

OIR
GROUP

**OIR Group Report to City Council of
Santa Maria re**

**Status of OIR Group Recommendations re Santa
Maria Police Department and Audit of Current
Use of Force, Internal Affairs, and Related
Processes**

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Introduction

In 2011 and 2012, the City of Santa Maria's was rocked by a series of officer-involved shootings and a near in-custody death. As a result, OIR Group was tasked with conducting an independent review of the Department's use of force and internal investigations and related matters. Following that review, OIR Group provided a public report in May 2014 to the City Council and the City Manager setting out its findings and offering fifty-seven recommendations designed to improve various internal SMPD processes. When OIR Group delivered its 2014 report, Santa Maria's City Council requested that OIR Group revisit the Department at some point hence and report back on the status of implementation of the recommendations. In furtherance of that request, recently the City Manager asked OIR Group to examine SMPD's current processes to determine the status of implementation of the recommendations and to conduct a "mini-audit" of recent force and internal investigations.

As we wrote in our 2014 report, during the pendency of our review, and in large part as a result of changes in leadership, the Police Department has, on its own initiative, engaged in significant reform. OIR Group's recommendations were designed to continue to move the Department forward in a positive direction but by the time our report was issued, the reform arc for SMPD had already begun in earnest. The fact that OIR Group has now been commissioned to return to examine the status of force and internal investigations is a testament to a Department oriented towards transparency and a City interested in ensuring real and lasting reform.

I. Status of OIR Group Recommendations: Accepted or Accepted in Principle

Recommendation 11: This recommendation has been implemented by SMPD adopting and using IA Pro, a database that provides for tracking of force reports so that systemic and officer performance issues can be followed and identified.

Recommendation 12: SMPD reports that this recommendation dealing with developing training bulletins has been incorporated into practice by the more robust use of force review protocols currently in place.

Recommendations 14, 17, 19, 20, 26, 27, 29, 30, 31: These recommendations dealing with improving force investigations and citizen complaints have been implemented.

Recommendations 16, 21, 23, 24, 25, 28, 36, 37, 38, 39, 40, 49, 50, 56: SMPD reports that these recommendations dealing with improving various Departmental mechanisms dealing with internal investigations, other relevant internal procedures such as qualifications for

promotion, and ensuring that SMPD's training is current and robust have been put into practice and did not require changes in policy to do so.

Recommendations 33, 34, 35: The recommendation for revision of the Explorer Manual has been completed and a copy of the revised Manual provided to OIR Group during this audit.

Recommendations 36, 41, 52, 53: The recommendations for improved tracking of training and compliance have been implemented.

Recommendations 42, 43, 44, 45, 46, 47, 48: The recommendations for heightened scrutiny and improved protocols regarding deadly force incidents have been implemented and it has been reported to us that they were used to investigate a recent SMPD officer-involved shooting. As of the issuance of this Report, neither the SBSO nor the District Attorney's Office has yet to release any details of the incident. However, the OIR Group will be provided a copy of the report for review when it is available .

Recommendation 57: This recommendation suggested that the City consider creating some type of recurrent independent oversight to ensure that its Police Department objectively and thoroughly investigated critical incidents and allegations of misconduct and renderer objective disciplinary decisions as well as be able to provide input on systemic reform. OIR Group has had recent conversations with the City Manager regarding this recommendation and it appears that the City intends to enlist our services for recurrent future audits and public reports setting out the findings of those independent reviews. We are gratified that the City is committed to independent oversight and transparency and look forward to working with the City and the Department to provide such services.

II. OIR Group Recommendations: Still In Process

Recommendation 1: Incorporation of City's Mission Statement and Code of Ethics. SMPD has worked to further highlight and promote the Department's Mission Statement by posting such in visible places within the police station. The City has yet to formally make its Code of Ethics applicable to all members of the Department.

Recommendations 2, 3, 4, 5, 8, 9, 15, and 18: These recommendations deal with improving investigative protocols and related matters with regard to use of force. The recommendations are to be incorporated into a use of force general order that has been drafted but has yet to be adopted. SMPD reports that the order will be formally adopted once the Department's policy manual is updated later this year.

