

Burbank Police Department

ANNUAL REPORT OF THE INDEPENDENT
POLICE MONITOR: 2023 Review

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OIR
GROUP

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Introduction

As part of our ongoing relationship with the City of Burbank, we are pleased to present the latest in a series of audit reports about key elements of the Burbank Police Department's operations. This Report addresses activity from the calendar year 2023. And its purpose is to evaluate the effectiveness of the Department's own processes for the review of officer conduct.

Certainly, the idea of outside scrutiny of law enforcement has intrinsic value at a time when new levels of transparency and accountability have evolved into widespread public expectations. We have noted before that the City was a relatively early adopter of this concept. Our own relationship as an independent monitor of BPD¹ dates back to 2010, and the City's Police Commission – made up of residents who meet on a monthly basis to discuss local issues and trends – is an established vehicle for addressing concerns and promoting greater awareness of BPD's policies, procedures, and enforcement priorities.

But one key premise of the City's model of oversight is the fundamental responsibility of the Department itself for ensuring that its standards – and those of the public – for officer performance are being met. While our annual efforts provide a check on the Department's handling of this responsibility, and while we have offered a series of recommendations with an eye toward ongoing improvement of BPD's systems, the daily work of supervision, accountability, and intervention rests with the agency's management and leadership.

¹ This Report was completed by OIR Group, a team of police practices experts that has been involved in the civilian oversight of law enforcement for more than twenty years. Led by Michael Gennaco, a former federal prosecutor, OIR Group has performed investigations, audits, and monitoring assignments for jurisdictions throughout California and in several other states. More information about its work is available at oirgroup.com.

As detailed throughout the Report that follows, our impressions of BPD in this regard are largely favorable. We consider two factors to be central to this assessment. The first is the effectiveness of the structures that the Department has put into place to ensure that its internal reviews are meaningful. This is true across every aspect of our audit scope, from the thorough and thoughtful Internal Affairs investigations to the multi-layered and holistic analysis of force incidents.

The second factor informing our perspective on BPD's internal review systems is our sense of the Department's commitment to continuous improvement. Although we consider many of BPD's processes to be models for the other jurisdiction where we work, that comes with a recognition that positive adaptations and refinements are often possible and sometimes necessary. BPD's vehicle pursuit policy, for example, has been revamped on multiple occasions in recent years, as the Department works to align its risk management priorities with the needs of officers in the field for clarity and latitude in decision-making. And our recommendations for systemic adjustments are carefully considered – and usually adopted – in the context of each audit cycle.

As in the past, our scope of work as framed by the City incorporates a review of the completed investigations according to the following parameters:

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

Our responsibilities also encompass the review of critical incidents – encounters that result in death or serious bodily injury. This Report includes a discussion of the in-custody death of an individual who was being held in the BPD station jail. While the man's serious health issues were identified through the autopsy, BPD identified several ways in which its personnel fell short of

expectations during the twenty-six hours between his arrest (for public intoxication) and his fatal medical episode. The Report describes the outcome of that internal review, which produced a number of action items for systemic improvement.

The Department also kept us informed regarding the fatal officer-involved shooting of a man that BPD officers confronted in the parking lot of a busy shopping area on a weekend afternoon in May of 2023. We received a briefing on the day of the incident and attended the Department's administrative review presentation a few months later. Our own review is pending in light of ongoing processes related to the case; we look forward to sharing any related insights in a future public discussion.

Lastly, our scope of work provides the latitude for us to evaluate an additional feature of BPD operations. Recent topics included the Department's adjustment to its then-new body-worn camera technology and last year's focus on BPD mental health response initiatives – a subject that is both nationally prominent and particularly central to Burbank's enforcement strategies.

In looking for a similarly resonant area to explore this year, we settled on BPD's process for meeting its obligations under the state's Racial and Identity Profiling Act, or "RIPA." Ongoing concerns about racial disparities in the justice system prompted California legislators to impose new reporting requirements on officers at all agencies throughout the state. Burbank's compliance began in 2022, and its officers are now responsible for entering demographic information and other details regarding each detention of a member of the public. That data is then submitted to the state's Department of Justice for processing.

While broad-based attempts to reckon with the numbers has evolved at the state level, most publicly through the annual reports of the RIPA Advisory Board, the efforts of each individual jurisdiction to assess its own data and draw meaningful conclusions have varied. We evaluated BPD's approach to this important topic from a couple of perspectives: compliance with the new mandates, and consideration of whether and how the statistics it compiles suggest that adjustments in policy, practice, or training are warranted.

As we discuss below, we found strong elements in the Department's checks and balances regarding the data entry component of RIPA. Officer entries are regularly audited for completion and accuracy, and a supervisor serves as the

clearing house for each submission to the state -- a number that exceeded 85,000 in 2023. This creates a strong foundation for next level fulfillment of the Act's goals – namely, a thoughtful engagement with what the numbers might mean regarding issues of equity and bias.

While our "special" topics like RIPA have varied from year to year, and while new events and a new pool of cases have naturally prompted evolving recommendations, there are consistent features to our work in Burbank. These include a sense that the Department's commitment to rigorous internal review remains at a high level. The specific shortcomings we identify and encourage BPD to address are emerging in a context of accountability that is fundamentally sound and often quite advanced. And another reliable feature of this process for us is the full cooperation of the Department. This includes providing us with the necessary materials and engaging candidly with us when we have questions or suggestions. We appreciate these elements of our assignment in Burbank.

Review of Critical Incident: In-Custody Death

In early 2022, a 48-year-old man was arrested after a call for service at a local hotel. An employee had called the police after discovering the man behaving oddly in a public area and finding his attempts to engage the person met by contentious behavior. BPD officers responded to the scene, assessed the man, and eventually took him into custody due to his level of intoxication.

The officers brought the man to the station and booked him into the jail there. The man was basically cooperative, but also unwilling or unable to answer the routine pre-booking questions about his well-being. Eventually, he was placed in a designated detox cell for a period of several hours, and then transferred to a regular cell. There, he was re-questioned by a jailer and provided replies. Though he was not additionally communicative with staff, he apparently had a normal appetite and received meals on a regular schedule.

Some twenty-six hours after his arrest, the man appeared to be unresponsive on his bunk during a routine jail check. Jail staff moved him to the floor of the cell and attempted to render aid. They were joined within minutes by emergency medical personnel, but the man was pronounced dead at the scene.

The Department's detectives initiated an investigation that was ultimately submitted to the District Attorney's Office for review, though no use of force by BPD employees was involved in the case and no evidence of "foul play" emerged during the process. The investigation included interviews with all the different jail employees who had come in contact with the decedent during his brief time in custody, as well as other inmates who were in the jail. The autopsy report categorized the cause of death as complications resulting from

diabetes,² as well as the effects of narcotics. The manner of death was listed as "accident."

Administrative Review

The Department opened an Internal Affairs investigation into the case and ultimately named eight different employees as subjects for alleged shortcomings in the performance of their respective duties. This group was comprised of both sworn officers (including a supervisor) and civilian jail staff members. The incident also served as an opportunity to conduct a holistic review of relevant procedures in an effort to identify systemic changes that might be warranted.

The investigation reconstructed events through a significant amount of available evidence. This began with the body-worn camera recordings of the initial arrest, and continued through a compilation of jail records and surveillance camera recordings; among other things, these tracked the different instances in which the decedent's status had been checked prior to his death.³

The key performance issues to emerge related to a few primary questions. The first was whether appropriate triage of the decedent's condition took place at the time of his initial arrest and subsequent intake into the jail facility. The next was whether staff complied with expectations regarding the continuous monitoring obligations (and interventions as needed) that apply to all inmates. The last had to do with the fact that the man had remained in custody for the

² The intake questioning process was not recorded, in keeping with usual procedure at the jail. However, the form filled out by a jail staff member indicated that the man had answered "no" to a specific question about diabetes in his medical history review.

³ State regulations and Department policy/procedure establish the standards for how often and in what manner the wellness checks of persons in custody are completed by staff.

duration of his time in the jail, even though he had been eligible to be released sooner with a citation for his potential criminal charges.⁴

Each one of the eight named employees was found to have violated one or more policies in conjunction with their respective involvement in the case. This included the arresting officers, who were faulted for their decision not to get medical clearance for the subject in spite of his incapacitation and assertions of pain. The Watch Commander was cited for inadequate efforts to personally evaluate the arrestee (as dictated by policy) and confirm that medical treatment was not needed, in spite of his access to records and reports that indicated a possible problem. The civilian jail staff was faulted for shortcomings in their participation of initial screening (particularly with regard to possible medical exigency) and/or the subsequent failure to execute the timely citation and release of the subject after authorization from the Watch Commander.

As for the systemic issues that emerged from the review as factors in the outcome (or at least opportunities for improvement), the investigation noted several separate concerns that received further attention. These included the following:

- Policy changes for "extreme intoxication" arrests, to require medical clearance prior to booking. (This policy would have ensured that the subject received medical attention at the outset of his time in custody.)
- New body-worn cameras for jail staff, in an effort to capture the booking process and questioning of arrestees in detail.
- Staffing refinements to ensure that responsibilities are distributed adequately and appropriately when "light duty" employees are not able to perform the full range of jailer job functions. (This was a workload issue that was found to have compromised the efficiency of operations while the subject was in custody.)
- Additional documentation by Watch Commanders, to more comprehensively track when booking files are reviewed and processed.

⁴ Per the Department's practice, "cite and release" requires authorization from the Watch Commander for the shift, while the actual administrative paperwork and discharge is then the responsibility of the jail staff.

- Protocol strengthening for release of eligible inmates via citation, so as to reinforce expectations of timeliness and ensure managerial attention and follow-up.
- A proposal for additional cameras in the jails, to enhance monitoring capabilities.

Additionally, the Department conducted a formal training session that was specifically directed at all involved personnel. The case file contains a memo summarizing the people in attendance and the content of the various presentations from command staff and others⁵ The aforementioned adjustments to policy and procedure were highlighted.

This was a key component of BPD's efforts at remediation. In our view, it was an innovative and constructive response to the problems identified through the investigative process.

Deaths in the Burbank jail happen very rarely. Apart from a suicide in 2010 that also became the basis for significant systemic and structural change (and which we reviewed early in our relationship with the City), this is the only jail fatality we have seen. There are various reasons for this. Suitability for booking in the jail is itself contingent on a baseline of wellness, and the typical stay in custody there is short. But the efforts of staff over the years to fulfill their responsibilities for appropriate care and monitoring are also deserving of credit.⁶

Obviously, then, this case was inherently troubling as an "exception to the rule" that had significant consequences. The investigation identified mistakes in performance and gaps in systems that preceded the man's death, and led to both accountability and protocol changes.

⁵ A representative from the City Attorney's Office shared insights about the event from a liability and risk management perspective. The incident had prompted a lawsuit from the subject's family members that was eventually resolved via settlement.

⁶ Even in the context of this incident and its negative outcome, there were multiple examples of staff members performing checks appropriately and interacting with the subject in well-intentioned ways.

Review of Misconduct Investigations

We looked at a total of seventeen completed investigations into allegations of misconduct⁷, with our standard goal of using these as a window into the efficacy of BPD's investigative effectiveness and commitment to officer accountability. Some of the same strengths we have noted in the past continued to be reflected in this year's pool of case files.

Notification to Complainants

One of the more exemplary features of the Department's approach is the detailed notification letters that it provides to complainants at the conclusion of the investigative process. We have written in the past about BPD's unusual willingness to engage in case-specific discussions of the evidence and the rationale for the ultimate findings, and are happy to note that the agency remains committed to this practice.

Most agencies have tended toward comparative reticence, limiting the shared information to the minimums required under the state statute that covers the complaint process. While there are reasons for this (including parameters of confidentiality to which the involved employees are entitled), the terse form letters that can become the "default" response are often unsatisfying.

For several years now, BPD has committed to a personalized approach that frames the complainant's specific allegations and discusses the investigative

⁷ The Department initiated a total of 45 cases during the year (an increase of 7 from their 2022 statistics). Not all were completed by the end of the audit period. Of these, 25 were complaints from the public, while the remainder were begun by Department administration as a result of internally identified concerns.

work that went into responding to them. The letters also analyze the evidence with clarity and directness as a basis for explaining the findings.

In short, the Department continues to invest time and thoughtfulness into this correspondence. The results are persuasive; just as importantly, though, the letters show a respect for complainants insofar as they reflect a sincere engagement with the concerns that have been raised.

