

The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths

First Follow-Up Report

**Police Assessment Resource Center
August 2005**

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About PARC

The **Police Assessment Resource Center (PARC)**, a non-profit organization, is dedicated to strengthening effective, respectful, and publicly accountable policing. PARC serves as an “honest broker,” working in cooperation with law enforcement executives, civic and government officials, civilian oversight professionals, and other interested constituencies to improve police performance. Based in Los Angeles and New York, PARC provides direct services to jurisdictions throughout the United States and serves as a national resource center specializing in the formulation and dissemination of model policies and procedures to manage and reduce the risk of police misconduct.

Through its direct services, PARC assists officials in individual jurisdictions as they develop and strengthen oversight systems. PARC conducts reviews of police policies and practices; evaluates external and internal oversight mechanisms; collects and analyzes relevant data; performs accountability audits; and helps police leaders develop and implement management strategies that promote accountability.

As a national resource center, PARC performs research on issues of concern among law enforcement professionals and community members, and provides guidance regarding policing practices and oversight of the police. PARC publishes a monthly newsletter, *Police Practices Review*; maintains an informational website; sponsors forums on issues and trends in the field of policing; conducts and publishes independent research on emerging issues and enduring challenges in policing; and catalogues model policies and procedures.

A copy of this report is available on-line at www.parc.info.

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PORTLAND, OREGON

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MEMORANDUM

To: Mayor Tom Potter
Commissioner Sam Adams
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten

From: Gary Blackmer, City Auditor 

Date: September 2, 2005

Subject: 2005 Review of Officer-involved Shootings

This is the second report prepared for my office, as called for in the City Code. City Council instructed that these reviews emphasize policy-level recommendations with the goal of identifying any strategies for reducing the possibility of future incidents. We hired the Police Assessment Resource Center (PARC) to conduct the first review, which was issued in 2003.

The City Code calls for regular reviews and 14 more closed shooting incidents were evaluated, along with the Police Bureau's progress in implementing the policy recommendations of the previous report. I am very pleased to see many substantial changes undertaken by the Bureau on those recommendations.

You will also find responses from the Police Chief and Mayor, addressing the issues raised in the report as well as the ten additional recommendations, attached at the back of the report.

I need to remind our community that these regular reviews set a standard of accountability that, to my knowledge, no other city has been willing to undergo. Many members of the Police Bureau have cooperated and contributed immensely to making this a constructive effort, and we appreciate their participation.

I urge the City Council and our community to recognize and support the Police Bureau's progress. Only with a continuous, constructive dialogue among all the interests can there be lasting change in the way the Police Bureau meets the needs of our community.

Table of Contents

	Executive Summary	1
1.	Introduction	5
2.	Responses to PARC’s Recommendations on Deadly Force Policies	13
	Deadly Force Policy	13
	Other Substantive Policies	21
3.	Responses to PARC’s Recommendations on Deadly Force Investigation Procedures	25
	Investigative Framework	25
	Officer Sequestration	31
	Interviewing Involved Officers Contemporaneously	36
	Interviews	39
	Management of the Scene	43
	Civilian Oversight of Administrative Investigations	44
4.	Incident Reviews: Tactics and Risk Issues	47
	Critical Incident Management	49
	Extracting Persons from Vehicles	53
	Police Encounters with Individuals with Mental Illness, Emotional Disturbance, and Suicidal Ideation	55
	Rendering Aid to Wounded Persons	60
5.	Incident Reviews: The PPB’s Investigations and Review	65
	Quality of Homicide Investigations	65
	Internal Review	70
	New Recommendations	75

Appendix Table of Contents

	<u>Page No.</u>
 <u>Portland Police Bureau (PPB)</u>	
Policy Section 335.00 (July 5, 2005)	1
Draft Policy Section 630.15 (April 28, 2005)	8
Policy Section 1010.10 (August 1, 2005)	11
Policy Section 1010.20 (February 3, 2005)	21
Use of Force Report (August 1, 2004)	24
Tips and Techniques training bulletin (July 19, 2004)	26
Chief's Memorandum re: Use of Force Revisions (Sept. 8, 2005)	30
Communication Restriction Order (January 31, 2005).....	31
Detective Division SOP 37 and Checklists (2005)	32
Internal Affairs Division SOP 8 (July 15, 2005)	47
 <u>Alaska Department of Public Safety</u>	
Operating Procedures Manual, Section 107.020 (August 1, 2002)	49
 <u>Cincinnati Police Department</u>	
Procedure Manual, Section 12.110 (March 9, 2004)	51
 <u>Denver Police Department</u>	
Operations Manual, Section 105.00 (August 2004)	58
 <u>Los Angeles Police Department</u>	
Manual, Volume 1, Section 556.40 (2005)	64
 <u>New York Police Department</u>	
Patrol Guide, Section 203-12 (January 1, 2000)	65

Executive Summary

In the first follow-up report to its August 2003 Report (“PARC Report”) on Portland Police Bureau (“PPB”) officer-involved shootings and in-custody deaths, the Police Assessment Resource Center (“PARC”) examines how the PPB has responded to certain recommendations in the PARC Report and also reviews 14 officer-involved shootings that occurred from July 1, 2000 through December 31, 2001.

In an effort to ensure that the PPB’s policies and practices relating to officer-involved shootings and in-custody deaths were up-to-date and consistent with good practice, the Independent Police Review Division (“IPR”) of the Office of the Portland City Auditor retained PARC in 2002 to examine those policies and practices. The PARC Report made 89 recommendations for changes in the PPB’s deadly force policies, investigation and review procedures and practices, tactics, and information management.

IPR has retained PARC to issue five additional follow-up reports to the PARC Report. This First Follow-Up Report finds that the Police Bureau, led by Chief Derrick Foxworth, has responded very positively to most of the 28 recommendations examined this year. Those 28 recommendations were selected by PARC and IPR for examination this year because they involved changes to written policies and procedures that are basic to the good practices we recommended and would have been expected to have been implemented in the two years since the PARC Report.

The PPB appropriately revised its deadly force policy to emphasize the sanctity of human life, became a national leader by requiring its members to avoid actions that unnecessarily precipitate the use of deadly force, significantly improved its policy for using deadly force against fleeing felons, and adopted progressive policies relating to shooting at or from moving vehicles. One important recommendation not adopted by the PPB is to revise its policy to authorize the use of deadly force only when no other alternatives are reasonably available.

The PPB adopted in whole or in significant part most of the PARC Report's recommendations relating to the procedures for investigating officer-involved shootings and in-custody deaths. The PPB declined, however, to adopt one of two investigative models of deadly force incidents recommended by PARC that are consistent with good practice, and instead modified its Homicide-only investigative model. This change, nonetheless, will enhance the quality of its administrative investigations by increasing the roles of the Internal Affairs and Training Divisions, and the PPB has indicated that in a year's time it will consider whether to adopt one of the investigative models recommended by PARC.

No action has been taken on the important recommendation in the PARC Report—directed to the Portland City Council—to create permanent civilian oversight of PPB administrative investigations and tactical analyses relating to deadly force incidents. PARC's findings from reviewing five years of shooting investigations demonstrate the need for such ongoing contemporaneous civilian oversight. PARC recommends that the new Mayor and Council create the necessary oversight of this critical police function.

As anticipated, in light of the fact that the PARC Report was not issued until 2003, our examination of the 14 officer-involved shooting incidents from mid-2000 through 2001 raised many of the same issues we found in the cases (from 1997 to 2000) reviewed for the PARC Report.

Based on the cases reviewed this year, we do address and make recommendations concerning two subjects not directly addressed in the PARC Report: extracting noncompliant persons from vehicles and obtaining medical aid without undue delay for persons wounded in deadly force incidents. PARC makes a total of ten new recommendations in this Report. Most build on recommendations made in the PARC Report. In addition to the new recommendations on vehicle extractions and rendering medical aid, PARC recommends that the PPB adopt a policy that prohibits officers from responding to routine patient management situations in mental health facilities and requires advising all mental health providers in the City of that policy.

In future reports we will review the progress on the 61 recommendations in the PARC Report not followed up on in this Report. In two years we will begin the review of officer-involved shooting incidents that postdate the release of the PARC Report. PARC values the opportunity to establish a long-term working relationship with the Portland community and the PPB to improve its policies, procedures, and practices relating to these critical issues that literally affect life and death.

1. Introduction

In August 2003, the Police Assessment Resource Center (“PARC”) issued a report entitled “The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths,” which is generally referred to as the “PARC Report.” The report was commissioned by the Independent Police Review Division of the City Auditor’s office, and involved a review of 32 officer-involved shootings and two in-custody deaths that occurred in Portland from 1997 through mid-2000. Based upon that case review and other relevant information, PARC made 89 recommendations to the Portland Police Bureau (“PPB”) relating to policy issues and the quality of officer-involved shooting investigations. The PARC Report may be found on-line at <http://www.portlandonline.com/auditor/index.cfm?c=27070> and at <http://www.parc.info/pubs/pdf/ppbreport.pdf>. As described below in greater detail, this is the first of five annual reports assessing the PPB's progress in implementing the recommendations of the PARC Report.

We stated in the PARC Report that we believed that, if followed in good faith, our recommendations would produce benefits for the City and the Police Bureau, as well as for Portland’s police officers and the people they serve. While the PPB’s response to the PARC Report is still ongoing, and as we discuss in Chapters 2 and 3, can still be improved in various respects, the response to date has been very positive. Chief Derrick Foxworth and his command staff have embraced many of the PARC recommendations and have made serious, good-faith efforts to implement those recommendations. The Bureau has broadened its horizons over the past two years, repeatedly seeking knowledge from other police departments around the country and from respected national police organizations.

In April 2004, with the approval of the City Council, the Independent Police Review Division (“IPR”) of the City Auditor’s office retained PARC to issue five reports over a five-year period measuring progress on the recommendations of the PARC Report

and reviewing additional officer-involved shooting cases (and in-custody death cases) as they become “closed.” Pursuant to the ordinance that authorized IPR to hire an expert to review officer-involved shooting cases, the review was restricted to “closed” cases, which are defined as cases as to which all criminal and civil proceedings, if any, have been concluded and the two-year statute of limitations for filing civil suits has expired. The ordinance also restricted the issues to be identified during the review to “any policy-related or quality of investigation issues that could be improved.” “Policy-related issue” is defined by the ordinance as: “a topic pertaining to the Police Bureau’s hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer’s conduct.” Portland City Code § 3.21.020 (S).

Because there will be a series of follow-up reports and because none of the cases from 2000 and 2001 being reviewed this year had the benefit of the recommendations made by the PARC Report, IPR and PARC decided that this year’s report would examine the progress on 28 recommendations that can be measured principally by changes in written PPB policies and procedures. IPR and PARC also decided to focus in this report on recommendations that required changes in written policies and procedures because practices cannot be expected to change until the necessary amendments to policy and procedure have been implemented. It was thus important to measure progress on the recommendations that would provide the framework for changes in practices both on the street and in deadly force investigations and reviews.

Chapter 2 of this report looks at the PPB’s progress on recommendations concerning deadly force policies (PARC Report Chapter 3) and policies regarding foot pursuits and officers shooting at and from moving vehicles (Recommendations 7.11 and 7.15). Chapter 3 of this report examines the PPB’s response to recommendations concerning investigation procedures (PARC Report Chapter 4) and the City’s response to the recommendation for civilian oversight of PPB administrative investigations of officer-involved shootings and in-custody deaths (Recommendation 5.15).

We have also reviewed for this report 14 closed officer-involved shooting cases that occurred between July 1, 2000 and December 31, 2001. There were no in-custody death cases during that 18-month period. We emphasize here, and we will reiterate below, that the shootings and the investigations in the 14 cases we reviewed this year all occurred well *before* the PARC Report was issued. Thus, there is no expectation on our part, and should be no expectation on any reader's part, that what occurred in these cases could have been influenced by the PARC Report's recommendations. While the proposition that the PPB should not be judged for noncompliance with recommendations that were issued well *after* the events being reviewed is an obvious one, we think it important to try to ensure that no reader labors under a mistaken conception of the relevant sequence of events.

Because the shootings and investigations being reviewed occurred before the PARC Report was issued, to the extent that the same issues as were identified in the PARC Report occur in this year's set of cases, we will note but not belabor those issues. While it is important to document whether similar issues occur during the 2000-01 period as occurred during the 1997-2000 period, neither the community nor the PPB will benefit from a lengthy repetition of all the same points, same analyses, and same recommendations as were presented in the PARC Report. To the limited extent that we have discovered new issues, they will receive a more comprehensive presentation in Chapter 4, where we deal with risk management and tactical issues, and in Chapter 5, where we deal with investigation and review issues. When we make recommendations beyond those made in the PARC Report, they are set forth in bold in the text and are numbered sequentially starting at "2005.1" to differentiate them from the 89 recommendations originally made.

Future reports will review officer-involved shootings that occurred after the August 2003 release date of the PARC Report. With respect to those post-August 2003 incidents, we will analyze whether the PPB's tactics, investigation, and review conform to the recommendations of the PARC Report.

This year's report builds on and often refers to the PARC Report. Although this report can be read without reference to the PARC Report, we think that it would be a mistake to do so. There are a multitude of references to material and analyses in the 222 pages of the PARC Report and its large Appendix that are only summarized or briefly referred to in this much shorter report. We encourage the reader to have available a copy of both the PARC Report and its Appendix while reading this report. Page references to the PARC Report will be preceded by "PR" and references to the PARC Report's Appendix will be preceded by "PR Appendix."

PARC reviewed the following materials on the 14 cases that were included in this year's cohort of cases:

- Such official PPB files of the investigations of each of these incidents as were available, including interviews with officers and civilians, tapes, transcripts of 911 calls and MDT transmissions, videotapes, photographs, medical records, and autopsies;
- The available personal files of the investigating detectives;
- Such after action reports and executive review determinations as were generated;
- City of Portland risk management files for those cases on which a claim was filed;
- Non-privileged portions of City Attorney's files for those cases on which a lawsuit was filed; and
- The files relating to the nomination for and awarding of commendations.

As was the case in 2003, the completeness of the files was a substantial problem. Records that certainly or probably once existed could not be located and were thus not available for our review. While no file was so incomplete that the PARC reviewers could

not reach overall conclusions about each case, our reviewers were sometimes thwarted in reaching conclusions on discrete issues. We are hopeful that the PPB's record retention and maintenance practices today have improved dramatically from what they were in and before 2001. We do know that since 2003 the PPB has relatively contemporaneously sent copies of the case-specific records needed for the annual officer-involved shooting reviews to IPR for safekeeping until the time comes to review those cases. That procedure should markedly improve the completeness of the files in the future.

In addition to reviewing the case files, we met—sometimes on more than one occasion—with numerous PPB officials and others who provided us with information, history, and context.

At the PPB, we met with the Chief; the Assistant Chiefs; the heads of the Detective, Internal Affairs, Management Services, Personnel, and Training divisions; the two supervisory sergeants from the Homicide detail; and other supervisors and staff, sworn and civilian. We met with the President of and attorney for the Portland Police Association, the union that represents PPB sergeants and officers; and the President of the Portland Police Command Officers Association, the union that represents lieutenants, captains, and commanders. Additionally, we met with the Chief Deputy District Attorney in the Multnomah County District Attorney's Office.

We also met with members of the Citizen Review Committee, the Community Police Organizational Review Team (CPORT), and the Albina Ministerial Alliance Ad Hoc Committee for Police and Civil Redress, as well as representatives of community groups, activist organizations, and attorneys concerned with issues related to policing.

We gave those we met our contact information and encouraged them to call or e-mail us during the course of this project with additional information and insights that would further our work.

We reviewed all policies and procedures issued by the PPB since the PARC Report and a number of new and revised training manuals and lesson plans.

In addition to PARC staff, four consultants—all with a wealth of sworn law enforcement experience and broad knowledge of policing practices across the country—participated in the file reviews and in the formulation of the conclusions reached by this report. Brief biographies of PARC’s four consultants follow.

Ruben B. Ortega was Chief of the Salt Lake City Police Department from 1992-2000 and Chief of the Phoenix Police Department from 1980-1991. Joining the Phoenix department in 1960, he rose through the ranks before becoming Chief. In both Salt Lake City and Phoenix, he instituted community policing and created police-citizen review boards that oversaw uses of force and discipline. Chief Ortega was President of the Major Cities Chiefs Association and for ten years served on the Executive Committee of the International Association of Chiefs of Police (“IACP”), where he was instrumental in the formulation of IACP’s first Model Policy on Deadly Force. He was appointed to numerous commissions by Presidents Reagan, George H.W. Bush, and Clinton, and by the Governors of Arizona and Utah. He graduated from the FBI Academy’s National Executive Institute and the Community Oriented Policing Program at Harvard University’s John F. Kennedy School of Government.

Bernard K. Melekian has been Chief of Police in Pasadena, California since 1996. Prior to that, he spent 23 years as an officer and supervisor in the Santa Monica Police Department. His most important goal when he became Chief in Pasadena was to try to end killings of young people. He has lowered the youth homicide rate by 85 percent, for which he recently was honored nationally. Chief Melekian instituted community service policing following existing neighborhood lines and established programs to improve interactions between law enforcement and persons with mental illness. He has been Secretary and a Director of the Police Executive Research Forum (“PERF”) for the past four years and was chairperson of the California Attorney General’s Blue Ribbon

Commission on SWAT Policy. He graduated from the FBI National Academy and the California P.O.S.T. Law Enforcement Command College.

Ronald L. Davis is Chief of Police in East Palo Alto, California. He previously served 19 years with the Oakland Police Department, including Inspector General of the Department. He is a former member of the federal monitoring teams in Washington, DC and Detroit, and the former Region Vice President of the National Organization of Black Law Enforcement Executives (“NOBLE”). Chief Davis serves as a police expert for the United States Department of Justice and is a member of the IACP Professional Standards Committee. A nationally recognized expert in racial profiling and police accountability, he developed the first bias-based policing training course in the country, which he has presented in 15 states to over 4,000 law enforcement executives and government officials. He is a graduate of the Senior Executive Program at Harvard University.

Christopher M. Moore has been a sworn police officer in California for 22 years, most recently as a Lieutenant with the San Jose Police Department. From 2000-2002, he served as Commander of the Internal Affairs Unit of the San Jose PD where he was responsible for managing the disciplinary process for more than 1,800 employees and supervising the department’s administrative investigations of officer-involved shootings. From 1999-2000, as a White House Fellow, Lt. Moore served as counsel to U.S. Attorney General Janet Reno. Among his Justice Department responsibilities were managing the Attorney General’s conference on police uses of force nationally and reviewing use of force policy. Lt. Moore is a graduate of the California P.O.S.T. Law Enforcement Command College, and currently serves as an instructor in the P.O.S.T. Internal Affairs and Police Management courses at San Jose State University. He is a member of the State Bar of California.

Significant time was devoted to reviewing the 14 investigative files and other materials related to those cases. All the first reviews done by staff members were performed by staff with sworn police experience. Two team members, always including one of the highly experienced law enforcement professionals profiles above, were

assigned to each file with each reviewer expected to provide an independent assessment of the issues in the case. In one case presenting particularly difficult issues, a third team member examined the file. The review team met for a full day in February 2005 to discuss themes drawn from the individual cases and the PPB policies and procedures drafted in response to our recommendations.

Drafts of our final report were provided to the Mayor, the PPB, the City Auditor, IPR, and the City Attorney. Drafts were also provided to, and comments sought from, members of the review team. After circulating drafts of our report, we met with PPB command staff, a representative of the Mayor, a deputy city attorney, the City Auditor, and the director of IPR to discuss our findings and recommendations, and to respond to concerns about our report. We carefully considered the constructive suggestions made to us concerning our report by those who read the draft. Neither the PPB nor anyone else who read the draft in any way tried to impinge on our independent judgment as to our findings and recommendations.

The Mayor and PPB were provided an opportunity to respond in writing to our report. The Mayor's and PPB's responses were drafted after PARC's report was completed. The process set up by the City Auditor's office did not provide an opportunity for PARC to respond to the specific language in the Mayor's and PPB's responses. Our extensive discussions with the PPB, however, led us to believe that we had sufficient information concerning the limited areas in which we and they disagree to have adequately anticipated the Bureau's response.

Having detailed what we did do, we should point out what PARC did not do. We did not review any cases other than the 14 that occurred within the prescribed time period. And consistent with the terms of the city ordinance that restricted our analysis to "policy-related issues," we did not re-investigate the 14 cases whose investigations we reviewed; nor do we provide any assessment whether the officers involved in these cases acted lawfully or within PPB policy.

2. Responses to PARC's Recommendations On Deadly Force Policies

Chapter 2 addresses the Portland Police Bureau's responses to date to the PARC Report's recommendations on deadly force policy, shooting at moving vehicles, and foot pursuits. Throughout this and the following chapter we will set forth the PARC Report's original recommendation before discussing the PPB's response to that recommendation.

In some instances, the Bureau has considered a recommendation PARC made and has chosen a change in policy or procedure different than PARC recommended. If that different response is consistent with good practices and fulfills the intent of the recommendation, we will say so. Sometimes there is more than one good practice with respect to a particular issue. On the other hand, where good practices in the field suggest that the changes implemented by the Bureau should have gone further or in a different direction, we will discuss how the provisions in question can be improved.

I. Deadly Force Policy

Effective August 1, 2005, after nearly two years of revisions, the PPB issued a substantially revamped version of Policy Manual Section 1010.10, which sets forth the Bureau's policy on the use of deadly force. "Section 1010.10," as we will refer to the August 1, 2005 directive, is set forth at page 11 of the annexed Appendix.

A. Recommendation 3.1: *The PPB should add a preamble or mission statement to its written deadly force policy, underscoring the Bureau's reverence for the value of human life and its view that deadly force is to be used only where no other alternatives are reasonably available.*

Section 1010.10 has added the following new language to the PPB deadly force policy (Appendix Page 11):

The Portland Police Bureau recognizes and respects the integrity and value of human life, and that the decision to use deadly physical force is the most important decision that a member will make in the course of his/her career. The use of deadly force will emotionally, physically and psychologically impact the member involved, the subject the deadly physical force was directed at, and the family and friends of both and can impact the community as well.

Section 1010.10's preamble relating to the "Sanctity of Life" is an important and valuable addition to the Bureau's deadly force policy. Its placement at the beginning of the policy provides significant emphasis to the points being made. The preamble, however, can be improved in one important respect.

The preamble would better reflect the Bureau's values and would be more useful to PPB members, particularly in training, if it explicitly stated that deadly force should be used only when no alternatives are reasonably available. The Alaska Department of Public Safety policy says this well:

The Department, recognizing the integrity of human life, authorizes officers to use deadly force against another person only when ... the officer has no other reasonable and practical alternative

Operating Procedures Manual Section 107.020(D) (August 1, 2002), a copy of which is set forth at Appendix page 49.

The Los Angeles Police Department policy provides another effective formulation:

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

Los Angeles Police Department Manual of Policy and Procedure, Volume 1, Section 556.40 (2005), a copy of which is set forth at Appendix page 64.

The New York Police Department policy provides another formulation that makes clear the restraint that officers should employ before using deadly force:

The New York City Police Department recognizes the value of all human life and is committed to respecting the dignity of every individual. The primary duty of all members of the service is to preserve human life.

The most serious act in which a police officer can engage is the use of deadly force. . . . Respect for human life requires that, in all cases, firearms be used *as a last resort*, and then only to protect life. [Emphasis added.]

NYPD Patrol Guide, Section 203-12 (January 1, 2000), a copy of which is set forth at Appendix page 65.

The PPB's reluctance to state in its preamble that "deadly force is to be used only where no other alternatives are reasonably available" is puzzling because it has adopted just that formulation in the portion of Section 1010.10 dealing with "Shooting At a Moving Vehicle," where it prohibits such shooting unless (Appendix, page 12): "There are no other means available at the time to avert or eliminate the threat." The PPB likewise uses nearly identical language in the portion of Section 1010.10, dealing with "Shooting From a Moving Vehicle" (Appendix, page 13). If the PPB deems this standard both desirable and workable for situations involving shooting at or from a moving vehicle (we are in full agreement), we fail to understand why the PPB has concluded that the standard would be inappropriate and dangerous when applied to deadly force situations generally.

The argument advanced by the PPB that such a standard is inappropriate because it would make police officers conduct too complicated a thought process before using deadly force is unpersuasive. If police officers in such disparate jurisdictions as Alaska, Los Angeles, and New York are capable of determining not to use deadly force until they

reach the conclusion that no other alternatives are reasonably available, we are confident that the officers of the PPB are fully capable of applying the same standard. Unless and until PPB officers have made a mental determination that no other alternatives are reasonably available, they should not use deadly force.

The more specific the Bureau's statement of values on the sanctity of human life, the more specific the training provided members of the Bureau will be. With academy and in-service training that reinforces this value and applies it in simulations, the Bureau can demonstrate its true belief in the sanctity of human life. To guide that essential training, the Bureau's deadly force policy should be unambiguous that deadly force will not be used if there are other reasonable alternatives.

B. Recommendation 3.4: *The PPB should consider whether it would be appropriate to revise its written deadly force policy to expressly require officers to refrain from taking actions that unnecessarily lead to the use of deadly force.*

In response to PARC's recommendation, the PPB added the following sentence to Section 1010.10 (Appendix, page 12):

Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics.

This important statement makes the Portland Police Bureau a national leader on this issue. We are particularly impressed that the statement specifically refers to training and tactics. In incorporating this sentence into its deadly force policy, the Bureau is demonstrating an understanding of one of the central themes of the PARC Report. While most officer-involved shootings meet the legal standard for the use of deadly force when the trigger is actually pulled, many of those uses of deadly force were potentially

avoidable had greater restraint, better tactics, more thoughtful planning, or more proactive supervision been employed.

Having adopted this forward-looking policy provision, the task for the PPB is to ensure that the principles underlying this policy statement are consistently taught in training and are fully employed in the investigation and review of deadly force incidents. For instance, this principle should inform and guide the analyses pursued during the administrative investigations the Bureau will conduct on deadly force incidents.

C. Recommendation 3.3: *The PPB should revise its deadly force policy to prohibit officers from using deadly force to stop a fleeing felony suspect unless they have probable cause to believe that the suspect (1) has committed an offense involving the actual or threatened infliction or threat of serious physical injury or death, and (2) is likely to endanger human life or cause serious injury to another unless apprehended without delay. In addition, the policy should make clear that even in those circumstances, deadly force should not be used where (1) other means of apprehension are reasonably available to the officers, or (2) it would endanger the lives of innocent bystanders.*

The PPB has significantly improved its deadly force policy in Section 1010.10 by adding the words “and immediate” to Paragraph b. of the section entitled “Deadly Physical Force,” as follows (Appendix, page 12):

A member may use deadly force to effect the capture or prevent the escape of a suspect where the member has probable cause to believe that the suspect poses a significant and immediate threat of death or serious physical injury to the member or others.

By doing so, the Bureau has made clear that there must be reasonable grounds for believing that death or serious injury will occur if there is any delay in apprehending the suspect. The policy could be further improved by stating that deadly force should not be used where other means of apprehension are reasonably available to the officers, and by

specifying that deadly force should not be used, even in such circumstances, if it would endanger the lives of innocent bystanders.

