

January 10, 2022

# Seventy-Eighth Report *of the Independent Monitor for the Oakland Police Department*

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## Introduction

This is our seventy-eighth status report on the Negotiated Settlement Agreement (NSA) in the case of *Delphine Allen, et al., vs. City of Oakland, et al.*, in the United States District Court for the Northern District of California under the direction of Judge William H. Orrick. I was appointed in 2010 to oversee the monitoring process of the Oakland Police Department (OPD) that began in 2003.

Following the Court's Order of May 21, 2015, we devote special attention to the most problematic component parts of the NSA Tasks that are not yet in full or sustained compliance; and discuss in our status reports the most current information regarding the Department's progress with the NSA and its efforts at making the reforms sustainable. Our monthly reports do not address all Tasks. This report describes our recent assessments of NSA Tasks 24, 25, 26, 30, 31, and 41.

Each month, our Team conducts a visit to Oakland that includes both compliance assessments and technical assistance. Due to the COVID pandemic, we have been holding our visits remotely. During our site visits, we meet with Department and City officials; observe Department meetings and technical demonstrations; review Departmental policies; conduct interviews and make observations in the field; and analyze OPD documents and files, including misconduct investigations, use of force reports, crime and arrest reports, Stop Data Forms, and other documentation.

During the September 1, 2021 Case Management Conference, the Court reiterated its five priorities for the Department:

1. Reduce racial disparities in vehicle, pedestrian, and bicycle stops, with continued use of intelligence-led policing;
2. Implement Vision and its associated dashboards in a technologically straightforward way so that the tools are used effectively in the risk management process;
3. Recruit officers who reflect the diversity (gender, race/ethnicity, and other) of Oakland;
4. Ensure that all uses of force and instances of potential misconduct are accurately reported and rigorously investigated within set timeliness standards; and
5. Ensure that disciplinary decisions and the disciplinary process are fair and equitable.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 2 of 26

The Department is making progress in these areas, and the Chief and the Monitor continue their discussions regarding these on a regular basis.

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## *Focused Task Assessments*

### Overview of Our Assessments of Tasks 24 and 25

OPD had been in compliance with Tasks 24 and 25 since 2015, and we were not actively reviewing these Tasks. In November 2018, after we raised concerns regarding the identification, potential underreporting, and investigation of uses of force, the Court reactivated Tasks 24 and 25.

Between December 1-December 21, 2021, we reviewed three Level 2 uses of force for which a Force Review Board (FRB) was held. Consistent with our reviews of Level 3 and 4 use of force reports, we identified some concerns with the field reporting, which were appropriately addressed during the FRBs. Level 2 uses of force are reported in the Task 26 section of this report. We did not review any uses of force for which an Executive Force Review Board (EFRB) was held. Only Level 3 and 4 uses of force are discussed in this assessment.

For purposes of this report, we reviewed 91 Level 3 and Level 4 use of force (UOF) reports that were completed by OPD personnel between April 1-July 31, 2021. We reviewed all incidents that involved at least one Level 3 use of force (12), all Level 3 uses of force that were reduced to Level 4 (4), and a sample of Level 4 uses of force (75).

Since we resumed these reviews following the Court's reactivation of these Tasks, we have provided detailed feedback on the force investigations to OPD during each of our site visits. In cases where we have had questions or concerns, OPD personnel have continued to be responsive and have provided follow-up where necessary. In some cases, OPD has provided additional information or documentation that supports its actions, and we have concurred with the Department's assessments. In others, we have identified concerns that had not been identified or addressed by supervisors who conducted the UOF investigation, or the command personnel who reviewed the investigation. In these cases, OPD executive staff have directed additional review; directed training; entered a Supervisory Note File (SNF); or initiated an Internal Affairs Division (IAD) investigation.

In late 2018, OPD employees received training on the requirements for use of force reporting related to the pointing of weapons. In April 2019, OPD issued an Information Bulletin that provided clarification and direction regarding the documentation of use of force. The content of this bulletin included many of the concerns we had identified with the proper reporting of force. In June of 2019, the then-Chief issued a directive via email that specifically addressed boilerplate language in use of force reports; and in November 2019, she followed up with an additional email to address the use of generic or boilerplate language in the administrative section of Department reports. In December 2019, OPD completed the training developed to address

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 3 of 26

deficiencies found in UOF documentation based on OIG's global use of force audit. On February 15, 2020, OPD published Special Order 9196, which expanded and clarified the use of force policy. On February 27, 2020, the Department published Special Order 9202, which temporarily modified the requirements for the reporting of Type 32 uses of force. In June and August 2020, emails from executive staff addressed delayed body-worn camera (BWC) activations, the 30-second BWC buffer, and "pat" language being used in reports. In January 2021, an information bulletin addressed ongoing BWC activation concerns; and in May 2021, OPD provided training on announcements of police during community contacts, BWC activations, accuracy in reporting, and identifying patterns prior to issuing SNFs for discovered MOR violations. As noted in this and prior reports, while these efforts by executive staff have resulted in some improvement, there is still an unacceptable number of deficiencies in the investigation and review of uses of force.

In September 2021, OPD began conducting line-up training that covers: inappropriate use of force commands, failure to identify oneself as a police officer, the 30-second body-worn camera buffer, late BWC activations, use of profanity and slang, professional demeanor, conclusions designed as facts, boilerplate language, ensuring equipment is functional at the beginning of each shift, avoiding multiple officers giving commands during contacts with subjects, documentation of Type 32 UOF, proper preparation of SNFs, requirements for lowering or raising the level of force), and administrative due date reminders. This most recent training repeats many of the directives already provided to employees over the past two years. We are hopeful this training will provide necessary reinforcement and increase compliance with previous directives.

This report covers Level 3 and 4 UOF reports completed by OPD between April 1-July 31, 2021. All 91 of the cases we reviewed for this time period occurred after the publication of Special Order 9196, which clarified the use of force policy; and after Special Order 9202, issued on February 27, 2020, which temporarily modified the requirements for reporting Type 32 uses of force. While we had continued to note overall improvement in the reporting of uses of force in our reviews over our past several reports, we did not see continuing improvement for this and the last report.

In the 91 Level 3 and 4 uses of force we reviewed, there were 237 uses of force by 189 officers, against 112 different persons. In some cases, multiple officers used force on a single person; and in others, force was used on multiple persons, either by a single officer or by multiple officers. The total breakdown for the force used on the 112 persons is as follows: African Americans, 68%; Latinos, 21%; whites, 5%; and Asians or other, 6%. The percentage of force incidents involving African Americans decreased by 2%; force incidents involving whites increased by 1%; force incidents involving Latinos increased by 1%; and force incidents involving Asians or persons categorized as "other" remained at 6%, as we found in our last review, documented in our seventy-sixth status report.

In the 16 Level 3 uses of force we reviewed, 10 involved the deployment of a Taser along with one or more Level 4 uses of force. Two involved a Level 3 Type 16 use of force, along with additional Level 4 uses of force. Type 16 is defined as "all non-carotid takedowns on a restrained subject." In all 12, we found the uses of force to be appropriate and in compliance with OPD policies. Of these 12, only one was completed within the required timelines. The remaining 11 took between two and five months to complete, with the average being 10 weeks.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 4 of 26

Four additional Level 3 Type 16 uses of force were reduced to Level 4s, Type 26-16 with the approval of a supervisor. Our reviews determined that in these cases, this classification and reduction of Level 3 UOF to Level 4 UOF was not consistent with Department policy. There appeared to be some confusion in those instances where OPD personnel were restraining or lifting and carrying persons without any additional use of force. OPD agreed with our assessment regarding the inconsistencies and has committed to conduct additional training to clarify how to properly classify these types of use of force in the future.