Timeliness

The Department has clearly committed to timely completion of complaint investigations. It was routine in our review for the notification letters to be sent within two or three months of the case being opened – and occasionally within a matter of weeks. Nor did this come at the expense of appropriate thoroughness and deliberation.

This prioritization has intrinsic value for reasons we have discussed before. Timeliness tends to favor the availability of relevant evidence, allows for shortcomings to be addressed more impactfully, and conveys to the complainant that the matter is being taken seriously.

BPD's current approach also has resonance as a significant internal course correction. Several years ago, our audit in Burbank addressed a situation where cases had extended beyond the statutory one-year limitations period for imposing discipline for policy violations. The Department adopted several measures to ensure that its tracking is more rigorous and formalized, but has also clearly emphasized a new set of expectations for the Internal Affairs team. The focus continues to pay dividends.

Thoroughness and Investigative Resourcefulness

In another positive trend that has extended forward from prior reports, the quality of the investigations themselves remains strong overall. The case memos are comprehensive and are generally written with notable clarity. This is in part because the investigators are extremely methodical in their approach to framing allegations and pursuing available evidence. The template and "quality control" provided by the Internal Affairs team member also has a positive influence on the work of other supervisors who are given responsibility for conducting complaint reviews.⁸

In terms of other distinguishing features, Internal Affairs is diligent about formally interviewing involved personnel (both witnesses and subject employees). We are familiar with a tendency in other agencies to rely heavily on body-worn camera recordings, and we acknowledge that this is often an adequate means of reaching conclusions. Certainly, the prominence of that technology has been hugely influential with regard to misconduct investigations – and, to its credit, BPD takes considerable advantage of this as a resource.⁹ Some cases were in fact resolved in relatively straightforward fashion based on the recordings alone. But we also think there are times when the officers' thought process, perceptions, and decision-making are not readily apparent from the recordings alone. Accordingly, the opportunity to question interactively continues to have its place, and BPD has made a clear commitment to it.

We also appreciate the Department's inclusive approach to opening and pursuing cases of possible misconduct. While some agencies will take pains to

⁸ We have been advocates for the notion of the discipline process as a shared responsibility throughout the management team, rather than being treated as a secretive, unpleasant duty that is shunted off to Internal Affairs so that others don't take ownership of accountability issues.

⁹ It has become routine for investigative memos to summarize and analyze relevant recordings as a major component of the review; this often includes the inclusion of still photographs from the videos of key moments in the encounter at issue.

keep an issue outside of the formal complaint process if it appears to be otherwise resolvable, or somehow falls short of requiring definitive action, two BPD cases from this year's sample group went in the other direction.

The first was an investigation that the Department chose to open on its own initiative, in reaction to a claim for damages that was filed by a man who asserted that he was wrongly arrested. As we have seen in the past, BPD treated this as the equivalent of a "complaint with a price tag attached." It opened a misconduct investigation about the incident, and determined that one of the involved officers had in fact fallen short of expectations at the scene by not attempting to interview possible witnesses. BPD recognizes the importance of following up with all claims for damages in this way, another distinct departure from other agencies that do not have an established mechanism for investigating allegations that are raised during litigation or claims.

The second was a complaint about excessive force and planted evidence made by an arrestee. He was interviewed about his allegations – but then called back the next day in order to retract his complaint. To its credit, the Department followed through regardless, and the body-worn camera video was definitive in showing that the alleged misconduct had not occurred.

The Department's use of available resources in gathering evidence was also on display, including traffic cameras, surveillance cameras in the jail, and other technologies. In one case, a complaint turned in part on whether an arrestee's car had been properly impounded: he claimed it was closer to the curb than the legal limit of eighteen inches, in spite of the Department's claim to the contrary. The investigator used a still photo of the parked vehicle from the body-worn camera recordings, identified a nearby storm drain on the street as a frame of reference, and went back to the scene to take measurements that corroborated the officers' original contention.

None of this is to say that the investigations were flawless. For example, in that same case involving the impounded vehicle, the complainant also said his brother was willing to drive the car away, but that the police had willfully ignored this option. While the investigator asserted that the recordings did not support this claim, it seemed odd not to have attempted an interview with the brother himself.

We noted other cases in which interviews with complainants themselves or with witnesses might have been beneficial. And we also noted times in which the officers' tone or demeanor seemed to contribute to the tension of an encounter – not to the point of a policy violation, but perhaps warranting some constructive follow-up by management had they been pursued.

Overall, though, the cases we looked at suggested a rigorous and effective process. Some of the cases we reviewed (like the jail death case above) were also particularly noteworthy for substantive reasons. We focus on a couple of them below.

Major Investigations

Allegations of Inappropriate Comments by Department Executive to Co-workers

We looked at two separate investigations involving remarks in a workplace context that were allegedly in violation of Department policy. The subject in both cases was a member of the Department's command staff.

The first received complaint came in the form of an anonymous letter about a recent community event in the City that several officers had attended on behalf of the Department.¹⁰ The claim was that a Department executive had made a joking comment to a subordinate officer about that officer's hairstyle, in a manner that was related to that officer's ethnicity. This comment was potentially in violation of the Department's "Anti-Discrimination, Harassment, and Retaliation" policy.

Upon receiving the letter, the Department conducted initial fact-gathering and then consulted with City officials as to whether an outside investigation of the matter was necessary in light of the subject's rank in the agency. The City

¹⁰ The sender explained that his or her choice to submit anonymously was driven by concerns about possible retaliation.

advised the Department to move forward internally, and an investigation ensued.

The Internal Affairs investigator interviewed the identified target of the offending remark, as well as the other BPD personnel who were in attendance at the event and potentially within earshot of the comment. The accounts were fairly consistent in terms of establishing that the alleged statement had in fact been made. Witness officers varied in their descriptions of the impression that the incident made on them, in terms of the extent to which they found it inappropriate or offensive.

Significantly, the involved officer professed to have not been personally offended. He said that he understood it to be a joke, reacted by laughing in the moment, and viewed it in the context of what he described as a good working relationship with the executive. He said that he would not have raised the issue himself, and was sorry to be in the middle of an investigation that he had not initiated or encouraged.

The subject of the investigation was also interviewed for the case. He acknowledged making the comment and explained the context. While asserting that he was not at all intending to be demeaning or discriminatory, particularly in light of his positive relationship with the officer, he acknowledged that it would have been better to refrain from joking in that manner in a professional setting. He also described immediately reaching out to the other officer to apologize upon learning about the complaint.

The allegation was "Sustained."

While the facts and outcome were relatively straightforward, there were noteworthy collateral components to it. One was the anonymous letter that started the investigation. It was supplemented by subsequent anonymous outreach several weeks later to a local journalist and other City officials, alleging that "nothing" had been done about the original concern and claiming a significant detriment to morale as a result of the lack of accountability.

The sender of these follow-up communications was seemingly misinformed. But the case offered a reminder that internal rumors about the discipline process are commonplace – particularly when perceptions about disparate

treatment for executives are involved. Balancing the privacy rights of individual officers against the benefits of some generalized communication about administrative discipline can be challenging. This is especially true in small or mid-sized agencies like BPD. Here, though, the Department's leadership acted appropriately in addressing the allegation, and hopefully any skepticism about that has somehow been resolved.

One additional point relates to a prior incident that was also flagged in the original complaint letter – another allegedly inappropriate racial/ethnic reference that was made by the same executive. Because that previous incident had already been addressed informally, it was not included in this investigation.

While that earlier decision may have been substantively legitimate, it appears to have fueled the negative perceptions of favoritism, etc. Certainly, the agency's executives are entitled to fairness and the exercise of discretion. But it also seems reasonable to hold them to the highest standards of conduct. And confidence at all rank levels in the legitimacy of the system would be enhanced erring on the side of formality in a "close call" situation.

RECOMMENDATION 1

BPD should look for ways to enhance internal communication about misconduct investigations and their status, while remaining mindful of employee privacy rights.

RECOMMENDATION 2

BPD should incline toward formal documentation and investigation of misconduct allegations directed at executive staff members.

Perhaps in reaction to a perception that the Department was not adequately addressing accountability issues with this person, a *new* anonymous complaint emerged around the time that the "hairstyle comment" case was being finalized. This one concerned an incident from 2021 (some twenty-one months before the complaint was submitted to the Department via a letter to the Chief of Police).

The claim was that the named Department executive had used the "n-word" at a briefing that dozens of officers had attended. While no other context was provided, the complainant characterized the incident as "not acceptable" and challenged the Department to take appropriate action.¹¹

An Internal Affairs investigation was initiated. It involved an effort to answer several questions, including whether the egregiously offensive term had in fact been used, what the circumstances were (including the specific date and occasion), who had been present, and what the reactions/perceptions had been among the people who heard it. Accomplishing this was quite methodical and exhaustive; it ultimately included eighty-seven separate interviews of Department members and encompassed all rank levels within the agency.

The investigation ultimately determined that the word was said by the accused Department member during a briefing for approximately 60 officers who were preparing to work in a crowd control capacity at a planned demonstration. The dispute was a recurring one and involved protests of enforcement activity related to COVID-19 restrictions. Based on a previous episode of this controversy (which ultimately extended over several weeks), the Department command staff member hoped to impress upon the line officers that the atmosphere was likely to be extremely hostile, and that they should be prepared to remain steadfast in the face of intense provocation. He used the inflammatory word as an example of what the officers could perhaps expect to hear.

The reactions of those in attendance had apparently been mixed. In their administrative interviews for the case, many of the involved parties professed not to have heard it (while acknowledging that it later became a subject of rumor and "hallway talk").¹² Others did confirm that it was said, and were

¹¹ A few weeks later, City Council members were also contacted about the allegation in the form of an anonymous email.

¹²It is hard to know why so many of the documented attendees claimed not to have heard the word being used, but the issue was not rigorously pursued in the investigation.

consistent about the context and their understanding of what it had been meant to accomplish.¹³

Within this small group of acknowledged "hearers," the consensus appeared to be that the use of the word was intended as a concrete illustration and not in an effort to be racially derogatory or malicious. No one described themselves as having been offended, nor were they aware of others who had experienced the moment as an offensive slur.

Still, the thought was that the highly charged history of the word, and its inherent potential to be offensive and upsetting, meant that avoidable uses of it were ill-advised. The intended benefit as an example of anticipated rancor of the demonstrators was, in the view of these witnesses, outweighed by the word's notoriety.

The command staff member who was the subject of the investigation defended his actions. While asserting in his interview that he did not have a specific recollection of using the term (a position he later amended based on additional reflection), he did not deny doing so. Instead, he focused on his recent experience of the harsh environment at the protests, and stressed that he meant to impress upon the officers the challenge they were facing. He talked about the importance of context when assessing the suitability of any term.

¹³ Among those Department members who recalled the incident, more than one was a supervisor or manager. This meant that, for purposes of calculating the statute of limitations period for administrative discipline, the agency was arguably "on notice" of the potential policy violation as of the date it occurred. If so, it then had one year to complete any investigation and impose any disciplinary consequence – a period that had elapsed well before the investigation was even initiated. This potential issue was rendered moot by the ultimate determination that no violation had been established. Moreover, while the inactivity by aware and empowered leaders in the agency seems problematic at first glance, the substantive impression of these individuals *in the moment* that no misconduct had occurred (as reinforced in their interviews for the case) is relevant here. It explains the lack of follow through and tends to support the ultimate determinations. Nor is there any evidence of anyone else bringing the matter to the attention of the Department's leadership at any point prior to the anonymous complaint.

The investigation ultimately framed two charges. The first related to whether the behavior at issue was racially discriminatory and was rejected as "Unfounded" based on the executive's intent.

The second related to whether, as a command officer, the subject had properly maintained an "example of excellence." After some initial consideration of whether the avoidable use of an inflammatory term was itself actionable (regardless of intent), the Department ultimately decided that the relevant policy standard was unfairly vague¹⁴ and would be difficult to support, a finding that was supported by the City's legal team. The attendant memo also made note of the unusual delay behind the emergence of the (anonymous) complaint. It suggested a motivation that was more about targeting the subject of the accusation than about vindicating a sincere concern.

That said, it was recognized that the use of the term had been a mistake. Recognition of contemporary dynamics regarding racial discourse, discrimination and injustice requires a calibration of speech that did not occur here, and the command staff member was counseled accordingly.

On the whole, the investigation and subsequent review and disposition constituted a good faith and impressively thorough effort to address an extremely sensitive situation. It balanced fairness to the accused party with an awareness that managerial legitimacy depended on a rigorous review. The outcomes were supportable. Just as importantly, the goals of an effective discipline process – including conducting thorough fact finding, addressing potential misconduct, upholding standards, and correcting performance issues – all appear to have been met.