D. Recommendation 7.15: *The PPB should revise its existing policy on the use of firearms against moving vehicles. The revised policy should include a preface explaining that shooting at moving vehicles is dangerous and generally ineffective, and should embody the following guidelines:*

- *Officers shall not fire at moving vehicles except to counter an imminent danger of death or serious bodily harm to the officer or another person.*
- *Officers shall only fire at a moving vehicle when no other means of avoiding or eliminating the danger it presents are available at that time.*
- *Officers shall not place themselves, or remain, in the path of a moving vehicle.*
- *Officers shall take account of risks to vehicular and pedestrian traffic, and to any other bystanders, before deciding whether to fire at a moving vehicle.*
- *Officers shall take account of risks to vehicle occupants, who may not be involved (or may be involved to a lesser extent) in the actions necessitating the use of deadly force before deciding whether to fire at a moving vehicle.*

Section 1010.10 effectively addresses this recommendation in two new sections entitled “Shooting At a Moving Vehicle” and “Additional Considerations” (Appendix, page 12). In addition, Section 1010.10 adds another excellent section entitled “Shooting From a Motor Vehicle” (Appendix, page 13). The new provisions unambiguously point out the dangerousness and ineffectiveness of shooting at or from a moving vehicle. They clearly prohibit officers from engaging in the “poor tactics” of placing themselves, or remaining, in the path of a moving vehicle and then using the threat from the moving vehicle to justify using deadly force. By adopting these provisions, the PPB has joined the departments across the country that are taking the lead to better safeguard officers and the public in these situations through evasive action rather than ineffective and dangerous discharges of weapons.

E. Recommendation 3.5: *The PPB should revise its deadly force policy to clearly articulate when officers may draw or point their firearms and when they should re-holster them. In addition, the PPB should require officers to report in writing each instance in which they draw and point a firearm at another.*

The PPB has followed this recommendation to the extent that, since August 1, 2004, officers are required to report when they point their firearms at another. In all other respects, the Bureau has not acted to date on this recommendation.

Of particular concern is the fact that the PPB has not added provisions to its deadly force policy as to *when* officers may draw or point their firearms and *when* they should re-holster them. Policy guidance on this frequently used precursor to the use of deadly force is essential. Officers need concrete guidelines as to when they may appropriately draw or point their weapons and when they should re-holster them. The Bureau needs those guidelines so that, if weapons are inappropriately drawn or pointed or not re-holstered, it can hold officers accountable for deviations from those guidelines. The LAPD has had such a policy for the past 28 years, and police departments in Washington, D.C. and Cincinnati have adopted such guidance in the last several years. See PR 39-41.

As of August 1, 2004, officers are required by PPB Manual Section 1010.20 (Appendix, pages 22-23) to report on a Use of Force Report that they pointed a firearm at a person and the distance the person was from them. Copies of the Use of Force Report, a July 19, 2004 Tips and Techniques training bulletin concerning the report, and a September 8, 2004 memorandum from the Chief on the same subject are set forth in the Appendix at pages 24, 26, and 30, respectively. While we know from the Community Police Organizational Review Team (CPORT) Summary Report (January 2004), pages 4-5, and from press reports (*The Oregonian*, news articles, April 20, 2004, and July 23, 2004; editorial, April 24, 2004), that the Portland Police Association and many members of the Bureau vigorously opposed this reporting requirement as being inconsistent with officer safety, the command staff tasked with considering this recommendation found that

many nearby law enforcement agencies—including the Oregon State Police, Multnomah County Sheriff’s Office, and police departments in Beaverton, Hillsboro, and Tigard—had had such requirements for years without jeopardizing officer safety.

Requiring a Use of Force Report when officers point their weapons is an important positive step which could be significantly improved by broadening the requirement to include drawing weapons. The Metropolitan Police Department in Washington, D.C. has required such reporting since 2002 without any reported diminution of officer safety. Metropolitan Police Department General Order 901.07, at 9 (2002) (copied at PR Appendix page 129).

Of significant concern is that when more than one officer points a weapon, only one officer is required to complete a Use of Force Report. July 19, 2004, Tips and Techniques training bulletin, at Appendix pages 26 and 29; September 8, 2004 memorandum from the Chief, at Appendix page 30. Neither document states how officers are to determine which officer is required to file the Use of Force Report. Nor does either document suggest how the reporting officer—who presumably would have been in a dangerous situation if a firearm was pointed at a person—is expected to observe which other officers pointed their weapons or otherwise gather that information before writing a Use of Force Report. With respect to the Bureau’s contention that situations where more than one officer draws a weapon “are rare,” we suggest that if officers are only pointing their weapons when there is reason to believe that deadly force may be necessary, it would be surprising that the second or third officer on the scene would not perceive a similar danger and take a similar action.

The “multiple officer” exception to the requirement of reporting the pointing of weapons is inconsistent with principles of accountability and, without clear rules on who has the responsibility to report and how that person is expected to ascertain what other officers did, is unworkable. Every officer who uses any other type of force is personally required to report that use of force. Tips and Techniques training bulletin at Appendix page 26. There is no principled reason for lessening the reporting requirements when a

firearm is pointed. Every officer who points or draws a weapon should be required to report that use of force.

F. Recommendation 3.2: *The PPB should expand its written deadly force policy to provide that certain uses of force, such as strikes to the head or other vital areas with impact weapons, may not be used unless the officer is justified in using deadly force.*

To date, the PPB has not made the recommended addition to its policy on deadly force.

The use of deadly force is not limited to firearms. The PPB has a responsibility to provide adequate guidance to its members concerning all types of uses of deadly force. While Section 1010.10 (see Appendix page 12) appropriately identifies weapons and techniques that can constitute deadly force, the policy does not provide more specific guidance on when strikes with impact weapons amount to deadly force. Consistent with the agencies whose policies are discussed at PR 28-30, the PPB's policy should make clear that strikes with impact weapons to the head and other vital parts of the body constitute deadly force.

II. Other Substantive Policies

A. Recommendation 3.6: *The PPB should require its officers to record their use of force on a separate Use of Force Report. The PPB should use the information from these reports to analyze and manage its officers' use of force. The PPB should also log and track information from such reports in its early warning system.*

As discussed above, the PPB introduced Use of Force Reports in August 2004 consistent with the PARC recommendation. The Bureau's planned early intervention system, which will allow it to analyze and manage officers' uses of force is not expected

to be operational for up to two more years. Because no department in 2005 can claim to be appropriately managing risk without an operational early warning system, we urge the Bureau to ensure that development of the system does not lag.

Recommendation 2005.1: The PPB should set a firm deadline for making its early intervention system operational and should prioritize its resources so as to ensure meeting that deadline.

B. Recommendation 7.11: *In order to effectively prevent the unnecessary exposure of its officers to the risks associated with foot pursuits, the PPB should adopt and enforce a policy mandating the use of sound foot pursuit tactics by its officers.*

The PPB is in the process of formulating a foot pursuit policy. An April 28, 2005 draft of such a policy is set forth at Appendix page 8. While the Bureau's decision to formulate a foot pursuit policy is an excellent one, the draft policy leaves room for substantial improvement, including the following:

- Creating a greater emphasis on the dangers of foot pursuits, consistent with the PPB's training documents that label foot pursuits as "one of the most dangerous police actions" officers can expect to perform in the course of routine patrol work. Supervisor In-Service Training, 1997-98.
- Making officer and public safety the prime consideration in determining whether to initiate or continue a foot pursuit.
- Providing more affirmative direction to officers, rather than leaving most pursuit decisions to officers' discretion, subject only to various considerations.
- Presumptively banning solo pursuits.
- Requiring two or more officers engaged in a pursuit to terminate that pursuit if they do not remain in sight of and in communication with all other pursuing officers.

- Terminating a pursuit if a suspect's identity is known, making apprehension at a later time probable, so long as the suspect does not pose an immediate threat.

In drafting its policy, the Bureau will benefit by relying in particular on the IACP Model Policy on Foot Pursuits (February 2003) and the accompanying IACP publication, "Foot Pursuits: Concepts and Issues Paper" (February 2003).

3. Responses to PARC's Recommendations On Deadly Force Investigation Procedures

We turn now to the Police Bureau's responses to the PARC Report's recommendations on procedures for investigating officer-involved shootings and in-custody death cases. We also consider the City's response to the recommendation for civilian oversight of investigations of administrative issues and analyses of tactical decisions arising out of officer-involved shootings and in-custody deaths.

I. Investigative Framework

A. Recommendation 4.1: *The PPB should replace its current Homicide-only model of investigating officer-involved shootings and in-custody death cases with a broader, multidisciplinary approach, such as the Internal Affairs Overlay Model or the Specialist Team Model used by most major law enforcement agencies — with the Los Angeles Sheriff's Department and Washington, D.C. systems serving as examples of best practice.*

Over the past two decades most police departments the size of the Portland Police Bureau, or larger, have stopped using the Homicide-only model of investigating officer-involved shootings. The reason for this shift has been that while Homicide detectives are well-equipped to conduct a criminal investigation—determining whether the involved parties (police and civilian) should be charged with a crime—they lack the training and the perspective necessary to investigate officer-involved shootings from the two other perspectives from which those shootings should be analyzed. The latter two perspectives are administrative—whether the involved officers violated the department's rules and regulations and therefore should be subject to discipline; and tactical—whether the involved officers followed their training and performed in a tactically sound way and whether the underlying policy or tactical training needs to be changed.

Jurisdictions which have moved away from the Homicide-only model have instead adopted one of two different models. The first, which we term the Internal Affairs Overlay model, leaves Homicide responsible for controlling the crime scene, conducting the criminal investigation, and taking voluntary statements from the involved officers. (“An involved member is a member who is involved in the actual application of deadly physical force or directs another to use deadly physical force.” Section 1010.10 [Appendix, page 14].) At the same time, however, Internal Affairs (“IA”) investigators—sometimes joined by staff from Risk Management and/or Training—conduct the administrative investigation, responding to the crime scene and participating in Homicide’s interviews of civilian and officer witnesses. They do not, however, participate in (but may monitor from another room) Homicide’s interview of the involved officers in order to avoid any appearance of coercion that might render the officers’ statements inadmissible in a criminal proceeding. The IA investigators receive all of Homicide’s investigatory materials, including tapes and transcripts of interviews of involved officers.

If the District Attorney or grand jury rejects prosecution, Internal Affairs interviews the involved officers, using compulsion if necessary. Under this model, Internal Affairs is involved from the inception, significantly speeding up the conclusion of the IA investigation. Upon the conclusion of its investigation IA prepares a summary report that, along with the case file, is presented as part of the agency’s review process.

Other police agencies have removed Homicide from officer-involved shooting and in-custody death cases altogether. They have embraced what we call the Specialist Team model, in which a stand-alone group of specialists investigates all aspects of officer-involved shootings and in-custody deaths. Unlike Homicide and regular Internal Affairs investigators, these special investigators typically do not have caseloads other than officer-involved shootings and in-custody deaths, and sometimes other high-risk uses of force. Specialist Teams often provide team members with advanced tactical and investigative skills training to permit them to determine whether officers could have safely approached the situation in a manner less likely to lead to the use of deadly force.

The PPB has traditionally employed the Homicide-only model, but has recently grafted onto that model IA involvement after Homicide has finished its work. After the grand jury presentation has concluded, all investigative reports have been filed, multiple photocopies of the file have been made, and the file has been organized and indexed—a process that takes approximately two months from the date of the incident—the Homicide detail of the Detective Division turns its officer-involved shooting file over to the Internal Affairs Division. IA then analyzes the case, with the assistance of the Training Division, from the administrative and tactical perspectives. Instead of an Internal Affairs Overlay model, the PPB has adopted a Homicide-and-then-Internal-Affairs model.

Section 335.00 of the Policy Manual (effective July 5, 2005) provides that IA, in coordination with Training, “will review the officer-involved shooting, and conduct an administrative investigation *as needed*, to determine if the member’s actions were within Bureau policy and procedures” (Appendix, page 4; emphasis added). Section 335.00 also contradicts itself as to whether administrative investigations of in-custody deaths and uses of force that result in hospitalization are mandatory or discretionary with the Chief. Paragraph a.1. (Appendix, page 4) explicitly makes investigations of such cases discretionary with the Chief. Paragraph a.2. (Appendix, page 5) requires IA investigations of all cases that “fit the criteria” for the Use of Force Review Board—a category that includes all in-custody deaths and uses of force that result in hospitalization. Investigations are required to be completed within ten weeks, which seems at least double the period that should be necessary in the vast majority of cases since virtually the entire investigation will have been done by Homicide, and Homicide generally has its investigation completed and ready for a grand jury presentation within two weeks.

Section 335.00 provides that Training will provide the Use of Force Review Board with a written analysis of all officer-involved shooting and in-custody death incidents (but not uses of force that result in hospitalization). The Training Division’s analysis is to focus on “[t]actics, policies, equipment ... level of force used ... [and] [t]raining provided to the member” (Appendix, page 5).

Although the involvement of IA and Training is positive, that involvement is too little and too late to reap many of the benefits of the two models now adopted by most departments the size of the PPB. IA is not involved in and cannot influence the Homicide investigation as it unfolds. All the investigative advantages of seeing the shooting scene, monitoring the interviews of all witnesses, and being able to influence the investigation as it proceeds are lost when IA does not become involved until after Homicide has completed its investigation. Furthermore, while Internal Affairs can completely re-investigate a case (“as needed”), including re-interviewing every witness, that duplication is not going to occur too often. More typically, IA will seek clarifications here and there, possibly conduct an interview or two, but will largely accept the investigation performed by Homicide. That means the information gathered for the investigation will largely be from the criminal perspective because that perspective is what the detectives doing the investigation are charged to operate within.

The PPB’s Homicide-“plus” model suffers from the same weaknesses of perspective as the pure Homicide-only model. Moreover, in a rare case where a great deal of re-investigation in fact occurs, the investigation will still suffer from being delayed, with all the liabilities that delay breeds. We are encouraged, however, that the Bureau has informed us that it intends to evaluate its experience with its hybrid model after a year and is considering the possibility in the future of including IA and Training in the units that respond to the scene of an officer-involved shooting.

In addition to the qualitative problems caused by the delay in IA’s investigation, the PPB model creates a series of other problems because of the delayed involvement of Internal Affairs. Shielding involved officers and witnesses from outside influences until IA interviews them, or decides not to, becomes harder and harder as time elapses. Communication restrictions, as has already happened once in 2004, may have to be extended to the point that involved officers are prohibited from obtaining the benefits of a Critical Incident Stress Debriefing (“CISD”), which generally occurs immediately after the grand jury presentation. Delaying IA’s involvement undercuts the safeguards geared to protect the integrity of the information being gathered and creates avoidable problems,

as we discuss in connection with our analysis below of other of PARC's recommendations relating to investigative procedures.

Another issue that the PPB should address is the absence of any Training Division procedures to implement its new role of conducting administrative investigations of officer-involved shootings and in-custody deaths. The Internal Affairs Division has adopted new procedures (Appendix, page 47) that are good as far as they go, but lack the substantive guidance to its investigators that are provided by IA's procedures for misconduct investigations. A sampling of the topics that could usefully be addressed by a fleshed-out procedure would be:

- How will IA interact with Training on these investigations?
- Which unit will consider whether policies need to be amended or added?
- How will the administrative investigation evaluate compliance with the excellent addition to Section 1010.10 that requires that officers avoid "precipitat[ing] the use of deadly force by placing themselves or others in jeopardy" (Appendix, page 12)?
- What criteria will be used to determine when IA should perform its own interviews and fact gathering?
- When IA decides to interview an officer, should it seek to have a communication restriction order re-imposed? Should it seek postponement of the CISD, or exclusion of that officer from the CISD?
- Will IA investigators debrief the Homicide investigators? Will IA receive all of Homicide's work product?
- When IA re-interviews a witness, will the witness have access to any prior statements?
- Will IA tape its interviews?
- What procedures will be followed if an officer balks at being re-interviewed, or declines to answer a line of questioning?
- What format should the report by IA use?

Recommendation 2005.2: The PPB should promptly draft procedures to govern the administrative investigations by the Training Division concerning officer-involved shootings, in-custody deaths, and injuries resulting in hospitalization, and it should supplement its procedures for such investigations by the Internal Affairs Division so that they are at least as thorough as its procedures for misconduct investigations.

Recommendation 2005.3: PPB policy should make clear that administrative investigations of in-custody deaths and uses of force resulting in hospitalization are mandatory by eliminating the contradictory provisions from Section 335.00 that make them discretionary.

B. Recommendation 4.2: *The PPB should revise its investigative policies regarding firearms discharges at animals and non-injury accidental discharges to require supervisors arriving at the scene to immediately notify the PPB's deadly force investigation unit of the incident. The deadly force unit should either respond to the scene and take over the investigation, or be required subsequently to review the chain of command's completed investigation for completeness and objectivity.*

The PPB has improved upon our recommendation with respect to what it has helpfully renamed “negligent discharges,” by requiring that the Detective Division investigate all negligent or unintentional discharges except those occurring at the range, and even then, such discharges must not endanger anyone (Appendix, page 13). The PPB, however, has not followed the portion of this recommendation that relates to discharges at animals, in that the investigation of such discharges remains in the chain of command with no review outside the chain of command, except if a supervisor chooses to seek Detective Division involvement (Appendix, page 13).

II. Officer Sequestration

A. Recommendation 4.6: *The PPB should issue a policy expressly forbidding all officers who participated in or witnessed an officer-involved shooting or in-custody death from discussing the incident with any person (including other involved or witness officers) other than their immediate supervisor, unit commanding officer, union representative, attorney, a medical or psychological professional, and PPB investigators until they have completed comprehensive, taped interviews in the criminal and, if needed, administrative investigations. In discussing the incident with their immediate supervisor or unit commanding officer during this period, officers should provide only that information necessary to secure the scene and identify the location of physical evidence and witnesses.*

Section 1010.10 requires that the Homicide sergeant at the scene of an officer-involved shooting ensure that all involved and witness officers be issued a written communication restriction order before they leave the scene (Appendix, pages 15, 18). A communications restriction order—a copy of which is annexed at page 31 of the Appendix—forbids the served officer from communicating with any but specifically listed types of persons regarding the case in question until the order has been rescinded in writing. The applicable portions of Section 1010.10 and the text of the communication restriction order fully comply with the above recommendation.

B. Recommendation 4.11: *The PPB should memorialize in its policies a rule expressly prohibiting members of the TIC Team—and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident—from discussing the incident with involved or witness officers until the officers in question have submitted to a comprehensive, taped interview with PPB investigators.*

As recommended and in accordance with good practice, the PPB has made clear in Section 1010.10 (Appendix, pages 15-16), the communication restriction order

(Appendix, page 31), and draft procedures applying to the Traumatic Incident Team that neither TIC Team members nor members under a communication restriction order should communicate to the other about the facts of the incident.

C. Recommendation 4.7: *The PPB should issue a policy forbidding all officers from volunteering or communicating any information to involved or witness officers before the deadly force investigation has been completed. In addition, just as a judge may order jurors to avoid media and other discussions of a pending case, so too should the PPB issue a policy directing involved or witness officers to avoid exposure to other accounts of the incident (even if unsolicited) until they have provided investigators with a comprehensive, tape-recorded statement. In addition, the PPB should require its investigators to thoroughly cover in each officer interview what information the officer had received from other officers or outside sources.*

Recommendation 4.7 contains three distinct parts—which have largely been followed.

The first portion of the recommendation calls for a policy prohibiting PPB officers, even if not an involved or witness officer, from communicating any information about the case or investigation to an involved or witness officer prior to the conclusion of a deadly force investigation. Section 1010.10 (Appendix, pages 15-16) imposes such a prohibition while a communication restriction order is in effect. As long as the communication restriction order remains in effect until the investigation has been completed—something which does not always happen because the administrative investigation takes place only after the homicide investigation—the new policy satisfies the first part of this recommendation.

The second part of Recommendation 4.7 calls for a policy directing involved and witness officers to avoid exposure to information from any source about the facts of the

case until they have been interviewed. The first paragraph of the communication restriction order now reads (Appendix, page 31):

The purpose of this communication restriction order is to safeguard the integrity of the investigation. A thorough investigation based on each individual's independent recall and perception will lend credibility to each member's testimony and the investigation as a whole. In following this theme, it is strongly recommended that you do not review media coverage or other outside information regarding this incident.

The PPB demonstrates forward thinking in adopting this policy. It nonetheless could be improved with two changes in wording. First, the policy would be improved by making it mandatory rather than recommended, as that would better demonstrate the Bureau's commitment to safeguarding the investigation. Second, the final phrase would be provided greater clarity and meaning by the insertion of "receive" before the phrase "other outside information regarding this incident."

The PPB has complied with the final portion of Recommendation 4.7. Section 1010.10 (Appendix, page 18) requires that detectives in deadly force investigations "use the interview checklists, ensuring that all applicable areas are covered." The "Interview outline/checklist: Witness and involved officer interviews related to use of deadly force and in-custody death investigations" includes the following question: "Has anyone discussed the details of this case with you or have you learned information about the incident from sources other than your own observations?" The question is comprehensive and well-phrased.

D. Recommendation 4.8: *The PPB should require that supervisors arriving at the scene of an officer-involved shooting or in-custody death incident ask each officer at the scene what, if any, discussions regarding the incident have occurred prior to the supervisor's arrival. The supervisor should then brief investigators immediately after they arrive at the scene concerning the answers to those inquiries.*

Detective Division procedures require the assigned Homicide detectives to “identify whom the involved and witness members have spoken to regarding the incident” before the detectives arrived (Appendix, page 34). While implemented by a different Bureau member than we originally recommended, the adopted procedures fully comply with the intent of our recommendation.

E. Recommendation 4.9: *The PPB should require that involved and witness officers be physically separated immediately after the scene has been secured, and that the officers remain sequestered (i.e., unable to communicate with each other) until they have submitted to a comprehensive, taped interview by investigators.*

Section 1010.10 appropriately provides (Appendix, page 16):

Separation of all witness and involved members is necessary in order to safeguard the integrity of the investigation.

The sequestration requirement is subject, however, to the following exception (Appendix, page 16, 17):

If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place.

So long as the exception is used only in the unusual cases when the number of involved and witness officers is in fact too many to be physically separated and so long as the number of supervisors or detectives posted to ensure that no communication regarding the incident takes place is sufficient to accomplish the objective, we find the exception to be reasonable.

Section 1010.10 also requires the patrol supervisor on the scene, subject to the above exception, to “[s]eparate all witness and involved members” (Appendix, page 17), and “[w]henever practical,” to direct that “each involved member and witness member

should be transported in a separate vehicle” (Appendix, page 20). The supervisor is to assign an uninvolved member to drive each involved member, while witness officers are allowed to drive themselves. While not required by the PPB policy, it is the better practice, when possible, to have involved members transported by supervisors. It is a poor practice, as occurred in at least one of the cases reviewed this year, to have an involved member transported by his patrol partner.

A significant problem lies in the fact that, while involved members are now being interviewed much more promptly, they are not being interviewed before going off duty. Once an involved officer goes off duty, the efforts to separate that officer from any other involved officer and from witness officers end. Again, delay in interviewing witnesses creates risks to the integrity of the investigation process.

Recommendation 2005.4: PPB policy should prohibit involved officers from being transported by their assigned partners and should require, when feasible, that the transportation be done by a supervisor or a detective.

F. Recommendation 4.19: *The PPB should establish policies that ensure that each officer who was involved in or witnessed an officer-involved shooting or in-custody death incident does not participate in a Critical Incident Stress Debriefing (CISD) meeting prior to submitting to a comprehensive, tape-recorded interview in the investigation of the incident.*

As recommended, PPB policies will not permit a CISD meeting prior to all the officers being interviewed by Homicide. Those policies, however, leave it to the Chief’s discretion as to whether to prohibit a CISD meeting from taking place until after any Internal Affairs, or potential Internal Affairs, interviews have taken place. As discussed above, the Homicide-and-then-Internal Affairs model the PPB has adopted falls short of good practice. One of the unintended consequences of the decision to choose this model is that the Chief will be put in the position of having to determine on a case-by-case basis

whether to allow the beneficial CISD meetings to occur immediately after the grand jury proceeding or to order officers not to participate in a CISD meeting until Internal Affairs has determined that it has conducted all the interviews it needs for its administrative investigation, which might not occur until three or more months after a deadly force incident. In one 2004 shooting, the Chief in fact ordered the re-issuance of communication restriction orders during the pendency of the IA investigation. This caused the CISD meeting to be cancelled and complaints of disparate treatment by many Bureau officers and the Portland Police Association.

The best solution to resolving the conflict between avoiding tainting officers' accounts before the administrative investigation has been completed and gaining the benefits of a CISD meeting is for the PPB to adopt one of the recommended models for handling these investigations—either the Internal Affairs Overlay or the Specialist Team model. The next-best solution to resolving this conflict between two desirable ends is for the PPB to adopt a policy that delays the CISD meeting until Internal Affairs determines that no further interviews of involved or witness officers will be needed in a particular administrative investigation. The current situation, where the Chief exercises case-by-case discretion, is not an acceptable solution. *Ad hoc* decision-making means there is no policy and no way for PPB members to know what to expect until the Chiefs (whoever they may be) rule. Moreover, to the extent the Chiefs allow CISD meetings to precede IA interviews, the PPB's practices will be inconsistent with good practice.

III. Interviewing Involved Officers Contemporaneously

Recommendation 4.3: *The Bureau should revise its policies to make clear that investigators should always strive to obtain a contemporaneous, tape-recorded interview of involved officers. Such a policy would not only ease doubts about officer collusion, but place officers and civilians on the same footing. In addition, in those cases where an officer declines to provide a contemporaneous interview, investigators should be required to thoroughly document their efforts to obtain the interview, including (1) when*

the request was made, (2) to whom it was directed, and (3) the reason(s) for the declination.

Recommendation 4.4: *The PPB should meet with the leadership of the police unions to work out procedures for taking voluntary statements from involved officers in the hours immediately following a shooting or in-custody death incident. Interviews would not be conducted until after the officers have been given an opportunity to consult with a lawyer and/or union representative. The unions should encourage involved officers to provide investigators with contemporaneous statements, and likewise should encourage the lawyers they furnish to their members to facilitate such prompt statements.*

Recommendation 4.5: *The PPB should study the Phoenix system of obtaining contemporaneous statements, in which all involved or witness officers are ordered to speak to Internal Affairs investigators no later than a few hours after the deadly force or in-custody death incident, regardless of whether they have already given a voluntary statement to Homicide investigators. The IA interview, which is walled off from Homicide and the District Attorney, is used solely in connection with the agency's administrative and tactical review of the incident.*

The PPB has fully complied with Recommendations 4.3 and 4.5, and it has taken significant steps toward compliance with Recommendation 4.4. Preceding the issuance of the PARC Report, involved officers were not interviewed until three or more days after a deadly force incident. Those delays sometimes stretched to five or six days in the absence of any exigent circumstances, such as an officer being hospitalized, that would justify such lengthy delays. Since the issuance of the PARC Report, with one reported exception, Homicide has been interviewing involved officers within approximately 24 hours, which is a substantial improvement from prior practice. We nonetheless have two concerns.

The first concern is that even the delay of 24 hours allows officers to leave sequestration and thus to become subject to improper outside influences on their

statements. While collusion between officers to tailor their statements is prohibited by the communication restriction orders, the opportunity to do so exists once officers are no longer separated. Even the delay of 24 hours creates a risk of collusion or other improper influences that would not exist if statements were taken before an involved officer went off duty. Moreover, the less justified the officers' conduct the greater the incentive to risk the consequences of violating a communication restriction order. If officers believed they were likely to be criminally prosecuted or dismissed from the force for an out-of-policy shooting, they would be unlikely to be deterred by the consequences of violating a communication restriction order. We thus recommend that the PPB continue to work toward devising procedures for interviews of involved officers before they go off duty, as occurs, for example, in Phoenix (see PR pages 59-60).