In the 79 Level 4 UOF reports we reviewed, there were 176 uses of force by 142 officers against 93 persons. Fifty-nine of the 79 Level 4 UOF reports reviewed involved a Type 22, pointing of a weapon only. In these 59 reports, there were 122 uses of the Type 22, by 105 officers, against 73 persons. This equates to 71% of the total 176 Level 4 uses of force we reviewed during this time period. We again found in our reviews that there were numerous incidents involving multiple subjects with numerous OPD personnel being involved in the pointing of weapons. In these 122 uses of force, the breakdown is as follows: African Americans, 68%, a decrease of 1% from our seventy-sixth report; Latinos, 18%, a decrease of 5% from our 76<sup>th</sup> report; whites, 7%, an increase from 2%; and Asians or other, 7%, an increase of 1% from our 76<sup>th</sup> report. Of the 20 Level 4 UOF reports that involved use of force other than a Type 22 only, six (5%) involved a Type 29 takedown only. Six (5%) involved a Type 25 weaponless defense only and eight (6%) involved a combination of multiple Level 4 uses of force.

Of the total 112 persons on which a Level 3 or 4 UOF was used, 78 (70%) were arrested or criminally charged for felony or misdemeanor violations. This is a decrease in arrests from the 72% in our seventy-sixth report. The remaining 34 involved mental health holds, inability to establish criminal conduct, subjects who escaped, victims who did not want to prosecute, or subjects determined not to be a suspect after the investigation was conducted. In nine of the incidents reviewed, a person claimed an injury; none of these injuries required admittance to a hospital. In 11 other instances, persons were transported to a medical facility for the removal of a Taser probe only, for injuries that occurred prior to the use of force, or solely to obtain a medical clearance.

In our early assessments of Task 25.3 after reactivation of Tasks 24 and 25, we found numerous instances where officers did not attempt verbal communications prior to using force. Significant improvement in this area has occurred over time; and again for this report, we did not identify any uses of force where officers failed to attempt verbal communications and de-escalation where appropriate, prior to utilizing force. We did, however, again identify numerous instances where officers did not identify themselves as police officers when contacting members of the public and there was time to do so. We will continue to discuss any future concerns we identify with OPD and continue to monitor these types of instances; as is our practice during our monthly site visits, we continue to provide input to the Department on our observations.

Special Order 9196, the revision to the UOF reporting requirements, that went into effect on February 15, 2020, clarified what constitutes a “reportable use of force” and provided clearer direction on the reporting of use of force. Special Order 9196 also added a new force type: Type 32. A Type 32 use of force includes: overcoming resistance of a person during an arrest or detention; or defending oneself or another from combative action by another person. Type 32 is intended to address any use of force not already covered in Types 1-31. While we expected an

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 5 of 26

increase in Level 4 use of force reporting after Special Order 9196 was issued, the immediate and significant spike in the numbers was much greater than anticipated and appeared to be primarily related to the new Type 32. We agreed with OPD's assessment that further review of the force policy was needed due to this unanticipated increase; and Special Order 9202 was issued, that at least temporarily removed the Type 32 from the category of a Level 4 reportable use of force. Alternative means for counting these uses of force were implemented by OPD until more permanent solutions could be identified.

For our sixty-ninth report, we reviewed a sample of Type 32 uses of force. We found in these early reviews that there was some initial confusion regarding this reporting. In some cases, we identified instances where a Type 32 was documented and it did not appear that a use of force had occurred; and in others, we found that Type 32 was not the appropriate force type to have been used. We also identified concerns with officers not authoring their own supplemental reports, failures to properly document these uses of force in required reports, and the identification of MOR violations or training issues that did not appear to have been addressed. In June 2020, OPD began providing additional training on how to properly document Type 32 uses of force; and we began to see improvement.

As part of our reviews for this report, we reviewed the monthly Type 32 UOF audits conducted by Area Command personnel during this time period. They found again that, in general, officers are properly reporting these uses of force. They did not identify any instances in their reviews where they believed that a Type 32 UOF should have been classified as a different, or higher, level of force. They also found that the majority of these uses of force were the result of resistance during handcuffing, resisting while a subject was being escorted, or restraining persons with mental health issues.

All of the uses of force we reviewed for this report occurred after Special Order 9196 was issued, and after Special Order 9202 was issued to address the challenges created with the required reporting of Type 32 UOF. During our review of the 91 Level 3 and 4 UOF incidents for this report, we again noted numerous instances where it took multiple officers to control and secure combative persons. In the majority of the cases, we found that officers continued to identify and document Type 32 uses of force as required – though there were two instances identified in our reviews where we found that a Type 32 UOF had not been properly identified or reported. OPD took action when we brought these to the Department's attention.

The issuance of Special Order 9202 resulted in the identification of several challenges in collecting data regarding Type 32 UOF, as OPD's technology did not allow personnel to accurately collect the information as OPD had expected it would. There has also been a need to identify a long-term solution that will address not only how Type 32 uses of force will be documented, but how they will be reviewed. We have had several discussions with OPD; and the Department has now developed a protocol that will ensure the appropriate identification, review, and reporting of these uses of force. We noted in our 76<sup>th</sup> report that this protocol was pending final review and publication. For this report, we note that this protocol still has not been approved and published. We urge OPD to finalize and implement this protocol as soon as possible.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 6 of 26

For our 74<sup>th</sup> report, we found that in the 109 UOF reports we reviewed, there were 36 instances (17%) where a BWC had not been properly activated; all were late activations. In 18 (50%) of these, a supervisor identified and properly addressed the late activation. In the remaining 18, the supervisor either failed to identify and address the late activation at the time it occurred or failed to ensure that appropriate follow-up was conducted once it was discovered.

For our 76<sup>th</sup> report, we reviewed 69 UOF reports for the three-month period between November 1, 2020, and January 31, 2021. In 15 (22%) of the reports reviewed, we identified concerns with BWC activation. We did not include documented malfunctions of BWCs or those that have been deactivated during a struggle or other contact with persons in these numbers. Of the 15 instances we identified, eight (53%) were not identified by the supervisor. Of the eight instances not identified by the reporting supervisor, two (25%) were identified by a reviewing supervisor.

We did not review UOF reports for February or March 2021 to allow our reviews to become more current, and to allow OPD personnel an opportunity to address ongoing concerns with UOF reporting. For this report, we reviewed 91 UOF reports for the four-month period between April 1-July 31, 2021. In 24 (26%) of the reports reviewed, we identified concerns with BWC late activations or failure to have the 30-second buffer activated as required. Of the 24 cases where we identified BWC concerns, OPD agree with our assessment in 19 (79%) of them. In the remaining five, OPD maintained that either the BWC activation was not specifically required by policy based on the circumstances of the incident, or that the contact had been a chance encounter and officers had not had time to activate the BWC before contacting a subject. Of the 19 where OPD agreed with our assessment, only seven were identified and addressed by supervisors. In two others, OPD noted that though there had been a late activation by an officer, a supervisor would not have been required to review the BWC as the officer had not been one of the officers that used force. OPD review requirements for BWC in the event of a UOF only requires that the footage of officers involved in a UOF be reviewed.