Allegation of Inadequate Handling of Calls for Service: Domestic Violence Case

This investigation was initiated by a lengthy and thoughtful letter by a Deputy District Attorney, who was handling the prosecution of a male defendant for

¹⁴ That analysis suggests that a revisiting of the policy to clarify its intended meaning is warranted.

domestic violence.¹⁵ The man had been arrested in his apartment by BPD officers. However, review of the events leading up to that arrest showed that, in the preceding days, patrol officers had been involved in two other related calls for service involving the female victim. Scrutiny of those events suggested serious shortcomings in the BPD's handling of the situation.

The initial call for service was in the evening and had come from a resident calling on behalf of a distraught twenty-five-year-old female, who made serious allegations of domestic violence against the man she'd been living with for several weeks. He was on parole with a documented history of violence. Over the course of a few hours, officers and a supervisors spoke with her about her options and looked for ways to provide assistance. This included several interactions about whether she wished to have him arrested – an issue about which she was vacillating.

Although they eventually found an opening for the woman in a shelter, she changed her mind about wanting to go there. Ultimately, and in spite of officer efforts to dissuade her, she asked to be dropped off where officers had originally located her. This was approximately one block from the home she had been staying. She claimed her plan was to spend the night in a nearby park.

The flaws in this handling were numerous, as the deputy District Attorney had indicated after reviewing the reports and body-worn camera recordings from the encounter. These included (but were not limited to) misinformation about the viability of an emergency protective order (supposedly because of the woman's lack of a fixed address), an unwillingness to undertake further investigation of the crime or otherwise engage the suspect (in spite of knowing

¹⁵ We appreciate and commend the deputy District Attorney who took the time to prepare, explain, and register her concern about the performance of BPD personnel. In our experience, it is unfortunately often commonplace for prosecutors to shy away from any formal criticism of a criminal justice partner.

his location),¹⁶ and a series of rhetorical appeals by the supervisor that had the effect of dissuading the victim from pursuing an arrest.

These deficiencies set the stage for a second missed opportunity in the early morning hours of the next day. Neighbors contacted the police in response to a disturbance at the apartment complex where the subject female had been living. A supervisor and three officers ultimately went to the residence, knocked on the door, and conducted a brief welfare check from the stairs.¹⁷ Assured by the man, the female, and another woman who was apparently a relative, that all was fine, the officers quickly left after minimal investigation. This was in spite of the fact that, based on the information from the previous encounter, the officers potentially had probable cause to arrest, and certainly reason to further investigate.

BPD detectives ultimately put a case together and arrested the man at the apartment approximately one week after the first call for service; the woman (who showed signs of newly received injury) was uncooperative with the investigation.

Based on the concerns expressed by the prosecutor in her outreach to the Department, and in conjunction with its own review of the series of events, the Department ultimately named two lieutenants, two sergeants, and five officers as subjects of an administrative investigation. Although issues were identified at the officer level, any deficiencies in their performance were superseded by inadequacies at the supervisor level – particularly by the sergeants who were in the field when the two inadequate responses occurred. Accordingly, both sergeants were found to have violated policy because of "Unsatisfactory Work Performance." One of the two lieutenants who were serving as watch commander on the respective nights was also found in violation of the same

¹⁶ Having established that they would be taking the woman to a shelter, the supervisor said they would not be going to the apartment to retrieve her belongings, since the safety risk of encountering a problem from the male outweighed the benefits of doing so. The emphasis on speculative officer safety concerns was singled out as a particular flaw in the decision-making, particularly in light of the vulnerability of the victim.

¹⁷ Only one of the officers had also been involved on the previous call.

policy, based on a lack of sufficient engagement and direction in light of the amount of available information as to what had transpired.

The initial memorandum that formally opened the investigation also included a reference to additional remedial action. Individual meetings with all watch commanders, and roll call training for all shifts on the particulars of domestic violence law, policy, and expectations, were proposed.¹⁸

Apart from the more serious failures at the supervisory level, the case offered examples of some of the nuances and challenging dynamics of domestic violence enforcement (a reality that the assistant District Attorney acknowledged in her lengthy correspondence). BPD's willingness to hold management personnel accountable was noteworthy here; using the case as a meaningful learning opportunity would be a second important outcome.

Biased Policing Allegations

For several years, we have focused on allegations of bias as a particular subject of concern. This is for primarily for two reasons. The first is that the idea of discriminatory policing remains so central to concerns about legitimacy in the justice system.¹⁹ And the second is that these allegations – which are both quite sensitive and quite difficult to prove – can be particularly challenging in terms of investigative effectiveness.

We have remarked in the past on the strengths of BPD's efforts in this area, and specifically in its resourcefulness in moving beyond the impasse of "accusation vs. denial" in order to help ascertain the validity of the respective

¹⁸ We were informed that these did occur.

¹⁹ Troubling history, as well as continued statistical overrepresentation of minority groups in key categories, gave rise to the state legislature's passage of the "Racial Identity and Profiling Act" of 2015. The act requires all California law enforcement agencies to report demographic information about detentions and arrests. We discuss below BPD's compliance measures with this important initiative – another vehicle for exploring and addressing issues of potential bias.

versions of events. We saw examples of this here as well in the five completed cases that we reviewed.

In one complaint, involving a traffic stop that led to a vandalism arrest, the complainants alleged that officers had made a sudden U-turn to follow them because they were being profiled on the basis of their Hispanic ethnicity. An officer disputed this at the scene, saying that their change of direction was because they had reached city limits. The investigator pursued this explanation by conducting a GPS review of the car's movements at the time of the stop – and saw that the officers were in fact at the border of the city when the turn occurred.²⁰

In another, a Black man was arrested for an outstanding warrant and other charges. He had been the passenger in a car that had attracted the attention of officers for being illegally parked outside a drugstore. The car was soon stopped on the basis of vehicle code violations. The man's primary complaint was over the search he had been subjected to at the jail, but he added an assertion that he had been profiled.

The investigation determined that no policy violations had occurred. In doing so, it included reported data about several recent thefts at the location, which had heightened officer suspicions about the vehicle in a race-neutral way.²¹

Other cases were addressed more straightforwardly. A woman asserted that the detective handling the criminal investigation into her allegation of rape had been racially biased against her. (The case had not led to an arrest or prosecution.) However, the detective's efforts were reviewed and found to be appropriately rigorous, and the complainant was not able to cite specific facts or impressions to support her bias claims. Another woman who had been arrested for shoplifting took offense to an allegedly inappropriate assumption about her immigration status. However, a review of the body-worn camera recordings determined that the named officer had not made such a remark,

²⁰ Notably, one of the legal bases for the stop was for the car's illegally tinted windows – which the handling officer said had precluded his knowing the race of any occupants until approaching on foot.

²¹ The car also had illegally tinted windows.

and that a question about her country of citizenship during the booking process had been part of a pre-printed template.

A fifth case came from a complaint submitted more than two years after a man's arrest on different charges. He asserted that his Fourth Amendment rights had been violated during a search of his vehicle, and claimed that racial profiling had been a basis for the officer's actions.

We agreed with the finding that the profiling allegation was not substantiated. But our review of the case materials offered reminders that the topic is a fraught one. The man was with his fiancée, who was resistant to initial requests for information about her identity, asserting that she was not obligated to provide it in her capacity as a passenger. The officers persisted, and when she asked why she had to provide an ID number as well as her name and date of birth, one officer responded, "don't worry about it."²² Perhaps predictably, this did not assuage her concerns, and she repeatedly claimed that the officers' treatment of them was because they were Black. It was the driver (and later complainant) who urged her not to continue in that vein and to remain calm.²³

The smallness of the case total (along with the extent to which the bias claims that do occur are unsupported and often collateral to other assertions by complainants) is itself noteworthy. At the same time, though, it is important for the Department not to be complacent in this area. Refraining from making a formal complaint is not inherently the same thing as believing that you have been treated fairly and in an unbiased manner.²⁴ Accordingly, we continue to encourage BPD to be introspective and proactive about bias – including implicit bias – its philosophies of enforcement and its focus on relevant training.

²² This was in contrast to other instances from within this review cycle in which we noted the officers politely explaining the concept of the consent search and the rights of the detained parties.

²³ In another twist showing the tension between divisive "hassling" and commendable investigative efforts, the woman turned out to have an open warrant from an issue she believed had been resolved.

²⁴ In fact, we saw the issue being raised by frustrated detainees in examples from our RIPA audit, which we discuss below; they did not go on to make a complaint.

Another case we looked at reinforced this point: it involved a young black man who was detained as a possible robbery suspect as he rode his bike near the location of a recent crime. He apparently fit the description of the suspect as reported by the victim, but was not involved – and resented being stopped. This led to a challenging dynamic we have seen before, in which an innocent person's attempts to exercise his rights (and reluctance to cooperate in non-mandatory ways) has the effect of heightening suspicion and extending the encounter. He was eventually allowed to leave after more than ten minutes had passed. He later filed a complaint with the Department.

While the officers were found to have acted in accordance with policy, two aspects of the case were especially noteworthy in our view. The first was that, for some reason, the complainant's allegation of bias had not been singled out or addressed in spite of its plain relevance to the case. And the second was that the young man was familiar to us – for having initiated a very comparable complaint about a very comparable experience during our previous audit cycle. We discussed the case in detail in our last Report.²⁵

We are unclear about why the bias element of the case was not pursued. It should have been, and its omission marked a deviation from our usual experience of BPD's rigor in this area. But the repeated nature of the complainant's experience also made an impression, and offered a reminder that these incidents – even when appropriately resolved as "unfounded" – are a window into frustrations and perceptions about which the Department should remain mindful.

RECOMMENDATION 3

BPD should ensure that all allegations of bias are appropriately lodged and investigated.

RECOMMENDATION 4

²⁵ In the earlier case, as here, the supervisor who met with the young man to handle intake of the complaint was both thoughtful in his sharing of the police perspective and understanding of the complainant's reasons for frustration and concern.

BPD should continue its practice of seeking independent corroboration of officer-decision making in cases where possible bias is at issue.

Review of Force Cases

The Department reported a total of 55 separate force incidents in 2023, a reduction from the comparable statistics in previous years. Of this overall total, a majority were limited to the "takedown" of a resistant subject for purposes of handcuffing. 10 of the cases involved multiple force options being utilized in the encounter; each was evaluated by the Department.

We sampled fourteen of these incidents and reviewed the totality of the case file, including all body-worn and in-car camera footage. Six involved uses of physical force such as control holds, takedowns, or team takedowns – usually a lower level of force that typically constitutes a majority of the agency's annual deployments. The others covered a range of force options, including Taser deployments, use of the police K-9, use of the 40mm less lethal weapon, and OC spray. Three of these resulted in injuries to the subject, were appropriately classified as "Type-1" uses of force and were investigated by the Internal Affairs Bureau (IAB).

While tactical issues were identified and debriefed, none of the uses of force in our sample were found to be out of policy.²⁶

We continue to be impressed with the rigor of the Department's use of force review process, which has grown over time partly in response to our recommendations. The review process has become even more robust with the addition of several new items to the use of force review checklist; these include an affirmative requirement to evaluate and assess the use of de-escalation strategies and the role of the supervisor on scene. This is in addition to the Department's already rigorous and multi-leveled holistic review of each force deployment, a process that involves assessments by sergeants, lieutenants, and executives.

Again, this year, we found the supervisors' initial investigations of force incidents to be thorough and complete, with an eye toward identification and

²⁶ Overall, the Department found one of the force deployments to be out of policy, and addressed it through the discipline process.

remediation of challenges and issues that did not rise to the level of misconduct but merited attention, nonetheless. Among the many performance issues identified by supervisors and command included the following:

- In a case involving a Taser deployment in a convenience store parking lot, the supervisor noted that the officer had failed to document the intended target area for the Taser probes in his Incident Report (as the officer deployed the Taser, the subject moved abruptly, causing the Taser probes to miss the intended target area), and provided counseling on improving the officer's report writing. The supervisor also noted that another officer removed the Taser probes without using the safety clips designed to safely remove the probes and provided training for the officer.
- In a case involving a subject armed with a knife that resulted in a prolonged deployment of BPD resources, the supervisor's review noted that the call might have qualified for a Special Weapons and Tactics (SWAT) Team callout to allow patrol officers to respond to other calls for service, rather than be tied up on the scene.
- In two separate cases, supervisors noted use of profanity and provided the officers with "profanity counseling." This is a topic we have highlighted over the past several years, and one that Department leadership takes seriously as it seeks to provide the most professional interactions with the public. (We did review one case where officers' use of profanity was not addressed or corrected – a reminder that continued vigilance in this arena is warranted.)
- In another case, a secondary review of body-worn camera footage identified a peripheral concern regarding unloading a shotgun in the aftermath of an incident. This was addressed with the officer, documented, and added to the case file. This is a good example of the Department's due diligence in reviewing all aspects of an incident from start to finish, even those that might not directly relate to the appropriateness of the use of force.