Some might disagree with this concern on the ground that it appears to assume that involved officers are untrustworthy or potential criminals, thereby impugning the integrity of officers who shoot a suspect. This is not so. Rather, members of the community are more inclined to presume good faith on the part of a police department investigating its own officers if the appearance and reality of the integrity of the investigation are patent.

The second concern is that the progress the PPB has made in lessening the delay in involved officers' interviews from three or more days to one day is based solely upon informal understandings with the Portland Police Association. No binding agreements have been reached. There is nothing that officially prevents the union from reverting to advising involved officers to delay their interviews for days. Several people we interviewed characterized the current willingness of the union to encourage its members and their lawyers to submit to interviews within 24 hours as the product of public pressure. The union, it was said, recognized that it was in its self-interest to bend on this issue to achieve other goals that it deemed important. But, it was warned, the fading of public pressure stemming from controversial shootings over the past several years might well result in a reversion to delays of several days. Several people we interviewed also pointed to the union's accommodations on this issue as being based on personal

relationships. People cautioned that a change of personnel in either the union leadership or in certain positions at the PPB could cause a reversion to the delays of three or more days. The PPB thus must continue to work to devise procedures that will ensure that contemporaneous interviews of involved officers will occur as a matter of binding procedures.

IV. Interviews

A. Recommendation 4.12: *The PPB should revise its deadly force policy to ensure that all persons who witnessed an officer-involved shooting or an in-custody death are interviewed on tape by investigators. The PPB should specifically eliminate its policy granting Homicide the discretion to forego interviews of witness officers and rely instead on written reports. Transcripts of all interviews should be included in the case file.*

Recommendation 4.13: *If a civilian refuses to submit to a taped interview, investigators should (1) not begin the interview until the witness has signed a form acknowledging that he or she has refused to be interviewed on tape; and (2) present the civilian with a written copy of the investigator's summary of the interview and allow the citizen to review and sign the investigator's summary for accuracy. The civilian should be permitted to make any corrections or amendments to the statement he or she feels is necessary. A copy of both the original and corrected/amended witness summary should be included in the investigative file.*

Recommendation 4.15: *The PPB's policy and practice of conducting untaped "pre-interviews" of officers or civilians should be eliminated.*

Section 1010.10 provides (Appendix, page 18): "All interviews [of witness and involved members] wherein material facts of the case are discussed will be tape-recorded in their entirety." The policy also provides that detectives' responsibilities include (Appendix, page 18): "Interview civilian witnesses and attempt to tape-record their

statement.” Pre-interviews of both PPB members and civilians have been eliminated. Detectives are required to include transcripts of all taped statements in the case files (Appendix, page 18). The Detective Division’s procedures further require the tape recording of all interviews (Appendix, page 34). These provisions represent a significant and appropriate improvement in response to the PARC Report.

While the policies and procedures require that all interviews of PPB members be taped in their entirety, we have a small concern that in practice some preliminary procedural matters are covered before the tape is turned on. While this may not present a problem generally, it does run the risk of an inadvertent failure to tape something of significance before the tape has been activated. The better practice is to tape the entire interviews including all preliminary and procedural matters.

Turning to Recommendation 4.13, the PPB has thus far not followed that recommendation. While virtually all civilians agree to taped interviews, a small percentage does not. The PPB has told us that it cannot produce a copy of the investigator’s summary of an untaped interview immediately and it fears that civilian witnesses will change their statements between the time they provide those statements and the time the witnesses are asked to come back to approve the investigator’s summary. The PPB’s concern is legitimate. Some witnesses may want to change their statements when they are asked to approve the summaries. Notwithstanding the PPB’s legitimate concern, we adhere to our recommendation because the concern that prompted this recommendation overrides the PPB’s concern. When we were preparing the PARC Report we found investigator summaries of *taped* interviews that did not accurately or fairly represent what the witnesses had said on tape. Our concern about the accuracy and fairness of the summaries and the need for civilians to verify that they said what is in the summaries is thus not a hypothetical concern.

The consequences that may result from not asking a witness to approve the summary of his untaped statement are considerably greater than the consequences that may flow from providing a witness with that opportunity. If a witness recants (which he

can do at the grand jury or an inquest whether or not asked to approve a summary of his statement), two detectives will be available to testify to the witness's original statement. If, on the other hand, a detective distorts a summary of an untaped statement, that distortion is unlikely to be discovered in the administrative review performed by Internal Affairs and Training, as IA will generally interview very few witnesses on its own and Training will interview none. Weighing the competing risks supports Recommendation 4.13. The PPB should follow the recommended procedure, just as the police department in Washington, D.C. does. See PR 70 note 94; PR Appendix page 162.

Moreover, the PPB can both follow Recommendation 4.13 and also avoid most of the risk of recantation by writing up the summaries—in handwriting, if necessary—before the witness leaves the building. Such quick turnarounds are done every day for suspects' confessions. Such prompt production of summaries seems eminently doable for the very few statements taken where a witness declines to be taped.

B. Recommendation 4.14: *PPB investigators should video- or tape-record all scene walk-throughs with involved or witness officers. Transcripts of all walk-throughs should be included in the case file.*

The PPB has renamed what it used to call a “walk-through” an “on-scene briefing.” By either name the process is one by which a witness officer gives investigators a brief account of what happened and where, to assist in gathering evidence and otherwise processing the scene appropriately. Based upon the summaries of the walk-throughs in cases reviewed for the PARC Report, it was clear that sometimes witness officers (and occasionally involved officers) provided detailed oral statements concerning the incidents. In a step in the right direction, the PPB has now directed detectives to restrict the detail provided to what is required for purposes of processing the scene. To date, however, the PPB has not adopted this recommendation.

Even if carefully restricted in scope in actual practice, the absence of a tape will preclude the best evidence of any inconsistent statements an officer might make. The PPB objects to Recommendation 4.13, above, because of a fear of recantation by civilians. Concern about recantation by officers—which can also happen—should cause the Bureau to adopt this recommendation.

C. Recommendation 4.16: *The PPB should improve the already useful existing Deadly Force Interview Checklist by adding policy and tactical questions, including:*

(1) Whether the officers can think of

(a) Alternative approaches that might have minimized risk to themselves and others, and

(b) Potential improvements in PPB training;

(2) A description of when and why the officers decided to

(a) Draw their guns;

(b) Point their guns; or

(c) Lower or re-holster their guns;

(3) Describing the grip and shooting stance used by the officers, including gun/flashlight technique;

(4) Indicating whether the shots were sighted;

(5) Describing the availability and use of cover and concealment; and

(6) Identifying distances from suspects with weapons other than guns, and opportunities for tactical retreat.

Recommendation 4.17: *The PPB should also issue a policy requiring investigators to cover all areas on the modified interview checklist in all interviews.*

Recommendation 4.18: *The PPB should prepare an Interview Checklist, similar to the Deadly Force Interview Checklist, to be used during in-custody death and serious force investigations.*

All of these recommendations have been followed. The PPB's deadly force interview checklist was an impressive and useful document even before the additions proposed by Recommendation 4.16 were made. The checklist (Appendix, page 43) is excellent. One suggested improvement would be to require questioning in appropriate cases concerning the existence of opportunities for tactical retreat.

With respect to Recommendation 4.17, Section 1010.10 (Appendix, page 18) appropriately requires the use of "interview checklists, ensuring all applicable areas are covered" in the interviews of involved and witness officers.

With respect to Recommendation 4.18, the PPB has added "in-custody death investigations" to the subheading of the checklist and has added a useful section devoted to such investigations to the list (Appendix, pages 43, 45).

V. Management of the Scene

Recommendation 4.10: *The PPB should memorialize in its policies the requirement that members of the TIC Team—and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident—remain outside of the crime scene absent express authorization from on-scene PPB investigators.*

PPB Manual Section 640.10 directs that the first member present at a crime scene should "[e]xclude all unauthorized persons (all persons who do not have an official duty to perform pertinent to the incident should be kept out of the protected crime scene)." Policy 640.10 complies with the general portion of Recommendation 4.10, but it does not address TIC directly. However, draft procedures for Employee Assistance Program ("EAP") members, including TIC, direct them "to respect crime scene integrity and wait to be directed into the scene if necessary by the crime scene supervisor." The PPB informs us that TIC members are now kept out of crime scenes because they are

“unauthorized persons” within the meaning of Section 640.10. Section 640.10, coupled with the draft EAP procedures, complies with Recommendation 4.10.

VI. Civilian Oversight of Administrative Investigations

Recommendation 5.15: *The City of Portland should create an independent, professionally staffed, and adequately funded mechanism for civilian oversight of PPB investigations of administrative issues and analyses of tactical decisions arising out of officer-involved shootings and in-custody deaths. At a minimum the oversight mechanism would monitor:*

- (a) Crime scene processes and procedures (this would involve rolling out to the scenes of officer-involved shootings and in-custody deaths);*
- (b) Evidence collection and preservation;*
- (c) Witness identification and interviewing;*
- (d) Investigative file integrity and preservation; and*
- (e) Presentation of evidence to the Review Level Committee.*

This important recommendation, designed to ensure the thoroughness and fairness of administrative investigations, is directed to the City of Portland, not the PPB. To date, the City has taken no action on this recommendation. Our findings in Chapter 5, Section I, below, with respect to the incomplete and biased investigations conducted in 2000 and 2001 strongly reinforce the reasons upon which this recommendation was originally based. See PR 126-27. The City has recognized the value of civilian oversight of Internal Affairs investigations of police misconduct. Cases where a life was taken or could have been taken deserve as least as much oversight, particularly since the PPB investigations conducted from 1997 through 2001 were consistently incomplete and/or biased.

Since the PARC Report was issued, Denver, a city similar in size to Portland, has created an Office of the Independent Monitor that will provide oversight for

investigations into officer-involved shootings, in-custody deaths, and cases where police uses of force result in death or serious physical injury. (The authorizing ordinance may be found at <http://198.202.202.66/PoliceComplaints/template320090.asp>.) Among other things, the ordinance seeks to have the monitor have access to the scenes of officer-involved shootings and in-custody deaths, witness interviews, and other evidence, as the investigation of these incidents proceed. Los Angeles County has created a similar model in the Office of Independent Review, which monitors investigations of serious force incidents involving the Los Angeles County Sheriff's Department. See <http://laoir.com/report1.pdf>, pages 11-15. Perusal of the findings set forth in Chapter 5 of the PARC Report and in Chapter 5, Section I (pages 65-70) of this Report demonstrates the need for such oversight in Portland.

4. Incident Reviews: Tactics and Risk Issues

For this report, PARC reviewed 14 officer-involved shootings occurring between July 1, 2000 and December 31, 2001 to identify policy issues and patterns that the PPB should address. Consistent with the City Council ordinance authorizing this study, PARC did not re-investigate these 14 cases nor attempt to reach conclusions whether individual shootings were justified. Rather, our review was calculated to make observations and draw lessons that will assist the PPB to devise better tactical and strategic options for its officers, improve the quality of supervision, avoid unnecessary shootings, and better investigate and review deadly force incidents. In this chapter, we discuss risk management and tactical issues raised by the 14 cases. In Chapter 5, we discuss the issues raised by the cases that relate to the internal PPB investigation and review of the shootings.

As noted in the Introduction, the shootings and the investigations in the 14 cases we reviewed for this report all occurred at least 20 months *before* the PARC Report was issued in 2003. Thus, there is no expectation on our part, and should be no expectation on any reader's part, that what occurred in these cases could have been influenced by the PARC Report's recommendations. Nonetheless, each of these cases provides opportunities to learn lessons for the future.

Police work is inherently dangerous. The rare situations that threaten officers' lives or the lives of others are interspersed among countless day-to-day interactions with the law-abiding public and with lawbreakers who pose no threat. In a small number of those dangerous situations, officers will have no good option but to use deadly force. The risks arising from police operations are not, however, entirely unpredictable or random. Although danger to officers is unavoidable, and officer-involved shootings, to some degree, are also, careful risk management will minimize the frequency with which officers resort to deadly force.

In this year's review, we identified four areas where the PPB could improve its performance in the area of deadly force.

1. Critical Incident Management. Among other things, we found instances where supervisors should have been on the scene but were not, or were there but failed to take charge or communicate vital information to line officers.
2. Extracting Persons from Vehicles. We encountered situations where officers exercised substandard tactics and strategy when attempting to get individuals out of their cars and trucks after a traffic stop or a pursuit.
3. Police Encounters with Individuals in a Disturbed Mental State. We discovered cases involving inadequate training, questionable tactics and strategy, or poor supervision.
4. Rendering Aid to Wounded Persons. There were instances where officers could have safely rendered first aid, or allowed medical personnel to provide treatment, but did not.

By contrast, the PPB employed effective tactics in several cases we reviewed, such as where it promptly created a containment that led to the identification and apprehension of the person who had recently committed an armed robbery, and where it employed a radio tracking device to identify robbers and to effectively pursue their car and apprehend them.

In each instance where the PPB's performance fell below good practice, the chances of an officer or civilian suffering harm increased. This does not mean that these lapses in and of themselves caused otherwise avoidable injuries or deaths. So many variables affect the outcome that such judgments typically cannot be made with any degree of assurance: Would a gun-toting suspect who was confronted in a poorly-managed police operation been shot in any event even if a well-managed strategy had been employed? Would a knife-wielding subject who was shot with a firearm have been effectively subdued if a less-lethal weapon had been deployed? In most cases, one can only speculate whether a lethal outcome *would* have been avoided.

Unsatisfactory performance does, however, raise the question of whether a more favorable outcome *could* have been achieved. Although it may not be possible to say, case-by-case, whether death or injury was truly avoidable, it is undoubtedly the case that sometimes the answer to that question will be “yes.” Substandard performance in managing the risk of deadly force, therefore, invites avoidable trauma, pain, and grief for officers and civilians alike.

I. Critical Incident Management

Critical incidents—situations of potentially life-threatening danger to police officers or members of the public—demand a skillful, deliberated, tactically sound police response. A police department that consistently does so will have gone a long way towards eliminating avoidable uses of deadly force and frayed community relations.

While critical incidents like terrorist bombings are a rare occurrence, others—such as the cases we reviewed—constitute relatively routine police work. When officers have no option but to react immediately to a rapidly unfolding incident, the opportunity for consideration of alternatives is limited. In some of the incidents we reviewed, officers had to make split-second decisions in response to immediate deadly threats. Yet in seven of 14 cases, the officers had advance indication of real danger and thus had time to consider alternatives and adopt sound tactics and strategy. In these cases, the involved officers, to varying degrees, failed to do so, thereby unnecessarily jeopardizing their own safety as well as that of bystanders and suspects.

Consideration of officer-involved shootings entails much more than simply questioning whether officers had a plausible justification for pulling the trigger. Rather, one must conduct a step-by-step analysis from the first moment the Bureau was notified that something potentially dangerous was unfolding. One must then critically examine the actions and omissions of all those personnel who became involved, or whose involvement should have occurred but did not, through to the incident’s conclusion.

A. Planning

Whenever police officers have the opportunity to formulate a well-considered plan before taking action, they should take full advantage and do so effectively. To do otherwise is to virtually guarantee a sub-optimal response to whatever challenges an incident might present. In 10 of the 14 incidents we reviewed, additional planning would have been appropriate, as illustrated by the following examples:

1. Taking account of risk factors

- An officer left a probationary officer alone with an agitated, mentally-disturbed man. The inexperienced officer then physically confronted the agitated individual, further upsetting him.

2. Assembling sufficient police resources before taking action

- A sergeant and officers tried to remove a barricaded suspect who had threatened the use of deadly force from a dwelling without obtaining the proper equipment and without notifying the Special Emergency Reaction Team (“SERT”), as was apparently required by PPB policy.
- An officer conducted a solo foot pursuit and confronted a suspect alone even though the reason the officer thought the suspect was fleeing from a traffic stop was that he might have a gun.

In each instance cited here, better planning could have enhanced officer safety and reduced the likelihood that officers would need to use their weapons in self-defense.

B. Communication

Effective communication is an essential element of any well-managed police operation. Our review identified failures in communication as problematic in five cases.

Ineffective communication by officers can make it difficult for supervisors to take control and coordinate and direct officers at the scene. Likewise, communication failures by supervisors can produce suboptimal performance in the field. These issues are demonstrated in the following examples:

1. Alerting colleagues to danger

- An officer did not inform colleagues that the suspect was armed with a knife.

2. Supervisors communicating tactical instructions

- A sergeant who broadcast a report of a “man with a gun” did not coordinate officers’ response to his broadcast and, even when on the scene, did not communicate with the officer who was about to confront the man with a gun.

3. Communicating key tactical decisions

- An officer did not communicate with his partner how the first officer and others on the scene were planning to contain and isolate an agitated subject.
- An officer did not communicate to his partner that he suspected the man they had just stopped for questioning was the armed robbery suspect they were looking for and that he (the first officer) was about to take the man into custody.

C. Field Supervision

Our review identified six cases where substandard supervision caused or contributed substantially to a poor outcome. Indeed, overall, supervision problems were a particularly critical weakness in the cases we reviewed. Effective supervision leads to better outcomes. For example, the San Diego Police Department has found that getting a supervisor to the scene of a critical incident reduces the chance of an officer-involved shooting by 80 to 90 percent. Police Executive Research Forum, *Chief Concerns*:

Exploring the Challenges of Police Use of Force, page 10 (April 2005). Experience from the San Jose Police Department also suggests that more effective supervision was the prime cause in a steep reduction in officer-involved shootings. See PR 175, note 182. An effective field supervisor is alert at all times to his or her officers' activities, and seeks to actively manage the police response to any incident that is life-threatening or that requires the coordination of multiple officers' actions.

The PPB should seek to ensure that all supervisors are equipped with the requisite skills and knowledge to effectively command their officers whenever a critical incident arises. As Chief William Lansdowne has noted, the San Diego Police Department has trained its sergeants who are responding to critical incidents "to work as a team, to slow things down, and accept the responsibility of doing this work safely." Police Executive Research Forum, *Chief Concerns: Exploring the Challenges of Police Use of Force*, page 11 (April 2005).

The following are examples of problematic supervisory performance identified during our review:

1. Supervisors issuing tactical instructions
 - Supervisors on the scene issued no instructions to officers as to what they should do if the suspect was not disarmed by use of a less-lethal weapon.
2. Supervisors assuming a supervisory role
 - Instead of taking a leadership role, a supervisor responding to a "man with a gun" call gave no directions to a subordinate officer and left him to confront the suspect alone.
 - A sergeant on the scene did not accompany officers under his supervision when they went to confront a dangerous suspect.

3. Supervisors overruling inappropriate strategies

- Although terminating his own foot pursuit of an armed suspect at night because he knew it was unduly dangerous, a sergeant failed to stop a subordinate from continuing his foot pursuit of the suspect.

II. Extracting Persons from Vehicles

In three cases, unarmed drivers were shot as they tried to escape from police custody after having been stopped for a traffic infraction. In two instances, contrary to longstanding PPB training, officers leaned through the window of the vehicle, placing themselves in a vulnerable position, particularly if the car was put in motion. In two instances, a single officer, acting alone, tried to extract a driver from a vehicle or to stop him from driving away.

Extracting uncooperative, but unarmed, individuals from vehicles led to several officer-involved shootings reviewed in the PARC Report, three officer-involved shootings in the 18-month period under review in this report, and two highly controversial shooting incidents in 2003 and 2004. In response to the latter incidents, the PPB expanded its training curriculum on vehicle extractions and made it part of mandatory in-service training for all officers.

The recently instituted training curriculum focuses on distraction techniques and control holds that are designed to get the occupant out of the vehicle, while protecting officers and avoiding putting them into situations where the use of deadly force might become necessary. Alternative options presented in the training to the various control holds are using a Taser or pepper spray, or getting the subject to hand an officer the ignition keys. Officers are appropriately taught, as they have been in the past, never to reach or lean into a vehicle. We question the fact, however, that, with the exception of

one tactic, the training does not require that more than one officer be present and involved in attempting a vehicle extraction.

Precisely because extracting uncooperative persons from vehicles is so potentially problematic, such situations demand planning and effective, thought-out tactics. As a threshold matter, officers need to ensure their own safety by positioning themselves as safely as they can alongside the vehicle in a position that makes it harder for an occupant of the vehicle to try to use a weapon against them. Assuming the occupant(s) do not pose an overt threat to the officers or others, the officer(s) on the scene should treat the situation as one of containment—i.e., they are seeking to contain the person in the vehicle until the occupant exits or is safely extracted from the car. Once several officers are on the scene, spike sticks, or other devices that will puncture the vehicle's tires, can be placed in front of and behind the vehicle so as to prevent the car from being driven too far.

A supervisor should be notified and be on site before any extraction is attempted. The supervisor should be in charge of planning how to extract the individual and how the police personnel should be deployed. The presence of a supervisor is a factor that experience has shown lessens the likelihood of the use of deadly force. See pages 51-52, above. Forcible extraction of a person from a vehicle is a critical incident that demands active supervision. The frequency of PPB officer-involved shootings arising out of these circumstances from 1997 to 2004 alone demonstrates the necessity of a strong supervisory presence.

Officers should not be in a hurry to extract the person from the vehicle. The mere passage of time, combined with the person's increasing awareness that he is seriously outnumbered and has no reasonable likelihood of escape, will cause many recalcitrant individuals to think better of their refusal to comply with the officers' directives. With time on the police officers' side, supervisors can plan a safe extraction. These tactics are designed to get the individual out of the vehicle with the minimum force necessary, while not compromising the safety of the officers.

Recommendation 2005.5: PPB procedures should require (a) that a supervisor and sufficient cover officers be present before members try to extract an apparently unarmed person from a vehicle, and (b) that tactics calculated to protect the safety of both the officers and the occupant of the vehicle be employed.

III. Police Encounters with Individuals with Mental Illness, Emotional Disturbance, and Suicidal Ideation

Our review included five instances where PPB members encountered individuals with mental illness or severe emotional disturbance, or persons actively pursuing suicide. The proportion of incidents in which these issues arose this year was double the proportion of such cases in the 1997 to mid-2000 period covered by the PARC Report: five of 14 incidents (36 percent) this year as compared to six of 34 incidents (18 percent) analyzed by the PARC Report. In four of the five cases reviewed for this report, the police officers knew of the subjects' mental illness, emotional disturbance, or suicidal ideation ("disturbed mental state" hereafter) before the confrontation that led to the shooting began. In the fifth case, more would have been known about the subject's emotional state had the officers who responded more fully debriefed the civilian on the scene who had summoned the police.

Police encounters with subjects with disturbed mental states involve great unpredictability and risk to both law enforcement personnel and the subjects involved. Many police departments, like Portland, have therefore put together specialized teams to deal with persons in a disturbed mental state. In the PPB, the team is called the Crisis Intervention Team ("CIT"). CIT officers receive specialized training in dealing with individuals with disturbed mental states and learn to slow down and de-escalate incidents, negotiate with subjects, and respond more flexibly.

Approximately 140 of the PPB's current officers have received CIT certification, which is a decrease from approximately 200 when the program started. Even with the

higher number of CIT-certified officers in 2000-01, less than half of incidents identified as appropriate for CIT were responded to by CIT-certified officers. In 2004-05, however, the Bureau has added a mandatory two-hour CIT/Mental Health Awareness component to the in-service training for all sworn members. While the two-hour awareness training cannot substitute for the 40-hour certification training, the training of CIT officers and the mandatory CIT Awareness training are both excellent steps to help the Bureau deal with this complex and difficult issue that challenges all police departments. Were government at all levels to better address the problems of those with mental illness, law enforcement personnel would less frequently be called upon to deal with problems resulting from a lack of sufficient governmental commitment and resources.

In none of the five shooting cases reviewed this year involving subjects in a disturbed mental state was the involved officer CIT-trained. In three of the five cases, Bureau personnel knew from the time the call was received that the subject was experiencing a mental disturbance. In four of the five cases, the timing of the confrontation with the subject was in the control of the police. Because there was no immediate danger to another person in those four incidents, the police could have employed de-escalation and other CIT techniques. In the fifth case, the officers should have first sought to rescue the suspect's relative, thereby isolating the suspect. The officers would then have had control of the timing of any subsequent confrontation.

In the PARC Report (pages 204-06), we pointed out the success of the Memphis CIT model after which Portland's Crisis Intervention Team training is patterned. Just as supervisors should be dispatched to every critical incident where there is a substantial risk of deadly force, so too should at least one CIT officer be dispatched to every incident where the subject is known to be in a disturbed mental state. To do so will require a significant increase in the number of CIT-certified officers.

Cincinnati Police Department Procedure Manual 12.110 (March 9, 2004) (a copy of which is set forth at Appendix page 51) provides a model that Portland could beneficially follow:

Mental Health Response Team (MHRT) officers will be the first responders, when available, on all runs involving suspected mentally ill individuals. If two MHRT officers are available, they will be dispatched as a team. If the run is an emergency and no MHRT officer is available, beat cars will be dispatched immediately and an MHRT officer from another district will be notified to respond. If the run is **not** an emergency and no MHRT officer is available, the nearest MHRT officer from an adjoining district will be dispatched as the primary car.

An MHRT officer on the scene of a suspected mentally ill individual will be the primary officer handling the situation. They will also be responsible for transporting the individual, if necessary, to the hospital.

A supervisor will respond on all radio runs involving violent or potentially violent mentally ill individuals and when possible, will consult the MHRT officer on scene to decide on a course of action. [Emphasis in original.]

And the Denver Police Department Operations Manual 105.00 (4)(d)(2) (August 2004) (a copy of which is included at Appendix page 58), in discussing “use of force/control options” provides:

Requesting a CIT officer: Whenever an officer learns, through his or her observations or otherwise, that a person with whom the officer is dealing may be a mentally ill, developmentally disabled, or emotionally disturbed individual, the officer will, if time and circumstances reasonably permit and dictate, contact dispatch and request that a CIT officer respond to the scene. If time and circumstances reasonably permit, officers will use distance, time, verbal tactics, or other tactics, to de-escalate the situation when dealing with such persons. When a CIT officer arrives on the scene, he or she should be the primary officer responsible for coordinating negotiations with the mentally ill, developmentally disabled, or emotionally disturbed individual unless determined otherwise by the CIT officer or a superior officer.

That none of the approximately 1,300 responses by CIT-certified officers to incidents involving persons with disturbed mental states in the 18 months under review resulted in an officer-involved shooting strongly suggests the value of the training. Since universal CIT certification should lessen the overall number of officer-involved shootings, the cost of certifying all PPB officers as CIT officers would be at least

somewhat offset by the money saved from not having to deal with the consequences of those avoided officer-involved shootings.

The Bureau has a valuable resource in its CIT-certified officers, and it should use them whenever possible when dealing with persons in a disturbed mental state. The volume of such cases means that the Bureau will have to train more CIT officers. Nationwide, as in Portland, the number of such cases continues to increase. The PPB's requirement that all sworn members receive in-service training on CIT/Mental Health Awareness is commendable. It is an important step toward decreasing incidents where officers might otherwise resort to deadly force against persons with mental and emotional problems. The Bureau should nonetheless analyze the desirability of providing all officers with CIT certification and, if that is determined to be too costly or otherwise not feasible, it should ensure that it trains enough officers in CIT techniques and has an adequate number of CIT-certified officers available on every shift for rapid deployment.