While we understand OPD's response regarding the above UOF incidents where the Department determined that a violation of the BWC requirements had not occurred, we do not concur in all cases that their explanation was sufficient. What has become clear and is more important, however, is that OPD's BWC policy requires additional explanation and clarification regarding required activation. As OPD readies for the implementation of the new BWCs the Department will be obtaining in early 2022, the Department is also in the process of revising the BWC policy. We will closely monitor both the implementation of the new BWCs, and the policy revisions designed to clarify required activations.

Even if we discount those UOF incidents where we and OPD have differing opinions on required activation, in 21% of the UOF incidents we reviewed for this report, there was an agreed upon BWC issue; and in more than half of these, OPD supervisors and reviewers did not identify or address these concerns. As we have noted in numerous previous reports, the failure to properly activate a body-worn camera is a violation of policy; and more importantly, could result in the loss of critical information regarding the community contact. Beyond the late activations themselves, we continue to be concerned that supervisors and those who review the supervisors' reports have not been consistently identifying and addressing this violation.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 7 of 26

While OPD has continued to conduct follow-up on each of the BWC activation concerns we have raised and has issued numerous SNFs – and in some cases, discipline – to both those who fail to properly activate their BWCs and to those supervisors who fail to identify and address the failures, our Team is still having to identify many of these failures as they were not initially identified and addressed by OPD personnel. At this point in the process, that should not be the case.

While we have continued to remain supportive of the use of SNFs for BWC violations, we have also continued to emphasize that supervisors must ensure that the officer does not have a pattern of similar conduct prior to using an SNF. To assist in determining whether SNFs are being properly utilized to address BWC concerns, we requested OPD provide us with a list of SNFs issued over the past two years for this violation. In their preparation of this information, OPD identified 16 officers who had four or five “no” or “late” activations over the last two years and 10 months. OPD is now in the process of reviewing these officers to determine whether SNFs were the appropriate outcomes. We have asked OPD to provide us with the outcome of this review when it is completed. During this review, OPD also identified that in some cases, supervisors and commanders are inconsistently categorizing SNFs; some SNFs lack detail; in some the violation or policy issue is difficult to identify; and SNFs often lack language documenting the supervisor’s review of the employee history for patterns of similar conduct. The Department will be conducting training to address these concerns.

In our monthly site visit meetings with OPD, we have discussed and supported OPD’s proposed transition to a new BWC system that would allow additional ways to ensure proper activations. During our December 2021 virtual site visit, OPD advised us that the new BWCs should be received in early 2022, though there will be both policy revisions and training required prior to their implementation. While we agree that the technology improvements and a revised policy will likely address many of the ongoing concerns we have identified, it will still remain the responsibility of supervisors to identify and address failures to properly activate BWCs when they occur.

The use of force analysis we conducted in 2018 established the underreporting of Level 4 uses of force where an officer pointed a weapon at a person. Following our analysis, OPD partially addressed this concern with refresher training in September 2018 for all officers, and the Department has further addressed this issue in its use of force policy revisions. In our review of Level 3 and 4 uses of force for this report, we did not identify any instances where an officer failed to report the pointing of a weapon at a person.

In OPD’s 303<sup>rd</sup> Biweekly Compliance Update, dated December 16, 2021, the Department provided a comparison of year-to-date Level 3 and 4 uses of force for 2021 compared to the same time period in 2020. Overall UOF decreased from 2,734 in 2020, to 1,569 in 2021. Level 3 uses of force decreased from 130 in 2020, to 47 for the same time period in 2021. The ongoing reduction in Level 3 UOF continues to be at least in part due to the institution of new policies and the reclassification of some uses of force from Level 3 to Level 4. Level 4 uses of force decreased from 2,568 in 2020, to 1,503 for the same time period in 2021. These decreases appear to have numerous explanations. New policies and the adjustment of Type 32 reporting that occurred in 2020 is responsible for some of the large numbers in early 2020. OPD command staff have been addressing the use of Type 22 uses of force, firearms control, and the number of

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 8 of 26

officers who need to deploy weapons at incidents. OPD has been offering more training on de-escalation; there has been a reduction in stops due to the necessary disbanding of specialized units due to budget constraints; and OPD is now using a consolidated, Citywide approach to stops, focusing on violent crime. The Department's assessment has been that while there is an overall reduction in stops and arrests that has contributed to the decrease in UOF, those arrests that are occurring are of a "higher quality."

OPD has taken numerous steps to address the proper reporting of use of force and the concerns that have been identified during our reviews. In our reviews of UOF reports for March 1-October 31, 2020, we saw evidence that OPD's efforts appeared to be having a positive effect on reporting. During our September 2021 virtual site visit, the City Administrator requested that our Team attempt to make our reviews of UOF more current. In response to this request, we agreed to review two months of reports at each site visit, which would allow us to be as current as possible by December 2021.

We reviewed December 2020 and January 2021 UOF reports in our 76<sup>th</sup> report. We had expected that the Department would continue to improve its reporting and there would be ongoing improvement with compliance requirements. Unfortunately, it appeared from this review that OPD's progress had stalled. The number of concerns with the investigation and review of UOF reports showed no appreciable improvement from our November reviews. We also agreed to skip February and March 2021 reviews and start reviews again for April and May 2021. We were hopeful that this additional time would allow for all of the Department's directives to take root with its personnel.

In our reviews for the April and May 2021 uses of force, our assessment is that, again, the Department has not made appreciable progress in proper activation of BWCs, supervisory review and reporting, and timeliness of UOF reporting. We will continue to monitor the impact of revised policies, training delivered, and any directives from OPD executive staff that addresses any ongoing UOF reporting concerns.

## Task 24: Use of Force Reporting Policy

### **Requirements:**

*The policy shall require that:*

- 1. Members/employees notify their supervisor as soon as practicable following any investigated use of force or allegation of excessive use of force.*
- 2. In every investigated use of force incident, every member/employee using force, and every member/employee on the scene of the incident at the time the force was used, shall report all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor.*
- 3. OPD personnel document, on the appropriate form, any use of force and/or the drawing and intentional pointing of a firearm at another person.*

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 9 of 26

4. *A supervisor respond to the scene upon notification of an investigated use of force or an allegation of excessive use of force, unless community unrest or other conditions makes this impracticable.*
5. *OPD notify:*
  - a. *The Alameda County District Attorney's Office immediately or as soon as circumstances permit, following a use of lethal force resulting in death or injury likely to result in death.*
  - b. *The City Attorney's Office as soon as circumstances permit following the use of lethal force resulting in death or serious injury. At the discretion of the City Attorney's Office, a Deputy City Attorney shall respond to the scene. The Deputy City Attorney shall serve only in an advisory capacity and shall communicate only with the incident commander or his/her designee.*
  - c. *Departmental investigators regarding officer-involved shootings, in accordance with the provisions of Section V, paragraph H, of this Agreement.*
6. *OPD enter data regarding use of force into OPD's Personnel Assessment System (PAS).*

(Negotiated Settlement Agreement V. A.)