While the above examples reinforced our overarching conclusion that the process is a distinctively sound and thorough one, our audit also discovered areas that merit additional attention:

- The first topic involves Department policy and expectations that officers are to provide warnings and time to comply when feasible prior to using force. To its credit, the Department’s review process identified most, but not all, instances where officers could have, but did not, issue clear warnings that force would be used, or where warnings were issued in an ineffective way, and provided corrective action. But the frequency of times in our sample of cases where warnings were not provided indicate a possible need for Department-wide emphasis on its “warning” requirement in in-service training.
- The second relates to the role of BPD supervisors, an issue we identified last year. In some cases, we found that supervisors became involved in use of force incidents, rather than directing them, and that these involved supervisors sometimes also authored the use of force reviews, a practice that the Department changed several years ago.²⁷
- The third involves continued challenges with uses of the Conducted Electrical Weapon, or Taser. We discussed these issues in last year’s report and raise them again here, while acknowledging that at least some of these Taser uses occurred prior to issuing the recommendations in our 2022 report.
- The fourth relates to the use of closed-fist strikes to the head, which we observed in two cases. Perspectives on the safety and effectiveness of this force option has evolved in recent years, with some agencies choosing to classify them as “deadly force” because of the risks involved, both to officer (most commonly, broken hand bones) and facial and head injuries to the subject. In previous years, we noted that the Department gave careful attention to this specific use of force, and cautioned officers on the risks of using head strikes.

²⁷ In force incidents, a supervisor has the additional responsibility of responding to the field to conduct the use of force review. Several years ago, and upon our recommendation, the Department modified its policy to reflect a preference for an *uninvolved* supervisor to conduct the use of force review (Policy 300.7.3).

Issuing Use of Force Warnings

The Department's use of force policy requires that, when possible, officers provide a clear and direct warning that force may be used, with the understanding that some incidents may unfold too quickly for this to be feasible. Policies related to use of specific tools, such as the Taser and less lethal impact munitions, also require that the officer issue a warning that the specific tool will be used.²⁸ These warnings, when given effectively and with time to comply, may gain a subject's compliance before force is used; that is, the warning alone may change a subject's behavior. Additionally, and importantly, a warning alerts other officers that force may be deployed, allowing other officers to prepare.

In our 2022 report, we noted that officers did not always issue a clear warning prior to deploying the Taser, and we recommended that BPD reinforce this requirement through training and counseling (see Recommendation 10). In this year's sample, we reviewed three cases where officers again failed to give a warning that the Taser would be used; in one case, the failure to issue a warning resulted in several officers, who were "hands-on" at the time, receiving an electrical current from the Taser deployment.

In each of these Taser cases, the failure to issue a warning was identified in the supervisor's review and the involved officers received counseling. This issue spotting and individual counseling is commendable. But the recurring issue suggests that all BPD officers would benefit from reinforcement of the warning requirement.

The Department also identified issues with warnings in a case involving the deployment of a police canine. In that case, officers pursued a burglary subject and believed that he was hiding inside a residential garage. The team

²⁸ See the Department's Control Devices Policy 308 and Conducted Electrical Device Policy 309.4.

decided to deploy the police canine to search. The canine officer initially issued warnings, but the Department noted that it was unreasonable to believe that the subject had heard these orders from his position inside the garage. Once the garage door was opened, the canine officer deployed the canine without additional warnings or allowing the subject time to comply with officer orders to surrender. These issues (among others, such as the speed at which this unfolded) were identified, and all responding officers were counseled.²⁹

This sort of issue-spotting and corrective action in the review process is, as we have noted, a consistent hallmark of BPD's approach. However, there were two other cases in our sampling that fell short of the Department's highest standards, not only in the moment but during the subsequent review.

In one case, several officers responded to a subject who had pointed a pocket-knife at the first-responding officers and threatened to fight them. Officers positioned themselves on either side of the subject to prevent his movement down the sidewalk; one officer had a 40mm less lethal weapon,³⁰ and others unholstered their Tasers. The subject then slowly moved in the direction of one of the officer teams. A supervisor called, "40! 40! 40!," and the officer who had the 40mm launcher deployed one round. While officers gave commands to stop or get on the ground, we did not hear any officer issue warnings that force would be used prior to deployment of the 40mm.

In another case, officers had cornered a subject who had stolen mail, fled, and produced a large knife. The officers quickly realized that the subject only spoke Spanish, and a Spanish-speaking officer took over issuing commands. To his credit, that officer attempted to de-escalate and issue commands in Spanish. But during the course of this incident, officers deployed five rounds

²⁹ We noted that the Department had identified the same challenges with the same canine officer in an incident last year (see case 2022-004) and recommend that the Department evaluate this potential pattern.

³⁰ A 40mm less lethal projectile launcher and its accompanying impact munition are often collectively referred to as "40mm." The 40mm is a target-specific intermediate force tool used for pain compliance.

from the 40mm less lethal and seven cycles from the Taser,³¹ and we did not hear the officer issue a clear warning before any of these uses of force. Instead, and perhaps because of the language challenges, the officer repeated generalized statements such as, “this is your last chance,” “we’re going to come [at you],” and “this is your last option” as well as “it’s going to hurt.”

Eventually, once the team decided to use OC vapor to gain compliance, the officer explicitly warned the subject that gas would be used and began a “countdown” to allow the subject time to comply (he did not). Later, and, after the final deployment of the 40mm, the officer warned that another round would be fired if the subject did not comply.

Some agencies teach officers basic law enforcement commands, such as force warnings, in the language(s) spoken by their community. We advise that the Department consider teaching basic commands, including use of force warnings, and practice them in daily briefings.

RECOMMENDATION 5

BPD should consider teaching officers basic law enforcement commands, including use of force warnings, in the languages spoken in their communities, and practice these in daily briefings.

Overall, we recommend that the Department emphasize the importance of issuing clear and concise warnings that force may be used and allow time for a subject to comply when practicable. Further, we recommend that the Department continue to hold officers accountable when these warnings are not issued. While the efficacy of warnings in these dynamic situations is far from guaranteed, the policy is predicated in part on a cost/benefit analysis that

³¹ The Department’s review noted that the subject was wearing several layers of clothing that prevented the Taser from achieving NMI, and appropriately counseled officers on choosing another tool when a subject is wearing thick clothing and the Taser does not appear to be effective. This deployment of the Taser is incompatible with BPD’s current policy on Taser use discouraging such multiple deployments; studies have shown such multiple use to increase the risk of serious injury or death when the Taser is activated in such a manner.

makes sense to us. Warnings, when feasible under the circumstances, are easy to offer and make sense in terms of risk management, public perception and, best of all, potential persuasion of the subject.

RECOMMENDATION 6

At all future trainings on defensive tactics, BPD should reinforce the importance of issuing clear and concise warnings that force may be used and of giving subjects time to comply.

RECOMMENDATION 7

BPD should continue to hold officers accountable when use of force warnings are not issued, including more formal discipline for repeated performance failures.

The Role of Supervisors

In last year's report, we noted two trends related to the role of supervisors: first, that supervisors become engaged in the incident itself, rather than playing a command and control role (this was also true in this year's vehicle pursuits, detailed below), and, second, that the force review had been completed by a supervisor who was involved in the incident, either by directing force or in the use of force itself. The Department responded that this was most often due to staffing challenges, both in field operations (e.g., supervisors responding to calls for service) and in administrative functions, and expressed its commitment to ensure that such conflicts are mitigated. And, the Department added a responsive new field to its standard incident review template: "On Scene Supervisor Evaluation." The new evaluation category formalizes and reinforces the significance of the supervisor's role in field operations.

We noted the same challenges in this year's sample. We acknowledge that the Department is facing the same staffing shortages, and, as such,

supervisors are often tasked with multiple and, at times, conflicting roles. At the same time, we stress the importance of supervisors taking a clear command-and-control role whenever possible in field operations. For example, in one case, we observed a supervisor go hands-on with a subject despite there being at least five patrol officers on scene to do so, and the lack of command resulted in confusion and less-than-ideal tactics. In another, despite there being patrol officers on scene, a supervisor engaged with a belligerent and uncooperative subject and the situation escalated to a use of force immediately after the supervisor laid his hand on the subject's arm – becoming the first person to touch him.

We consider the new checkbox on the force review form to be a positive step, and we hope it has promoted additional opportunities for BPD leadership to reinforce its preferences. Ideally, a future audit cycle will reflect progress in this area.

Uses of the Taser

As noted above, last year we made several recommendations related to the use of the Taser, including recommending that the Department re-consider use of the Taser in drive-stun mode³² and the use of Tasers for “mere flight” from officers. The Department agreed and committed to careful evaluation of Taser policy and uses.

³² Drive-stun mode is when the Taser device is placed directly onto the subject's body and deployed without the Taser probes being ejected. This mode is not advised by either the manufacturer or by research studies because it does not result in neuromuscular incapacitation (NMI). See PERF & COPS, 2011 Electronic Control Weapon Guidelines (March 2011), pages 14, 19. Interestingly, the manufacturer's latest Taser model -- the Taser T10 -- no longer has the drive stun mode capability.

For BPD officers, policy restricts the use of drive-stun to specialized circumstances; we recommended that the Department revisit these use cases and consider prohibiting the use of drive-stun all together. See BPD's policy 309.5.1.

Before our report was issued, we found additional examples where officers continued to use the Taser in drive-stun mode. In one case in our sample, an officer used drive-stun mode on a subject who refused to give up his hands when officers attempted to handcuff him. The officer did not provide a warning, and, as a result, other officers experienced electrical shock from the Taser deployment. In its review, the Department identified concerns with use of drive-stun and reported that it would offer Department-wide training on appropriate uses of the Taser during its Defensive Tactics training session.

We will continue to monitor use of the Taser in drive-stun mode.

We also noted one Taser deployment that warranted more scrutiny of the subject's actual behavior and threat level prior to the Taser being deployed. The Department's policy allows for Taser deployment in the following cases:

309.5.2 APPLICATION OF THE TASER DEVICE The TASER device may be used in any of the following circumstances when perceived by the officer at the time that such application is reasonably necessary to control a person:

(a) The subject is violent or is physically resisting.

(b) The subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, self, or others.

In our evaluation of one deployment, we question if these thresholds were met. In that case, which involved the apprehension of an argumentative shoplifting subject, the subject refused officers' commands to stop and began walking away backward (that is, facing the officer but walking away) with one hand in his pocket. In his Incident Report, the officer wrote that he believed that the subject might pull something from his pocket such as a weapon. As he followed the subject, the officer warned the subject that he would use the Taser. The subject asked, "why?!" as he continued to walk, now half-turned

away from the officer. The officer deployed the Taser. The probes struck the subject's chest but did not achieve NMI.³³

The subject then completely turned away and walked toward the roadway. Without giving another warning, the officer deployed a second set of probes, reportedly to prevent the subject from walking into the roadway; in our evaluation, this did not meet the threshold for use of the Taser. This deployment struck the subject in the lower back, causing NMI. The subject then fell forward onto the sidewalk, resulting in a broken nose.³⁴

In its evaluation of the case, the Department noted that the subject's *initial* behavior warranted use of the Taser: he was argumentative, was turned toward the officers, and had a hand in his pocket as he shouted. We concur. But the Department ultimately concluded that *both* uses of the Taser were in policy because the subject was "demonstrably aggressive toward the officers" and his behavior and language suggested that "he was going to elevate the detention to a use of force." We did not find this supported by the video footage; in the body-worn camera footage, the second Taser deployment occurred once the subject had turned away, was not directly aggressive, and displayed no intent to assault the officers but instead a clear intention to leave. In fact, the officer himself stated that his second deployment was intended to prevent him from walking into traffic, contrary to the rationale found by BPD.