In one case we reviewed, the staff of a mental hospital twice called police officers to deal with a patient who, though agitated, was not engaging in criminal conduct. The incident ended with the fatal shooting of the agitated patient. The man died as a result of the hospital's failure to manage its patient. Mental health facilities have a responsibility to capably deal with run-of-the-mill agitation and physical resistance by their patients. Their staff should be trained and their facilities equipped to cope with such problems without police intervention. The presence of the police in this incident escalated the man's agitation, increasing the likelihood of a physical confrontation.

The second time the hospital called the police on the evening in question, all the patient had done was to walk out of an isolation room with a faulty lock. The Portland Police Bureau should not have had to respond to that call (or the earlier one) from the mental hospital. Dealing with garden-variety management of agitated patients is the responsibility of the hospital and its staff, not armed police officers who have not been trained to control persons with mental illness, particularly in a hospital setting. The PPB should have had a protocol in place that barred response to mental hospitals for routine

patient management issues unless serious criminal conduct had been committed or threatened—a threshold not approached in the incident in question.

We understand that the PPB is currently working on a protocol with Multnomah County governing when the police will respond to mental health facilities having problems managing unruly patients. The protocol should prohibit PPB response to routine patient management situations. To the maximum extent possible, the PPB should put every mental health facility in the City of Portland on notice that it is inappropriate for police officers to respond to routine patient management situations and that the facilities have the responsibility of managing such situations without police assistance. When serious criminal conduct has occurred or is threatened, however, the police should respond. In such circumstances at least one CIT-certified officer should be dispatched to the facility even if that officer will not be the first on the scene. Because serious criminal conduct by a person with mental illness is a critical incident, a sergeant should be dispatched to all such calls. Officers dispatched to mental health facilities should be appropriately equipped with a range of less-lethal weaponry.

Recognizing the volume of inappropriate calls for police assistance from mental health providers, the PPB is also proactively working with the City Bureau of Emergency Communications and the providers to try to lessen the number of unnecessary calls for police assistance.

Recommendation 2005.6: The PPB should develop a policy that prohibits it from responding to routine patient management situations in mental health facilities, and the Bureau should advise all mental health providers in the City of Portland of that policy.

IV. Rendering Aid to Wounded Persons

Just as the Portland Police Bureau's reverence for human life should limit its use of deadly force to situations when no other alternatives are reasonably available, so should that reverence for human life require that the Bureau as soon as safely possible render medical aid to suspects who have been injured. It is not a Hobson's choice between rendering or obtaining medical assistance and officer safety. Officers should provide emergency aid to a wounded person, or obtain it, unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers. Not only is such a requirement consistent with a reverence for human life, but it also demonstrates to members of the community that the Bureau adheres to that value.

The failure to assist a seriously wounded suspect when it was safe to do so necessarily will upset the community. The more controversial the shooting, the greater the likely outrage. If the circumstances suggested that the unreasonable withholding of emergency medical aid resulted in the wounded person's death, the officers involved—and the Bureau by extension—could justifiably be accused not only of a lack of reverence for human life, but also of a callous disregard for human life.

Three of the 14 cases we reviewed demonstrated withholding of medical aid following a shooting for varying lengths of time ranging from several minutes to an hour and a half. In each circumstance analysis of the facts showed that medical aid could have been rendered more promptly without unreasonable risks to officer safety.

The 90-minute delay occurred in the following circumstances. After an unsuccessful effort to pull the suspect driver out of his minivan, an officer shot him when he put the vehicle in gear. The officer saw that the bullet had entered the suspect's torso, heard him groan, and saw him fall over between the driver's and passenger's seats. The autopsy suggests that the suspect, whose aorta and heart were pierced by the bullet, probably died instantly, but that was not known at the time. Within several minutes medical aid and SERT were called for.

Other than the driver, there was no one else in the minivan, as the second occupant was known to have fled before the shooting. Neither occupant of the minivan had displayed a weapon during the incident. After the shooting two officers climbed onto a nearby roof and could observe the suspect lying face down between the seats, not moving, although they could not see his hands. The officers who responded to the scene moments after the shooting spent an hour and a half pointing their guns at the stationary minivan. They did so even though approximately halfway through the period of delay, a detective wrote that officers “thought that the individual inside the van was most likely deceased.” After an hour and a half the vehicle was “cleared” and the suspect’s body recovered. Emergency medical technicians then determined that the suspect was dead.

As part of its recent re-evaluation of its policies relating to deadly force, the PPB initiated policy changes relating to the rendering of medical aid. The Bureau is to be commended for initiating the policy changes relating to subjects who are or might have been injured, particularly because the topic of rendering aid to wounded persons was not raised in the PARC Report. The cases we reviewed from 2000 and 2001 cause us to make additional recommendations.

Section 1010.10 (Appendix, page 15) adds a new subsection to the policy entitled “Post Use of Force Medical Attention” which states:

When a person has been injured by the use of force by a Bureau member or there is a potential for injury to that person a member shall continually monitor the subject, if tactically feasible or appropriate. EMS will be requested to respond if the injury requires medical attention. The member shall monitor the subject for changes in their skin color, breathing and levels of consciousness. If any significant changes in any of these areas are observed, the member shall notify EMS immediately. See DIR 630.50 for further requirements.

PPB Manual Section 630.50 requires that members “provide medical aid to ill or injured persons” when they have been properly trained and certified and when:

- c. Primary police duties have been accomplished.
 1. Any immediate danger has been neutralized.
 2. Dangerous subjects have been apprehended or have fled the immediate area.
 3. Any required emergency assistance has been requested by telephone or radio, at the earliest time feasible.

Also, Section 640.10(c) was amended in 2004 to require the first officer on the scene to “render aid,” as well as “[p]rotect human life.”

Exactly how the quoted portion of Section 630.50 relates to the newly drafted portion of Section 1010.10, particularly its “tactically feasible or appropriate” requirement, is not readily apparent. The PPB should harmonize its policies to make explicit that medical aid should be sought for and rendered to injured persons as soon as possible unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or medical personnel.

In the cases we reviewed the investigations did not examine the question of whether medical aid had been rendered in a timely fashion. Without such inquiries during the investigation, the review body—now the Use of Force Review Board—will not have the information it needs to determine whether a delay in rendering or obtaining medical aid was reasonable.

The policies relating to the administrative investigation by Internal Affairs should be amended to require inquiry, in all cases where a person was shot or otherwise seriously injured, as to whether medical aid was obtained and rendered without unreasonable delay. The policies relating to the Use of Force Review Board should be amended to require an explicit determination, in all cases where a person was shot or otherwise seriously injured, as to whether the obtaining and rendering medical aid complied with the PPB’s policies. Investigating and reviewing this issue will increase accountability, provide guidance to supervisors at the scenes of shootings, and help determine whether the policies and training that exist concerning this subject are appropriate and sufficient.

Recommendation 2005.7: The PPB should clarify its policies relating to medical attention and rendering aid to make clear that officers who have used deadly force are required to ensure that medical aid is rendered to injured persons as soon as possible, unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or the medical personnel.

Recommendation 2005.8: The PPB should promulgate the policies and procedures necessary to require in all instances of the use of deadly force where a person is seriously injured: an Internal Affairs administrative investigation, and an explicit determination by the Use of Force Review Board, as to whether there was compliance with the policies for ensuring that medical aid is appropriately and timely rendered.

5. Incident Reviews: The PPB's Investigations and Review

I. Quality of Homicide Investigations

In Chapter 5 of the PARC Report, we discussed in some detail the ways in which homicide investigations and reports were in need of improvement. Among the areas of concern identified were the following:

- Not all relevant witnesses were interviewed and many interviews, both with officers and with civilians, were not taped.
- Interviews often were not thorough and were too narrowly focused on the moment when deadly force was employed.
- Questions during interviews were often leading and/or biased.
- In many instances attempts were not made to pursue or resolve inconsistencies.
- Files presented to the PPB's management-level review process, the Review Level Committee, (and later to PARC) were missing a great deal of relevant, and sometimes critical, evidence.
- Much relevant and critical evidence was kept in detectives' "personal files," which might or might not remain in the custody and control of the PPB.
- Files did not have summaries, logs, indexing, or page numbering.
- Crucial evidence was not promptly identified and collected at the crime scene.
- Relevant forensic tests were often not performed.

Given that each of the 14 investigations considered for this report took place prior to the PARC Report during the years 2000 to 2002, it is not surprising that we found many of the same deficiencies as we did previously. We stated in the PARC Report, and repeat here, that despite the seriousness of these deficiencies in the investigations, they

can be remedied; and we have no doubt that senior management in the Police Bureau will take the necessary steps to try to correct these problems. In furtherance of that goal, Section 1010.10 has adopted new language that says (Appendix, page 15): “The Police Bureau recognizes the importance of conducting a thorough, impartial and timely investigation into in-custody deaths and the use of deadly force by its members.”

Because most of the problems relating to the quality of the investigations in the 14 cases reviewed this year were fully identified and discussed in the PARC Report, it would be redundant to provide numerous similar examples in this report. We thus restrict our specific comments concerning investigations to two newly raised issues and one previously raised issue of such overriding importance that it demands discussion.

One case reviewed this year involved two reserve officers who together discharged 19 shots during an extended foot pursuit. The taped interview of one of those officers, who fired four shots, does not include any mention of his having discharged those rounds. The subject was covered in the untaped pre-interview, but appears neither on the tape nor in the transcript of the actual interview. That such a critical omission was not identified by any supervisor during the investigation process is a matter of particular concern.

Recommendation 2005.9: Supervisors in the Detective Division should review the work done by investigators to ensure that deadly force cases are appropriately investigated, and the results are properly documented.

In another case, two of the PPB members centrally involved in the incident, although neither fired his weapon, held the rank of commander and lieutenant. They were interviewed about their involvement in the incident by detectives, who in the PPB are detective sergeants. Moreover, the entire shooting investigation was conducted and led by sergeants. Good practice requires that, when a superior officer’s actions could lead to discipline (as was the case here), investigations be led by, and interviews of members be conducted in the presence of, officers of equal or higher rank. A lower-

ranking officer leading an investigation creates at least the appearance of possible deference to the higher-ranking officer. And having a lower-ranking officer interview a higher-ranking officer without the presence of an investigating officer of at least equal rank not only creates that same appearance of impropriety, but also the risk that the questioning may be less probing and less objective because of the witness's higher rank. Having said this, we note that in this particular case, we found no reason to believe that either of the higher ranking officers exerted undue influence with the investigators.

The Detective Division has appropriately amended its procedures (Appendix, page 36) to provide that interviews of an involved member of command rank be conducted in the presence of a member from the investigative branch of equal or higher rank than the involved member. That provision should be further amended to make the same provisions for the interviews of witness members. Likewise, the Bureau needs to adopt a procedure that investigations be led by an officer of at least equal rank to that of the most senior officer playing a role in the incident being investigated.

Recommendation 2005.10: The PPB should adopt procedures requiring (a) that deadly force investigations be led by an officer of a rank equal to or greater than the rank of the most senior officer playing a role in an incident, and (b) that interviews of witness officers of command rank be conducted by, or in the presence of, an officer of at least equal rank to the member providing evidence.

The issue of overriding concern that we raise here, notwithstanding having addressed it in the PARC Report, is one of a strong disinclination by investigators to find that a shooting was unjustified or that the officers' performance was deficient in any way. The disinclination or bias we observed seemed to appear in rough proportion to the number of questions a reasonable investigator might have about the justification for a shooting. In general, cases where a reasonable investigator should have been more probing, detailed, and skeptical about whether a shooting was justified, within policy, or tactically sound, were more likely to have less probing investigations.

The investigators on the cases we reviewed demonstrated bias in the following ways, among others:

- Detectives did not explore the discrepancy shown by medical records that the man who was alleged to have pointed a pellet gun at officers—at which point an officer said he fired in self-defense—was shot only in the back and the back of his arm.
- Detectives did not explore why an officer did not try to use pepper spray against an unarmed man he was trying to extract from a minivan.
- In the same case, investigators did not probe the discrepancy between the officer's account that he shot the driver of a minivan to prevent being run over and the accounts of two civilian witnesses that attributed the shooting of the unarmed man to the officer's seeking to prevent his escape. Rather than probing that discrepancy, a detective tried repeatedly, but unsuccessfully, to convince the civilian witnesses to say that they perceived the officer to have been in danger.
- In a similar case, detectives questioned a civilian witness so pointedly that she modified her initial statements that suggested that an officer's shooting of another unarmed man, this time in a pickup, was unjustified.
- In the same case, investigators did not ask the officer who fired the shot why he did not wait to approach the truck, which had previously fled from him but was now caught in traffic, until two other officers who were just arriving on the scene had time to cover his approach to the pickup.
- In a number of cases, investigators asked leading questions in their interviews of involved officers and civilians that suggested reasons that the shooting was justified. For example:

Investigator: Okay, and his back is would you say his back was towards, uh, the police officers?

Civilian: Towards the police officer, yes.

Investigator: So at this point you're kind of getting a side view of him?

Civilian: Yes, that's correct.

Investigator: He moves from onto the payment, pavement and then on to a, to a dirtied area and, and at that time you see him reach with his right hand, um to what area?

Civilian: Um. Like his right kind of waistband area.

Investigator: Okay. And when he reaches down there you see him pull out...

Civilian: A gun.

For another example, from another case:

Investigator: [Officer,] what kind of danger to the neighborhood would, um, a man that was armed with, uh, a handgun that, uh, you suspect may have just done a robbery and is now running from the police, what kind of danger is he to the citizens if he gets away from you?

For a final example, from a third case:

Investigator: [Officer,] at that point in time, did you have some concerns about the person who got out of the driver's seat regarding your safety, other officers' safety, or community safety?

A recurrence of biased investigations, as we have now seen from 1997 through 2001, raises the question as to whether a fair and balanced process and result can be reached without oversight by an outside agency. For just this reason, Recommendation 5.15 in the PARC Report called for civilian oversight of PPB investigations of administrative issues and analyses of tactical decisions arising out of officer-involved shootings and in-custody deaths. Our examination of the cases we reviewed this year reinforces the need for civilian oversight. See also Chapter 3, Section VI (pages 44-45) of this Report.

Finally, we note one irony arising out of the recurrent bias and/or lack of thoroughness found in officer-involved shooting investigations. While such deficiencies necessarily undermine public confidence in the PPB's ability to investigate itself, in cases where most reasonable observers would conclude that there is little doubt about the fact a shooting is justified, such deficiencies in the investigation process create doubt where otherwise none would exist.

II. Internal Review

Police agencies should conduct internal reviews of officer-involved shootings for two primary reasons: first, to hold officers accountable for actions that are inconsistent with policies, procedures, or training; and second, to use the incident as a learning tool, if appropriate, to improve the department's policies, procedures, training, and management. A meaningful review process engenders trust from the community, enhances officers' safety, and leads to less frequent and more judicious uses of deadly force.

In 2000 and 2001, the PPB used a two-tiered system of administrative review. The first level of review, also known as unit-level review, came from the involved officers' chain of command. The involved officers' unit commander was responsible for preparing a written analysis of the incident, known as an after action report, which was then forwarded to the Assistant Chief in the involved officers' chain of command for

review and comment. The second, or executive, level of review, the Review Level Committee, required an independent assessment of the incident and the analysis set forth in the after action report, by a panel comprised of (1) all the Assistant Chiefs in charge of the PPB's various branches, (2) the involved officers' unit commander, and (3) several non-voting members. The Review Level Committee discussed the incident and issued recommended findings of "justified" or "within policy" (which have always been the findings in the five years of cases we have examined) to the Chief.

The PPB has recently instituted a Use of Force Review Board (see Section 335.00 at Appendix, pages 4-6) that will review all officer-involved shootings, in-custody deaths, cases where a subject is hospitalized as a result of a use of force, and other serious incidents. The new board has replaced the Review Level Committee for such cases. PARC will analyze and discuss the policies and procedures relating to the Use of Force Review Board in a subsequent report.

We will briefly examine the use of the unit and executive levels of review in the 14 cases we examined. We repeat the caveat that the areas we identify as needing improvement arose out of processes that in the main occurred from 2000 to 2002, well before the issuance of the PARC Report in 2003.

A. After Action Reports

The after action reports showed a lack of commitment to the review process in several ways. First, after action reports were not drafted (or were lost) in six of the 14 cases we examined. (The PPB asserts the missing number is three, but PARC has never received six after action reports despite considerable follow-up with the appropriate staff member.) In a seventh case, the after action report addressed solely what happened after SERT and the Hostage Negotiation Team had been mobilized and did not examine the officer-involved shooting that preceded the activation of those two specialized units. Thus, 50 percent of the shooting incidents were not subjected to a unit-level review.

Second, the reports that were done presented a range of problems. For example:

- An after action report was authored by a lieutenant who was a key actor in the events and thus should not have been reviewing his own actions. Moreover, the lieutenant's commanding officer was also a key actor in the events that ended in an officer-involved shooting, creating a second reason the lieutenant should not have been conducting that review, since a lower-ranking officer should never review the conduct of his commanding officer.
- A different after action report did not find fault with the failure of a sergeant to supervise and to back up an officer who was left to confront a man with a gun alone.
- A third after action report did not address numerous areas for tactical improvement in the case, including officers exposing themselves to being shot by the armed passenger to whom they were paying no attention, a solo foot pursuit at night after an armed suspect, poor communication, and the failure of a sergeant on the scene to direct his subordinate to terminate the pursuit he later said he knew was too dangerous to maintain.

By contrast, the report in another case properly fulfilled the purpose of an after action report by identifying a key tactical error—an officer reaching into a car to try to grab the keys—and by setting forth better options that the officers could have pursued that might have prevented the need to use deadly force.

B. Review Level Committee

Four, or 29 percent, of the 14 cases we examined were not considered by the Review Level Committee—an improvement over the 44 percent failure to conduct such

executive-level review for cases considered by the PARC Report. Two of the ten 2000-01 cases subjected to Review Level consideration, however, were not reviewed until early 2005, when our work brought that oversight to the PPB's attention. While it is desirable that all shooting cases receive executive-level review, a delay of four and one-half years undercuts both the accountability and information-feedback reasons for internal review.

As was true in the PARC Report, all uses of deadly force considered by the Review Level Committee were unanimously found to be justified. Consistent with its procedures, the Committee made no other findings. From March 2001 to March 2002, however, the Committee engaged in an effort to track the follow-up on non-disciplinary recommendations made by the Review Level Committee.

Only one of the cases we reviewed this year generated a recommendation that was placed on the list used for tracking follow-up. The case involved one of the three shootings arising out of an attempt to extract a driver from a vehicle—the same case where the precinct commander appropriately addressed the tactical issues in his after action report. (The other two 2000-01 vehicle extraction cases were not reviewed, either at the unit or the executive level.) The Review Level Committee's recommendation in March 2001 was that the Training Division put together a training bulletin addressing the issue of officers reaching into occupied motor vehicles. No training bulletin was issued, but following other car extraction shootings in 2003 and 2004, the issue has recently been addressed in some depth in mandatory in-service training.

New Recommendations

Recommendation 2005.1: The PPB should set a firm deadline for making its early intervention system operational and should prioritize its resources so as to ensure meeting that deadline. *(See page 22.)*

Recommendation 2005.2: The PPB should promptly draft procedures to govern the administrative investigations by the Training Division concerning officer-involved shootings, in-custody deaths, and injuries resulting in hospitalization, and it should supplement its procedures for such investigations by the Internal Affairs Division so that they are at least as thorough as its procedures for misconduct investigations. *(See page 30.)*

Recommendation 2005.3: PPB policy should make clear that administrative investigations of in-custody deaths and uses of force resulting in hospitalization are mandatory by eliminating the contradictory provisions from Section 335.00 that make them discretionary. *(See page 30.)*

Recommendation 2005.4: PPB policy should prohibit involved officers from being transported by their assigned partners and should require, when feasible, that the transportation be done by a supervisor or a detective. *(See page 35.)*

Recommendation 2005.5: PPB procedures should require (a) that a supervisor and sufficient cover officers be present before members try to extract an apparently unarmed person from a vehicle, and (b) that tactics calculated to protect the safety of both the officers and the occupant of the vehicle be employed. *(See page 55.)*

Recommendation 2005.6: The PPB should develop a policy that prohibits it from responding to routine patient management situations in mental health facilities, and the Bureau should advise all mental health providers in the City of Portland of that policy. *(See page 59.)*

Recommendation 2005.7: The PPB should clarify its policies relating to medical attention and rendering aid to make clear that officers who have used deadly force are required to ensure that medical aid is rendered to injured persons as soon as possible, unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or the medical personnel. *(See page 63.)*

Recommendation 2005.8: The PPB should promulgate the policies and procedures necessary to require in all instances of the use of deadly force where a person is seriously injured: an Internal Affairs administrative investigation, and an explicit determination by the Use of Force Review Board, as to whether there was compliance with the policies for ensuring that medical aid is appropriately and timely rendered. *(See page 63.)*

Recommendation 2005.9: Supervisors in the Detective Division should review the work done by investigators to ensure that deadly force cases are appropriately investigated, and the results are properly documented. *(See page 66.)*

Recommendation 2005.10: The PPB should adopt procedures requiring (a) that deadly force investigations be led by an officer of a rank equal to or greater than the rank of the most senior officer playing a role in an incident, and (b) that interviews of witness officers of command rank be conducted by, or in the presence of, an officer of at least equal rank to the member providing evidence. *(See page 67.)*

Appendix

Appendix Table of Contents

Page No.

Portland Police Bureau (PPB)

Policy Section 335.00 (July 5, 2005)	1
Draft Policy Section 630.15 (April 28, 2005)	8
Policy Section 1010.10 (August 1, 2005)	11
Policy Section 1010.20 (February 3, 2005)	21
Use of Force Report (August 1, 2004)	24
Tips and Techniques training bulletin (July 19, 2004)	26
Chief's Memorandum re: Use of Force Revisions (Sept. 8, 2005)	30
Communication Restriction Order (January 31, 2005)	31
Detective Division SOP 37 and Checklists (2005)	32
Internal Affairs Division SOP 8 (July 15, 2005)	47

Alaska Department of Public Safety

Operating Procedures Manual, Section 107.020 (August 1, 2002) ...	49
---	----

Cincinnati Police Department

Procedure Manual, Section 12.110 (March 9, 2004)	51
--	----

Denver Police Department

Operations Manual, Section 105.00 (August 2004)	58
---	----

Los Angeles Police Department

Manual, Volume 1, Section 556.40 (2005)	64
---	----

New York Police Department

Patrol Guide, Section 203-12 (January 1, 2000)	65
--	----

PORTLAND POLICE BUREAU, POLICY SECTION 335.00 (JULY 5, 2005)



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

TOM POTTER, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Integrity Compassion Accountability Respect Excellence Service

EXECUTIVE ORDER

Date: July 5, 2005

TO: All Members

RE: New Directive, 335.00 Performance Review and Use of Force Review Boards

335.00 PERFORMANCE REVIEW AND USE OF FORCE REVIEW BOARDS

Index: Title

Refer: ORS 131.005 Probable Cause, defined
ORS 161.015 Deadly Physical Force and Serious Physical Injury, Defined
ORS 161.219 Limitations on Use of Deadly Physical Force in Defense of a Person
ORS 161.239 Use of Deadly Physical Force in Making an Arrest or in Preventing an Escape
DIR 341.00 Discipline Process
DIR 342.00 Personnel Performance Deficiencies and Non-Internal Affairs Rule Violations
DIR 343.00 Criminal Investigations of Portland Police Employees
DIR 344.00 Prohibited Discrimination
DIR 1010.10 Deadly Physical Force, Use of, Including Reporting Requirements
DIR 1010.20 Physical Force, Use of
Applicable Bargaining Agreements

PROCEDURES (335.00)

Directive Specific Definitions

An in-policy finding is a determination by the Performance Review Board or Use of Force Review Board that the matter being reviewed was within Bureau policies.

An out-of-policy finding is a determination by the Performance Review Board or Use of Force Review Board that the matter being reviewed was not within Bureau policies.

A sustained finding is a determination that the member was found to be in violation of policy or procedure.

A controverted finding is a determination that is overturned by the Chief of Police and/or Branch chief.

Action items are recommendations for the review of policies, training, supervision, tactics, and equipment that were identified during the review board process.

A board member is a Bureau member or citizen serving on a Use of Force Review Board or a Performance Review Board.

A review file is a file containing copies of all of the reports and documents for a specific case.

A witness member is a member who observes, or has firsthand knowledge of, the events surrounding the matter before the board.

An involved member is the primary member involved in the matter before the board.

A due process meeting is a pre-disciplinary meeting with the Chief of Police and the involved member to discuss the members' proposed discipline.

The Performance Review and Use of Force Review Boards (335.00)

Community Policing: Making the Difference Together
An Equal Opportunity Employer

Police Information Line 503-823-4636, TTY (for hearing and speech impaired) 503-823-4736, www.portlandpolicebureau.com

The Bureau review board process will fall under the Performance Review Board (PRB) and the Use of Force Review Board (UFRB). They will be convened as needed.

Selection Process for Board Members (335.00)

The Chief will select volunteers to form a pool of community members to serve on either board. Citizen board members must pass a background check, participate in training to become familiar with Bureau training and policies and sign a confidentiality agreement. Training for Board members will include such topics as use of force, just cause, discipline policy and Bureau directives. Citizen members will be required to participate in ride-alongs to maintain sufficient knowledge of police patrol procedures. The Chief will appoint members for a term of two years. The Chief will also appoint Bureau members from each rank to serve as peer members for the boards. Peer members will be asked to serve a two-year term. All Board members will serve at the discretion of the Chief. Peer member applications will be reviewed by the Services Branch chief and representatives of the Bureau's bargaining units. Their recommendations will be forwarded to the Chief for final selection.

The Review Board Coordinator will select members from the pools to form each UFRB or PRB. Pool representatives from the involved member's RU will not serve on the UFRB or PRB.

For purposes of Board business, a quorum consists of six UFRB members who must be present for the Use of Force Board and five PRB members who must be present for the PRB. The UFRB or PRB shall invite involved Bureau member(s) to be present and to participate in providing a personal account of the incident details. If the involved member is unable to attend due to illness or emergency, the meeting may be rescheduled by the Services Branch chief.

Board Member Responsibilities (335.00)

All PRB and UFRB case files are confidential in nature. Therefore:

- a. Board members will not discuss or disclose any information or details about the cases presented to either a PRB or a UFRB without the authorization of the Services Branch chief.
- b. All PRB/UFRB case files, when not being presented to either Board, will remain in custody of the Review Board Coordinator.
- c. Case files may be reviewed by PRB and UFRB members when the Boards are not in session. The following procedures will be adhered to when doing so:
 1. The review must take place in the Review Board Coordinator/Chief's office.
 2. No materials will be removed from the Review Board Coordinator/Chief's office including case files or notes.

Performance Review Board Functions (335.00)

The PRB is to review all cases that involve:

- a. Investigations resulting in a sustained finding and the proposed discipline is suspension without pay or greater.
- b. A controverted finding.
- c. Independent Police Review returns for reconsideration.
- d. A request for review by the Chief or a Branch chief.
- e. All completed Equal Employment Opportunity investigations.
- f. The PRB may make recommendations regarding the adequacy and completeness of the investigation, the findings of the investigation, the proper charges, and the level of discipline. The PRB may also suggest action items to address training or policy issues that have emerged from an investigation or various investigations. In cases where discipline is recommended, the PRB will recommend a level of discipline that is consistent with the applicable City and Bureau rules, including obligations under collective bargaining agreements.