Recommendation 6: OIR Group recommended that, when force was reviewed that the supervisor also reviewed collateral issues to the incident such as legal justification for the stop or residence entry, questioning outside of Miranda, etc. should any issues be present. Such a

review ensures that each force incident be also used as a check on how SMPD officers are performing in the field consistent with Constitutional policing. Implementation of this recommendation could be accomplished as easily as including a checklist question for supervisors to answer regarding whether any other non-force related Constitutional issues were considered and addressed. It appears that this recommendation has not yet been implemented.

Recommendation 10: This recommendation suggests that SMPD adopt protocols that when force is used and when resources allow, the transport of arrestees is conducted by officers who did not use force on the arrestee. This recommendation has been orally accepted by SMPD but OIR Group has yet to see a written provision incorporating this recommendation.

Recommendation 13: This recommendation advises the devising of mechanisms to provide recognition to officers who use exemplary tactics that result in lower levels of force or no resort to force. It is unclear whether this recommendation has been implemented.

Recommendation 32: This recommendation advises removal of a passage on SMPD's complaint form that officers may seek money damages from complainants in a civil lawsuit should the allegations be shown to be false. In our most recent audit of citizen complaints, the passage was still present on the complaint form. We were presented a copy of a revised complaint form that does not contain this passage and urge SMPD to substitute the revised forms as soon as practicable.

Recommendation 51: This recommendation suggests that sexual harassment training should be provided to all sworn and non-sworn members of the Department. SMPD reports that this matter was to be referred to the City's Human Resources Division which will develop and provide such training to Department personnel. This recommendation remains a work in progress.

Recommendation 53: This recommendation calls for the Department to provide its officers training for interacting with mentally ill persons. SMPD has responded to this recommendation in part by providing additional training to its members on crisis negotiation and integrated a crisis negotiation component to its SWAT team. However, more should be done with regard to ensuring that each SMPD officer receive Crisis Intervention Training so that its officers will have additional capacity to respond to persons they may encounter in mental crisis.

Recommendation 55: This recommendation suggests that SMPD explore means to regularly share information with its public about the number of officer-involved shooting and force incidents, types of uses of force, numbers and types of administrative investigations, and the number of such investigations which were sustained. OIR Group is pleased to learn that

efforts are currently underway to include on SMPD's recently revamped website statistics relating to Department use of force and citizen complaints with an anticipated launch date prior to the end of calendar year 2015.

III. Recommendations Currently Not Accepted

Recommendation 7: OIR Group recommended that, as part of the force investigation, SMPD include an updated status of any charges sought by the Department against the arrestee. SMPD indicated that the Department did not intend to implement this recommendation because there is seldom any significant relationship between justification for a use of force and the eventual charges that are filed by the office of the District Attorney. SMPD also expressed concern that implementation of this recommendation would also require significant follow up from investigative resources.

OIR Group asks SMPD to reconsider this recommendation. The impetus behind this recommendation is based on OIR Group's prior experience examining other police agencies. That experience has found that, at times, law enforcement agencies have sought PC 148 (interfering or obstructing law enforcement) or PC69 (assault on a peace officer) charges whenever force is used by police officers. Often referred to as "contempt of cop" filings, the 148 charge in particular has been sometimes subject to abuse and used as a way to "justify" the force used by the officer. In the recent past, those law enforcement agencies that have been seen to have overused these charges have been subjected to federal inquiry for potential violations of the Constitution and/or subjected to successful litigation after the obstruction charges have been dismissed or have resulted in an acquittal against the citizen. For these reasons, it is important in our view to ensure that SMPD not fall victim to the same overuse of these charges when force is used. It is particularly important for SMPD to examine force incidents in which PC 148 or 69 charges are sought and either the District Attorney refuses to file the charges or later dismisses them. With regard to the concern that the recommendation would require significant resources to follow up, OIR Group suggests that all that the process would entail would be for the force investigator to conduct a data base search for the status of any criminal charges pending against the person against whom force was used; a process that is undertaken routinely by SMPD and in which the time commitment is negligible.