We acknowledge that policy allows officers to make a predictive assessment of a subject's intentions and likely actions in the context of an encounter, based on the totality of the circumstances: *the subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, self, or others.*

³³ The officer stated that the chest was not his intended target, but the subject turned too quickly. The Department counseled the officer on probe placement and on documenting these details in his Incident Report.

³⁴ The Department classified this as a Type-1 use of force because of the injury to the subject, and it was investigated as such. However, on the day of the incident, the supervisor on scene contacted command staff, including the IAB Captain and Lieutenant, and together they determined that IAB personnel would not respond to the scene because the injury was relatively minor and had not required hospitalization. We found that decision to be appropriate given the level of injury.

But, in this case, the video evidence suggested that the subject was walking away and posed no additional threat to the officers.³⁵

We recommend that the Department carefully evaluate use of the Taser and the subject's observed actions of assaultive or actions indicating an intention of assaultive behavior in the moment preceding deployment. We encourage the Department to carefully re-evaluate these use cases, avoid speculation about what might occur if force is not used, and consider if officers' own perceptions and narratives warrant the use of the tool.

RECOMMENDATION 8

In evaluating uses of the Taser, BPD should focus on the subject's actual actions and officers' perceptions as captured in their own reports and/or interviews in the moments preceding its use, and limit its reliance on speculative justifications.

Use of Closed-Fist Head Strikes

In last year's report, we wrote about a case where an officer used a kick to the head during an intense fight where he feared for his partner officer's life. In that case, we commended the extremely detailed evaluation of each force type used by officers during the prolonged fight, including one officer's use of closed-fist head strikes. The investigator noted that these are not advised, stating: "[the officer] struck [the subject] in the face with his fist on more than one occasion. [Striking] with a fist can be problematic in regard to breaking small bones in the hand an elbow or forearm may have been more appropriate" (as we noted last year, while here we do not agree with the

³⁵ While the officer reported that he intended to prevent "harm to self" because the subject appeared to be walking into the roadway and could be struck by cars, it is unclear that a Taser deployment, which caused NMI and could have resulted in the subject falling into the roadway, was any safer.

suggestion that an elbow or forearm to the face are “more appropriate,” we appreciated the detailed issue-spotting).

The use of closed-fist head strikes has come under scrutiny in the last several years as law enforcement tactics have evolved. Departments nationwide are taking a closer look at the safety and effectiveness of closed-fist head strikes because of their inherent risk of injury. Officers often report significant injuries to the dominant hand (such as broken bones or sprains); in the immediate short term, these may render them unable to use their firearm; in the longer term, they may result in time off duty.³⁶ There are serious risks to subjects as well (which often come with civil liabilities), such as concussions, broken bones, or other injuries to the face and neck. And, in our observations, despite these risks, the closed-fist head strike is rarely what effectively ends an aggressive struggle.

But while other strikes to the head (for example, with an impact weapon or with a foot / a kick) are clearly classified as potentially lethal per BPD’s updated policy, the appropriate use cases for the use of closed-fist head strikes, if any, remain largely undefined, and BPD’s officers continue to use them. In two cases this year, we observed officers use closed-fist head strikes on subjects who were resisting arrest. In one, the investigator again noted the risks to an officer’s hands from using closed-fist head strikes. But this was not addressed in the second, and we did not note any action taken to address (or caution against) this use of physical force in either case.

In the first case, officers used force to apprehend a fleeing subject after a vehicle pursuit. Officers pulled the subject off of a cinder block wall when he attempted to flee and delivered a series of punches, including several closed-fist strikes to the face. The subject sustained significant injuries, including broken ribs, nose, and hand (some of which were possibly the result of the fall from the wall, but others perhaps may have been caused by head strikes). Here, like last year, the investigator cautioned that closed-fist head strikes may

³⁶ Law enforcement’s own tactical experts advise against using closed fist strikes to the head. See, for example, Police1’s “Tactical Tip: Head Strikes” at <https://www.police1.com/close-quarters-combat/videos/tactical-tip-head-strikes-bB7Omj5jYFhPShAF/>

injure an officer's hand, rendering him/her unable to use that hand if needed (for example, to use a firearm).

In the second case, an officer was struggling with a shoplifting subject who refused to give up his hands to be handcuffed and attempted to reach into a front pant pocket. While commanding the subject to give up his hands, the officer delivered two strikes to the subject's abdomen, and then a single closed-fist strike to the subject's head. The subject was apprehended. Photos showed a "minor laceration" to the subject's head, but it was unclear when in the incident the injury had occurred (or what caused it). In that case, the Department classified the three strikes together as "modest ground grappling," and found the use of physical force to be warranted to overcome the subject's level of resistance but did not address the specific use of a head strike.

We recommend that:

- The Department should consider offering Department-wide trainings on the officer safety concerns of closed-fist head strikes and train alternatives to this use of physical force.
- As they did with kicks to the head last year, Department executives and training personnel should carefully evaluate the risks of this force tactic and consider whether further guidance on its use be set out in the Department's policy.
- In evaluating cases involving uses of closed-fist head strikes, the Department should consider the risks to officers and the injuries sustained by subjects who received them, and provide corrective action when it is warranted.

RECOMMENDATION 9

BPD should carefully evaluate the use of closed-fist head strikes in training, policy, and practice, to determine when this physical use of force is appropriate.

Review of Vehicle Pursuits

Vehicle pursuits and the policy that guides their use continue to be a challenge as the Department weighs inherent safety concerns against enforcement priorities. As we have discussed in previous reports, the Department has worked on striking the appropriate balance since 2013, when it issued a policy that drastically reduced the total number of vehicle pursuits but was also overly complicated and limiting. Leadership worked on refining its pursuit policy from 2019 to 2021, releasing a policy in February of 2021 that it believed provided guardrails and limitations while also allowing for officer discretion and decision-making in real time. In that interim timeframe, the Department saw an increase in pursuit activity,³⁷ a trend that was reversed after the new policy was implemented: the Department tallied only three more pursuits in 2021 and 11 in 2022, down from the previous years.

While the reduction reflected the more stringent thresholds in a positive way, the Department found over half of the 2022 pursuits to be out of policy, indicating that they still did not comply with Department requirements for pursuits. As we reported last year, the pursuit policy violations were not egregious, but pointed to continued confusion over how to implement aspects of the new policy, such as understanding the acceptable reasons for initiating a pursuit and proper implementation of “Tracking Mode,” a feature intended to provide officers opportunity to follow a subject without formally initiating a

³⁷ In 2020, the Department reported 16 pursuits and continued this upward trend with five more pursuits the first two months of 2021 before the new policy was finalized (for a total of 21 over this period). While there was no clear explanation for why this increase occurred, the Department pointed to factors related to the pandemic (e.g., members of the public willing to engage in higher-risk activities) and a younger patrol force with less overall experience.

pursuit.³⁸ In those cases, the Department directed additional training on the pursuit policy, either to the specific officers or to entire units.

In 2023, nearly two full years into the new policy, the Department only had four documented vehicle pursuits – a noteworthy reduction. Of these, the Department found two to be out of policy: one for unsafe speeds, failure to consider road conditions, and poor communication, and the other for failing to meet the pursuit initiation criteria. We also continued to see confusion over aspects of the policy, such as improper use of Tracking Mode, which led to at least one vehicle pursuit initially being unreported.

In assessing BPD's handling of this small sample size of incidents, we found that the Department appropriately identified deficiencies and directed officers and their supervisors to training – most often to debriefs – to avoid them in the future. But we also found the Department's application of the "Balance Test" – a method framed in policy to assess the risk-to-reward ratio of engaging in a pursuit – to be incomplete in two cases.

Meanwhile, the continued challenges with the vehicle pursuit policy led the Department to recently initiate yet another round of policy review, which we learned will include a more detailed definition of and guidelines for Tracking Mode. We commend the Department for its continued commitment to getting vehicle pursuits "right," both in practice and in policy, as it reacts to the real-world experiences of its officers.

Tracking Mode: Undocumented Pursuit-Like Activity

In our 2022 report, we advised caution with Tracking Mode, one key new feature of the updated policy. In theory, Tracking Mode was offered as a way to allow officers greater latitude in the field using "lower risk" tactics such as

³⁸ "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."

following from a safe distance without lights and sirens. But in practice we saw officers use it to initially engage in “pursuit-like” activity before a formal vehicle pursuit was appropriate or authorized – thus making the difference more a matter of labeling than substance.

Moreover, we expressed concern that had those incidents not eventually become formal pursuits, they might not have been evaluated in any way. We recommended that the Department establish some form of review protocol for when officers engaged in “pursuit-like” driving behaviors in circumstances that did not evolve into formal vehicle pursuits (see Recommendation 16, 2022 Annual Report). The Department agreed: it established a log for “Tracking Mode / Assessment Period Driving,” which would arguably capture these incidents and provide some level of supervisory review. And it drafted a detailed definition and guidance for use of Tracking Mode, which it trained Department-wide.

However, our annual reporting cycle means that recommendations come in the subsequent calendar year, and policing activity obviously does not stop in the interim. Unfortunately, *before* our last report was released, and before those remedies were in place, the Department saw at least one incident where officers declared that they were in Tracking Mode but were clearly in pursuit. Had that incident not resulted in a use of force, which was subject to the Department’s rigorous review process during which a supervisor observed the pursuit, the “pursuit-like” activity would likely not have been identified or evaluated.

We anticipate that the more detailed definition, specific guidance, and supervisors’ heightened awareness of the use of Tracking Mode should further curb these “pursuit-like” activities, or at least ensure that they are carefully reviewed and corrected if necessary. And the new Log provides a formal mechanism for reporting these “pursuit-like” activities so that the Department can provide statistics about their use and effectiveness. We will continue to monitor the use of Tracking Mode to ensure it is used and evaluated appropriately.

The Balance Test as an Assessment Tool

The 2021 policy update introduced the “Balance Test,” a series of considerations for safely initiating, continuing, and terminating a pursuit. Essentially, the Balance Test requires involved officers and their supervisors to continually evaluate the risk of a pursuit and terminate the pursuit “if the threat to public or officer safety is greater than the need for immediately apprehending the suspect.”

In our 2022 review, we found the Balance Test to be an effective assessment mechanism, both in real-time in the field as well as during the case review process, where the reviewers conducted their own after-action Balance Test. This year, we found that the Department appropriately applied the Balance Test in its review of two of the four vehicle pursuits. The Balance Test, among other factors, served as a basis to reach an out of policy determination in these two cases:

- In the first pursuit, which involved chasing a subject at up to 81 MPH on residential streets in moderate to heavy traffic, the Department found that the risk to public safety was too high. While the officers self-terminated the pursuit when they lost sight of the subject’s vehicle, the Department determined that the officers should have terminated it earlier. The Department also noted that the officers failed to fully broadcast the road conditions and speeds, leaving their supervisor with insufficient information in deciding whether to order a termination.
- In the third pursuit, which involved the inappropriate use of Tracking Mode discussed above, the Department determined that the initial violation – a traffic violation – did not warrant the risk of engaging in a vehicle pursuit.

But we found that the Department’s assessment of the second and fourth cases, which it found to be in policy, did not appropriately assess the “risk/reward” balance of those pursuits, either in the field or in later review.

- In the second vehicle pursuit, officers observed a catalytic converter theft in progress, and identified the subjects from an armed theft two days earlier.

These subjects fled and jumped into a second vehicle. The circumstances were sufficient to warrant a pursuit initiation.

But, rather quickly, the subject driver and pursuing officers engaged in behaviors that seemingly warranted terminating the pursuit per the Balance Test. First, the lead unit in pursuit drove by a stopped patrol vehicle in the middle of the roadway without taking any action, such as broadcasting its location; it was later learned that one of the involved subject vehicles had struck that patrol vehicle head-on, leaving the driver, a supervisor, dazed.³⁹

Second, speeds at times exceeded 100MPH. The reviewing supervisor found this to be acceptable, reporting that the roadway was clear and that driving was not erratic. But in that same memo, the supervisor also noted that the subject vehicle “nearly collided[ed] with an oncoming vehicle,” later hit a curb, and was damaged (driving on rims), which conflicted with the assessment that the driving behavior was safe.

The supervisor reported that he did not terminate the pursuit because he believed that the vehicle, now damaged, would be unable to drive at “excess speeds.” But we noted that as the pursuit entered a residential area, officers broadcast speeds varying from 25 MPH to 40-60MPH. And there were up to four units in pursuit (including one field supervisor), which exceeded the limit set by policy.⁴⁰

Finally, we noted that the pursuit ended with three subjects exiting and fleeing on foot. Officers pursued them on foot despite knowing that the

³⁹ When he was lucid enough to broadcast, he was unable to do so because of excessive radio traffic and poor radio control (this was noted as a Department-wide training need).

