soundness of their Department. Years into our process of monitoring and interacting with BPD leadership, we find much to admire in the arenas that we evaluate in this Report. Our goal in continuing to push for further refinements is to bring an outside perspective that we hope will be useful – and that will enhance the strengths of BPD’s dedication to continuous self-improvement.

# Recommendations

- 1: BPD should commit to its initial standard of addressing its mandatory critical incident releases in a way that informs and explains, beyond the minimal requirements of the statute.
- 2: BPD should re-examine its policy on administrative interviews after an officer-involved shooting (and/or its interpretation thereof) to promote more definitively the “same day” acquisition of a statement from involved personnel.
- 3: BPD should consider working with the labor association and reviewing the approach of other agencies in considering a possible revision to its “view first” approach to allowing officers to watch BWC recordings prior to being questioned about their involvement in a deadly force incident.
- 4: BPD should reconsider its practice of inviting involved officers to attend Critical Incident Review briefings, so as not to complicate the candid presentation of facts and/or the panel analysis and instead instituting a process whereby a CIRB attendee is tasked with providing involved officers feedback after the meeting.
- 5: BPD should evaluate its current physical force options training with an eye toward increasing the frequency and time spent on hands-on tactical practice, incorporating de-escalation techniques and non-force options into any curricula.
- 6: BPD should consult with other agencies, both locally and nationwide, to explore and potentially pursue new models of training for physical force options, especially those that effectively incorporate de-escalation techniques.

- 7:** When officers reach into vehicles, in addition to determining whether the force was within policy, BPD should determine whether the tactic conformed with its “Reaching Into Vehicles” policy.
- 8:** BPD should regularly train to its policy on “Reaching Into Vehicles” and develop tactical scenarios designed to demonstrate to officers the potential danger of the tactic to officers and civilians.
- 9:** BPD should develop new scenario-based training on the new state law relevant to prevent positional asphyxia.
- 10:** BPD should train officers to explicitly articulate any rationale for keeping the subject in the prone position in their Incident Reports, and expressly address their considerations of positional asphyxia.
- 11:** BPD should ensure that the force review and CIRB process expressly consider in relevant cases whether officers’ actions were in compliance with new law and policy relating to cautions against positional asphyxia for restrained subjects.
- 12:** BPD should remain focused on promoting professional language and providing briefing, training, and counseling that will encourage officers to remain conscious of the very limited instances in which profanity should be considered tolerable.
- 13:** BPD should instruct supervisors to return any report for correction that uses the phrase “tactical language.”
- 14:** BPD should continue to evaluate its force review process and specifically consider more frequent use of the option of finding tactics to be out of policy where relevant.

- 15:** BPD should amend policy to require that all officers detail in writing the circumstances surrounding their use(s) of force to include any efforts to de-escalate prior to the use of force; and if no de-escalation techniques were deployed, an explanation for why none were deployed.
  
- 16:** BPD should revise its CIRB force review policy to require the Board to consider whether de-escalation techniques were deployed prior to moving to force options and if not, whether it would have been appropriate to consider them.
  
- 17:** BPD should remain vigilant during this transitional period as to the use of “Tracking Mode,” in terms of both volume and individual episodes, to ensure that the spirit of the new approach is understood and followed by officers utilizing this option.
  
- 18:** Apart from its individual documentation of unintentional lapses related to BWC use, BPD should supplement its semi-annual audit program by tracking the number of otherwise identified failures to properly engage the recordings as required by policy, with the goal of ensuring that overall compliance levels remain high.
  
- 19:** BPD should reinforce its policy expectations regarding the muting of microphones during recorded encounters, and direct training as needed regarding the circumstances in which muting is considered appropriate, focusing on the need per policy to document the reason for the decision to mute.
  
- 20:** BPD should continue to evaluate its existing camera mount equipment and pursue alternatives that would lower the rate at which cameras are dislodged in a physical encounter.

- 21:** BPD should consider sharing the stories and related video footage of “everyday policing” in the City as a way to educate and inform its community.