Performance Review Board Composition (335.00)

A new PRB will be convened as needed. A PRB will both be comprised of six voting members:

- a. Three Branch chiefs. The Services Branch chief will serve as the chair.
- b. One peer member.
 - 1. The peer member will hold the same or comparable rank/classification as the member being reviewed, and will be selected from a pre-approved pool of Bureau representatives.
- c. One citizen member.
 - 1. The citizen will be selected from a pre-approved pool of citizen volunteers.
- d. Member's RU manager.
- e. The Review Board Coordinator (non-voting member).
- f. A representative from the Bureau of Human Resources (non-voting member).
- g. A representative from the City Attorney's Office (non-voting member).

During the presentation of the case there may also be representatives from the following:

- a. Training Division.
- b. Investigative divisions (IAD, Detectives, Precinct).
- c. Independent Police Review.

Performance Review Board Procedures (335.00)

Discipline Process-Suspension or Greater

The Review Board Coordinator will convene a Performance Review Board when the recommendation for a sustained finding is a suspension or greater. See DIR 341.00 for procedures for Discipline Process-Less than Suspension. PRB members will have access to a copy of the investigative file and applicable directives prior to the PRB meeting.

RU manager responsibilities (335.00)

- a. During the PRB meeting, the RU manager of the involved member will:
 - 1. Present a summary of the facts of the case.
 - 2. Recommend findings as they relate to specific directives, rules or laws.
 - 3. If the PRB votes for a sustained finding, recommend the level of discipline.

Deliberations and voting (non-board members will be excused).

Board recommendations will be accomplished by a majority vote of the Board members based on their best judgment of the relevant facts and circumstances. Dissenting points of view will also be presented to the Chief by the Board chair.

If an out of policy or sustained finding is recommended by the Board, specific provisions of Bureau policies, rules or laws that have been violated will be identified and appropriate discipline or corrective action will be recommended consistent with Bureau and City rules, including obligations under collective bargaining agreements.

Affected members' responsibilities (335.00)

- a. After presentation of the case, the involved member may come before the Board and provide an account of his/her actions with regards to the incident and allegations. This may be in written or oral format. Afterwards, the Board may ask the member clarifying questions.
- b. Deliberations and voting (Non-board members will be excused).
- c. The member will be informed of the Board's recommendation by the Board chair or designee at the conclusion of the board meeting.

Chief's responsibilities (335.00)

- a. Review and evaluate the recommended finding(s) and discipline.
- b. Determine the appropriate course of action and/or discipline.
- c. Return the case to the Review Board Coordinator for processing.
- d. In a case where suspension without pay, demotion or discharge is proposed, conduct or delegate the authority to conduct a due process meeting.

- e. Consider information presented by the employee in the due process meeting, make a final recommendation to the Commissioner-in-Charge and, once finalized, forward documentation of the imposed discipline and the investigative file to the Review Board Coordinator.

The Use of Force Review Board Functions (335.00)

- a. To review the following use of force incidents:
 - 1. All officer involved shootings.
 - 2. Serious injury caused by an officer that requires hospitalization.
 - 3. All in-custody deaths.
 - 4. Less lethal incidents where recommended finding is out of policy.
 - 5. Discretionary cases referred by the Chief or Branch chief.
- b. To determine and recommend to the Chief whether or not the level of force used by an officer was within Portland Police Bureau policies.
- c. The UFRB may make recommendations regarding the adequacy and completeness of the investigation, the findings of the investigation, the proper charges, and the level of discipline. The UFRB may also suggest action items to address training or policy issues that have emerged from an investigation or various investigations. In cases where discipline is recommended, the UFRB will recommend a level of discipline that is consistent with the applicable City and Bureau rules, including obligations under collective bargaining agreements.

Use of Force Review Board Composition (335.00)

A new UFRB will be convened as needed. A UFRB will be comprised of nine voting members and three advisory members:

- a. Three Branch chiefs. The Services Branch chief serves as the chair.
- b. One RU manager (non-involved RU).
- c. Two peer members.
 - 1. These peer members will hold the same rank/classification as the member being reviewed, and they will be selected from a pre-approved pool of Bureau representatives.
- d. Two citizen members.
 - 1. These citizens will be selected from a pre-approved pool of citizen volunteers.
- e. Member's RU manager.
- f. The Review Board Coordinator (non-voting member).
- g. A representative from the Bureau of Human Resources (non-voting member).
- h. A representative from the City Attorney's Office (non-voting member).

During the presentation of the case there may also be representatives from the following:

- a. Training Division.
- b. Division with investigative functions (IAD, Detectives, Precinct).
- c. Independent Police Review.

Use of Force Review Board Procedures (335.00)

- a. Internal Affairs Division (IAD) review:
 - 1. Following the Detective Division (Detectives) investigation of an officer-involved use of deadly physical force and any grand jury hearing or public inquest, the IAD manager, in coordination with the Training Division (Training), will review the officer-involved shooting, and conduct an administrative investigation as needed, to determine if the member's actions were within Bureau policy and procedures. IAD may be asked, at the direction of the Chief's Office, to review other serious incidents with respect to the use of force (i.e., in-custody deaths, injury by an officer requiring hospitalization or less lethal incidents).
 - 2. IAD will provide a complete investigation file, containing the Detectives investigation, IAD investigation and the written training analysis to the involved member's RU manager for case review and preparation of the After Action Report.

Use of force incidents that fit the criteria for the UFRB will be investigated by IAD. IAD will have 10 weeks (70 days) to complete the investigation. The 10 weeks start on the day after IAD receives the case file from Detectives. When the investigation is complete, IAD will initiate the review process by sending the case file to the suspect member's RU manager for review.

RU manager responsibilities (or his/her designee) (335.00)

- a. Review all UFRB case files sent to him/her.
 1. The review of each case file must be completed in 14 days or less. The 14 day review period starts on the day after the case file is received at the RU.
- b. Make a finding in the case.
- c. If the finding is sustained, make a recommendation for discipline and/or corrective action.
- d. Forward the case file to the Branch chief.
- e. Review any case files that are returned to him/her for further investigation by the Branch chief. Complete the enhanced investigation and return the file to the Branch chief.

Branch chief responsibilities (or his/her designee) (335.00)

- a. Review all UFRB case files sent to him/her within seven days.
- b. If the Branch chief concurs with the recommended finding and discipline, then he/she will determine what Discipline Process is to be used (Less than Suspension or Suspension or Greater).
 1. If Discipline Process-Less than Suspension is used, he/she will:
 - a) Document that Process-Less than Suspension will be used, and return the case file to the appropriate RU manager to implement discipline.
 2. If Discipline Process-Suspension or Greater is to be used he/she will:
 - a) Document that Process-Suspension or Greater will be used, and include that documentation in the case file.
 - b) Send the case file on to IAD.

IAD Manager responsibilities (335.00)

- a. Ensure that each UFRB case file sent to IAD is logged in upon receipt.
- b. Ensure that when investigation and review are complete, two copies of the file are made and sent to the Review Board Coordinator.
- c. File the original copies of all case files normally.
- d. Forward both photocopied sets to the Review Board Coordinator.

Review Board Coordinator responsibilities (335.00)

- a. Upon receipt of the Process-Suspension or Greater case files do the following:
 1. Send one case file to the suspect member's bargaining unit.
- b. Within 21 days schedule a time for the Performance Review Board to convene.
 1. The UFRB must be convened as soon as it is reasonably possible to do so.

The bargaining units' responsibilities (335.00)

- a. Review the case file with the member(s) and legal representation deemed necessary.
 1. The review of the case file must be completed in 14 days or less (two weeks). The 14 day review period starts on the day after the case file is received at the bargaining unit.

Training Division review:

- a. Before a Use of Force Review Board meets to review any officer involved shooting or an in-custody death, the Training manager or his/her designee will prepare a written analysis of the incident to be included in the case file. This analysis will focus on the following items:
 1. Tactics, policies, equipment and level of force used.
 2. Training provided to the member.
- b. Forward a copy of their written analysis to IAD for inclusion in the case file.

After Detectives, IAD and the Training Division have completed the investigation the following steps will be taken:

- a. IAD will prepare a review file for each case eligible to go before the Use of Force Review Board. The Review file will contain the following items:
 1. Copies of all of the reports and documents written and/or prepared for the case by Detectives.
 2. Copies of all the reports and documents written and/or prepared for the case by IAD.
 3. Copies of all the reports and documents written and/or prepared for the case by Training.
- b. The member and a representative from his/her bargaining unit will have 14 days to review the file in IAD.
- c. The IAD manager will review any discrepancies alleged by the involved member and will determine if further investigation is warranted before forwarding the case to the RU manager for findings.

Branch chief review:

- a. After receiving a completed copy of the investigation file the RU manager will have 21 days to complete their finding and forward the file to his/her Branch chief.
- b. The Branch chief will have seven days to review the findings and forward the case to IAD.
- c. IAD will review the recommendation, close the case and forward to the Review Board Coordinator.
- d. After receiving the case the Review Board Coordinator will have 21 days to schedule the convening of a Use of Force Review Board.

Review Board Coordinator (335.00)

The Review Board Coordinator is a non-sworn position assigned to the Chief's office. The Review Board Coordinator oversees the implementation and functioning of a UFRB and a PRB.

In cases where discipline is recommended, the Review Board Coordinator will, within three weeks, prepare a letter of proposed discipline that reflects the Review Board's recommended findings and discipline, to be sent to the Chief for review and signature.

- a. The Review Board Coordinator Responsibilities for a PRB.
 1. Maintenance of the Police Bureau's Discipline File. To assist in preparing for possible discipline, the Review Board Coordinator will:
 - a) Obtain member's previous discipline record.
 - b) Review the history of discipline meted out in similar circumstances, if any.
 - c) Coordinate with the RU manager in the preparation of proposed Letter of Reprimand.
 - d) Assist in the administration of the Performance Review Board review process.
 - e) Schedule pre-disciplinary meetings for the Chief.
 - f) Advise and assist in ensuring that all proper procedures are adhered to in administering discipline, including the pre-disciplinary meetings.
 - g) Coordinate with the Deputy City Attorney and the Employee Relations Office of the City's Bureau of Human Resources.
 - h) Assist in the preparation of appropriate documents for discipline.
 - i) Ensure that copies of the final disciplinary letter are forwarded to the Bureau of Human Resources for inclusion in the member's City Official Personnel File.
 2. In cases where discipline is recommended, the Review Board Coordinator will, within 21 days, prepare a letter of proposed discipline that reflects the PRB's recommended findings and discipline, to be sent to the Chief for review and signature.
- b. The Review Board Coordinator responsibilities for a UFRB:
 1. Schedule UFRB meetings.
 2. Assist in the review process as required.
 3. Maintain a record of all recommendations and actions taken.
 4. Advise and assist in ensuring that all proper procedures are adhered to.
 5. Assist in the preparation of appropriate documents.

6. Assist in preparation of due process meeting as necessary.
7. Ensure that action items are documented.

FOR MORE INFORMATION:

Please contact Officer Eric Dinnel at 503-823-0014.

DERRICK FOXWORTH
Chief of Police

DF/erd

DRAFT #2 Form

DRAFT DATE: April 28, 2005

630.15 FOOT PURSUITS

Index: Title;

Refer:

POLICY (630.15)

The Bureau has the duty and responsibility to pursue and apprehend offenders. Foot pursuits must be conducted in such a way so as to minimize the risks to members and citizens.

PROCEDURE (630.15)

Foot Pursuits in General (630.15)

Members must be mindful of the risks inherent in engaging in foot pursuits when making the decision whether to pursue a suspect on foot.

In recognition of the potential risk to public safety and member's safety, no member or supervisor shall be criticized for a decision not to engage in a foot pursuit or to terminate an ongoing foot pursuit based on the risk involved.

The primary purpose of this policy is to secure a balance between the protection of the lives and safety of the public and Bureau members, and law enforcement's duty to enforce the law and apprehend violators. Since there are numerous situations which arise in law enforcement that are unique, it is impossible for this policy or any standard operating procedure to anticipate all possible circumstances. Therefore, this policy is intended to guide a member's discretion in matters of foot pursuit.

Directive Specific Definitions (630.15)

A foot pursuit is a pursuit on foot by a member(s) where constant visual contact is maintained at all times, and the suspect is readily capable of being apprehended by the pursuing member(s).

- a. A foot pursuit should end when the member(s) loses visual contact with the suspect, and a tactical apprehension should begin.
- b. Members can re-engage in a foot pursuit when he/she regains visual contact of the suspect and the suspect is readily capable of being apprehended.

Tactical apprehension strategies for the search and apprehension of the suspect could be accomplished by:

- a. Member follows and maintains constant visual contact, without the intent to apprehend, while waiting for additional resources for apprehension.
- b. Perimeter/block searches.
- c. Cover/contact search.
- d. K9 track
- e. Air Support Unit.
- f. SERT.

Deciding Whether to Pursue (630.15)

A member has the authority, at all times, to attempt the stop of any person suspected having committed any criminal offense, violation or traffic violation. It is clear that while it is the

member who initiates the stop, it is the violator who initiates the foot pursuit by fleeing. The member's decision to pursue should always be undertaken with an awareness of the degree of risk to which the member exposes himself/herself and others.

Foot pursuits and tactical apprehensions present certain inherent risks, yet both are an important law enforcement tool. The principles outlined below should be considered when initiating, continuing or terminating a foot pursuit or tactical apprehension.

Factors to Consider When Initiating/Continuing a Foot Pursuit (630.15)

- a. Whether the suspect is armed.
- b. Suspect's behaviors:
 1. Looking back over his/her shoulder may be a threat indicator.
 2. Change in stride, slowing down or the suspect does not appear to be attempting to elude but rather draw the member in close for an attack.
 3. Hand and shoulder movement is an indicator the suspect may be reaching into the waistband or other threat areas.
- c. Conditions:
 1. Locations: Residential, commercial, roadways, schools, wooded or isolated areas.
 2. Environmental factors: Weather or darkness.
 3. Communications.
 4. Availability of cover units.
- d. Member's characteristics:
 1. Physical conditioning and abilities.
 2. Familiarity with the area.
- e. The offense committed by the suspect.

Role of the Pursuing Member (630.15)

- a. Once the foot pursuit has been initiated, the pursuing member should notify BOEC and attempt to broadcast the following information:
 1. The suspect's direction of travel.
 2. Whether the suspect is armed, if known.
 3. Number of fleeing suspects.
 4. If known, the identification of the suspect, or a physical description.
- b. Generally, the pursuing member should not attempt to overtake the fleeing suspect but keep the suspect in sight until sufficient cover is available to take him/her into custody. The following are techniques to consider:
 1. Following and maintaining a safe distance.
 2. Paralleling the suspect.
 3. Cover/contact pursuits.
 4. Follow a different route than the suspect (i.e., wide corners).
 5. Using available cover between you and the suspect (i.e., parked cars).
- c. The primary member should attempt to immediately coordinate with secondary members to establish a perimeter in the area to contain the suspect. If unable, secondary members should fill this role.

Foot Pursuit Restrictions (630.15)

- a. Members shall not engage in or continue foot pursuits in the following circumstances and, if appropriate, attempt tactical apprehension strategies:
 1. Armed suspects unless, in extreme circumstances, no other alternative strategy is feasible and a delay in the apprehension of the suspect would present a threat of death or serious physical injury to others.
 2. In the event that a suspect enters a building, structure, wooded area or otherwise isolated area, the primary member should consider the use of tactical apprehension strategies. Members should not pursue suspects into these areas without sufficient cover present.
 3. If the member believes that the danger to the pursuing member or the public outweighs the necessity for immediate apprehension.
 4. If the member is disarmed.
 5. If the member loses contact with BOEC for any reason.
 6. The member is unsure of his/her location.
 7. If instructed to do so by a supervisor.
- b. The pursuing member may attempt tactical apprehension strategies upon terminating the pursuit for the above reasons.

Role of the Supervisor (630.15)

- a. The supervisor will respond and continually monitor the pursuit.
- b. Consider the tactical apprehension strategies.
- c. Terminate pursuits that are not in compliance with this policy.
- d. Following each incident, debrief with the members involved and, if feasible, his/her shifts.

RESPONSIBILITY, ACCOUNTABILITY, AND CONTROL (630.15)

The Training Division will ensure recruit members receive training in the Advanced Academy on foot pursuit policy and techniques. Follow-up training will occur, as needed, and delivered by debriefings, Tips and Techniques, roll call training and in-service training.

RU managers will require all supervisors to review and debrief foot pursuits with all members involved and, if feasible, his/her shifts.



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

TOM POTTER, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Integrity Compassion Accountability Respect Excellence Service

EXECUTIVE ORDER

Date: August 1, 2005

TO: All Members

RE: Changes to Directive 1010.10 Deadly Physical Force, use of, Including Reporting Requirements

ACTION: This directive has been significantly revised, so a complete copy is presented here for review.

1010.10 DEADLY PHYSICAL FORCE, USE OF, INCLUDING REPORTING REQUIREMENTS

Index: Title; Deadly Physical Force Against Members; Firearms Policy; Force, Deadly Physical; Notification Procedures When Deadly Physical is Used Against Bureau Members; Reports – Requirements, Use of Deadly Physical Force; Review Board, Firearms Discharge; Shooting at or From Vehicles; Shooting, Cover Fire; Warning Shots

Refer: ORS 131.005 Probable Cause, defined
ORS 161.015 Deadly Physical Force and Serious Physical Injury, Defined
ORS 161.219 & 161.239 Use of Deadly Physical Force
DIR 335.00 Performance Review and Use of Force Review Boards
DIR 410.00 Injuries/Occupational Illness
DIR 630.05 Vehicle Pursuits
DIR 631.70 Investigations of Animal Problems
DIR 640.10 Crime Scene Procedures
DIR 910.00 Field Reporting Handbook Instructions
DIR 1010.20 Use of Physical Force
Supervisor's Checklist (Detectives)
Supervisor's Checklist Form (Detectives)

POLICY (1010.10)

Sanctity of Life

The Portland Police Bureau recognizes and respects the integrity and value of human life, and that the decision to use deadly physical force is the most important decision that a member will make in the course of his/her career. The use of deadly physical force will emotionally, physically and psychologically impact the member involved, the subject the deadly physical force was directed at, and the family and friends of both and can impact the community as well.

Deadly Physical Force (1010.10)

The Portland Police Bureau recognizes that members may be required to use deadly force when their lives or the life of another is jeopardized by the actions of others. Therefore, state statute and Bureau policy provide for the use of deadly force under the following circumstances:

- a. Members may use deadly force to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious physical injury.

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- b. A member may use deadly force to effect the capture or prevent the escape of a suspect where the member has probable cause to believe that the suspect poses a significant and immediate threat of death or serious physical injury to the member or others.
- c. If feasible, some warning has been given.

The use of statutorily defined deadly weapons, barricades and vehicle ramming, constitutes deadly physical force. Also, depending upon how they are used, flashlights, batons, body parts, and other statutorily defined dangerous weapons may constitute deadly physical force.

Members must be mindful of the risks inherent in employing deadly force, which may endanger the lives of innocent persons. A member's reckless or negligent use of deadly force is not justified in this policy or state statute. Members are to be aware that this directive is more restrictive than state statutes. Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics.

Threat indicators, Levels of Control, and Post Use of Force Medical Attention are outlined in detail in DIR 1010.20 Use of Physical Force.

Shooting At a Moving Vehicle (1010.10)

For the purposes of this policy, a moving vehicle itself shall not presumptively constitute a threat that justifies the member's use of deadly physical force. The member using deadly physical force must be able to clearly articulate the reason for the use of deadly physical force. Members shall not discharge a firearm at a person(s) in a moving vehicle unless one or both of the following criteria are met:

- a. To counter an active threat of death or serious physical injury to the officer or another person, by a person in the vehicle using means other than the vehicle.
- b. There are no other means available at the time to avert or eliminate the threat.

Members threatened by an oncoming vehicle should attempt to move out of its path instead of discharging a firearm at it or any of its occupants.

In those cases where the criteria are met, Bureau members shall take into account the location, vehicular and pedestrian traffic and any hazard to innocent persons before discharging a firearm at a moving vehicle.

Additional Considerations (1010.10)

A moving vehicle may become an uncontrolled deadly weapon that could seriously injure or kill the occupants of the vehicle and/or subjects in its path if the driver becomes incapacitated before the vehicle comes to a stop.

Members must be mindful of the following when considering the use of deadly physical force involving a vehicle:

- a. Bullets fired at occupants of moving vehicles are extremely unlikely to stop or disable the moving vehicle.
- b. Bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons.
- c. The vehicle may crash and cause injury to officers or other innocent persons if the bullets disable the operator.
- d. Moving to cover, repositioning, and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for use of deadly physical force.
- e. Shooting accurately from a moving vehicle is extremely difficult and, therefore, unlikely to successfully stop or prevent a threat to the member or other innocent person.

These criteria do not allow members to use poor tactics or positioning as justification for discharging a firearm at a moving vehicle. An example of poor tactics would be a situation in which a member places him/herself into the path of a moving vehicle, and uses the danger he/she finds him/herself in as the sole justification for shooting at the vehicle. Tactics of this nature are prohibited.

Shooting From a Moving Vehicle (1010.10)

Members shall not discharge a firearm from a moving vehicle except:

- a. In the immediate defense from the threat of death or serious physical injury to the officer or another person.
- b. No other means exists at the time to avert or eliminate the threat.

Other Authorized Uses for Firearms (1010.10)

A member is also authorized to discharge a firearm in the performance of official duty under the following circumstances:

- a. To kill or deter a dangerous animal or to kill an animal so badly injured that it should be destroyed to prevent further suffering.
- b. At a firing range pursuant to all safety rules and regulations.
- c. The definition of cover fire is when a member discharges a firearm in a tactical situation to neutralize the use of deadly physical force. Cover fire is not intended to strike a subject, but is meant only to prevent subjects from taking action against the police or others, or entering or occupying locations. Cover fire can be dangerous and must be used with extreme caution. The Portland Police Bureau reviews the use of this type of cover fire, it judges its employees by the standard of reasonableness, and expects members to have balanced the risks against the benefits, and to have considered safety factors such as backdrop and penetration, as well as the effect on the incident dynamics.

Warning Shots (1010.10)

Members will not fire warning shots.

Destruction of Animals (1010.10)

Immediate supervisors will be responsible for investigating incidents where an animal was intentionally destroyed under the guidelines of DIR 631.70. This requirement does not prohibit a supervisor from requesting Detective Division (Detectives) assistance if the circumstances dictate such involvement.

Negligent Discharge (1010.10)

Detectives will respond and assume investigative responsibility for all negligent or unintentional discharges, except:

- a. At a Bureau authorized firearms range where no person was endangered by the discharge. In those circumstances, the Training Division (Training) will have responsibility for investigation and reporting.

Release of Information (1010.10)

The Bureau realizes that it is, in every situation, accountable to the public. Public accountability requires the Bureau to provide timely and complete information when members use deadly force. However, the Bureau must weigh the public's right to know with what is in the best interest of the investigation. As a rule, the Bureau will release, as soon as possible, accurate information which will not compromise an ongoing investigation or the potential prosecution of a suspect(s).

The Public Information Officer (PIO), who reports directly to the Chief of Police, will be called out to all use of deadly force incidents. As soon as possible, the PIO will coordinate with the Detective Division Sergeant in charge of the investigation, the on-scene representative of the District Attorney's office, and a union representative of the involved member(s) to determine what information will be released. During the course of the criminal investigation, the Detective Division will coordinate the release of information through the PIO. The Chief of Police is ultimately responsible for approving information available for release.

The Bureau also has a responsibility to ensure that citizens and, in particular, the family of citizens directly affected by the use of deadly force, along with members of the Bureau receive timely information. To provide timely and accurate information, the Detective Division may direct the Crisis Response Team to assign a liaison to assist in providing information to members of the community directly affected by a use of deadly force. The Crisis Response Team will not release information that has not been approved for release by the Detective Division and the District Attorney's office. Internal communication will be coordinated through the Chief of Police.

As soon as possible, the PIO will release to the public the available information. Typically, the information will include:

- a. Nature of the call.
- b. Time of the call and member arrival.
- c. Number of members directly involved in the use of deadly force.
- d. Years of service of members directly involved in the use of deadly force.
- e. General information about the citizen(s) involved in the deadly force encounter.
- f. Other information as determined by the Detective Division and District Attorney's office.

The identity of the Bureau member(s) involved in the incident will be released after a minimum of 24 hours. In incidents involving the death of a Bureau member, or member of the public, the identity will be released with approval of the Detective Division and the Medical Examiner's office.

As is normal procedure, requests for documents, CDs and other public records will be processed through the Records Division.

The Bureau has an interest in providing the community with information in the days that follow the use of deadly force. The Detective Division will coordinate the release of information with the PIO's office. Public accountability requires that the Bureau provide updated information in a timely manner. Information that could jeopardize the integrity of the investigation or information needed to complete the criminal investigation or any pending prosecution will be withheld from the public.

PROCEDURES (1010.10)

Directive Specific Definitions

- a. A barricade is the intentional blocking/barricading of a roadway, by any means, to prevent passage of a pursued vehicle (per DIR 630.05).
- b. A Communication Restriction Order is an order issued in writing during an investigation that restricts the involved member(s) from discussing the facts of the case. This restriction will be given in writing and will be lifted in writing.
- c. Deadly physical force is that physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury (per ORS 161.015(3)).
- d. An in-custody death occurs when a subject dies while under physical control of a member or dies while in police custody. Physical control includes the use of a Taser.
- e. An involved member is a member who is involved in the actual application of deadly physical force or directs another to use deadly physical force.
- f. For purposes of this directive, the term member refers to any sworn member of the Portland Police Bureau. This includes reserve police officers.
- g. A negligent discharge is any unintentional discharge of a firearm by a sworn member that is not due to equipment malfunction.
- h. An on-scene briefing is a brief overview of the incident given to detectives or others as necessary, for the purpose of accurately processing the scene. An on-scene briefing may include but would not be limited to, the identification of the crime scene(s), the identification of other members present, the identification of potential witnesses, and the identification of evidence at the crime scene(s).
- i. A police action is any circumstance(s), on or off duty, in which a member exercises official authority.

- j. Probable cause is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it (per ORS 131.005(11)).
- k. Serious physical injury is physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ (per ORS 161.015(8)).
- l. A warning shot is an intentional, unauthorized discharge of a firearm into the air, ground, or an inanimate object with the intent of gaining compliance by a suspect through shock or fear.
- m. A witness member is a member who observes, or has firsthand knowledge of, the events surrounding an in custody death or the use of deadly physical force by another member and, other than observing the incident, did not use deadly physical force.

Post Use of Force Medical Attention (1010.10)

When a person has been injured by the use of force by a Bureau member or there is a potential for injury to that person a member shall continually monitor the subject, if tactically feasible or appropriate. EMS will be requested to respond if the injury requires medical attention. The member shall monitor the subject for changes in their skin color, breathing and levels of consciousness. If any significant changes in any of these areas are observed, the member shall notify EMS immediately. See DIR 630.50 for further requirements.

Investigations and Reporting (1010.10)

The Police Bureau recognizes the importance of conducting a thorough, impartial and timely investigation into in-custody deaths and the use of deadly force by its members. The investigation into the events surrounding such incidents is of critical importance to the involved member(s), the Bureau and the community. It is the responsibility of all Bureau members to assist in these investigations for the purpose of determining justification as well as to identify any training and/or performance deficiencies. The Bureau also recognizes the impact these traumatic incidents have on its members and acknowledge the need to be sensitive when conducting the required investigation. Recognizing these dual responsibilities, the following procedures serve to meet both goals.

The investigation of all incidents involving the use of deadly physical force and/or the death of an individual in police custody will be the responsibility of the Detective Division. This will require Homicide Detail supervisors to respond and assume responsibility for the investigation of the incident.