⁴⁰ The Department’s policy limits the number of units in a pursuit to three (two plus a supervisor), unless circumstances suggest that additional units might be necessary to apprehend/arrest a subject. In this case, we acknowledge that the number of units may have been warranted by the severity of the crime and the number of subjects. But, we urge caution in the number of units engaged. See Policy 314.5 PURSUIT UNITS:

Pursuit units should generally be limited to three vehicles (two units and a supervisor).

subjects were known felons who had previously been armed with firearms. The vehicle pursuit review did not evaluate this final high-risk tactical decision, and should have included a review of the officers' choice to engage in a foot pursuit.

- In the fourth vehicle pursuit, officers responded to a call of erratic driving in a parking structure and located what they determined to be a stolen vehicle driving at high speed through the structure. A supervisor followed the speeding vehicle down several levels of the structure while officers parked their patrol vehicles at the lot's exits, intending to prevent its escape. But the driver drove past one of the parked patrol vehicles, striking it before driving into the roadway.

Now, officers believed that they had an assault with a deadly weapon (ADW) on a peace officer: a felony.⁴¹ The supervisor broadcast that he was in formal pursuit. At one point, six units, including two other field supervisor units, were in pursuit (again, this exceeded the limit set by policy, and there was no clear reason for having this many units in pursuit). The In-Car Camera footage showed the subject driver engaged in dangerous driving behavior, including swerving left to right, driving into oncoming traffic, running traffic signals and, at one point, swerving 90 degrees nearly striking parked vehicles.

Approximately two minutes into the pursuit, an involved officer broadcast that the subject was driving dangerously and requested to conduct a "legal intervention:" striking the vehicle to stop it. A supervisor monitoring the pursuit approved this, even though no Department officer (including the one who requested it) is currently trained in these maneuvers.⁴² But the

⁴¹ In the review memo, the supervisor noted that while officers initially reported that the subject had committed an ADW, review of the In-Car Camera suggested that the strike was perhaps accidental, a factor of attempting to flee rather than an intentional assault on a peace officer. We commend this acknowledgement while also noting that, in the moment, the supervisor's decision-making was sound.

⁴² Intervention maneuvers such as this are allowed by policy in limited cases, and only by officers who are trained in the tactic. See Policy 314.9 and 314.9.1.(a).

driver sped away before this intervention could be accomplished.⁴³ The driver eventually collided with the freeway embankment and was apprehended.

Despite identifying all these factors and directing all involved officers and all Department supervisors to training, the Department determined that the pursuit met the criteria of the Balance Test.

The Balance Test requires that the benefits of apprehension outweigh the risks and costs of engaging in or continuing a pursuit. In these two incidents, the Department determined that they did, quoting the first section of the Balance Test. But we found its assessment to be incomplete in that it did not consider the factors listed in policy for when to terminate a pursuit that were, in our observation, clearly met, such as:

314.4. When to Terminate a Pursuit

c) When the suspect enters a one-way street or highway the wrong way or drives on the wrong side of the roadway.

d) Hazards to uninvolved bystanders or motorists.

e) The danger that the continued pursuit poses to the public, the officers, or the suspect, balanced against the risk of allowing the suspect to remain at large.

f) When the suspect engages in extraordinary and dangerous maneuvering to escape capture.

While pointing this out, we also acknowledge that vehicle pursuits are difficult to get right and there is certainly a public safety interest in apprehending felony subjects (especially those that might be armed). Moreover, even with the “in policy” findings in these two cases, the Department’s review identified areas for additional training and appropriately debriefed both the involved

⁴³ As noted in the supervisor review memo, had the intervention been conducted, it might have raised this incident to a deadly use of force as the officer planned to “ram” the subject’s vehicle without having any training in that type of pursuit intervention.

employees and the entire Department – a sign that worthwhile intervention was occurring. Still, it is important that the review process apply policy requirements, such as the Balance Test, equally across all incidents and fully consider all factors that contribute to the risks of vehicle pursuits.

RECOMMENDATION 10

In assessment of vehicle pursuits, BPD should fully consider all factors that contribute to the risks of vehicle pursuits as listed in the pursuit policy's Balance Test.

Equipment Requests

In discussing the potential ways to safely end a vehicle pursuit, the evaluation memo for one of the pursuits suggested that BPD acquire equipment, such as spike strips and a launchable tracker, to its toolkit.⁴⁴ While we note that spike strips come with risks, both to officers who deploy them and to subjects who drive over them⁴⁵, we advise that the Department evaluate the advisability of these tools to reduce the instances of and more safely resolve vehicle pursuits.

RECOMMENDATION 11

BPD should evaluate any additional tools and related training that may contribute to safe resolution of or reduction in instances of vehicle pursuits.

⁴⁴ A spike stripe is a device that is laid out in the roadway with the intention of impeding or stopping movement of a fleeing vehicle by puncturing the tires. A launchable tracker is a GPS device that attaches to a fleeing vehicle via a launching mechanism that will track a fleeing vehicle's location for planned apprehension at a later (and arguably safer) time with the objective of obviating prolonged vehicle pursuits.

⁴⁵ Anecdotally, spike strips have resulted in officer injury and death when they are deployed (see, for example, the 2022 death of an Ohio officer when he was struck by a fleeing subject vehicle as he attempted to deploy the spike strip device) and result in dangerous driving by subjects who strike them as they might not immediately render a vehicle inoperable.

Racial Identity Profiling Act Audit:

BPD Stop Data

As we mention above in the Introduction to this Report, we chose as the "special project" for this audit cycle an evaluation of BPD's initial responses to its obligations under the Racial Identity Profiling Act (RIPA).

Originally enacted in 2015, RIPA is a state law that aims to address biases and disparities in law enforcement practices by requiring the collection and analysis of demographic data on stops, searches, and other interactions between law enforcement officers and individuals. The goal is for the resultant data to provide local agencies – and the communities they serve – with insight into the demographic realities of police encounters in their jurisdiction. Moreover, viewed in the aggregate, the data is a springboard for potential statewide reform initiatives and policy discussions.

RIPA requires law enforcement agencies throughout the state to collect and report demographic data for any peace officer detention and any interaction that results in a search. Most often, these encounters are traffic and pedestrian stops, but can include any officer activity that results in a detention or search, including calls for service or consensual contacts. The statute obligates officers to report what they *perceived* to be the race, ethnicity, age, gender identity, disability and English fluency of the subject.

This dataset is collectively referred to as “stop data.” It is compiled and then assessed by the appointed members of the RIPA Board, which publicizes findings and recommendations annually.⁴⁶ The initial results show that, in California, police stop people of color at a higher rate, and that the stop outcomes are disparate as well, with people of color more likely to be searched or subject to police use of force. While there is value in the statewide results (and while they corroborate long-held concerns about disparities in the impacts of enforcement activity on different demographic

⁴⁶ All reports can be found at the Board's website:
<https://oag.ca.gov/ab953/board/reports>

groups), there are also inevitable limitations in the amount of nuance and site-specific applicability of the broader analyses.⁴⁷

Arguably, then, there is motivation to take a more granular, jurisdiction-specific approach. With this in mind, and given the relative recency of BPD's reporting obligations⁴⁸, we thought it would be worthwhile to take a closer look at BPD's RIPA response efforts from a perspective of compliance, quality control, and self-analysis.

We framed the project in a few straightforward ways. This included meeting with the BPD supervisor who has primary responsibility for overseeing the Department's program. As we describe below, BPD takes its reporting requirements seriously – and goes to some effort to ensure the accuracy and completeness of the mandatory information.

One element of this rigor is the *internal* audit that the Department devised in order to impose an additional layer of tracking on the information being submitted on a daily basis by officers in the field. Importantly, the audit also provides BPD with an additional opportunity to monitor the legality and professionalism of officer interactions during traffic stops and other detentions. The Department performs the audit on a quarterly basis.

⁴⁷ The RIPA Board's annual reports do cite individual examples in support of key points. Again, though, the scale and sources of the Board's information intake can create challenges. For example, BPD itself was mentioned unfavorably in the RIPA Board's 2022 Annual Report: it referenced a 2018 incident during which officers used force to detain a young person with autism after a traffic stop as an example of negative police encounters with youth. But we ourselves had reviewed this incident in an earlier audit cycle; it had been a relatively high-profile event at the time. We found that the Department's review – which endorsed the actions of involved personnel while also treating the incident as a learning opportunity – had been quite thorough and effective and did not support the conclusions reached by the RIPA Board.

⁴⁸ Though RIPA was enacted in 2015, there was a transition period for establishing the data portals and allowing jurisdictions to ramp up for meeting the new reporting requirements. The largest agencies in the state were first to come online with their data: BPD was in the pool of mid-sized agencies that began recording and submitting information in 2022.

We shaped our own review from this starting point. We decided to double-check a sample from BPD's own audit process to further evaluate its legitimacy, and then to perform our own mini audit of another group of cases that we selected randomly, comparing the body-worn camera recordings and reports to the data captured for RIPA compliance.

Lastly, we considered the significance of an internal assessment of 2022 data that BPD prepared in the spring of 2023. Unfortunately, staffing changes had led to an imperfect transfer of this information within the agency, and it was neither fully digested nor further pursued in terms of analysis or action items.⁴⁹ The Department shared this information with us at our request. We comment here on that data's possible significance.

More fundamentally, though, we suggest that BPD engage with the underlying questions that are prompted by the numbers – and by the whole RIPA initiative. What insights are there to be gleaned from the surface statistics themselves? What are some of the factors that might account for the disparities and disproportionalities that are reflected in the data? Which of these are a function of policing practices that deserve re-consideration, as opposed to demographic, economic, and structural realities that are beyond law enforcement's control? Is bias – intentional or implicit – a major element in the dynamic that the statistics reflect?

The answers to these questions are complex, elusive, and challenging. Certainly, BPD is not alone among California or national agencies in being yet to emerge from the process with a clear understanding of the data's larger implications, or the specific "calls to action" that the numbers support. But a more structured, concerted effort in this arena – similar to the thoughtful and

⁴⁹ This was, in our experience of the agency, uncharacteristic. While the explanation (which revolved in part on the long-term medical leave of a key member of the management team) was understandable, the fact that the information effectively "slipped through the cracks" was unfortunate. To be clear, RIPA does not require agencies to take additional action upon receipt of the data. But, as we discuss below, the effort to derive actionable insights from the information seems worthwhile in a way that has not yet happened.

rigorous internal audits it conducts in other contexts – could be beneficial in producing relevant insights and adjustments to current practice.

BPD Data Capture and Internal Auditing

Data Tracking and Verification

From January 1 to December 31, 2022, Department personnel recorded 20,563 stops that were subject to RIPA’s reporting requirements. Almost 90% of these were for traffic violations, which were further broken down by type of citation: moving violations (47% of all traffic stops), non-moving violations (9%), and equipment violations (43%).⁵⁰

A data set is only as good as the accuracy of its component parts, and the Department takes impressive measures to ensure the integrity of its RIPA data. This is no small task: the Department has had nearly 45,000 data entries since the start of data collection, and it reviews each entry several times.

First, each officer’s assigned supervisor checks officers’ Daily Field Activity Report (DFAR) to ensure that officers submit a RIPA report for every activity that requires one. In their 2022 Annual Report, the Department reported an increasing compliance rate quarter-over-quarter, ending 2022 with nearly a 96% compliance rate from officers. If the officer did not submit a RIPA report when required, that officer was directed to training. The Department also held regular Roll Call and supervisor trainings to reinforce the importance of reporting and increase its compliance rate.

⁵⁰ “Moving violations” are violations that occur when a traffic law is violated by a vehicle in motion, such as speeding or failing to follow rules of the road, such as making a full stop at a stop sign. “Non-moving” violations might also occur when a vehicle is in motion (e.g., driving while holding a cellular phone or not wearing a seatbelt). “Equipment violations” are fixable offenses, such as vehicle maintenance issues like a broken taillight, overly tinted windows or other illegal enhancements or obstructions.

Then, the supervisor reviews the officer's report entry for completeness and accuracy. If the entry contains errors or does not meet standards, this supervisor then "kicks back" the entry to officers for correction.