Recommendation 22: OIR Group recommended that SMPD develop disciplinary guidelines that set out penalty ranges for particular policy violations and assist the decision maker in considering how aggravating and mitigating factors are to be applied. SMPD responded by the fact that a disciplinary matrix is less crucial to the Department because of the low frequency of formal discipline meted out. SMPD also noted that, in practice, Department executives currently refer to the Guidelines for Discipline document devised by the Los Angeles Sheriff's Department.

SMPD makes a valid point that the relative smallness of the Department and the infrequency of discipline make the need for a disciplinary guideline system less critical. Moreover, the use of LASD's Guidelines for Discipline that sets out how aggravating and mitigating factors are to be applied addresses the second basis for the development of disciplinary guidelines. For those reasons, OIR Group believes that implementation of this recommendation is not critical for SMPD at this time.

Recommendation 54: This recommendation was that further refinement should be developed between the Department, the Santa Barbara Sheriff's Office, and the Santa Barbara County District Attorney's Office regarding which entity would handle critical incident investigations or criminal allegations against officers. SMPD notes in response that currently the Sheriff's Office investigates all officer-involved shootings involving SMPD personnel. SMPD believes that no further protocols are necessary and that the Sheriff's Office will be requested to assist with any other criminal investigations a requested by the Chief of Police.

OIR Group suggests that SMPD revisit this issue. It has learned through experience with other agencies and through examination of recent SMPD cases that even a general coordination with other law enforcement and prosecutorial agencies is helpful so that each have an understanding of under what circumstances when and whether a call for assistance may be forthcoming. Classes of incidents in which there is often uncertainty about which investigative agency will take the lead often involve in custody deaths or allegations of sexual misconduct or other serious misconduct alleged against police officers. Other law enforcement agencies have learned the unfortunate way when there has been uncertainty about whether to call another agency for assistance and whether the agency was willing to assume responsibility, usually at 2:00 in the morning where decisions end up being made on the fly and are less likely to be well considered. To the degree that such scenarios are discussed prior to an incident occurring, there is greater likelihood that the investigation will be handled smoothly and without potential disruption to the integrity of the investigation as a result of any uncertainty about which agency will handle the matter.

Even if SMPD declines to enter into formal protocols with its sister law enforcement agency and the District Attorney's Office, it should at least set out protocols for its own supervisors to follow about what they should do when an in custody death occurs or a serious allegation of criminal misconduct against an officer needs to be investigated. Without the development of such guidelines, supervisors may be required to make irreversible ad hoc decisions in the field that will not be pre-informed by the wisdom and leadership of SMPD command staff.

IV. Results of Independent Audit

In addition to reviewing the status, progress, and implementation of OIR Group's systemic recommendations, we were provided a small sample of force and internal affairs investigations for review. Our general findings stemming from that review was that SMPD had significantly improved the quality of investigations of force incidents and allegations of misconduct. We also had the following specific observations and devised three new systemic recommendations for SMPD to consider:

High Quality Citizen Complaint Letters: When a citizen complains about law enforcement conduct, an investigation is initiated, and upon conclusion of the investigation a letter is sent to the complainant reporting on the results of that investigation. For too many police agencies, this letter is little more than a form letter that provides almost no information to the complainant about the information that was considered and what the investigation revealed, usually leaving the complainant less than satisfied about the process. In contrast, SMPD's citizen response letters are detailed and tailored to the allegations investigated, the evidence reviewed, and the disposition. The letters convey to the complainants a police department that is interested in doing its best to investigate allegations of misconduct and to address any sustained findings.

Performance of Officer Too Narrowly Framed in investigation. In one case reviewed, an officer used profanity against a citizen after the individual was slow to respond to the officer's commands to turn down his radio. After the individual took offense to the officer's profanity, the officer stopped the person and issued a citation.

During the internal investigation, the officer admitted using profanity and appropriate action was taken with regard to this action. However, the investigation failed to discuss or consider a broader concern; namely that the officer apparently only stopped and cited the individual after he complained about the officer's use of profanity. The internal investigation should have considered whether the officer's decision to stop and cite the individual was based on an inappropriate motive, namely, the fact that the civilian had reacted to the officer's use of profanity.