**Relevant Policy:**

OPD most recently revised Departmental General Order K-4, *Reporting and Investigating the Use of Force*, on October 16, 2014.

**Commentary:**

To assess compliance with Task 24, we reviewed 91 Level 3 and 4 use of force (UOF) reports that were completed by OPD from April 1-July 31, 2021. We also reviewed two Level 2 UOF investigations, for which an FRB was held during December 2021. These Level 2 uses of force are reported in our regular assessments of Task 26.

**Task 24.1** requires that members/employees notify their supervisor as soon as practicable following any reportable use of force or allegation of excessive use of force. In our reviews, we identified only three instances where notification was not properly made or was not properly documented. All involved Level 4, Type 32 UOF.

**Task 24.2** requires that in every reportable use of force incident, every member/employee on the scene of the incident at the time the force was used, reports all uses of force on the appropriate form, unless otherwise directed by the investigating supervisor. **Task 24.3** requires that OPD personnel document, on the appropriate form, every use of force and/or the drawing and intentional pointing of a firearm at another person.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 10 of 26

In the 91 Level 3 and 4 UOF incidents we reviewed; officers used force 237 times. In 65 of the reports, weapons were pointed at one or more subjects. In 59 of these 91 reports, Level 4 Type 22 was the only UOF used. We determined that officers' pointing of their firearms was appropriate in all instances we assessed. There were no instances identified where officers did not report Type 22 uses of force. We did identify three instances where a use of force was not properly reported; these were addressed by OPD. One was a Level 4, Type 26-17a, deployment of munitions that was directed by a supervisor, but not reported as a UOF for the supervisor. Two were Type 32 UOF that were not properly documented in reports. We will continue to closely monitor force reports to ensure that OPD personnel properly report uses of force in the future.

**Task 24.4** requires that a supervisor respond to the scene upon notification of a Level 1, 2, or 3 use of force or an allegation of excessive use of force, unless community unrest or other conditions makes such a response impracticable. In all 12 Level 3 uses of force we reviewed for this subtask; supervisors responded to the scene as required. Though not required, in all but two of the 79 Level 4 UOF reports we reviewed, a supervisor was either on scene at the time of the use of force or responded to the scene upon being notified of the use of force.

**Task 24.5** specifically addresses requirements for the response and handling of Level 1 uses of force. We assess Level 1 uses of force in our regular reviews of Task 30 (Executive Force Review Boards).

**Task 24.6** requires that OPD enter all use of force data into Performance Reporting Information Metrics Environment (PRIME), which is now called Vision. In all 91 of the Level 3 and 4 UOF cases we reviewed; the data was entered as required.

The Court's reactivation of Task 24 at a November 2018 Case Management Conference resulted from our serious concerns with the Department's handling and investigation of uses of force. OPD drafted Special Order 9196 to address and clarify requirements for the proper reporting of use of force. This revision to UOF reporting requirements went into effect in February 2020. OIG's global use of force audit, conducted in 2019, also identified numerous concerns with the reporting of use of force and enumerated recommendations. As noted throughout this report, OPD has taken a number of actions to address the identified concerns with the reporting of force. This is the third report where our assessment includes only uses of force that occurred after the implementation of Special Order 9196, the revisions to OPD's use of force policy, and Special Order 9202, and includes the review of 91 Level 3 and 4 uses of force. While we will continue to closely monitor uses of force to ensure that the desired reporting outcomes continue, we find OPD in compliance with this Task.

<b>Task 24 compliance status</b>	In compliance
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## Task 25: Use of Force Investigations and Report Responsibility

### **Requirements:**

*An on-scene supervisor is responsible for completing an investigated use of force report in accordance with the provisions of Departmental General Order K-4, "Reporting and Investigating the Use of Force."*

1. *OPD shall develop and implement a policy for conducting and documenting use of force investigations that include, at a minimum:*
  - a. *Documentation of the incident in either an Offense or Supplemental Report from the member(s)/employee(s) using force; and/or, when necessary, a statement taken from the member(s)/employee(s) using force;*
  - b. *Separating and separately interviewing all officers who were at the scene at the time of the incident;*
  - c. *A Supplemental Report from other members/employees on the scene or a statement taken, if deemed necessary by the investigating supervisor;*
  - d. *Identification and interviews of non-Departmental witnesses;*
  - e. *Consideration of discrepancies in information obtained from members, employees and witnesses, and statements in the reports filed;*
  - f. *Whether arrest reports or use of force reports contain "boilerplate" or "pat language" (e.g., "fighting stance", "minimal force necessary to control the situation");*
  - g. *Documentation of physical evidence and/or photographs and a summary and analysis of all relevant evidence gathered during the investigation; and*
  - h. *Consideration of training/tactical issues involving the availability and practicality of other force options.*
  - i. *Supervisor's justification as to why any element of the policy was not documented; and*
2. *All supervisors shall be trained in conducting use of force investigations and such training shall be part of a supervisory training course.*
3. *Use of force investigations shall include a recommendation whether the use of force was objectively reasonable and within Department policy and training. The recommendation shall be based on the totality of the circumstances and shall consider, but is not limited to, the following factors:*
  - a. *Whether the force used was pursuant to a legitimate law-enforcement objective;*

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 12 of 26

- b. *Whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the members/employees were attempting to achieve;*
  - c. *Whether the member/employee used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts;*
  - d. *Whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped;*
4. *use of force reports shall be reviewed by the appropriate chain-of-review as defined by policy.*

*The type of force used, the identity of the involved members, and the report preparer shall be the determining criteria for utilizing the appropriate chain-of-review. Reviewers may include, when appropriate, the chain-of-command of the involved personnel, the appropriate Area Commander on duty at the time the incident occurred, other designated Bureau of Field Operations commanders, and as necessary, the chain-of-command of the involved personnel up to the Division Commander or Deputy Chief/Director, and the Internal Affairs Division.*

*Reviewers for Level 1-3 use of force investigations shall:*

- a. *Make a recommendation as to whether the use of force was in or out of policy,*
  - b. *Order additional investigation and investigative resources when necessary, and*
  - c. *Comment on any training issue(s) when appropriate.*
5. *Any recommendation that the use of force did not comply with Department policy shall result in the incident being referred to the Internal Affairs Division to conduct additional investigation/analysis, if necessary.*
6. *Members/employees involved in a use of force incident resulting in serious injury or death and/or an officer-involved shooting, shall be separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed.*

(Negotiated Settlement Agreement V. B.)

**Relevant Policy:**

OPD most recently revised Departmental General Order K-4, *Reporting and Investigating the Use of Force*, on October 16, 2014.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 13 of 26

### **Commentary:**

As noted above in Task 24, we reviewed 91 Level 3 and 4 use of force (UOF) reports that were completed between November 1, 2020-January 31, 2021. We also reviewed two Level 2 UOF reports, for which a Force Review Board (FRB) was held in December 2021.

**Task 25.1** requires that supervisors complete a use of force report and that certain criteria are met in the report. We have found that OPD meets many of the required subtasks. However, Task 25.1f addresses the use of “boilerplate” or “pat” language in reports. While OPD has made strides in eliminating most of such language, we continue to find some deficiencies. Specifically, we continue to find instances where officers justify their uses of force “based on my training and experience,” without any further information or explanation as to what training and experience they are referring to. We have discussed this with Department officials on numerous occasions; and though we now see more instances where officers provided additional details in their justifications of force, there is still need for improvement.