These RIPA entries are then submitted to the Department's RIPA supervisor, who also reviews every entry to identify any procedural issues with the stop data. For example, the supervisor might check the length of the stop to determine if it is reasonable given the reason for the stop and eventual outcome. If the supervisor identifies any concerns, he or she returns the entry for correction. The RIPA supervisor also keeps track of any patterns of practice by individual officers or within a unit that may need counseling or training.

When the entry meets the Department's rigorous standards, the supervisor submits RIPA reports to the California Department of Justice (CalDOJ). These submissions occur nearly daily.

The thoroughness of BPD's protocol, including the detailed verification and real time submission of data to CalDOJ, is rare: many (if not most) agencies submit large batches of RIPA reports that have not been verified in any way, and do so on a biannual or annual basis. This can lead to the denial of entries by CalDOJ based on clerical errors (such as repeated entries) as RIPA staff attempts to compile the most accurate data set. The Department proudly reported that CalDOJ has denied less than 0.5% of its total submissions, a testament to its rigorous internal controls.

Internal Audits and Quality Control

In addition to checking each entry, the Department's Audit and Inspections Unit conducts annual audits of RIPA data on various topics. As we noted above, the Department tracks compliance rates on a quarterly basis. Beyond this, in 2022, the internal audit sought to ensure that stops/detentions and any related searches were lawful. To do so, the Department selected five percent

of the 3,434 stops that included some form of search, which amounted to 172 unique encounters.

Of these, the Department found that 170 encounters were “Lawful;” that is, that the entire encounter from start to finish was legally sound and appropriate. The Department found two encounters to be “Questionable:”

- In one, an officer asked for consent to search a subject, but did not receive it. The officer then conducted a pat-down search, during which the officer manipulated the outside of the subject’s pants pocket. The officer then reached in and removed a methamphetamine pipe from the subject’s pocket.
- In the second, the Department questioned the officer’s legal basis for making a traffic stop. The Department consulted the officer’s Police Report and then spoke to the officer in question, who then satisfactorily explained the rationale for the stop.

To its credit, the Department then did a deeper dive into these specific officers’ stops, selecting and reviewing an additional ten random stops for each officer. The Department found two additional “Questionable” pat down searches in the first officer’s stops. In response, the Department provided specific re-training to that officer (both from POST and Department training personnel), re-trained all Field Training Officers to ensure that all trainees receive proper instruction in pat down searches, shared the results of the audits with all supervisors, and instructed all supervisors to conduct specific and regular Roll Call training on the Department’s search policy (Policy 440) and case law.

The Department did not discover any issues in the second officer’s ten additional stops.

In short, the Department's internal audit was extremely thorough, and its responses were thoughtful and constructive. As an added confirmation of this, we chose to do our own "quality control" check of the Department's audit.⁵¹

We selected ten of the Department's 172 cases: eight at random, and the two that the Department determined were "Questionable." Overall, we concurred with the Department's findings: in the cases that we reviewed – except for the two addressed by the Department as "Questionable" – the stops and searches met Constitutional standards. However, we did identify two notable ancillary issues.

First, we observed potential issues with what we perceived to be interrogation of subjects in custody before the subjects were properly informed of his rights, commonly referred to as being "Mirandized." In one case, officers pulled over a vehicle driving in a residential area in the middle of the night with inoperable taillights. Officers detained the subjects (one in handcuffs) and performed a consent search of the vehicle, where they discovered tools typically involved in catalytic converter theft.⁵² One officer asked the subject specific questions about these tools, what the subject knew about catalytic converters, why the subjects were in the area, and other questions that, at times, sounded much like an interrogation.⁵³

Second, we noted one case where an officer de-activated his body-worn camera to have a conversation with his supervisor, and never re-activated the camera. As a result, the officer's encounter with the subject, which included what the Department found to be a "Questionable" search, was not captured in

⁵¹ This matched the approach we took in an earlier Report, when we studied BPD's then-new body-worn camera program. While crediting BPD for its initiative in designing a mechanism for internal evaluation of compliance, we thought a limited attempt at verification would also be worthwhile.

⁵² Though what counts as "custody" for purposes of implicating Miranda obligations is one of the more contentious elements of the concept (as with the preliminary questions that are often asked of a driver at the outset of a DUI stop), the handcuffing of the subject here elevated the nature of the detention.

⁵³ Conversely, we reviewed a third case involving a subject who did not appear to speak fluent English. In this case, officers waited to both Mirandize and question the subject until they could obtain a translator at the jail.

its entirety. The Department did not address the body-worn camera issue, perhaps because the main portions of the encounter – the stop and search - were complete. But best practice (and policy) is to keep body-worn cameras active until the entire encounter is complete. In this case, the subject was reportedly arrested and booked, but these events were also not captured on body-worn camera video. Moreover, officers should use the camera’s muting functionality instead of de-activating if a situation meets the policy requirements for use of that feature.

While these two concerns do not have a direct nexus to RIPA data collection, we recommend that the Department use any audit to identify officer behavior actions that may warrant attention and remedial action.

OIR Group "Mini-Audit"

We also reviewed a small sampling of the Department’s 2022 stops to examine if data collected by officers was accurate, to observe officer behavior and stop outcomes, generally, and to evaluate compliance with the RIPA program. We selected ten stop cases at random that had not been previously reviewed by the Department, either in their general internal audit or their subsequent review of two specific officers. While the small sample size does not lend itself to any statistically significant conclusions, it did provide a qualitative sense of the nature of the stops and officers’ actions. The Department provided all related body-worn camera footage, reports, and the related RIPA data for each case.

Overall, our findings were much like the Department’s own audit: we found the officers’ stops and searches to be legally justified, and the data entries were generally accurate.⁵⁴

⁵⁴ We did identify two minor data input errors. In one, the question, “Limited English Fluency” was marked “No,” but our review showed that the subject spoke predominantly Armenian and required a City translator (which the officer provided throughout the encounter). In another, the officer inadvertently selected the incorrect stop outcome, marking that he had issued a citation for driving while using a device

More substantively, we observed that officers had an articulable legal basis for each stop, which they shared with the stopped person immediately or shortly after initiating the stop.⁵⁵ We also found that the stop durations and outcomes were appropriate to the nature of the stop. Most stops were short, and most drivers were released with a warning to modify their driving behavior. This was true across all demographic characteristics.

And, in all cases, the officers were respectful and professional. For example:

- In one case, a female passenger alleged that the officers were racist because they made her boyfriend (the driver) exit the vehicle after asking if he “rolled with anyone;” the driver, who was not wearing a shirt, had a large tattoo known to the officers to be a gang-related tattoo, was driving without his lights on at night, had expired tags, and did not have a valid driver’s license. The officers apologized sincerely and explained their reasons for asking him to exit. They then asked the female if she wanted to file a complaint or had other concerns with the stop. The officers eventually allowed the female, who had a valid driver’s license, to drive the car and let the driver go with a warning.
- In another case, officers stopped a vehicle for tinted windows. When they approached, they observed five adults in a vehicle. Because the number of passengers, the tinted windows, and the vehicle’s disheveled interior raised concern about possible hidden weapons and officer safety, the officers requested that they all exit the vehicle. They did. Then, the officer asked the driver for consent to search the vehicle. The driver appeared to be confused by the question. The officer explained “consent search,” and informed her that she could give consent or say “no.” She responded that she did not consent, and the officers did not search the vehicle at that time.

when he only gave the driver a verbal warning. Neither of these is significant, and we acknowledge that minor clerical errors are to be expected when officers are inputting hundreds of data points.

⁵⁵ As discussed in further detail below, this practice comports with a new state law that requires officers to provide detainees a reason for the stop prior to initiating any interrogation.

- Officers stopped a vehicle in the early morning hours for "no front license plate" after noticing some odd changes of direction by the driver. There were several black subjects in the vehicle. The officer was polite and quickly explained that he was puzzled about the car's movements; just as quickly and politely, the driver explained that they were lost and getting confusing instructions from their phone's map application. After checking license and registration for the driver, the officer sent them off with a warning.

However, despite the legality of all stops and the officers' professional conduct, we noted that the Department, like many throughout California and nationwide, sometimes used minor vehicle violations to initiate stops with the secondary intention of identifying a separate, unrelated crime.⁵⁶

For example, in the traffic stop we described above for a broken taillight (in which the Miranda could have been issued earlier), the officers reported that the vehicle, a dilapidated pickup truck driving through a more affluent part of the City in the middle of the night, was out of place and suspicious. While the inoperable taillight was certainly a safety concern, officers used that violation to stop a vehicle that they suspected might be engaged in other (more significant) criminal activities. As it turned out, in this case the officers' intuition was right: the subjects had equipment commonly used for catalytic converter theft. They were arrested accordingly.

We also looked at two cases in which the absence of a front license plate provided the basis for the detention.⁵⁷ Again, one of these led to an arrest when the driver turned out to have a warrant. The other, as we mention above, did not. But it presumably constituted an imposition, however brief, on the individuals who were stopped.

This tactic is certainly not illegal: officers are given significant discretion in whom they stop and for what reasons. And some studies have found that traffic stops of all types have a positive impact on overall road safety for

⁵⁶ The Department's own report of 2022 data showed that 87% of all stops were traffic violations. Of these, 53% were for equipment or non-moving violations. The remaining were for moving violations and a small number of listings for "unknown."

⁵⁷ As of 2024, this is not even a violation in 21 of the 50 states.

drivers, pedestrians, and cyclists, and that reducing stops for minor traffic infractions has a negative impact on crime rates.⁵⁸ BPD is unapologetic in acknowledging that it has chosen a "proactive" enforcement model that includes this strategy as one of its elements.

But these encounters, referred to as "pretextual stops," have a potential downside that has been given greater weight in recent years – to the point where some jurisdictions have found concrete ways to keep them from occurring. At bottom, the concern is that these minor justifications for engaging with people can too easily result in disparate or selective enforcement. Multiple studies have opined that pretext stops affect people of color disproportionately, and that the public safety benefit of these stops is outweighed by the potential harm as a result of loss of community trust in policing, and/or the escalation of low-level situations into major and even fatal confrontations.⁵⁹

Some communities are responding concretely to the new perspectives on the value of this approach. One prominent example is the City of Los Angeles,

⁵⁸ For a discussion of the benefits associated with traffic stops in general, and pretext stops in specific, please see studies cited by the Insurance Institute for Highway Safety's Highway Loss Data Institute, including Dingus et al., 2016; Guo et al., 2016; Tefft, 2013; and Elvik, 2013.

These studies can be accessed at <https://www.iihs.org/topics>

For an analysis of the costs of "de-policing," including but not limited to reducing or limiting types of traffic enforcement, please see Nix et al., "When police pull back: Neighborhood-level effects of de-policing on violent and property crime." (2023).

⁵⁹ For a discussion of the downsides associated with pretext stops, see:

Public Policy Institute of California 2022 study by Lofstrom et al., "Racial Disparities in Traffic Stops."

Westervelt, "Cities Looking to Reform Police Traffic Stops to Combat 'Fishing Expeditions'" (2022);

where the LAPD recently stopped authorizing officers to conduct vehicle stops on the basis of low-level equipment violations.⁶⁰

To be sure, there is tension here between competing concerns: our audit alone, while obviously covering just a tiny fraction of encounters, featured examples of both the advantages (as a mechanism for uncovering and addressing more serious offenses) and disadvantages (as a way of perpetuating some people's perceptions of law enforcement as discriminatory over-policing) of the pretextual stop model of enforcement.

Moving Forward: Making Use of the Data

The Department's own analysis of its 2022 stop data which, as we mentioned before, was not formally released due to internal staffing changes, also highlighted the challenges facing the Department as it tries to strike a balance between the advantages and costs of enforcement activity.

It is important to first acknowledge that RIPA data is particularly difficult to effectively analyze – this is true for agencies across the state, many of which are grappling with the implications of statistical overrepresentation among certain races. Numerous factors, not all of which are quantifiable, contribute to why someone is stopped. As such, simple number comparisons, which on their surface suggest a bias problem, do not tell the whole story.

There are complicating factors and possible alternative explanations for the statistical outcomes; for example, officers have significantly less discretion in enforcement activity when they respond to a call for service that may have been initiated as a result of the reporting party's explicit or implicit biases. Moreover, for traffic stops in particular, the officer may not be able to discern

⁶⁰ Since the implementation of an agency "Special Order" to this effect, the LAPD has reported a notable shift in traffic stop patterns, including a decrease in stops for minor traffic violations. More significantly, although some racial disproportionality in stops remains, the proportion of Black drivers stopped has declined compared to the previous year. Officers also conducted fewer searches during stops and were less likely to rely on driver consent for searches.

the motorist's race at the time the decision to stop occurs. And there are potentially relevant variables in Burbank, such as airport traffic, the influx of workers who commute through Burbank and use the freeways and "side streets" in the area, the community's desire for police to enforce traffic laws to prevent traffic collisions and poor driving, the number of stops involving the unhoused population, and complementary disparate arrest and crime rates. Each of these constitutes a variable that potentially undermines overreliance on simple residential demographics and census data comparisons.