Communication Restriction Order (1010.10)

- a. A communication restriction order (CRO) will be issued in writing by the Chief or as delegated to a member of the Detective Division's Homicide Detective Detail. Issuing a CRO will include:
 - 1. Providing a copy of the CRO to all witness and involved members before they leave the scene.
 - 2. Providing a copy of the CRO to a Detective Division Homicide Detail supervisor.
- b. Documenting that the CRO was issued, and to whom.
- c. Union representatives shall not communicate to either involved members or witness members what has been told to them by an individual they are representing.
- d. The CRO generally will continue until the conclusion of the Grand Jury or, if no Grand Jury is held, until a disposition is entered by the District Attorney. The CRO may be extended. Reasons for the extension may include:
 - 1. For purposes related to the Administrative Review.
 - 2. While the case is under review by another law enforcement agency (e.g., FBI civil rights review, outside agency, etc.).
 - 3. The decision to extend the CRO will be made on a case by case basis, at the direction of the Chief of Police.
- e. Members not involved in a deadly force or in-custody death incident, shall not communicate with a member who has been designated as an involved or witness member, about factual aspects of

the investigation at hand, unless authorized to do so and until the involved or witness member is no longer under a CRO.

- f. Members may speak with Traumatic Incident Committee (TIC) members. Members should avoid directly discussing factual aspects of the incident with TIC members, as the TIC members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s).
- g. Separation of all witness and involved members is necessary in order to safeguard the integrity of the investigation. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place.

Duties and Responsibilities When Deadly Physical Force is Used or an In-Custody Death Occurs Inside Portland During a Police Action (1010.10)

Member Responsibilities (1010.10)

- a. Members as soon as practical will notify the on-scene supervisor and advise them of the member's role in the incident (e.g., witness member, involved member, assisted at the scene). This notification shall be to identify those members involved. This notification is intended to identify those members which detectives must attempt to interview in conjunction with their investigation of the incident. This notification is not intended to compel any statements or the production of any evidence by any involved member.

Involved Members Responsibilities (1010.10)

- a. The member will first notify an on-duty supervisor at the precinct of occurrence, as well as his/her own supervisor, if assigned to a precinct or division other than the precinct of occurrence. The notifications will take place as soon as possible.
- b. The member, unless injured, will remain at the scene until released by an on-scene supervisor. The release from the scene must be approved by the Homicide Detail sergeant. The member will not be held at the scene any longer than necessary.
- c. The involved member will make it known to the on-scene supervisor that they are an involved member, as defined.
- d. The involved member(s) will be afforded all rights guaranteed under the United States and State of Oregon Constitutions and the benefits of the current collective bargaining agreement throughout the investigation.
- e. The member will be provided time to discuss the incident with his/her immediate supervisor, RU manager, union representative, and private attorney. Members will not discuss the incident with anyone other than those covered in the Communication Restriction Order once it is issued, until the Communication Restriction Order is removed.
- f. The involved member will be asked, but not required, to voluntarily discuss the incident with Detectives in order to ensure the prompt and accurate processing of the scene.
- g. In situations requiring Detectives involvement, the member will not drive a vehicle following the incident. An uninvolved member will be assigned to transport each involved or witness member.

Witness Member Responsibilities (1010.10)

- a. Witness members will make it known to the on-scene supervisor if they are a witness to the incident (as defined) or assisted at the scene.
- b. All witness members, unless injured, will remain at the scene until released by the Homicide Detail sergeant. Witnesses will not be held at the scene any longer than necessary.
- c. Witness members, if requested, are required to give an on-scene briefing to detectives in order to ensure that the scene is processed properly.

- d. All witness members will be afforded all rights guaranteed under the United States and State of Oregon Constitutions and the benefits of the current labor agreement throughout the investigation.
- e. Witness members will not discuss the incident with any other person other than their immediate supervisor, RU manager, detectives, and their union representative prior to the conclusion of their investigative interview. Members will not discuss the incident with anyone other than those covered in the Communication Restriction Order once it is issued, until the Communication Restriction Order is removed.
- f. Witness members will be required to submit to an interview prior to going off shift. If injured, the witness will be interviewed when medically stable. Exceptions must be approved by the Detective Division Commander. Those exceptions must be limited to those situations where the number of witnesses or the complexity of the crime scene make it necessary for the investigators to obtain additional details of the incident prior to beginning an interview.

First Arriving Supervisor Responsibilities (1010.10)

- a. After complying with Directive 640.10 (secure scene and render first aid), complete the following:
 - 1. Separate all witness and involved members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place.
 - 2. Ensure that a single entry point into and out of the scene is established and advise BOEC of its location.
 - 3. Ensure that a Crime Scene log is maintained at the entry point.
 - 4. Make required notifications.
- b. Required notifications, in the following order:
 - 1. Detective Division Homicide Detail Sergeant (up team).
 - 2. Identification Division (ID).
 - 3. Appropriate precinct or division commander. This would include the precinct of occurrence if the involved member is from a precinct or division separate from that of the occurrence.
 - 4. Public Information Officer (PIO).
 - 5. EAP Coordinator.
 - 6. The appropriate bargaining unit representative.
- c. Ensure witness and involved members weapons are retained in their holsters pending weapon examination by responding detectives.

Precinct or Division Commander Responsibilities (1010.10)

- a. The precinct or division commander will notify the appropriate Branch chief and/or the Chief.

Chief's Responsibilities (1010.10)

- a. The Chief will make the appropriate notification to the Commissioner in Charge and the Deputy City Attorney.

Detective Division Homicide Detail Responsibilities (1010.10)

- a. The Detective Division Homicide Detail will be responsible for all investigative duties of an in custody death and a deadly force incident, to include the following:
 - 1. Completion of the Investigative Report.
 - 2. Scene sketches.
 - 3. Diagrams.
 - 4. Evidence processing.
 - 5. Interviews of involved members and supervisors.
 - 6. Interviewing witnesses.

7. Issuing communication restriction orders.

Homicide Detail Sergeant Responsibilities (1010.10)

- a. Make required notifications:
 1. Detective Division Command.
 2. On-call detectives.
 3. District Attorney's office.
 4. Medical Examiners office.
 5. Identification Division, and ensure that criminalists are responding to the scene.
- b. Request assistance from the East County Major Crime Team.
- c. Respond to the scene and assume responsibility for the scene after receiving a briefing from the on-scene commander.
- d. Take charge of the investigation.
- e. Obtain a list of all members and their role in the incident from the on-scene supervisor.
- f. Make investigative and scene processing assignments.
- g. Ensure the appropriate checklists are used and case notebooks are prepared.
- h. Ensure that the communication restriction orders are issued.
- i. Ensure that all weapons have been examined, documented, as appropriate and ensure that the member is supplied with a replacement weapon by the Training Division, if appropriate.

Detectives Responsibilities (1010.10)

- a. Conduct a complete and thorough investigation of the incident. That investigation will be used to determine justification for the use of deadly physical force, as well as to identify any training or policy concerns regarding the member's actions.
- b. Conduct interviews of all witness and involved members and use the interview checklists, ensuring all applicable areas are covered. All interviews wherein material facts of the case are discussed will be tape-recorded in its entirety.
- c. Interview civilian witnesses and attempt to tape-record their statement.
- d. Ensure that his/her reports include detailed information related to any weapons involved, all shots fired and each shot's trajectory and point of impact (if determinable) and any injury or damage to property.
- e. Collect and submit all weapons involved in a deadly force incident, including SERT weapons, to the Oregon State Crime Lab for appropriate testing, documenting their condition as found to include serial number, rounds in chamber, and number of rounds in each magazine.
- f. Complete a Summary Report and case notebooks to include all transcripts of all taped statements.
- g. Submit all cases involving intentional use of deadly force, in-custody deaths and negligent discharge resulting in injury to another, to the District Attorney's office for review.

Duties and Responsibilities when Deadly Force is Used or an In-Custody Death Occurs Outside Portland During a Police Action by a Bureau Member (1010.10)

- a. Involved member.
 1. Notify the jurisdiction of occurrence.
 2. Notify your supervisor.
- b. Supervisors.
 1. Supervisors will make notification as required of the on-scene supervisor.
- c. Detective Division Homicide Detail.
 1. Respond to the scene, if feasible.
 2. Serve as the Bureau liaison.

Duties and Responsibilities when Deadly Force is Used Against a Bureau Member in the City of Portland (1010.10)

This will be treated in the same manner as deadly force used by a member, for notification purposes. Detective Division will be notified in all cases and will assume investigative responsibility.

Use of Deadly Force or an In-Custody Death inside Portland by a Member From Another Jurisdiction (1010.10)

If such police action results in the use of deadly physical force against a person or an in-custody death occurs, the Bureau will normally be the investigating agency. Detectives will be responsible for the investigation.

The on-scene supervisor will ensure that an on-duty supervisor of the police officer's agency is notified. Unless there is some immediate need to seize weapons, the involved members will be allowed to keep his/her weapon(s) until his/her agency supervisor arrives. Upon arrival, the agency supervisor will take custody of the firearm and, if necessary, surrender it to the investigator.

In order to enhance community understanding of situations, the Precinct Commander and Branch chief will be notified so that they may determine the need for community notification and information dissemination.

First Arriving Supervisors Checklist for Deadly Force or In-Custody Death (1010.10)

- a. Upon arrival at the scene, and as soon as practical and safe after the use of deadly force has occurred, the supervisor will:
 1. Determine the condition of all involved members and injured citizens, and ensure medical treatment is provided. If ambulance transport is required, ensure that an uninvolved member is assigned to accompany the injured member or citizen to the hospital (in the ambulance). If an involved member is injured, requires treatment and does not require ambulance transport, an uninvolved member should be assigned to transport the involved member to an appropriate facility.
 2. Establish a perimeter, staging area and a single entry point into the scene and broadcast this information on the radio.
 3. Separate all witness and involved members. If the number of individuals to be physically separated is so great to be impractical, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place.
 4. Make notifications:
 - a) The Detective Division Homicide Detail Sergeant (up team).
 - b) Identification Division (ID).
 - c) The appropriate precinct or division commander. This would include the precinct of occurrence if the involved member is from a precinct or division separate from that of the occurrence.
 - d) The PIO.
 - e) The EAP Coordinator.
 - f) The appropriate bargaining unit representative.
 5. Ask each member on scene what his/her role was in the incident (involved member, witness member, assisted at scene), and document on a log sheet. Instruct the involved members and witness members to not discuss the incident among themselves or with any other person, except their immediate on-scene supervisor, union representative and private attorney, prior to being interviewed by a detective.
 6. Maintain integrity of witness and involved members weapons. If holstered, ensure it is retained there pending weapon examination by responding detectives. Weapons not still in custody of the member, but still in the crime scene, will be left as evidence if the situation is stable and safe to do so.
 7. Ensure that notification of the appropriate bargaining unit has occurred. Notify the involved and witness members that they have the right to have a union representative present through all stages of this process.

8. Unless injured, do not release involved members and witness members from the scene without the approval of a Homicide Detail Sergeant.
 9. Assign an uninvolved member to drive each involved member. Witness members may drive themselves. Whenever practical, each involved member and witness member should be transported in a separate vehicle.
 10. Upon release from the scene, instruct the involved members, witness members and drivers of the following:
 - a) Proceed to Detectives.
 - b) Involved members and witness members, prior to changing out of the clothes worn at the time of the incident, must confer with the Homicide Detail Sergeant.
 - c) The assigned criminalist, at the direction of the lead detective, will collect all evidence including involved members' uniform and all outer clothing (including duty belt) and retain as evidence until instructed otherwise by the lead Detective of the investigation. This instruction should be relayed to any uninvolved member that accompanied an injured involved member to the hospital.
 - d) Exceptions will be authorized by the Homicide Detail Sergeant.
 11. Instruct members and witness members to remain at the Detectives until instructed otherwise by the lead detective or they are released from Detectives with the approval of the Homicide Detail Sergeant.
-

FOR MORE INFORMATION:

Please contact Officer Eric Dinnel at 503-823-0014.



DERRICK FOXWORTH
Chief of Police

DF/erd

EXECUTIVE ORDER

February 3, 2005

TO: All Members

RE: Changes to Directive 1010.20, Physical Force, Use of

ACTION: Pg. 421-422 Delete the current directive and replace it with (the new text is underlined for purpose of highlighting the changes and additions for this Executive Order):

1010.20 PHYSICAL FORCE, USE OF

Index: Title

Refer: ORS 161.015 (7) Physical Injury, defined

ORS 161.205 – 161.265 Use of Physical Force

DIR 910.00 Field Reporting Handbook Instructions

POLICY (1010.20)

Per ORS, the Bureau authorizes its sworn members to use physical force in a police action when and to the extent it is reasonably necessary to accomplish some official purpose. The amount of physical force authorized may vary in degree and shall only be the amount of force that is reasonably necessary, depending on the circumstances of each situation taken as a whole, to accomplish the official purpose. Use of excessive physical force in any situation is prohibited.

PROCEDURES (1010.20)

Directive Specific Definitions

Excessive physical force is any physical force used in a police action that is not reasonable under the circumstances.

Official purpose is any purpose, undertaken in a police action, which is authorized by official orders, the Manual of Policy and Procedure, by law or by judicial decree.

Police action is any circumstance, on or off duty, during which a member exercises or attempts to exercise official authority.

Physical injury is as defined in ORS 161.015 (7), the impairment of physical condition or substantial pain.

Physical force is that force which is directed against a person and is readily capable of causing injury. Such force may be applied through the use of a person's body, weapons, equipment, and/or instruments. For purposes of this Directive, physical force includes pointing a firearm, Taser or impact munitions weapon, directly at a person or directed at a person in the low ready position.

Use of Physical Force (1010.20)

Members may use physical force only when they reasonably believe it is necessary to:

- a. Prevent or terminate the commission or attempted commission of an offense.
- b. Lawfully take a person into custody, make an arrest or prevent an escape.
- c. Prevent the commission of suicide or self-inflicted serious physical injury.
- d. Defend self or a third party from what is reasonably believed to be the use or imminent use of physical force.
- e. Accomplish some official purpose that is authorized by law, by judicial decree or is performed in the reasonable exercise of the member's official power, duty or function.

Notification and Reporting (1010.20)

Each and every member who uses reportable physical force, as defined in this Directive, will complete a Use of Force Report (UFR), in addition to any other reports required by Bureau policy. In limited circumstances, a supervisor may allow a member to delay writing the UFR for up to 24 hours to limit overtime. Examples of exceptions may include pointing a firearm, Taser or other impact munitions at a subject without discharging it.

If the primary report and UFR covering the specific incident are completed by one member and another member used physical

force in the incident, then each member who used physical force will complete a UFR. The only exception to this is when the reportable use of force was pointing a weapon at one or more subjects (i.e., during a high risk stop). In that case only one UFR needs to be completed.

The following circumstances do not require a UFR:

a. Bureau approved training exercises (i.e., an in-service patrol tactics class).

b. A member unknowingly points a weapon at a subject during a building search or other high risk situation (i.e., an undiscovered subject was hiding behind an object where a weapon was pointed at).

If the member is injured and unable to submit a report, the report regarding the use of force will be completed by an on-duty supervisor. Supervisors will be notified as soon as possible of the use of physical force which requires any person to receive medical attention.

Supervisors will ensure that members comply with the reporting requirements.

Handcuffing Reporting (1010.20)

Although handcuffing is not defined as physical force, Bureau policy requires that members document each time a person is handcuffed in a police report (i.e., Investigation, Custody or Special).

FOR MORE INFORMATION:

Please contact Officer Dean R. Halley at 503-823-0014.

DERRICK FOXWORTH
Chief of Police

DF/drh

PORTLAND POLICE BUREAU, USE OF FORCE REPORT (AUGUST 1, 2004)

Portland Police Bureau		USE OF FORCE REPORT				PAGE/OF
Case No.		Refer Case No.		Classification		
Date/Time Reported		Date/Time Occurred		Location of Occurrence		
UF	Name of Subject			CRN	Sex	Race
	DOB					
Address				Hgt	Wgt	Hair
				Eyes		
Conditions						
Lighting Conditions: <input type="checkbox"/> 01 DARK <input type="checkbox"/> 02 LOW LIGHT <input type="checkbox"/> 03 BRIGHT						
Applicable Suspect Conditions (Check all that apply)				Under the Influence (Check all that apply)		
<input type="checkbox"/> 01 Actually armed <input type="checkbox"/> 02 Reported to be armed <input type="checkbox"/> 03 Assaulted officer <input type="checkbox"/> 04 Assaulted citizen <input type="checkbox"/> 05 History of violence <input type="checkbox"/> 06 Failure to comply				<input type="checkbox"/> 01 Alcohol <input type="checkbox"/> 02 Drugs <input type="checkbox"/> 03 Mental Illness <input type="checkbox"/> 04 None apparent <input type="checkbox"/> 05 Other (explain) _____		
<input type="checkbox"/> 07 Engaged in or indicated the intent to engage in physical resistance <input type="checkbox"/> 08 Engaged in or indicated the intent to engage in aggressive physical resistance <input type="checkbox"/> 09 Other _____						
Event Conditions: <input type="checkbox"/> 01 High risk incident <input type="checkbox"/> 02 Search warrant <input type="checkbox"/> 03 Other _____						
Use of Force / Control Necessary to:						
<input type="checkbox"/> 01 Defend self <input type="checkbox"/> 02 Defend another <input type="checkbox"/> 03 Make arrest <input type="checkbox"/> 04 Prevent escape <input type="checkbox"/> 05 Civil hold <input type="checkbox"/> 06 Accomplish official purpose (explain) _____ <input type="checkbox"/> 07 Other _____						
Warning Given Before Deployment: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Not feasible						
Control						
Physical Control: <input type="checkbox"/> 01 Pressure points <input type="checkbox"/> 02 Handcuffing <input type="checkbox"/> 03 Control holds <input type="checkbox"/> 04 Takedowns <input type="checkbox"/> 05 Hobble <input type="checkbox"/> 06 Not applicable						
Effective? <input type="checkbox"/> YES <input type="checkbox"/> NO						
Impact Weapons: <input type="checkbox"/> 01 Hands/Feet <input type="checkbox"/> 02 Baton <input type="checkbox"/> 03 Flashlight <input type="checkbox"/> 04 Not applicable <input type="checkbox"/> 05 Other _____						
Effective? <input type="checkbox"/> YES <input type="checkbox"/> NO						
Pepper Spray: Distance (Feet) <input type="checkbox"/> 01 1-3' <input type="checkbox"/> 02 4-7' <input type="checkbox"/> 03 7'+ <input type="checkbox"/> 04 Not applicable						
Duration (Seconds) 1st _____ 2nd _____ 3rd _____ Effective? <input type="checkbox"/> YES <input type="checkbox"/> NO						
Pointing of Firearm: # of Officers _____ # of Subjects _____						
<input type="checkbox"/> 01 Handgun Distance (feet) _____ <input type="checkbox"/> 02 Shotgun Distance (feet) _____ <input type="checkbox"/> 03 AR-15 Distance (feet) _____ <input type="checkbox"/> 04 Impact Munitions Distance (feet) _____ <input type="checkbox"/> 05 Not applicable						
Discharge of Firearm <input type="checkbox"/> Not applicable						
Weapon		Subject		Result		
<input type="checkbox"/> 01 Handgun (Primary) <input type="checkbox"/> 02 Handgun (Secondary)		<input type="checkbox"/> 03 Shotgun <input type="checkbox"/> 04 AR-15		<input type="checkbox"/> 01 Person <input type="checkbox"/> 02 Animal <input type="checkbox"/> 03 Other		
				<input type="checkbox"/> 01 Death <input type="checkbox"/> 02 Injury <input type="checkbox"/> 03 Missed		
Impact Munitions <input type="checkbox"/> Not applicable						
Type/Distance				Effective?		
<input type="checkbox"/> 01 Bean bag _____ Feet <input type="checkbox"/> 02 Stingers _____ Feet <input type="checkbox"/> 03 Sage _____ Feet <input type="checkbox"/> 04 Other _____ Feet				<input type="checkbox"/> YES <input type="checkbox"/> NO If not, why?		
				<input type="checkbox"/> 01 Clothing <input type="checkbox"/> 02 Missed <input type="checkbox"/> 03 Malfunction <input type="checkbox"/> 04 No physical effect <input type="checkbox"/> 05 Other _____		
Rounds Fired _____				Hits _____		
Reporting Officer		DPSST	Prec/Div	Rlf/Shift	Assn/Dist	Supervisor's Signature

Case No.

- Copies
- Dets
 - Cent
 - East
 - North
 - NE
 - SE
 - PLM
 - Trng
 - Traf
 - TOD
 -
 -

COMPUTER ENTRY
Person
Entry

Case No.

Use of Force Report

PAGE/OF

Taser

Not applicable

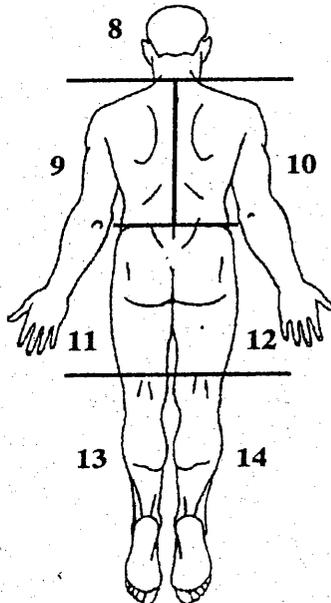
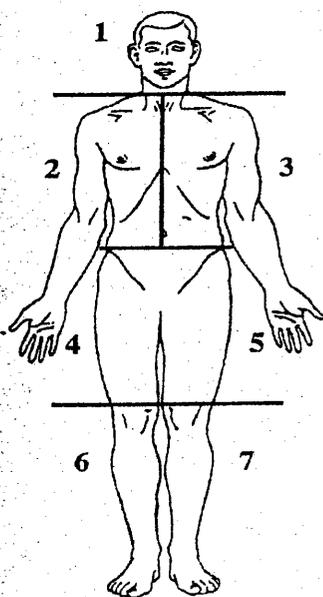
Application	Cycles	Distance (Feet)
<input type="checkbox"/> 01 Probe	<input type="checkbox"/> 1	<input type="checkbox"/> 01 0-5'
<input type="checkbox"/> 02 Drive stun	<input type="checkbox"/> 2	<input type="checkbox"/> 02 6-10'
<input type="checkbox"/> 03 Laser only	<input type="checkbox"/> 3	<input type="checkbox"/> 03 11-15'
	<input type="checkbox"/> 4	<input type="checkbox"/> 04 16-21'
	<input type="checkbox"/> 5	
	<input type="checkbox"/> OTHER _____	

Did Probes Penetrate the Skin? YES NO

Effective? YES NO If not, why?

<input type="checkbox"/> 01 Heavy clothing	<input type="checkbox"/> 04 Subject moved	<input type="checkbox"/> 07 One probe
<input type="checkbox"/> 02 Close probe strikes	<input type="checkbox"/> 05 Missed	<input type="checkbox"/> 08 Other _____
<input type="checkbox"/> 03 Low muscle mass	<input type="checkbox"/> 06 Malfunction	

Taser Serial # _____ Cartridge # _____



Injuries

Officer	Suspect
<input type="checkbox"/> 01 None	<input type="checkbox"/>
<input type="checkbox"/> 02 Bruises	<input type="checkbox"/>
<input type="checkbox"/> 03 Abrasions	<input type="checkbox"/>
<input type="checkbox"/> 04 Lacerations	<input type="checkbox"/>
<input type="checkbox"/> 05 Broken bones	<input type="checkbox"/>
<input type="checkbox"/> 06 Other	<input type="checkbox"/>

Checked by Medical

Officer	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Suspect	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Taken to Hospital Where

Officer	<input type="checkbox"/> YES	<input type="checkbox"/> NO	_____
Suspect	<input type="checkbox"/> YES	<input type="checkbox"/> NO	_____

A = Drive Stun C = Munitions E = Impact Weapons
 B = Probes D = Pepper Spray

Notification: Superv. Notified: YES NO At Scene: YES NO Name / DPSST _____

Narrative:



Tips and Techniques

Portland Police Bureau

VOL. XL

No. 14

July 19, 2004

Use of Force Report

The following needs to be reviewed carefully by all sworn and nonsworn Police Bureau members who will write or process the new Use of Force Report:

On August 1, 2004, the Police Bureau will adopt the new Use of Force Report. The report has been developed and will be implemented because of the continued review of Police Bureau policies and practices and because it brings the Police Bureau inline with many other law enforcement organizations around the country that already require this type of reporting.

The Use of Force Report will allow the Police Bureau to count, report and track the various uses of force by Police Bureau members during the course of their duties. The data will enable the Training Division to evaluate training and to recommend changes to training and policy, and will also aid in the continuing efforts of the Police Bureau to be accountable to the community - a critical element of community policing.

The majority of the report is a series of checking boxes and filling in lines to collect data and statistics. On the back, lower portion, of the report there is a section for a narrative. It is important that each Use of Force Report contain a complete and thorough narrative explaining the use of force and its justification. **Note:** You may write the narrative in another report such as a Custody or Investigative Report and refer to it in your Use of Force Report.

Every Bureau member who uses force, as defined in Directive 1010.20, and/or points a firearm, Taser or impact munitions at a person, shall use the Use of Force Report in addition to any other report currently required by Bureau policy. However, when more than one officer points a firearm or impact munitions at a person during an incident, only one officer is required to complete the Use of Force Report and document the pointing of weapons by other officers at the scene. The Use of Force Report condenses many other reports that are already used by Police Bureau members, including the Taser and Less Lethal (typically beanbag) reports. Members may discontinue use of those reports, but again, a narrative is still required.

Questions related to the completion of a Use of Force report should be directed to a supervisor.

The following are three scenarios that should help clarify the Bureau's policy on using the Use of Force Report:

Example #1: Officer Smith is a cover officer for Officer Jones at a verbal disturbance in a downtown nightclub. Upon arriving, Officer Smith applies a control hold on one of the subjects and escorts him out of the area to be interviewed. The force used by Officer Smith is not "...readily capable of causing injury."¹ Officer Smith subsequently releases the subject, without arresting him, uninjured. No Use of Force report is required for the control hold used in this incident.

¹ Ref. Directive 1010.20

Example #2: Officer Debry responds to SW 6th/Yamhill to a report of a man with a knife. Officer Debry parks a block away and waits for cover officers. However, before cover can arrive, the suspect approaches Officer Debry. From a distance of about 30 feet Officer Debry draws her pistol, points it at the suspect and orders him to drop the knife and lie on the ground. The suspect immediately complies and is taken into custody when cover officers arrive. Officer Debry must complete a Use of Force Report for pointing a firearm at a person - this is in addition to any other reports that she writes as a result of this incident. However, if the cover officers pointed firearms at the suspect, Officer Debry can document their involvement (pointing of a firearm) on the Use of Force Report and in her narrative report without the necessity of the covering officers completing a Use of Force Report.

Example #3: Officer Peel responds to a fight and briefly handcuffs one of the combatants, searches her and places her in his police car. After some investigation, it is determined that the subject in Officer Peel's car will be released. Officer Peel does so, but is required to complete a Use of Force Report to document the handcuffing of a subject, consistent with Bureau policy.

The following are step-by-step instructions to complete the Use of Force Report. There is also an example of a Use of Force Report attached to aid the user.

Introductory Section

Self explanatory; complete as you would other Police Bureau reports.