**Task 25.2** requires that all supervisors are trained on how to conduct use of force investigations and such training is part of a supervisory training course. OPD includes the requirement for this training in its Departmental policies. During our August 2020 site visit, we again confirmed with OPD that the Department continued to require and deliver this training. In OPD’s 279<sup>th</sup> Biweekly Compliance Update, dated January 15, 2021, the Department provided the results of its review of Task 25 requirements. OPD reviewed 15 uses of force for this audit; one was a Level 3 UOF, and 14 were Level 4 uses of force. The Department noted in this report that all supervisors had attended a Sergeants’ Transition Course, where use of force investigation is part of the curriculum. During our future site visits, we will verify that this training continues to occur.

We continue to be concerned with the preparation and review of UOF reports by supervisors. The NSA has had a long duration. The use of force and the processes in which force is documented and reviewed are at the core of the Court’s oversight. These deficiencies should no longer be defining the Department’s obligation to fulfill its requirements. While the Department has provided numerous directives on this topic, we continue to find instances where supervisors fail to identify deficiencies in officer reporting and fail to identify or address MOR violations. Reviewers of the supervisor reports have also failed on a number of occasions to identify or address concerns.

**Task 25.3** requires that use of force investigations include required recommendations. Areas of recommendation include: whether the force used was pursuant to a legitimate law enforcement objective; whether the type and amount of force used was proportional to the resistance encountered and reasonably related to the objective the officers were attempting to achieve; whether the officers used reasonable verbal means to attempt to resolve the situation without force, if time and circumstances permitted such attempts; and whether the force used was de-escalated or stopped reasonably when resistance decreased or stopped.

In our assessment of 91 Level 3 and 4 UOF reports, we did not identify any instances where we believe the force may not have been appropriate, where the use of force was not deescalated or stopped reasonably when resistance decreased, or any instances where we believe officers could have made additional efforts to explain to subjects being detained why the detention was

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 14 of 26

occurring prior to using force. We *did* continue to identify numerous instances in our reviews for this report where officers failed to identify themselves as police officers when it was appropriate and there was time to do so. During our site visits, we will continue to discuss any concerns that we identify with this Task.

**Task 25.4** requires that use of force reports be reviewed by the appropriate chain of command and appropriate recommendations are made. In all of the cases we reviewed, the reports were reviewed as required. We continue to note that while some deficiencies related to the preparation and review of UOF reports for Level 3 and 4 uses of force are discovered during the reviews, many are not. This is troubling. We continue to find instances where supervisors fail to identify and properly address concerns with body-worn camera activations, or other MOR violations. We have noted that these same concerns exist when the reports are reviewed by the chain of command. This is unacceptable.

**Task 25.5** requires that any determination that a use of force did not comply with Department policy result in the incident being referred to IAD to conduct additional investigation/analysis, if necessary. None of the Level 3 or Level 4 investigations we reviewed resulted in our finding that the force did not comply with policy.

**Task 25.6** requires that members/employees involved in a use of force incident resulting in serious injury or death and/or officer-involved shooting, are separated from each other as soon as practicable at the incident scene, and kept apart until they have completed their reports and been interviewed. This Task is not assessed here, as we review and consider it as part of the Force and Executive Force Review Boards that OPD holds to examine Level 1 and 2 uses of force.

The Court's reactivation of Task 25 at a November 2018 Case Management Conference resulted from our serious concerns with the Department's handling and investigation of uses of force. OPD drafted Special Order 9196 to address and clarify requirements for the proper reporting of use of force. This revision to UOF reporting requirements went into effect in February 2020. OIG's global use of force audit, conducted in 2019, also identified numerous concerns with the reporting of use of force and enumerated recommendations. As noted throughout this report, OPD has taken a number of actions to address the identified concerns with the investigation and reporting of force.

This is the third report where our assessment includes only uses of force that occurred after the implementation of Special Order 9196, the revisions to OPD's use of force policy, and Special Order 9202, and includes the review of 91 Level 3 and 4 uses of force. These revisions to policy, along with the many follow-up emails and training by executive staff, have outlined the Department's expectations of those who prepare and review UOF reports. We had hoped to see ongoing improvement in the investigation of force and the required documentation. Unfortunately, and again, that was not the case for the investigations we reviewed for this report. We will continue to closely monitor uses of force to ensure that the desired reporting outcomes occur and that OPD addresses those deficiencies that have been identified. OPD remains in partial compliance with this Task.

<b>Task 25 compliance status</b>	In partial compliance
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Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 15 of 26

## Task 26: Force Review Board (FRB)

### **Requirements:**

*OPD shall develop and implement a policy concerning its FRB proceedings. The policy shall:*

- 1. Set out procedures, membership and a timetable for FRB review of use of force investigations involving Level 2 incidents, as defined in Department General Order K-4, REPORTING AND INVESTIGATING THE USE OF FORCE;*
- 2. Require the FRB to review all use of force investigations;*
- 3. Require the FRB to make a recommendation as to whether the use of force was in policy or out of policy;*
- 4. Require the FRB to forward sustained policy violations to the Discipline Officer.*
- 5. Require the FRB not to review any use of force allegation until the internal investigations has been completed;*
- 6. Authorize the FRB to recommend to the Chief of Police additional use of force training or changes in policies or tactics, or additional standards, investigatory policies, or training for use of force investigations;*
- 7. Require the FRB to conduct an annual review of use of force cases examined, so as to identify any patterns of use of force practices that may have policy or training implications, and thereafter, issue a report to the Chief of Police;*
- 8. Require that the FRB membership include, at a minimum, one member from the Training Division, one member from the Field Training Officer program, and either the Bureau of Field Operations Deputy Chief or his/her designee;*
- 9. Minimally, that one member of the FRB shall be replaced at least annually.*

(Negotiated Settlement Agreement V. C.)

### **Relevant Policy:**

OPD most recently revised Departmental General Order K-4.1, *Force Review Boards*, on December 21, 2015.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 16 of 26

### **Commentary:**

OPD Force Review Boards (FRBs) are regularly convened to examine the investigations conducted relative to the deployment and application of Level 2 uses of force.<sup>1</sup> OPD first achieved compliance with this Task during the nineteenth reporting period (April 1-June 30, 2014). We continue to assess the compliance with this Task, including our analyses of force reports; our review of Force Review Board reports; attendance at Force Review Boards when conducted during our site visits; and observing Force Review Boards between site visits via online meeting software.

For this report, we reviewed four FRB reports that were completed and approved by the Chief of Police during October and November 2021. In general, we found the reports to be well-written and accurate accounts of the proceedings they documented, with one exception, further described below. At least one member of the Monitoring Team observed all of these FRBs remotely via virtual meeting software. The reports collectively documented the assessment of 25 uses of force associated with four separate incidents. All uses of force were found to be in compliance. In all of the cases, the Chief concurred with the Boards' findings without any modifications.