SMPD Should Consider Use of Mediation as an Alternative Way to Resolve Low Level Citizen Police Conflict. In several cases reviewed, the citizens' complaints were about comments that had been made by police officers that were perceived as rude, offensive, or less than professional. As we indicated in our 2014 report, several police agencies have used mediation as a less formal way of potentially resolving such disputes. Mediation can be a beneficial process to both the officer and the citizen and can lead to results more beneficial to police-citizen relations than relying entirely on the formal investigation process. We urge that SMPD

continue to identify citizen complaints that might be good candidates for resolution through mediation and consider trying that process as a way to resolve these matters.

Recommendation: SMPD should consider use of mediation as an alternative dispute resolution between citizens and officers in appropriate cases.

Photographs Are Routinely Taken of Injuries, Complaints of Pain Where There is No Observable Injury and Other Relevant Materials. Our review found that, consistent with best investigative practices, photographs are routinely taken of subject and officer injuries, areas where the subject complains of pain but there are no observable injuries and other relevant evidentiary materials. One particularly commendable investigative task was that after numerous efforts, the SMPD supervisor was able to obtain a video of the force that was captured on a cameral maintained by another law enforcement agency.

With One Exception, Supervisors Are Traveling to the Scene and Conducting and Coordinating Force Investigations. Consistent with OIR Group investigations, our review of the recent SMPD force investigations found that supervisors were traveling to the scene to initiate a force investigation. However, in one case in which a SMPD officer used force out of the City limits, a supervisor was not able to travel to the scene because the officer did not report his force until he returned to Santa Maria. This officer's delay in reporting the force hampered the ability of the supervisor to investigate the force and should have been addressed since it is not consistent with SMPD's expectations on when force should be reported.

With One Exception, Essential Witnesses Are Interviewed During Internal Investigations. We found that SMPD internal investigations were much improved and generally thorough with all witnesses being interviewed. In one case, however, the complainant registered concern about a comment made by an officer who responded to his location. When interviewed, the officer admitted to making the comment but asserted that he meant the comment as a joke and that the complainant's wife had made similar joking comments. At that point, a complete investigation would have returned to interview the wife to learn whether the officer's account of the conversation was corroborated by her.

With One Exception, Officers Provided More Detailed Descriptions of the Suspect Action that Formed the Basis for the Force and Their Force Actions Designed to Bring the Suspect Into Custody. In our review of the force incidents, we found that SMPD officers were generally providing more detailed information in their reports about the suspect activity that formed the basis for their decision to use force and a description of the force they deployed. However, in one case, the officer described the force he used as a "Thai clench". This term does not assist the reviewer in learning what actions the officer took to bring the suspect into custody and the

SMPD supervisor should have returned the report to the officer to have him write what actions he actually took rather than a summary description of it.

Taser Download Information Not Included with Force Package. When Tasers are used as a force option, SMPD can readily download the device and learn how many times the Taser was deployed and for how long. This objective quantifiable information can be helpful to assess the propriety of the force option. In our review, the information was not downloaded during the course of the investigation. We recommend that SMPD devise policy instructing that force investigations routinely download Taser use information and include in the force package.

Recommendation: When a Taser is used as a force option, SMPD should download the Taser usage information, include with the force package, and review when determining the propriety of the force.

Follow Up Interviews Should Be Conducted When Subjects Are Not Able to Provide Coherent Accounts of the Incident. In one force incident reviewed, a supervisor attempted to interview the arrestee but because he was likely under the influence, he was not able to provide a coherent account of what occurred. In cases where due to intoxication levels, injury, or pain medication administered to subjects they are not able to provide coherent accounts of the incident, SMPD protocols should instruct supervisors to attempt to re-interview the subject when they may be able to provide a coherent account of what transpired.

Recommendation: SMPD should devise protocols instructing supervisors to conduct a follow up interview of an arrestee should the initial attempt to interview be hampered because of the physical condition of the subject.

The issues identified herein should be understood by the reader as recommendations designed to fine-tune a healthy internal investigative regime devised by the leadership of Santa Maria's Police Department. We look forward to continuing to watch the progress of SMPD as it moves into its new facility and addresses the ever increasing challenges facing policing in the 21st Century.