Because of these factors, we caution drawing conclusions about disproportionalities in the initial stops themselves.⁶¹ Instead, we looked at what happened once the stop was initiated: that is, what actions occurred once a person was stopped, and were there any notable differences based on the race of the individual stopped? To its credit, the Department was also interested in stop outcomes, and a significant portion of its report was dedicated to analyzing these.

First, the Department reported on basic stop outcomes: did the individual(s) receive a warning, citation, arrest, or something else. Overall, nearly 44% of individuals stopped were issued a warning, 39% were issued a citation, 10% were subject to arrest, and the remainder were subject to other outcomes. But notably, Blacks and Hispanics received a warning or no action more frequently than Whites.⁶²

Again, the data lends itself to differing explanations that are each plausible. On one hand, it may suggest that Blacks and Hispanics are stopped more often for "violations" that do not rise to the level of formal action and are therefore more likely to be let go with a warning (or no action at all). But perhaps the inverse is true: it is officers' own sensitivity to contemporary scrutiny that prompts them to exercise legal discretion by choosing to "let go" persons of color more frequently to *avoid* the perception of bias.

⁶¹ BPD's report provided Census data for Burbank and Los Angeles County with a side-by-side chart of the population against their RIPA data; on its face, this showed clear disparities. Again, though, for the reasons articulated above, the use of raw census data is not seen by many statistical experts as a fair or appropriate comparison.

⁶² 51% of Hispanics and 51% of Blacks versus 39% of Whites received no action or a warning.

Conversely, Blacks, Hispanics, and Whites had relatively similar arrest rates (14, 12 and 10%, respectively), suggesting that arrests are made at a somewhat comparable rate across race categories. This makes sense: when there is cause to arrest, officers are doing so, irrespective of race.

Second, the Department reported on other actions taken. The Department provided a breakdown of person and property searches by race, which was also the topic of its internal audit (discussed above). The Department reported that Blacks were searched in 22% of stops and Hispanics were searched at a rate of around 21%, whereas individuals who were perceived as White had a search rate of approximately 14%. Similarly, Blacks and Hispanics were subject to property searches at a higher rate than Whites. The Department unfortunately did not break out other possible outcomes, such as curbside detention, handcuff, or patrol car detention, by race.

All of these numbers may suggest disparate treatment. But, as we have maintained, these may not paint the full picture absent a sophisticated data analysis to consider confounding variables. For example, the data does not tell us how many of those stopped were on parole or probation or had an outstanding warrant, and therefore were subject to searches. Our own review of individual stops did not reveal notable race-based differences in decisions about conducting searches.

In sum, we recommend that the RIPA data continue to be used by BPD as a starting point for careful evaluation of officer performance in the field. While it is complex and difficult, RIPA data should not be wholly disregarded and may point to specific enforcement areas that suggest a closer look. And BPD's resourcefulness in finding worthwhile mechanisms to audit officer performance, both individually and collectively, is something we have seen in the past across different contexts.

RECOMMENDATION 12

BPD should use its RIPA data as a jumping off point for discovering areas of enforcement that may require closer evaluation, such as its use of pretext stops, potentially problematic “hot spots” with higher disproportionality, and stop outcomes.

As of January 1, 2024, several promising developments address the concerns highlighted in the BPD 2022 RIPA data report.

Firstly, Assembly Bill 2773, effective January 1, 2024, mandates that officers must immediately inform individuals of the reason for a stop at the beginning of the encounter. This law aims to provide detainees with information upfront and prevent immediate questioning, which previously raised concerns about officers trying to obtain admissions of other criminal activities following a detention for a minor infraction. In addition, the law is responsive to frustrated encounters expressed by many motorists understandably curious about why they had been stopped when officers have initially withheld the information.

BPD reported that all Department personnel were trained on these new requirements in December 2023 through a Training Bulletin and legal update training. Additionally, a new policy reflecting this law is being finalized. This statute is expected to reduce the potential negative encounters from traffic stops.

Secondly, the RIPA Board has added or amended several data fields deemed necessary for better analysis of stop data and will do so again in January of 2025. Some of these data points provide important context for stops, such as whether a stop was initiated by officer observation or by a call for service. Others require information about the officer, enabling more detailed analysis and pattern identification. And, per Assembly Bill 2773, officers will be required to document the reason given to the individual for the stop on the RIPA form.

We advise that BPD consider adding additional specialized fields to its RIPA reporting forms to better capture relevant data.

- Across the state, agencies have asserted that using Census Bureau data (which counts the residential population) as the benchmark resulted in misleading findings because the actual population (as opposed to the residential population) of a jurisdiction at any particular time is highly variable. However, because the 2022 RIPA collection form did not capture information regarding a stopped person's address (e.g., a zip code),

agencies are largely unable to conduct any data analysis that might support (or refute) this assertion.

Accordingly, we recommend that BPD add a data field to capture the address (at a minimum, the zip code) of the stopped individual. This would allow BPD to more effectively analyze stop data of those identified as “residents” versus those identified as “non-residents.”

- Agencies also appropriately assert that many stops, particularly moving violations, are initiated *prior* to being able to discern the race/ethnicity of the person they are stopping; as such, they maintain that for these stops, officers cannot be engaged in bias-based policing because they have no information about the race/ethnicity of the subject until after making the decision to effectuate the stop.⁶³ By capturing when an officer was first able to identify the race/ethnicity of the detainee(s), this factor can be added to the statistical analysis.

RECOMMENDATION 13

BPD should add custom data fields to the RIPA collection form, including but not limited to the address/zip code of the stopped person and when an officer first identified the race/ethnicity of the stopped person.

Finally, an additional challenge for agencies throughout the state has been how to best present RIPA data for public consumption. The California Police Chiefs Association has partnered with member agencies to develop a data

⁶³ BPD attempted a similar analysis by breaking down stops by race and time of day. In that analysis, BPD found that the majority of all stops occurred from 8:00PM to midnight. But it also found that, while stops of Blacks remained largely consistent throughout the day with a slight increase at late night hours, stops of whites and Hispanics were highest from 8:00AM to noon and from 8:00PM to midnight. BPD did not provide any rationale for these data spikes.

dashboard template that can be used by agencies (for a fee) to present RIPA data online in a user-friendly and consistent way.

RECOMMENDATION 14

BPD should create a data dashboard of RIPA data to ensure its commitment to transparency and accountability.

BPD Accomplishments

We are pleased to end this version of our annual Report as we have for the last few years: by citing some of the Department's distinctive achievements from within the audit period.

One of these is the agency's ongoing commitment to "CALEA" standards. The Commission on Accreditation for Law Enforcement Agencies is a nationally recognized organization that provides participating departments with a template for institutional excellence. Its detailed requirements across every aspect of police operations helps agencies stay apprised of best practices, and the annual CALEA review process (which BPD undertakes voluntarily) provides a concrete mechanism for ensuring that good intentions translate into performance. Having achieved its initial accreditation more than a decade ago, the Department has both maintained its good standing and responded to refinements and updates in CALEA's program.

In our Report last year, we took a close look at BPD's Mental Health Evaluation Team. This is a specialized unit that has existed for several years as an alternative response model for addressing calls for service that have mental health challenges at their root. We were very impressed with the Team's philosophy, its personnel, and the extent to which the agency as a whole has embraced new understandings about this challenging area of public safety. BPD is justifiably proud of its approach – and also committed to ongoing improvements.

One development in this arena was the addition of a specially equipped, unmarked vehicle for transporting of subjects experiencing a mental health crises. By taking away some of the stressors that a traditional patrol car might create or exacerbate, the new vehicle allows for a more compassionate and service-centered method of getting individuals to the care they need.

This year's Report features a discussion of the Department's recent jail death and the administrative review that it prompted. The case offered a reminder of the challenges inherent in providing appropriate monitoring and care in the custody setting, where inmate wellness can be precarious. The Department took a significant step forward in this part of its operations by adding "biometric

wristbands" for the first time. This technology provides an efficient way for jail staff to track vital signs and receive timely alerts when potential health problems arise – thereby increasing inmate safety.

Two areas of Department responsibility that resonate with large segments of the Burbank population are traffic issues and response times. BPD made strides in both areas in 2023. The Department continued its "Mindfulness for Young Drivers" program through the City's schools, and looks to expand it in the future. Some 4000 students have already been through the program. And BPD has also maintained its focus on ensuring that residents who call the police will get timely service – especially in the context of a time-sensitive, dynamic situation. The Department is proud of having an average response time of less than three minutes for emergency calls.

Taken together, these developments are reflective of an agency that is looking to build on its strong foundation rather than resting on its laurels. BPD's efforts to gain and keep community trust are ongoing, and its recent accomplishments are contributing to that endeavor in positive ways.

Conclusion

Our oversight work with the Burbank Police Department now extends back for well over a decade. In revisiting our initial public Reports and comparing them to more recent iterations, a positive evolution becomes apparent. We stand by our recommendations this year and, as always, hope the Department will consider them seriously and take steps toward their implementation. But they are, for the most part, meant as refinements of processes that have come a long way since our first Report in 2011. In fact, the elements of BPD's current review mechanisms go far beyond basic requirements, to the point where they often serve as models that we cite in our work with other jurisdictions. Though our close evaluation inevitably prompts suggestions for changes or updates, it should be noted that these are primarily modifications to structures that are fundamental sound and often praiseworthy.

The need for ongoing adaptation remains. For example, body-worn camera technology is a relatively recent addition to BPD's operations, but it has been hugely influential in the internal review of force incidents and allegations of misconduct. The Department has done a fine job of using the video evidence to enhance not only the thoroughness but also the thoughtfulness of the individual investigations – and our access has allowed us an unprecedented window into officer performance in the field. Similarly, the RIPA reporting requirements that we discuss at length in this Report have only been a reality for BPD since 2022; our review and recommendations will ideally help the Department further refine its existing protocols and turn the new legislative obligation into as source of additional insight and constructive self-scrutiny.

Adjusting in this way to new technology, new policies, and new transparency expectations means that the Department – like any effective law enforcement agency – continues to be a work in progress. We are nonetheless happy to acknowledge the conscientious ways in which BPD seeks to serve the community and maintain an accountable, responsive culture.

Recommendations

- 1: BPD should look for ways to enhance internal communication about misconduct investigations and their status, while remaining mindful of employee privacy rights.
- 2: BPD should incline toward formal documentation and investigation of misconduct allegations directed at executive staff members.
- 3: BPD should ensure that all allegations of bias are appropriately lodged and investigated.
- 4: BPD should continue its practice of seeking independent corroboration of officer-decision making in cases where possible bias is at issue.
- 5: BPD should consider teaching officers basic law enforcement commands, including use of force warnings, in the languages spoken in their communities, and practice these in daily briefings.
- 6: At all future trainings on defensive tactics, BPD should reinforce the importance of issuing clear and concise warnings that force may be used and of giving subjects time to comply.
- 7: BPD should continue to hold officers accountable when use of force warnings are not issued, including more formal discipline for repeated performance failures.
- 8: In evaluating uses of the Taser, BPD should focus on the subject's actual actions and officers' perceptions as captured in their own reports and/or interviews in the moments preceding its use, and limit its reliance on speculative justifications.

- 9: BPD should carefully evaluate the use of closed-fist head strikes in training, policy, and practice, to determine when this physical use of force is appropriate.
- 10: In assessment of vehicle pursuits, BPD should fully consider all factors that contribute to the risks of vehicle pursuits as listed in the pursuit policy's Balance Test.
- 11: BPD should evaluate any additional tools and related training that may contribute to safe resolution of or reduction in instances of vehicle pursuits.
- 12: BPD should use its RIPA data as a jumping off point for discovering areas of enforcement that may require closer evaluation, such as its use of pretext stops, potentially problematic "hot spots" with higher disproportionality, and stop outcomes.
- 13: BPD should add custom data fields to the RIPA collection form, including but not limited to the address/zip code of the stopped person and when an officer first identified the race/ethnicity of the stopped person.
- 14: BPD should create a data dashboard of RIPA data to ensure its commitment to transparency and accountability.