We did not disagree with any of the findings in the FRB reports we reviewed. However, one report indicated that the Board voted on four uses of force associated with an incident in which a suspect was taken into custody for breaking a car window with a metal pole, as well as threatening the vehicle's operator with the same object. Our notes from observing the Board indicated that the members reviewed and voted on eight uses of force in connection with this incident. OPD researched this issue and confirmed that the report was inaccurate in this respect. An addendum was prepared to correct the issue, and approved by the Chief. This appears to be simply a typographical error. OPD advised us that the technical writer preparing the report was also serving as the technical writer for other FRBs, and he believes that he conflated the notes from another incident.

In addition to reviewing the completed FRB reports, we observed all three of the FRBs convened by OPD since we last reported on this Task. These Boards met on December 9, 20, and 21, respectively. We observed them all remotely via an online meeting platform due to the ongoing COVID-19 pandemic, which has curtailed our monthly in-person site visits. We provide immediate feedback for Board members at the conclusion of each FRB we observe.

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<sup>1</sup> According to OPD, Level 2 uses of force include: "1) Any strike to the head (except for an intentional strike with an impact weapon); 2) Carotid restraint is applied that does not result in the loss of consciousness; 3) Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury; 4) Any unintentional firearms discharge that does not result in injury; 5) A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; 6) Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; (NOTE: For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency treatment) 7) Any Level 3 use of force used on or applied to a restrained subject; 7.a) A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble; 7.b) A subject with only one handcuff on is not a restrained person."

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 17 of 26

In general, we continue to observe substantive discussion and deliberations among the Board members. All of the Captains who sit as panelists have gained a great deal of experience during the past two years, and this has resulted in a certain consistency in the manner in which the Boards are conducted. Members ask probing questions of the force investigators; and, where applicable, Department subject matter experts (SMEs) and IAD investigators. They also spend a great deal of time discussing issues ancillary to the uses of force, such as tactics, supervision, force alternatives, and training opportunities. As is customary for all Boards, their feedback was conveyed in the form of training points to appropriate personnel.

Collectively, the FRBs found all the uses of force they reviewed to be in compliance, with the exception of one Taser deployment. The force investigator who presented to the Board also deemed this use of force out of compliance. We did not disagree with any of the Boards' findings.

It is not a requirement, but all of the Board votes we observed during this reporting period were unanimous. We recognize that in some circumstances, there will be legitimate differences of opinion where the determination is not obvious. In these situations, we look for frank discussion and clear explanations of the differing positions.

There were only three FRBs held since our last report on this Task – all in December – but we did not note any of the timeliness concerns we've identified in prior reports. None of the Boards we observed for this report were in jeopardy of impacting 3304 dates.

In addition to ruling on the appropriateness of uses of force, Force Review Boards generally identify several follow-up items based on their review of the associated materials and the presentations made to them. These can include items such as counseling and training for individual officers, publication of Department-wide training materials, and modifications to policy. OPD tracks these deliverables in a spreadsheet, broken down into three categories: Individual Issues; Department-Wide Issues; and Quarterly Training Points.

The last accounting of deliverables provided to us, which lists follow-up items from FRBs convened prior to November 30, 2021, identified only two open items. (This information was provided to us pursuant to a standing monthly document request, and does not include deliverables from the FRBs we observed in December.) One follow-up item involved individual training, which is being held in abeyance pending the outcome of an administrative investigation. The other involved Department-wide training, which is still in development. OPD has successfully addressed the backlog of deliverables identified in some of our recent reports. Our two most recent reviews did not reveal any significant accumulation of unresolved commitments.

Based on this review, OPD remains in compliance with this Task.

<b>Task 26 compliance status</b>	In compliance
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Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 18 of 26

## Task 30: Executive Force Review Board (EFRB)

### Requirements:

1. *An EFRB shall be convened to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents. A firearm discharge at an animal shall be reviewed by the EFRB only at the direction of the Chief of Police.*
2. *The Board shall have access to recordings and/or transcripts of interviews of all personnel on the scene, including witnesses, and shall be empowered to call any OPD personnel to provide testimony at the hearing.*
3. *OPD shall continue the policies and practices for the conduct of EFRB, in accordance with the provisions of DGO K-4.1, FORCE REVIEW BOARDS.*

(Negotiated Settlement Agreement V. G.)

### Relevant Policy:

OPD most recently revised Departmental General Order K-4.1, *Force Review Boards*, on December 21, 2015.

### Commentary:

Executive Force Review Boards (EFRBs), consisting of three top command-level staff, conduct thorough, detailed reviews of all Level 1 uses of force, in-custody deaths, and vehicle pursuit-related deaths and serious injuries. OPD achieved compliance with this Task during the nineteenth reporting period (April 1-June 30, 2014). We found OPD to not be in compliance with this Task based on the EFRB conducted in 2018, which reviewed the officer-involved shooting of Joshua Pawlik. We disagreed with the Board's findings in that case, and issued a detailed report on the incident on August 17, 2020.

Since we last reported on this Task, OPD has not convened any EFRBs. We did review one EFRB report which documented a Board's July 2021 review of a Level 2 use of force (Type 12, or baton strike) causing injuries, which occurred on May 31, 2020 during the widespread civil unrest in Oakland from May 29-June 1, 2020. The incident was upgraded to and investigated as a Level 1 use of force, which requires review by an EFRB. We observed this EFRB remotely, and we found the report to be an accurate reflection of the Board's proceedings. The subject officer retired before the Board convened, but the EFRB nonetheless found the use of force out of compliance, and also agreed with IAD's sustained findings on other allegations related to the incident.

OPD remains in compliance with this Task.

<b>Task 30 compliance status</b>	In compliance
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Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 19 of 26

## Task 31: Officer-Involved Shooting Investigations Review Protocol

### **Requirements:**

*OPD shall develop a policy to ensure that, in every officer-involved shooting in which a person is struck, Homicide and Internal Affairs investigators respond to the scene. The Homicide Section's investigation shall be conducted in partnership with, and when deemed appropriate by, the Alameda County District Attorney's Office. Interviews of the subject officer(s) shall be conducted jointly with the appropriate staff from Homicide and the Office of the District Attorney. The District Attorney and City Attorney shall be notified in accordance with the provisions of Section V, paragraph A (5), of this Agreement. Homicide shall duplicate and provide all completed reports and documents to the District Attorney's Office, the Office of the City Attorney, and the Internal Affairs Division. IAD shall provide information and/or documents as required by law.*

(Negotiated Settlement Agreement V. H.)

### **Relevant Policy:**

OPD most recently published Departmental General Order K-4, *Reporting and Investigating the Use of Force* on October 16, 2014. IAD Policy & Procedures and Homicide Policy & Procedures are also relevant to this Task.

### **Commentary:**

Task 31 requires certain notifications and responses in the event of an officer-involved shooting. The Task has long been inactive, but on November 27, 2018, the Court reactivated the Task as an active part of our responsibility.

During this reporting period (October 23-December 30, 2021), OPD officers were involved in two officer-involved shooting incidents. One occurred on November 20, 2021; and one occurred on December 24, 2021. In both incidents, OPD complied with all of Task 31's requirements. The Department briefed us on the associated investigation into the November 20, 2021 incident during our most recent virtual site visit. We will request updates on both cases during our January site visit.

OPD remains in compliance with this Task.