Conditions

Lighting Conditions:

This refers to the lighting conditions where the use of force occurred. It may refer to lighting conditions outdoors or the lighting conditions found inside a building, dwelling or other location. Therefore, an officer may report the lighting conditions as "low light" on a bright sunny afternoon because the use of force occurred in a dimly lit basement. Conversely, an officer might report the lighting conditions as "bright" on a dark rainy night because the use of force occurred in a brightly lit residence.

Applicable Suspect Conditions:

01 Actually armed: Checking this box means the suspect was actually armed with a weapon, whether or not the weapon was used. This includes: firearms, knives, clubs, brass knuckles or other devices that have been manufactured or modified or other items that can be used as weapons.

02 Reported to be armed: Checking this box means the suspect was reported to be armed. This information can be conveyed via police radio or by information gained by officers by some other means.

03 Assaulted officer: Self-explanatory

04 Assaulted citizen: Self-explanatory

05 History of violence: Checking this box means the officer knew of the suspect's history of violence prior to using force.

04-14

Page 2 of 4

Submitted by: Commander Dave Benson

Original Issue Date: July 19, 2004

Original #: Vol. XL, No. 14

06 Failure to comply: Checking this means that the suspect is not actively physically resisting a police action, but is failing to comply. In certain situations an officer may be able to articulate that, in addition to failing to comply, the suspect is also indicating an "intent to engage in physical resistance" by means of clenching his/her fists, tensing muscles, etc. that could prompt an officer to check this box and box #07.

07 Engaged in or indicated the intent to engage in physical resistance: Checking this box means that the suspect is engaging in or intends to engage in behaviors that may necessitate the use of physical control by officers to control the suspect's actions.

08 Engaged in or indicated the intent to engage in aggressive physical resistance: Checking this box means that the suspect is engaging or intending to engage in behaviors that may necessitate the use of impact weapons to control the suspect's actions.

09 Other: This would be conditions not specifically referred to in #'s 1-8.

Under the Influence: Self-explanatory

Event Conditions

01 High-Risk Incident: Checking this box means the use of force arose out of a high-risk incident that could include high-risk vehicle stops, maintaining a perimeter on a location containing a suspected burglar, etc.

02 Search Warrant: Self-explanatory

03 Other: Many incidents cannot be easily categorized and will fall into the "other" category. These could include a foot pursuit, a domestic violence call, or a call to a report of an intoxicated individual.

Use of Force/Control Necessary to:

This requires that officers evaluate and check every box that applies. If a suspect engages in behaviors not listed in one of the eight categories, officers should write in the applicable conditions in either box #06 or #07.

Warning Given Before Deployment:

Self-explanatory

Control

Officers need to address every category even if it is only to check the "not applicable" box.

Physical Control: Check all that apply

Impact weapons: Check all that apply

Pepper Spray: Record the distance and number of sprays.

04-14

Page 3 of 4

Submitted by: Commander Dave Benson

Original Issue Date: July 19, 2004

Original #: Vol. XL, No. 14

Pointing of Firearm or Impact Munitions: Officers will complete this section when they point a firearm or impact munitions directly at a person, to include depressed or low ready. This does not include firearms or impact munitions that are drawn for purposes of a building search, perimeter, or other high-risk situations where the weapon is not pointed at a person. Officers engaged in approved training are exempt from this requirement. When officers are involved in situations where more than one officer points a firearm or impact munitions at a person during a single incident, only one officer is required to complete the Use of Force Report. However, the reporting officer shall list how many officers pointed a weapon and shall identify the officers by name and DPSST # in the narrative section of the report. Officers shall also note the number of subjects at whom officers pointed firearms or impact munitions.

Discharge of Firearms

Officers shall complete this section most frequently when a firearm is discharged at an animal. In situations where officers discharge a firearm at a person, the report shall be completed by the detective investigating the incident.

Impact Munitions

Officers employing less lethal impact munitions shall complete this section of the report and shall report impact areas on the diagram on page 2 of the report.

Taser

Officers who deploy the Taser, including pointing the Taser at a person, shall complete this section of the form and report impact areas on the diagram below it.

Injuries

Injuries sustained by either the suspect or officer as a result of the use of force shall be reported in this section.

Checked by medical: This section needs to be completed in every instance in which force is used.

Taken to Hospital: Self-explanatory

Notification:

Indicate if a supervisor was notified and if he or she responded to the scene.

Narrative:

Except for very few situations, it is anticipated that the majority of use of force reports officers write will require continuation pages to be attached. Officers are encouraged to write as much as necessary to fully document the use of force.


DERRICK FOXWORTH
Chief of Police

04-14

Page 4 of 4

Submitted by: Commander Dave Benson

Original Issue Date: July 19, 2004

Original #: Vol. XL, No. 14

PORTLAND POLICE BUREAU, CHIEF'S MEMORANDUM RE: USE OF FORCE REVISIONS
(SEPTEMBER 8, 2005)



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

VERA KATZ, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Service Compassion Integrity Excellence Respect

MEMORANDUM

READ AT ROLL CALLS AND POST

September 8, 2004

TO: All Bureau members
SUBJ: Use of Force Revisions

The Police Bureau adopted the Use of Force Report (UFR) on August 1, 2004. As with any new policy change, we recognized that there would be undoubtedly be revisions in the UFR as it was put to practical use. The purpose of this memorandum is to make a change in how the UFR is currently being used and to clarify what it should not be used for based on internal feedback.

Current Situation

Members are currently required to complete a UFR each time they handcuff a person regardless if additional force was used to take the person in custody.

Change in Policy

Effective immediately, members are no longer required to complete a UFR on situations where handcuffs are applied and no other force is used. Examples include custody arrests, Detox holds and persons detained and later released. However, as we have always done, members must document the application of handcuffs in a police report (Custody, Incident or Special) that fully and completely describes the circumstances leading to the application of handcuffs.

It is important to remember that the UFR is not a substitute for any other category of report. For example, some officers have written only a UFR on a Mental Hold or Detox situation without completing the required Incident Report. **These reports are still required.**

Finally, members are reminded in situations where multiple officers point a firearm at a person(s) during a single event, only one officer needs to document this on the UFR. This most typically occurs during search warrant service.

I appreciate everyone's continuing patience as we use the Use of Force Report. I believe that it is a valuable tool that will allow us to accurately report our agency's activities and show that our members continue to do an excellent job of serving our community.

DERRICK FOXWORTH
Chief of Police

An Equal Opportunity Employer
Police Information Line 503-823-4636, TTY (for hearing and speech impaired) 503-823-4736

PORTLAND POLICE BUREAU, COMMUNICATION RESTRICTION ORDER (JANUARY 31, 2005)



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

TOM POTTER, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Integrity Compassion Accountability Respect Excellence Service

MEMORANDUM

Date: _____

To: _____

Subject: Communication Restriction During Investigation
Portland Police Case # _____

The purpose of this communication restriction order is to safeguard the integrity of the investigation. A thorough investigation based on each individual's independent recall and perception will lend credibility to each member's testimony and the investigation as a whole. In following this theme, it is strongly recommended that you do not review media coverage or other outside information regarding this incident.

Regarding whom you may communicate with. You are hereby ordered not to speak or communicate with anyone inside or outside of the Portland Police Bureau, other than those identified below, regarding any aspect of the above cited case. You may discuss this case with criminal investigators, Internal Affairs Division investigators, Deputy City Attorney's assigned to the case, Deputy District Attorney's assigned to your case, your spouse, your clergy, your union representative and/or your attorney, as well as your medical and/or psychological professional.

You may meet with Traumatic Incident Committee members. You should avoid directly discussing factual aspects of the shooting as the TIC members are directed to steer the conversation away from the facts and instead focus on the emotional issues confronting you.

The Communication Restriction Order will remain in effect until rescinded in writing by order of the Chief of Police or his designee, currently the Assistant Chief of Investigations. It is quite likely that the order will be lifted as soon as practical after the Grand Jury has reviewed the case and has rendered a verdict, or if no Grand Jury is held, as soon as Detectives have completed their investigation. We will make every effort to rescind Communication Restriction Orders as rapidly as possible, while respecting the necessity of maintaining the integrity of the investigation.

Failure to follow this order will place you in violation of 315.00- Laws, Rules and Orders and possible other city rules and directives. Therefore, the failure to follow this order may result in discipline, up to and including termination.

Detective Division

Date/time

I have read and understood this directive

Bureau Member

Date/time

Witness

Date/time

White: Case File

Yellow: Union

Pink: Member Copy

Community Policing: Making the Difference Together
An Equal Opportunity Employer

Police Information Line 503-823-4636, TTY (for hearing and speech impaired) 503-823-4736, www.portlandpolicebureau.com

**Portland Police Bureau
Detective Division
STANDARD OPERATING PROCEDURE**

S.O.P. 37

June 21, 1988

Revised: August 7, 2004

Review: August 7, 2005

I. SUBJECT

Detective Division and Homicide Detail Response to Officer Involved Shootings, Officer Use of Deadly Physical Force, and In-Custody Deaths.

II. PURPOSE

To establish notification procedures and to provide guidelines for responding to officer involved shootings, use of deadly physical force, and in-custody deaths.

III. PROCEDURE

When an Officer Involved Shooting, Use of Deadly Physical Force, or in-custody deaths occur, the following procedure will be followed:

1. Standard notifications of the on-call Homicide Detail Sergeant and on-call Homicide Up-team will occur. The Homicide Detail Sergeant and Up-Team will be called on all officer involved shootings (that are not for the destruction of an animal or at an approved firing range) regardless if anyone was hit and the appropriate notifications will be made. They will also be called on all officer involved uses of deadly force and in-custody deaths.
 - a. On-duty Sergeants and Detectives from the Weekend Morning Relief and Afternoon Relief will respond along with the on-call Homicide Sergeant and Homicide Up-team. On-call Crime Scene Detectives will also respond directly to the scene. Additional teams of on duty Detective may also be called to the scene. The first arriving Sergeants or Detectives will:
 - 1) Secure and preserve the integrity of the scene, if not already accomplished by uniform personnel **per directives 640.10 and 660.10. (Appendix A)**
 - 2) **Separate all witness and involved members. If members are separated but within sight of each other, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place.**

- 3) Separate citizen witnesses.
 - 4) Coordinate with uniform to obtain a comprehensive list of all witnesses contacted.
- b. The Homicide Detail Sergeant will ensure notification of the following **per Directive 1010.10**:
- 1) Up-Team and Crime Scene Team
 - 2) District Attorney
 - 3) Persons Crimes Lieutenant
 - 4) Commander, if unable to make personal contact with the Lieutenant (The Commander will notify the Assistant Chief)
 - 5) Criminalist
 - 6) Medical Examiner
 - 7) PIO
 - 8) East County Major Crimes Team
 - 9) Other notifications as required
- c. Involved officers, unless injured, will remain at the scene to orient the Homicide Up-Team upon their arrival, unless the officers' demeanor or safety dictates the need to be transported to the Detective Division immediately. Only the Homicide Detail Sergeant can approve the release from the scene.
2. Homicide Detail Sergeant Responsibilities: utilize Homicide Supervisor's Checklist (Appendix B)
- a. Ensure above notifications have been completed.
 - b. Assume responsibility for the crime scene and supervision of the entire investigation, to include assigning, directing and coordinating follow-up work by the detectives.
 - c. Coordinate with Uniform Sergeant(s), and other investigative teams any work that needs to be done for the investigation.
 - d. Obtain the medical status and/or verify the extent of injury or death to the suspect/officer. Ensure the seizure and receipt of clothing as evidence and the identification of medical personnel on duty.
 - e. Ensure that a count down of the involved member's weapon has been completed and that a replacement weapon from Training Division is provided.

- f. Ensure Communications Restrictions Orders are issued in accordance with Directive 1010.10.
 - g. Ensure trajectory analysis to determine each shot's bullet path and point of impact, if determinable will be conducted and reported in accordance with Directive 1010.10.
3. Responsibility of Up-Team Homicide Detectives:
- a. It is the responsibility of the Primary Detectives to conduct a thorough and unbiased investigation into the use of deadly force, including what led up to the incident, the incident itself, and actions of members after the incident.
 - b. The Primary Team should not become involved in extraneous interviews, neighborhood canvassing, scene processing, etc.
 - c. The Primary Team Detectives will **strive to obtain a contemporaneous interview with all involved members. All interviews wherein material facts of the case are discussed will be tape-recorded in its entirety.**
 - d. Detectives will ask involved members to participate in a voluntary interview. The request, date and time and response of the members will be noted in the Detective's investigative report.
 - e. **Examine all weapons of the involved members and witness members, primary, back-up, AR, and less-lethal. Weapons will be examined using a standard format on the "Weapons Examination Form" (appendix C) Ensure Criminalists photograph each weapon with magazines and rounds, as depicted in appendix C.**
 - f. Detectives will identify whom the involved and witness members have spoken to regarding the incident.
 - g. **Interview all responding medical personnel and attend autopsy when applicable. When an autopsy is performed, a copy of the medical examiners protocol will be attained and included in the case file.**
 - h. Detectives will prepare a complete case notebook for distribution.
 - i. Detectives will prepare a presentation for the Use of Force Review Board.
4. Responsibility of Crime Scene Detectives and secondary investigators as directed by Homicide Sergeant.
- a. Processing physical evidence at the scene.
 - b. Prepare a diagram of the scene.
 - c. Assist in interviews of sworn and civilian witnesses as identified. (All interviews should be tape-recorded).

- d. Attend all investigative meetings.

Guidelines for interviews of officers involved in shootings, use of deadly physical force, and in-custody deaths.

Involved officers will not be "ordered to participate". The only exception would be an agreement discussed and planned by the Homicide Detail Sergeant and the Deputy District Attorney on scene.

A. Shooting Scene

1. The on-scene briefing is a brief overview of the incident given to detectives or others as necessary, for the purpose of accurately processing the scene. An on-scene briefing may include but would not be limited to, the identification of crime scene(s), the identification of other members present, the identification of potential witnesses, and the identification of evidence at the crime scene(s).

B. Officer Information

1. Explain investigative process and set appointments for an interview (assuming officer has consulted with attorney furnished by the union).
2. The Persons Crime Lieutenant will issue a Communications Restriction Order to the involved/witness officers and any other individuals deemed appropriate.
3. Allow time for personal considerations:

The involved member(s) will be afforded the benefits of the current collective bargaining agreement throughout the investigation. They will be provided time to discuss the incident with his/her immediate supervisor, RU manager, union representative, and private attorney.

C. Interviews

Detectives will utilize the attached interview checklist (Appendix D) and ensure all relative questions are asked. Investigators will take time to meet with Detective Command Staff to discuss interview questions and issues prior to interviewing the involved members. When the involved member is of a command rank the detectives will ensure that a member from the investigative branch, who is of equal or higher rank than the involved member, be present during the interview.

D. Post Interview

1. Ask that the officers re-contact detectives for a second interview should they recall additional information.
2. Explain judicial process to the officer (Grand Jury or possible Coroner's Inquest).
3. Ensure an explanation is given for altered duty status and the requirement to consult with a psychiatrist or psychologist.
4. Ensure an explanation is given on all possible civil litigation and resources available to them.

E. Other responsibilities

1. Conduct interviews of other officers or civilian witnesses that may have arrived at the Detective Division, other than those interviewed by the secondary team(s).
2. Dictate all necessary reports.

Detective Division/Homicide Detail Response
to Officer Involved Shootings, Officer Use of
Deadly Physical Force, In-Custody Deaths
Page 6

S.O.P. 37
June 21, 1988
Revised: August 7, 2004



STEVEN BECHARD

Commander

Detective Division

RMS/DH/db

**HOMICIDE SUPERVISOR'S CHECKLIST
OFFICER-INVOLVED SHOOTING**

CASE NAME: _____ DATE/TIME: _____

LOCATION: _____

LEAD INVESTIGATOR: _____

CASE NUMBER: _____

SUBMITTED BY SERGEANT: _____

LEGEND: X = COMPLETED; O = NOT COMPLETED; N/A = NOT APPLICABLE

UPON NOTIFICATION

- ____ 1. Ensure Primary Investigator notification Date: _____ Time: _____
- ____ 2. Ensure Secondary Investigator notification Date: _____ Time: _____
- ____ 3. Ensure Lieutenant notification Date: _____ Time: _____
- ____ 4. Ensure Medical Examiner notification Date: _____ Time: _____
Name of Medical Examiner: _____
- ____ 5. Ensure Crime Scene Team notification Date: _____ Time: _____
- ____ 6. Ensure Identification Division notification Date: _____ Time: _____
- ____ 7. Ensure District Attorney notification Date: _____ Time: _____
Name of District Attorney: _____
- ____ 8. Ensure East County Major Crime Scene Team notification: Date: _____ Time: _____
Name of Detectives: _____
- ____ 9. Ensure Training Division notification: Date: _____ Time: _____

AT SCENE - UPON ARRIVAL - (STABILIZATION PHASE)

- ____ 1. Determine safe path into scene and single entry point into scene.
- ____ 2. Determine time arrived on-scene.
- ____ 3. Evaluate/ensure scene security - coordinate with Lieutenant.
- ____ 4. Establish the identity of the involved officer(s).
- ____ 5. Establish identity of all officers on-scene.
- ____ 6. Evaluate uniform personnel assignments - coordinate with Lieutenant.
- ____ 7. Ensure witness identification and separation - including police officers that are witnesses.
- ____ 8. Evaluate search warrant requirements with on-scene District Attorney and investigators.
- ____ 9. Ensure Detectives inquire regarding who involved officer(s) have spoken to about the incident.
- ____ 10. Ensure coordination between team members, Crime Scene Team, Identification Division, and Major Crimes Scene Team.
- ____ 11. Ensure adequate number of investigators are at the scene or en route.
- ____ 12. Evaluate investigative assignments - availability and experience.
- ____ 13. Coordinate on-scene investigation and other related scenes.
- ____ 14. Direct/coordinate investigations at hospital - evidence collection.

AT SCENE - UPON ARRIVAL - (STABILIZATION PHASE)(continued)

CASE NAME: _____ CASE NUMBER: _____

- ___ 15. Evaluate/coordinate the need for special equipment.
- ___ 16. Verify Public Information Officer is at scene, or en route.
- ___ 17. Verify Medical Examiner status - on-scene, or en route.

AT SCENE AND DURING INVESTIGATIVE PHASE

- ___ 1. Ensure immediate area canvass - location of additional witnesses.
- ___ 2. Coordinate on-scene investigation and subject search, as required (BOLO/APB, person of interest file, known subjects, address checks).
- ___ 3. Coordinate and ensure thorough field searches, as required.
- ___ 4. Ensure/coordinate lines of communication between interviewing investigators and scene personnel.
- ___ 5. Coordinate investigative effort with other departmental entities.
- ___ 6. Coordinate on-scene witness statements.
- ___ 7. Coordinate investigative effort with other police agencies.
- ___ 8. Ensure all physical evidence has been located, identified and collected from all scenes.
- ___ 9. Coordinate on-scene briefings with Homicide Detectives, Deputy District Attorney, Medical Examiner, and Identification Division emphasizing team approach.
- ___ 10. Coordinate press releases with Public Information Officer.
- ___ 11. Request on scene briefing with involved officer(s) or witness officer(s). Document response.
- ___ 12. Ensure Homicide Detectives have asked involved officer(s) for a voluntary statement.
- ___ 13. Conduct on-scene critique, with all concerned personnel, prior to leaving scenes - includes secondary scenes and hospitals.
- ___ 14. Ensure appropriate charges are placed on subject.
- ___ 15. Schedule, and coordinate with Lieutenant, briefing with Division Commander, Assistant Chief of Investigations, and Assistant Chief of Operations.
- ___ 16. Ensure all personnel involved in investigation have the correct case number.
- ___ 17. Conduct an on-scene critique with Investigative Team to ensure complete scene processing and evidence collection.
- ___ 18. Ensure all weapons have been accounted for and weapon inspections are conducted as instructed in S.O.P. 37
- ___ 19. Ensure team meetings occur, as time allows, prior to major interviews.

OFFICE

- ___ 1. Inform supervisors of case progress.
- ___ 2. Coordinate/insure expeditious flow of evidence through Crime Lab entities.
- ___ 3. Ensure appropriate background investigations are completed.
- ___ 4. Ensure expeditious follow-up of all pending leads.
- ___ 5. Ensure completion of police reports.
- ___ 6. Coordinate, as required, obtaining reports from other entities.
- ___ 7. Coordinate release of officer's firearm(s).
- ___ 8. Conduct team briefing and critiques as training process.
- ___ 9. Ensure Crime Lab evidence was processed and preliminary results obtained.
- ___ 10. Ensure complete and organized case file is prepared and maintained.

Portland Police Bureau Detective Division Firearms Inspection Checklist

Case #/ Location: _____
Officer Name/DPSST #: _____
Date/Time Inspection completed: _____
Inspection done by- Name/DPSST #: _____

HANDGUN (Circle the applicable data or fill in data/complete all listed questions)

*Brand: Glock Other: _____
 *Action type: Semi automatic Revolver Other: _____
 *Caliber: 9 mm Other: _____
 *Model: 17 19 26 Other: _____
 *Serial number: _____
 *Bureau owned: Yes No
 *Ammunition if known: 147 Gr. (FEDERAL/JHP/P9HST2) Other: _____
 *Live round in chamber: Yes No
 *Number of rounds in primary magazine (magazine in weapon): _____
 *Any evidence of malfunction? No Yes **(If Yes: Photograph all sides of firearm prior to clearing and describe in detail.)**
 *Number of rounds in extra magazine(s) (note where these magazines were carried, pouch on gun belt, etc.): _____
 *Number of rounds in extra magazine: _____
 *Weapon/ammunition photographed: Yes No
 *Weapon seized: Yes No
 *Disposition of weapon: ID Property Room Crime Lab
 *Property Evidence Receipt number: _____
 *Replacement Weapon Issued: Yes No

AR-15

*Brand: Colt Other: _____
 *Model: AR-15 A2 Other: _____
 *Serial number: _____
 *Yellow safety block in magazine well: Yes No
 *Ammunition if known: 55 Gr. (Federal/BTHP/T223E) Other: _____
 *Live round in chamber: Yes No
 *Magazine inserted in magazine well: Yes No
 *Number of rounds in primary magazine (either in magazine well or in front pouch on carry strap): _____
 *Number of rounds in secondary magazine (typically in pouch on butt stock) _____
 *Where was weapon located (rack in vehicle, trunk, etc.): _____
 *Any evidence of malfunction? No Yes **(If Yes: Photograph all sides of firearm prior to clearing and describe in detail.)**
 *Weapon/ammunition photographed: Yes No
 *Weapon seized: Yes No
 *Disposition of Weapon: ID Property Room Crime Lab
 *Property Evidence Receipt number: _____

Portland Police Bureau Detective Division Firearms Inspection Checklist

Case #/ Location: _____ (Page 2)
Officer Name/DPSST #: _____
Date/Time Inspection completed: _____
Inspection done by- Name/DPSST #: _____

SHOTGUN

*Brand: Remington Other: _____
*Model: 870/Pump Other: _____
*Serial Number: _____
*Live round in chamber: Yes No
*Number of rounds in mag tube: _____ Type of ammo: OO buck Slug
*Number of rounds in side saddle carrier: _____
*Number of rounds in butt stock carrier: _____
*Any evidence of malfunction: No Yes **(If yes, photograph all sides of firearm prior to clearing and describe in detail)**
*Where was weapon located (rack in vehicle, trunk, etc.): _____
*Weapon photographed: Yes No
*Weapon seized: Yes No
*Disposition of weapon: ID Property Room Crime Lab
*Property Evidence Receipt Number: _____

LESS LETHAL/BEAN BAG SHOTGUN

*Brand: Remington Other: _____
*Model: 870/Pump Other: _____
*Serial Number: _____
*Live round in chamber: Yes No
*Number of rounds in mag tube: _____ Type of ammo: Accusox Other: _____
*Number of rounds in side saddle carrier: _____ (Yellow in color)
*Number of rounds in butt stock carrier: _____
*Any evidence of malfunction: No Yes **(If yes, photograph all sides of firearm prior to clearing and describe in detail)**
*Where was weapon located (rack in vehicle, trunk, etc.): _____
*Weapon photographed: Yes No
*Weapon seized: Yes No
*Disposition of weapon: ID Property Room Crime Lab
*Property Evidence Receipt number: _____

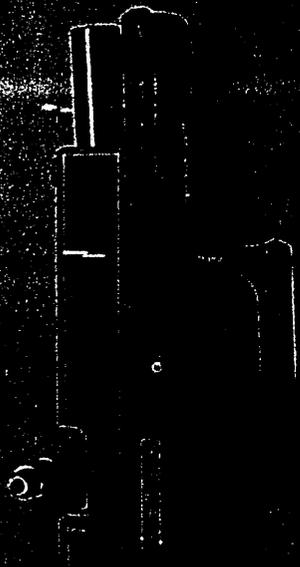
TASER

*Model: M26 X26
*Serial Number: _____
*Air cartridge fired: Yes No Serial number of cartridge: _____
*Air cartridge on the Taser: Yes No
*Extra air cartridges: Yes No Serial Numbers: _____
*Seized: Yes No
*Disposition of weapon: ID Property Room Training Division
*Property Evidence Receipt number: _____

1 RD IN CHAMBER
13 RDS IN PRIMARY
MAGAZINE



PPB CASE #
OFFICER BILL JONES
#40013
04:07:05 14:00 hrs
BLOCK 17 SW# DWU091



1-MAG FROM BELT POUCH
17 RDS
1-MAG FROM BELT POUCH
17 RDS

Interview outline \ checklist

Witness and involved officer interviews related to use of deadly force and in-custody death investigations

I. Officers Background

Training and experience Prior law enforcement Prior Military experience
 Other employment

Basic Academy	Y / N
Advanced academy	Y / N
In-Service Training	Y / N
Active Shooter	Y / N
Street Survival	Y / N
AR-15	Y / N
Less Lethal Shotgun	Y / N
Taser	Y / N
CIT	Y / N

Involvement in any other deadly force encounters
 Current Assignment Shift Days off

II. Physical / Mental State of Involved Officer

Generally how was the officer feeling that day?
 Illnesses?
 Amount of sleep?
 Normal amount of sleep?
 Use of any medication (prescription and non-prescription)
 Use of Narcotics or other intoxicants
 Use of Alcohol
 Any arguments or disagreements with spouse, child, supervisor, partner etc.?
 Any other factors that may have affected the officers mental state

III. Officers Activity Prior to the Incident

Tell about the 24 hour period prior to the event
 Activity the night prior to the event (Movies, TV, Party etc)
 Trip to work
 Activity prior to work (Court, Workout, Golf, Sleep etc.)
 Work activity prior to incident? (Number and Type of calls)

IV. Prior information the officer had

Did the officer have any prior contacts with the involved subject?
 Had the officer been on any prior calls to the location?
 How familiar is the Officer with the geographic area?
 Did the officer have any prior information about the individual or location?

(roll call info, teletypes, radio broadcasts, MDT messages, other officers, TPS files).
___ Any other information that the officer had about the person or location

IV. Details of the incident.

___ (obtain a diagram from officer depicting scene to include positions and locations)

- ___ How did the officer get to the location? (code or not, route taken, speeds, traffic etc.)
- ___ Where/ how did the officer park and approach?
- ___ Was the vehicle used for cover? Describe
- ___ If traveling on foot describe route, running, walking, use of cover, and what objects were available for cover?
- ___ While travelling to location or making approach, were there conversations with partner (plans, tactics)
- ___ Radio transmissions while in route
- ___ What was the officers thought process while in route and approaching?
- ___ Describe the topography of the areas involved. (footing, obstacles, high ground, possible threats)
- ___ Describe the lighting at the location
- ___ What cover was available
- ___ Were you fully identified as law enforcement officers?
- ___ Were other officers present and where were they before, during and after the encounter?
- ___ Were there other witnesses or participants? What were they doing before during and after?