<b>Task 31 compliance status</b>	In compliance
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## Task 41: Use of Personnel Assessment System (PAS) and Risk Management

### **Requirements:**

*Within 375 days from the effective date of this Agreement, OPD shall develop a policy for use of the system, including supervision and audit of the performance of specific members, employees, supervisors, managers, and OPD units, as well as OPD as a whole.*

*The policy shall include the following elements:*

- 1. The Chief of Police shall designate a PAS Administration Unit. The PAS Administration Unit shall be responsible for administering the PAS policy and, no less frequently than quarterly, shall notify, in writing, the appropriate Deputy Chief/Director and the responsible commander/manager of an identified member/employee who meets the PAS criteria. PAS is to be electronically maintained by the City Information Technology Department.*
- 2. The Department shall retain all PAS data for at least five (5) years.*
- 3. The Monitor, Inspector General and Compliance Coordinator shall have full access to PAS to the extent necessary for the performance of their duties under this Agreement and consistent with Section XIII, paragraph K, and Section XIV of this Agreement.*
- 4. PAS, the PAS data, and reports are confidential and not public information.*
- 5. On a quarterly basis, commanders/managers shall review and analyze all relevant PAS information concerning personnel under their command, to detect any pattern or series of incidents which may indicate that a member/employee, supervisor, or group of members/employees under his/her supervision may be engaging in at-risk behavior. The policy shall define specific criteria for determining when a member/employee or group of members/employees may be engaging in at-risk behavior.*
- 6. Notwithstanding any other provisions of the PAS policy to be developed, the Department shall develop policy defining peer group comparison and methodology in consultation with Plaintiffs' Counsel and the IMT. The policy shall include, at a minimum, a requirement that any member/employee who is identified using a peer group comparison methodology for complaints received during a 30-month period, or any member who is identified using a peer group comparison methodology for Penal Code §§69, 148 and 243(b)(c) arrests within a 30-month period, shall be identified as a subject for PAS intervention review. For the purposes of these two criteria, a single incident shall be counted as "one" even if there are multiple complaints arising from the incident or combined with an arrest for Penal Code §§69, 148 or 243(b)(c).*
- 7. When review and analysis of the PAS threshold report data indicate that a member/employee may be engaging in at-risk behavior, the member/employee's immediate supervisor shall conduct a more intensive review of the*

*member/employee's performance and personnel history and prepare a PAS Activity Review and Report. Members/employees recommended for intervention shall be required to attend a documented, non-disciplinary PAS intervention meeting with their designated commander/manager and supervisor. The purpose of this meeting shall be to review the member/employee's performance and discuss the issues and recommended intervention strategies. The member/employee shall be dismissed from the meeting, and the designated commander/manager and the member/employee's immediate supervisor shall remain and discuss the situation and the member/employee's response. The primary responsibility for any intervention strategies shall be placed upon the supervisor. Intervention strategies may include additional training, reassignment, additional supervision, coaching or personal counseling. The performance of members/ employees subject to PAS review shall be monitored by their designated commander/manager for the specified period of time following the initial meeting, unless released early or extended (as outlined in Section VII, paragraph B (8)).*

8. *Members/employees who meet the PAS threshold specified in Section VII, paragraph B (6) shall be subject to one of the following options: no action, supervisory monitoring, or PAS intervention. Each of these options shall be approved by the chain-of-command, up to the Deputy Chief/Director and/or the PAS Activity Review Panel.*

*Members/employees recommended for supervisory monitoring shall be monitored for a minimum of three (3) months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor. The first at the end of one (1) month and the second at the end of three (3) months.*

*Members/employees recommended for PAS intervention shall be monitored for a minimum of 12 months and include two (2) documented, mandatory follow-up meetings with the member/employee's immediate supervisor and designated commander/manager: The first at three (3) months and the second at one (1) year. Member/employees subject to PAS intervention for minor, easily correctable performance deficiencies may be dismissed from the jurisdiction of PAS upon the written approval of the member/employee's responsible Deputy Chief, following a recommendation in writing from the member/employee's immediate supervisor. This may occur at the three (3)-month follow-up meeting or at any time thereafter, as justified by reviews of the member/employee's performance. When a member/employee is not discharged from PAS jurisdiction at the one (1)-year follow-up meeting, PAS jurisdiction shall be extended, in writing, for a specific period in three (3)-month increments at the discretion of the member/employee's responsible Deputy Chief. When PAS jurisdiction is extended beyond the minimum one (1)-year review period, additional review meetings involving the member/employee, the member/ employee's designated commander/manager and immediate supervisor, shall take place no less frequently than every three (3) months.*

9. *On a quarterly basis, Division/appropriate Area Commanders and managers shall review and analyze relevant data in PAS about subordinate commanders and/or managers and supervisors regarding their ability to adhere to policy and address at-risk behavior. All Division/appropriate Area Commanders and managers shall conduct quarterly meetings with their supervisory staff for the purpose of assessing and sharing information about the state of the unit and identifying potential or actual performance problems within the unit. These meetings shall be scheduled to follow-up on supervisors' assessments of their subordinates' for PAS intervention. These meetings shall consider all relevant PAS data, potential patterns of at-risk behavior, and recommended intervention strategies since the last meeting. Also considered shall be patterns involving use of force, sick leave, line-of-duty injuries, narcotics-related possessory offenses, and vehicle collisions that are out of the norm among either personnel in the unit or among the unit's subunits. Division/appropriate Area Commanders and managers shall ensure that minutes of the meetings are taken and retained for a period of five (5) years. Commanders/managers shall take appropriate action on identified patterns of at-risk behavior and/or misconduct.*
10. *Division/appropriate Area Commanders and managers shall meet at least annually with his/her Deputy Chief/Director and the IAD Commander to discuss the state of their commands and any exceptional performance, potential or actual performance problems or other potential patterns of at-risk behavior within the unit. Division/appropriate Area Commanders and managers shall be responsible for developing and documenting plans to ensure the managerial and supervisory accountability of their units, and for addressing any real or potential problems that may be apparent.*
11. *PAS information shall be taken into account for a commendation or award recommendation; promotion, transfer, and special assignment, and in connection with annual performance appraisals. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
12. *Intervention strategies implemented as a result of a PAS Activity Review and Report shall be documented in a timely manner.*
13. *Relevant and appropriate PAS information shall be taken into account in connection with determinations of appropriate discipline for sustained misconduct allegations. For this specific purpose, the only disciplinary information from PAS that shall be considered are sustained and not sustained complaints completed within the time limits imposed by Government Code Section 3304.*
14. *The member/employee's designated commander/manager shall schedule a PAS Activity Review meeting to be held no later than 20 days following notification to the Deputy Chief/Director that the member/employee has met a PAS threshold and when intervention is recommended.*

15. *The PAS policy to be developed shall include a provision that a member/employee making unsatisfactory progress during PAS intervention may be transferred and/or loaned to another supervisor, another assignment or another Division, at the discretion of the Bureau Chief/Director if the transfer is within his/her Bureau. Inter-Bureau transfers shall be approved by the Chief of Police. If a member/employee is transferred because of unsatisfactory progress, that transfer shall be to a position with little or no public contact when there is a nexus between the at-risk behavior and the “no public contact” restriction. Sustained complaints from incidents subsequent to a member/employee’s referral to PAS shall continue to result in corrective measures; however, such corrective measures shall not necessarily result in a member/employee’s exclusion from, or continued inclusion in, PAS. The member/employee’s exclusion or continued inclusion in PAS shall be at the discretion of the Chief of Police or his/her designee and shall be documented.*
16. *In parallel with the PAS program described above, the Department may wish to continue the Early Intervention Review Panel.*
17. *On a semi-annual basis, beginning within 90 days from the effective date of this Agreement, the Chief of Police, the PAS Activity Review Panel, PAS Oversight Committee, and the IAD Commander shall meet with the Monitor to review the operation and progress of the PAS. At these meetings, OPD administrators shall summarize, for the Monitor, the number of members/employees who have been identified for review, pursuant to the PAS policy, and the number of members/employees who have been identified for PAS intervention. The Department administrators shall also provide data summarizing the various intervention strategies that have been utilized as a result of all PAS Activity Review and Reports. The major objectives of each of these semi-annual meetings shall be consideration of whether the PAS policy is adequate with regard to detecting patterns of misconduct or poor performance issues as expeditiously as possible and if PAS reviews are achieving their goals.*
18. *Nothing in this Agreement, and more specifically, no provision of PAS, shall be construed as waiving, abrogating or in any way modifying the Department’s rights with regard to discipline of its members/employees. The Department may choose, at its discretion, to initiate the administrative discipline process, to initiate PAS review or to use both processes concurrently or consecutively.*

(Negotiated Settlement Agreement VII. B.)

**Relevant Policy:**

OPD revised and issued Departmental General Order D-17, *Personnel Assessment Program*, in November 2013.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 24 of 26

**Commentary:**

During our December virtual site visit, the Department held a Risk Management Meeting for the Violent Crime Operations Center (VCOC), CeaseFire, and the Criminal Investigations Division (CID). This meeting, held before the Department command staff, followed earlier meetings in that same week at which the risk information was reviewed separately within each unit. Those individual meetings provide opportunities for significant participation and discussion with unit supervisors and make important contributions to the risk management process.

The Risk Management Meetings, which occur at Area levels, and at the Bureau and Departmental levels, are conducted under the auspices of the recently formed Bureau of Risk Management. The Department is currently revising a policy governing risk management to reflect developments that have occurred over the past several years; we have been working closely with a small group of Department officials on this endeavor. Furthermore, according to the City's Information Technology Department (ITD), the Vision database, which provides nearly all of the information used at the meetings, is now complete and fully implemented.

City ITD also reports that it has finished the creation of all needed "reports." Reports serve as the standard tools for summarizing the data and answering critical risk management questions. According to the ITD, there are no plans for the further development of reports – though ITD personnel report that they intend to address needs for the modification of reports, including the addition of variables, as needed.

Taken together, the ITD and Departmental reports will provide the direction for data analysis. A useful step forward would be to formalize a plan for analysis while retaining flexibility to address issues that may arise. That plan would go beyond the preparation of tables for the Risk Management Meetings. Currently, most analysis concentrates on a process often described in the Department as "drilling down," usually to the individual officer level. The Department has also recognized the importance of "drilling up" to examine patterns beyond individual officers. Those patterns may simply reflect common practices, or may even result from policy or training practices for which the analysis may suggest the need for revision.

The Department has noted the extensive data available for such analyses by the risk management unit, and by Area Commanders' and other staff. Reports for force, complaints, and arrests have been built and are being validated. Currently in progress are also reports on stop data, collisions, and OC checkout. Reports are also planned for addressing pursuits and canine deployments. The Department now has data and analysis staff resources for conducting such analyses.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
January 10, 2022  
Page 25 of 26

Of course, support for analysis should be the prime purpose of the Vision database. Stagnant summaries of the most recent data are of limited value. Analysis must help identify and assess risk-related behavior that has already occurred and help mitigate the prospect for that behavior to be repeated moving forward. To this point, however, the development of both the database and the structure of Risk Management Meetings has outpaced the development of *analysis*. It would be useful if the Department conducted summary analyses over time to detect patterns or spikes or, for that matter, any anomaly across Departmental data. For example, OPD's monthly "Risk Analysis Report" provides year-to-date summaries of some Task 40 data comparing the past two years and provides a comparison of averages for previous months but not individual months. It does not allow executive leadership to visualize trends or discuss such trends at the Departmental meetings.

Similarly, when stop outcomes for the Areas are examined by race in the supplemental analyses, the layout of the data makes it unclear what questions can be answered. In some Risk Management Meeting tables, for example, to make sense of the data, the reader must add figures to understand the differences by race. The fact that nearly four times as many African Americans and three times as many Hispanics compared with Whites are stopped in some specialized units, is not obvious from the data presentation but must instead be calculated by the reader by hand. There is a need to be more explicit in identifying and reporting patterns in the data. The race differences in the supplemental analysis are difficult to decipher – but critical to understanding risk.

Analysis for risk management, however, should not be limited to examining data from the Vision database or data dashboards. Questions beyond those data, but relating to risk, are often raised. During our most recent site visit, we asked questions about Performance of Duty complaints and the number and nature of Internal Affairs cases spawned from them. That is the sort of topic that the Department should examine as part of efforts to identify and manage risk. The recent Instagram scandal in the Department also raises important, but unanswered, risk-related questions. For example, what characteristics or common experiences were shared among participants? The Department should have the expectation that analyses of risk will address such questions and not be limited only to the established data tables.

The VCOC, CID, and Ceasefire Risk Management Meetings also raised another issue that should be considered. In each case, officers noted the impact of crime, and changing crime types and levels, on officer activity. As an example, stops have been greatly reduced in some places. The Ceasefire program reported that it had limited its work almost exclusively to investigations due to the crime increases. The addition of limited crime data to the risk management tables and meetings may serve several functions. It may link the chief concern of crime with both measures of officer activity and of risk. The addition of crime trends may help understand officer activity and changes in that activity.

Aside from the crime data itself, there may also be value in documenting in the risk management data reports unusual or extraordinary events that may have affected police activity during the time period covered. For example, several times in the meetings, sideshow activity was noted.

There are also other significant measures of productivity that were discussed during the meetings. These include such issues as the number of search warrants written and number of investigations in progress. These impact police activity and also, therefore, risk.

Seventy-Eighth Report of the Independent Monitor for the Oakland Police Department  
 January 10, 2022  
 Page 26 of 26

One additional issue raised at the meetings may also be useful to consider. Discussion of community outreach took place several times over the course of the meetings and could have a more formalized role in risk management. It was clear that community outreach was seen as a significant activity and reflected a significant commitment of time. However, it was not reflected in the available data, so there was no organized discussion of the practice or its role in the Department. Alternative approaches to assessing community outreach have been developed in other departments and may be worth examining.

<b>Task 41 compliance status</b>	While we find OPD in compliance, we continue to urge the Department to understand the nexus between this Task and the broader, pending risk management policy.
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## Conclusion

Unquestionably, the Department has made a significant effort to make the risk management process a meaningful one. It is imperative that the Risk Management Meetings be institutionalized, which requires that the Department finalize the draft policy to send to the Police Commission for review and approval. This process has already taken too long. In fact, there are other policies that the Department still must complete that remain in the queue.

Issues relevant to the documentation and reviews of uses of force flourish. The use of force is one of the reasons that there is a Negotiated Settlement Agreement. This must be a priority moving forward.



Chief (Ret.) Robert S. Warshaw  
 Monitor