- ___ Describe in detail what was observed by you that made you take the actions you did.
- ___ Describe how the actions of the subject made you feel
- ___ What were you thinking during the encounter?
- ___ What was your thought process?

- ___ What did you say and how did you say it.
- ___ What did other officers say?
- ___ What did the suspect say?
- ___ Did you hear anyone else (other suspects, witnesses)

- ___ Describe when and why you drew your weapon.
- ___ Describe when and why you pointed your weapon at the suspect.
- ___ Describe your stance, grip, (flashlight in hand), cover.
- ___ Did you use your sights when you fired?
- ___ What was your point of aim?
- ___ What was your backdrop?
- ___ What do you think the distance was between you and the subject?
- ___ How many rounds do you think you fired? What sequence did you fire these rounds?
- ___ Do you know where your rounds impacted
- ___ What was the subject's reaction?
- ___ Did you reload? If so what did you do with the magazine you removed?
- ___ How is your weapon usually carried? Number of magazines, rounds?

- ___ Were other force options available? What were they and why were they used or not used?

VI. Immediately after the encounter

- ___ Describe your actions immediately after the encounter?
- ___ Did you approach the subject?
- ___ Who approached the subject?

- ___ Was the subject handcuffed? Who did the handcuffing?
- ___ When and why did you lower your weapon?
- ___ When and why did you holster your weapon?
- ___ Was the subject moved at all? How was the subject positioned?
- ___ Was medical assistance requested and did they respond?
- ___ What was broadcast on the radio?
- ___ Who approached you and what was said or done?

___ In hindsight do you think incident could have been approached in a way that presented less risk to yourself or others. How?

___ Do you have any suggestions for improving relevant PPB training?

___ Has anyone discussed the details of this case with you or have you learned information about the incident from sources other than your own observations?

VII. In-custody death investigations

___ What contact did you have with the deceased?

___ What contact did you observe others having with the deceased?

___ What were your observations of the subjects physical condition prior to the subject being restrained?

___ How was the deceased restrained and what tactics were used?

___ How was the deceased positioned? Where was the deceased positioned, by whom, and for how long?

___ Did you observe any injuries to the deceased?

___ When did you notice the deceased was having medical problems?

___ How did you and others respond to the medical problems?

___ What is your training regarding the positioning of restrained persons?

Case Book Check list

Case # _____

ITEM	CHO X6	RU 1 ea.	Police Liab	IPR	REC	Det	Trng X3	IA X3
CASE BOOK CHECKLIST								
DETECTIVE SUPERVISOR CHECKLIST								
PPDS								
OFFICER(S) REPORTS								
TAPED STATEMENT TRANSCRIPTS								
DETECTIVES REPORTS								
PROPERTY EVIDENCE RECEIPTS								
CRIMINALISTS REPORTS								
CAD REPORT								
CRIME SCENE DIAGRAM								
MEDICAL EXAMINER'S REPORT								
STATE CRIME LAB REPORT								
SUBPOENAS FOR RECORDS								
MISCELLANEOUS								
CONSENT TO SEARCH FORMS OR WARRANT								
BOEC CALLS AND RADIO TRANSMISSIONS								
GAG ORDER & RESCINDMENT								
CRIME SCENE PHOTOS (PERTINENT)								
AUTOPSY PHOTOGRAPHS								
MEDICAL REPORTS								
DELIVERED DATE & BY								

PORTLAND POLICE BUREAU
Internal Affairs Division

S.O.P.:	<u>8</u>
Effective:	<u>07/15/05</u>
Revision:	<u>New</u>
Review:	<u>07/15/06</u>

I. SUBJECT

IAD Investigations of:

Officer involved shootings.

Serious injury caused by an officer that requires hospital admission.

All in-custody deaths.

Accidental discharges that occur outside the Shooting Range.

Discretionary cases referred by the Chief or Branch Chief.

II. PURPOSE

This SOP establishes procedures for the investigation of the above mentioned complaints involving Bureau members that will be presented to the Performance and Use of Force Review Boards.

III. POLICY

IAD will review all officer involved shootings and other cases as mentioned above. The review will consist of a list of all relevant policies and a comparison of the officers' actions related to those policies. The IAD Investigator will then present the investigation to the Use of Force Board.

IV. PROCEDURE

1. The IAD Captain will receive a copy of the completed investigation from Detectives. If it is an officer involved shooting, the case will be reviewed and assigned to at least two investigators.
2. IAD will have 10 weeks (70 days) to complete the investigation. The 10 weeks start on the day after IAD receives the case file from Detectives.
3. The investigators will review the case and determine with the assistance of the IAD Captain which policies are relevant. The investigators will then review the reports, interview the involved officers and witnesses (if necessary), and conduct any follow up necessary to determine whether the actions the officers took were in or out of policy.
4. The investigators will then prepare a report showing the relevant policies and procedures compared to the officers' actions.

5. For officer involved shootings / use of force cases, at the conclusion of the IAD investigation, IAD will notify the officer that the report is complete and allow fourteen days (from notification) for the officer and his/her representative to review the Detective and IAD reports. The review will take place in the IAD office. No reports will be copied or taken from the IAD office. The Captain or his designee will prepare a memo to file, noting the reports have been reviewed and any comments made by the officer.
6. IAD will send the case along with a copy of Training Division's report to the Review Board/Discipline Coordinator who will schedule the case for review by the Performance and Use of Force Review Board. The IAD investigators will prepare a presentation of the case and present the case to the Performance and Use of Force Review Board.

RODERICK BEARD, Sr.
CAPTAIN
Internal Affairs Division

ALASKA DEPARTMENT OF PUBLIC SAFETY OPERATING PROCEDURES MANUAL
(AUGUST 1, 2002)

**CHAPTER 107
USE OF FORCE**

Chapter Revised 08/01/2002

107.010 INTENT OF THIS CHAPTER

The Department policies established in this chapter are not intended, and should not be construed, to be used as evidence of the existence of any higher duty of safety or care than is otherwise provided by law. Rather, violations of this chapter are to be used solely to form the basis for departmental administrative action.

107.020 USE OF FORCE AND DEADLY FORCE

A. Definitions. As used in this chapter,

1. "force" means any deliberate bodily impact or restraint for the purpose of gaining control of a person, or the use of explosives and distraction devices even if not directed toward a person, unless used for animal or avalanche control; "force" includes use of OC, chemical agents, electronic weapons, and deadly force.
2. "deadly force" means force used with the intent of causing, or knowing that there is a substantial risk of causing, death or serious physical injury; "deadly force" may include the use of a motor vehicle or vessel to collide with an occupied motor vehicle or vessel.
3. "firearms instructor" means a person who has successfully completed a Department approved firearms instructor course for the type of weapons to be fired.
4. "authorized electronic weapon" means an M26 Advanced Taser or subsequent model of electronic weapon having similar characteristics and operation.
5. "air powered OC projectile delivery system" means a Jaycor Tactical Systems air powered launcher, designated models SA200, A85 or AM10 or subsequent model having similar characteristics and operation.

B. Before using force. When practical, a verbal warning should be given before using force, to communicate that force will be used if the officer's orders are not obeyed.

C. Using force: general. Officers

1. may use force only in accordance with the policies set out in this chapter, and may not ever use force as punishment or in retaliation;
2. may use force only to the extent that it is reasonably necessary in any given situation to accomplish the officer's lawful objectives, such as making an arrest, preventing an escape, in defense of the officer or another person, or other situations where physical control of another person is necessary;
3. should be reasonable in their selection of a level of force, and should not use more force than is necessary in any situation. However, there is no requirement to use, or attempt to use, a lesser amount of force if that is not practical;
4. should keep in mind that the proper officer response can be thought of as a continuum that includes several stages (from lowest to highest): officer presence, verbal persuasion, directions, and commands; "soft" empty hand control and OC spray; OC projectiles; "hard" empty hand control, electronic weapons and batons; and deadly force. The appropriate amount of force to be used must be based upon the combination of many factors, such as the subject's age, size, sex, ability to escalate his use of force, skill level, and background; the officer's age, size, sex, training, immediate physical condition (injuries, exhaustion); and the surrounding physical and social environment.

- D. Additional requirement for use of deadly force.** The Department, recognizing the integrity of human life, authorizes officers to use deadly force against another person only when, in addition to complying with the general policies regarding use of force, the officer has no other reasonable and practical alternative, and reasonably believes deadly force is necessary
1. to save his or her own life or the life of another;
 2. to prevent serious physical injury [Ref. AS 11.81.900 (51)] to the officer or another; or
 3. because there is probable cause to believe the person has committed a felony using deadly force against another, and will immediately endanger life.
- E. Negligent discharges of firearms.** The Department recognizes that every shot, even an inadvertent one, poses a risk of injury. Every inadvertent or negligent discharge of a firearm must be reported as provided in section 107.030, and may subject the officer to discipline.
- F. Warning shots prohibited.** Warning shots will not be fired.
- G. Other discharges of firearms.** The Department recognizes that there may exist special circumstances which justify the discharge of a firearm not at a person, animal, or on a firing range. Officers are cautioned that every shot fired poses a risk of injury and no firearm should be discharged without due regard for the consequences of that action.

107.030 AFTER FORCE IS USED OR A FIREARM IS DISCHARGED

- A. Use of force must be justified.** The Department recognizes that an officer's decision to use force must often be made in a split second and based on the minimal information then available. However, the officer's decision must be reasonable under the circumstances known at the time and may be subject to review by the department, other agencies, the courts, or the public.

It is important, therefore, that every officer using force or discharging a firearm be able to articulate the circumstances known at the time of the incident that justified the amount and nature of force used, or the discharge of the firearm.

- B. After force is used.** Each officer must complete a Vehicular Pursuit/Use of Force Report prior to going off duty if, in the performance of duty, an officer deliberately takes any of the actions listed in paragraph 1 except during training or while participating in a group operation reportable under paragraph C.
1. An individual report must be completed if an officer:
 - a. uses more force than is normal and incidental to handcuffing;
 - b. struggles with a person;
 - c. uses a pain compliance hold;
 - d. strikes a person with a part of the officer's body or with any object;
 - e. uses, prepares to use, or threatens to use OC (spray or OC projectile);
 - f. uses, prepares to use, or threatens to use an authorized electronic weapon;
 - g. uses, prepares to use, or threatens to use a baton or another object as an impact weapon;
 - h. uses an explosive or distraction device, other than for animal or avalanche control;
 - i. intentionally collides with an occupied vehicle or vessel; or
 - j. uses, prepares to use, or threatens to use a firearm or other deadly force.

12.110 HANDLING SUSPECTED MENTALLY ILL
INDIVIDUALS AND POTENTIAL SUICIDES

Reference:

Ohio Revised Code 5122.10 - Emergency
Hospitalization;
Examination; Disposition

- Procedure 12.175 - Use of Special Weapons and
Tactics Unit
- Procedure 12.180 - Use of Crisis Negotiations Team
- Procedure 12.400 - Offense Reporting, Miscellaneous
Reporting
- Procedure 12.555 - Arrest/Citation: Processing of
Adult Misdemeanor and Felony
Offenders
- Procedure 12.600 - Prisoners: Securing, Handling,
and Transporting
- Procedure 12.910 - Missing Persons

Policy:

Mental Health Response Team (MHRT) officers will be the first responders, when available, on all runs involving suspected mentally ill individuals. If two MHRT officers are available, they will be dispatched as a team. When necessary a cover car will be dispatched. If the run is an emergency and no MHRT officer is available, beat cars will be dispatched immediately and an MHRT officer from another district will be notified to respond. If the run is **not** an emergency and no MHRT officer is available, the nearest available MHRT officer from an adjoining district will be dispatched as the primary car.

An MHRT officer on the scene of a suspected mentally ill individual will be the primary officer handling the situation. They will also be responsible for transporting the individual, if necessary, to the hospital.

A supervisor will respond on all radio runs involving violent or potentially violent mentally ill individuals and when possible, will consult the MHRT officer on scene to decide on a course of action.

Document all encounters with suspected mentally ill individuals on a Form 316, Minor Accident/Aided Case/Mental Health Response Report. This will be in addition to any other reports made.

Any suspected mentally ill person with a mental hold or who voluntarily agrees, when found, will be returned to the facility that reported them missing. If the facility is unknown, the subject is violent, or from outside the Hamilton County boundaries, the suspected mentally ill person will be taken to University Hospital.

Information:

When officers arrive on the scene of a suspected mentally ill individual and the situation meets the criteria for activating the Crisis Negotiations Team or the Special Weapons and Tactics Unit, follow the steps as outlined in Procedures 12.175 and 12.180.

Mobile Crisis Team (MCT) members are employees of the Psychiatric Emergency Services Unit at University Hospital. The Mobile Crisis Team is an aid to Department personnel, providing around-the-clock, on-site psychiatric crisis intervention. Their aim is to help prevent harm to a suspected mentally ill person, or others, during psychiatric emergency situations requiring police response.

The University Hospital Center for Emergency Care (CEC) and Psychiatric Emergency Services (PES) areas will not provide a locked environment during triage for PES patients.

Procedure:

- A. Emergency Hospitalization without Medical Certificate Issued by a Qualified Physician, Ohio Revised Code (ORC) Section 5122.10:
 - 1. A police officer may take an individual into custody and transport him to a hospital if:
 - a. The individual is suspected to be mentally ill and likely to injure himself or others if allowed to remain at liberty.

2. ORC Section 5122.10 reads, "A person taking the respondent into custody pursuant to this section, shall explain to the respondent the name, professional designation, and agency affiliation of the person taking the respondent into custody; that the custody taking is not a criminal arrest; and that the person is being taken for examination by mental health professionals at a specified mental health facility identified by name."
3. Whenever there is any use of force or other significant police action with a state mental hold, sign appropriate criminal charges against the individual. This includes any use of force, use of chemical irritant, canine apprehension, or use of the taser, beanbag shotgun, 40mm foam round, or pepperball launcher.
 - a. When placing criminal charges, place a prisoner hold at the hospital according to Procedure 12.600. Have Police Communications Section (PCS) notify the hospital if the person is an unusual security risk.
 - b. Telephone the Hamilton County Justice Center (HCJC) Intake Office with the necessary information about the individual hospitalized only when placing criminal charges. Call before leaving the hospital.
 - c. Complete a Form 527, Arrest and Investigation Report and process according to Procedures 12.555 and 12.600.
4. Handcuff suspected mentally ill individuals during the transporting and processing phases when the individual's behavior is unpredictable or past contact indicates there is a potential for violence.
5. Explain the use of handcuffs to the person and the family in a tactful manner.
6. Two officers will transport the suspected mentally ill individual.

- a. The officer with personal knowledge of the individual's behavior or an MHRT officer will accompany the transporting officer to the hospital and complete the proper forms.
7. Only two hospitals in this area will admit individuals under these circumstances. Service is available 24 hours a day, 7 days a week.
 - a. Transport adults age 18 and over to University Hospital. Officers will enter through the ambulance bay doors and respond to the charge nurse station in the CEC.
 - 1) The charge nurse station will take the report and triage the patient as quickly as possible.
 - 2) Transporting officers will stay with the patient through the process and then transport the patient to the appropriate area.
 - b. Transport children, under 18 years of age, to Children's Hospital Medical Center.
 - 1) Handcuffed juveniles are to be brought in through the squad entrance for admission.
 8. Upon arrival at the hospital:
 - a. Complete the Ohio Department of Mental Health Form for emergency admission. In the "Statement of Belief" section, briefly note:
 - 1) The circumstances under which the individual came into custody.
 - 2) The reasons for your belief that hospitalization is necessary.
 - 3) Any other pertinent information known about the individual.
 9. Complete a Form 316.

B. Talbert House Crisis Hotline (513-281-CARE)
Action in Potential Suicides

1. When 281-CARE/Talbert House personnel receive a telephone call dealing with a potential suicide, they will assess the situation.
 - a. If they believe the caller is a threat to himself, they will call Emergency Number 911.
2. Police Communications Section will:
 - a. Relay information to the Cincinnati Bell Telephone Company requesting call tracing.
 - b. Relay the address received to the Officer In Charge (OIC) of the affected district and dispatch two officers to the scene.
 - c. Dispatch an MHRT officer to the scene when they are available.
 - d. Advise 281-CARE/Talbert House of the address.
3. A shift supervisor will respond to the scene.
4. Applicable law will guide Department personnel in the investigation of these cases. Compassion is a necessary approach to the successful handling of these crisis situations.

C. Mobile Crisis Team (MCT)

1. MCT members are permanently assigned to Districts One and Five and will primarily work during the day Monday through Friday. Supervisors and MHRT officers can activate the MCT through PES 24 hours a day at 513-584-8577.
2. MCT members will give priority response to the Police Department within the constraints of available staff. This priority response includes:

- a. Responding with MHRT officers in Districts One and Five.
 - b. Assessing the nature of a crisis.
 - c. Helping to control a situation, if possible.
 - d. Providing assistance in determining methods to use in response to the emergency.
 - e. Supplying available psychiatric information about a person in imminent risk of danger to himself or others. The release of this information is in the interest of safety to the person, police, and public in emergency situations.
 - 1) Where permitted by law, do not release information given to Department personnel by sources outside the Department without written permission. Do not use this information beyond the current emergency.
 - a) Immediately advise the appropriate outside source of any requests from the public for documents containing information provided by them.
3. The Mobile Crisis Hotline (513-584-8200) for police provides:
- a. Around the clock contact for any police officer facing a situation involving a suspected mentally ill individual.
 - b. Known premise history about a person with a mental illness who is in a dangerous situation.
 - c. Immediate suggestions about dealing with a person showing signs of mental illness.
 - d. Immediate information about services available to help someone in a psychiatric crisis.

e. Other necessary information.

4. The Police Department retains primary authority over any crisis situation covered by these guidelines. In an emergency, the Department will, when appropriate, use the advice and information the MCT provides.

105.00 USE OF FORCE**105.00 Use of Force Policy****(1) POLICY:****Preamble:**

The Denver Police Department recognizes the value of all human life and is committed to respecting human rights and the dignity of every individual. The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. When deciding whether to use a firearm, officers shall act within the boundaries of law, ethics, good judgment, this use of force policy, and all accepted Denver Police Department policies, practices and training. With these values in mind, an officer shall use only that degree of force necessary and reasonable under the circumstances. An officer may use deadly force in the circumstances permitted by this policy when all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly force is necessary. However, the Police Department recognizes that the objective reasonableness of an officer's decision to use deadly force must allow for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.

It is important for officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. The person in question may not be capable of understanding the gravity of the situation. The person's reasoning ability may be dramatically affected by a number of factors, including but not limited to a medical condition, mental impairment, developmental disability, physical limitation, language, drug interaction, or emotional crisis. Therefore, it is possible that a person's mental state may prevent a proper understanding of an officer's commands or actions. In such circumstances, the person's lack of compliance may not be a deliberate attempt to resist the officer. An officer's awareness of these possibilities, when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from risk of imminent harm. Officers may either escalate or de-escalate the use of force as the situation progresses or circumstances change. Officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. When reasonable under the totality of circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.

The Denver Police Department recognizes that the duties of a peace officer may require officers to use force. The department will support the lawful use of reasonable and appropriate force by officers in the performance of duty. Use of force that is not lawful, reasonable and appropriate will not be tolerated. Department Policy as well as relevant Federal, State and Local laws shall govern use of force by officers.

The level of force applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is within the range of "objectively reasonable" options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed.

Officers may either escalate or de-escalate the use of force as the situation progresses or circumstances change. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force shall be de-escalated accordingly.

Officers who use force as described in the Colorado Revised Statutes or the Operations Manual of the Denver Police Department must immediately report the circumstances to a command or supervisory officer and comply with all reporting requirements.

An officer who witnesses inappropriate, unnecessary, unreasonable or excessive use of force by another officer shall report it immediately to a command or supervisory officer.

Officers who are off-duty and become involved in any use of force situation must report the circumstances to an on-duty Denver Police Department command or supervisory officer as soon as the situation is stabilized. An exception to the requirement of reporting to an on duty supervisor or command officer may be granted by the Chief of Police for major events involving off duty officers. If an exception is granted a supervisor or command officer working the event may be allowed to fulfill the reporting requirements.

Officers are responsible to ensure that medical treatment is provided to any person who has been injured or alleges injury as a result of being subjected to the use of force.

(2) STATE STATUTES

- a. Colorado Revised Statutes 18-1-707 states in pertinent part: Use of physical force in making an arrest or in preventing an escape:
 1. "(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate **physical force** upon another person when and to the extent that he reasonably believes it necessary:
 - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
 - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.
 2. A peace officer is justified in using **deadly physical force** upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:
 - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
 - (b) To effect an arrest or prevent the escape from custody, of a person whom he reasonably believes:
 - I. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
 - II. Is attempting to escape by the use of a deadly weapon; or
 - III. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.
 3. Nothing in subsection (2)(b) of this section shall be deemed to constitute justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom he is not seeking to arrest or retain custody.
 4. For the purposes of this section a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts and circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsection (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid."
- b. 18-8-803: The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same and holds an officer accountable to do so in CRS 18-8-803 which states in part:

"(1)...a peace officer who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen."

"(2)...'excessive force' means physical force which exceeds the degree of force permitted pursuant to 18-1-707 (Use of force in making an arrest or in preventing an escape). The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by section 18-1-707 to a person who has been rendered incapable of resisting arrest."

- c. 18-8-802: The law requires that an officer who witnesses another officer using excessive force must report it to a supervisor. The Colorado Revised Statutes 18-8-802 states in part:

"(1)(a) A peace officer who... witnesses another peace officer... use physical force which exceeds the degree of physical force permitted pursuant to 18-1-707 [Use of force in making an arrest or in preventing an escape] must report such use of force to such officer's immediate supervisor.

"(1)(c) Any peace officer who fails to report such use of force in the manner prescribed commits a class 1 misdemeanor..."

(3) CASE LAW

- a. Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance. The degree of force required may be different in different situations. (Boykin V. People, 22 Colo. 496, 45 P. 419).

Law enforcement officers are permitted to use force to effect an arrest only to the extent that it is "objectively reasonable" under the circumstances (Graham v. Connor, 490 U.S. 386, 397, 109 S.Ct.1865, 104 L.Ed.2d 443).

(4) PERTINENT CONCEPTS AND DEFINITIONS

- a. Definitions:

1. Reasonable Belief – When facts or circumstances the officer reasonably believes, knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.
2. Deadly Physical Force – That force, the intended, natural, and probable consequence of which is to produce death and which does, in fact, produce death.
3. Bodily Injury – "Physical pain, illness, or any impairment of physical or mental condition."
4. Serious Bodily Injury – "Bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree."

- b. Types of Resistance

1. Psychological Intimidation – Non-verbal cues in attitude, appearance, demeanor or posture that indicate an unwillingness to cooperate or a threat.
2. Verbal Non-Compliance – Verbal responses indicating an unwillingness to comply with officer's directions or threat to injure a person.
3. Passive Resistance – Physical actions that do not prevent the officer's attempt to control, for example, a person who remains in a limp, prone position.
4. Defensive Resistance – Physical actions that attempt to prevent officer's control including flight or attempt to flee, but do not involve attempts to harm the officer.
5. Active Aggression – A threat or overt act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.
6. Aggravated Active Aggression – Deadly force encounter.
7. Psychological Intimidation, Verbal Non-Compliance and Passive Resistance usually do not involve conduct sufficient to support criminal charges related to resistance.

- c. Factors to determine "objectively reasonable" force options.

1. The reasonableness of an officer's use of force is based upon the totality of the circumstances known by the officer at the moment the force is used.
2. The following five (5) basic factors are considered when determining "reasonableness". Bearing in mind that the standard is "totality of the circumstances," these five (5) factors are not the only factors to be considered. The following have not been placed in a specific order of priority.
 - (a) Imminent threat of injury to officers and/or others. The greater the level of the threat, the greater the level of force that may be used.
 - (b) If the person is actively resisting seizure, the officer may escalate the justified (reasonable) level of force.
 - (c) Circumstances are tense, uncertain, and rapidly evolving. Some incidents take hours to resolve, while others are over in seconds. The more tense, uncertain and rapidly evolving the incident, the higher the level of force that may be reasonable.
 - (d) The more severe the crime, the more force that may be justified.
 - (e) Attempting to evade seizure by flight may justify escalating the level of force.
3. Each situation is unique. Sound judgment and the circumstances of each situation will dictate the force option the officer deems necessary. Depending on the circumstances, officers may find it necessary to escalate or de-escalate the use of force. It is not the intent of this policy to require officers to attempt to exhaust each option before moving to the next, so long as the level of force used is reasonable and appropriate under the circumstances.

d. Use of Force/Control Options

1. The level of force employed must be commensurate with the threat posed by the suspect and the seriousness of the immediate situation. It is recognized and understood that circumstances are fluid and may change rapidly. Officers should rely on their training, experience, and assessment of the situation, to decide the appropriate level of force.
2. **Requesting a CIT officer:** Whenever an officer learns, through his or her observations or otherwise, that a person with whom the officer is dealing may be a mentally ill, developmentally disabled, or emotionally disturbed individual, the officer will, if time and circumstances reasonably permit and dictate, contact dispatch and request that a CIT officer respond to the scene. If time and circumstances reasonably permit, officers will use distance, time, verbal tactics, or other tactics, to de-escalate the situation when dealing with such persons. When a CIT officer arrives on the scene, he or she should be the primary officer responsible for coordinating negotiations with the mentally ill, developmentally disabled, or emotionally disturbed individual unless determined otherwise by the CIT officer or a superior officer.
3. **Edged Weapons:** When confronted by a suspect armed with a deadly weapon, including edged weapons, an officer should weigh the totality of the facts and circumstances of each situation. Practical considerations may include, but are not limited to, the proximity of the suspect to the officer(s) and other persons, how rapidly the circumstances are evolving, and the use of force options that may be necessary, appropriate, and available. Officers should recognize that, when reasonable to do so with safety to officers and other persons in the vicinity, disengagement, repositioning, cover, concealment, barriers, or retreat, although not required by law, may be a tactically preferable police response to a confrontation. The value of all human life should be appropriately weighed in the decision process. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.

e. The following list of use of force/control options is not intended to suggest the order in which the various categories of force should be used in any specific situation:

1. Command presence
2. Voice

3. Hand control
4. Chemical agent
5. Hand strike, leg thrust / kick
6. Baton / impact instrument
7. Carotid compression technique
8. R.I.P.P. restraint devices
9. Less lethal weapons
10. Deadly force
11. Police service dog

Volume 1 - POLICY

escape presents a substantial risk of death or serious bodily injury to others.

556.30 PROTECTION OF GENERAL PUBLIC. Regardless of the nature of the crime or the justification for firing at a suspect, officers must remember that their basic responsibility is to protect the public. Officers shall not fire under conditions that would subject bystanders or hostages to death or possible injury, except to preserve life or prevent serious bodily injury. Firing under such conditions is not justified unless the failure to do so at the time would create a substantial immediate threat of death or serious bodily injury.

556.35 MINIMIZING THE RISK OF DEATH. An officer does not shoot with the intent to kill; the officer shoots when it is necessary to prevent the individual from completing what he/she is attempting. In the extreme stress of a shooting situation, an officer may not have the opportunity or ability to direct his shot to a nonfatal area. To require him/her to do so, in every instance, could increase the risk of harm to himself/herself or others. However, in keeping with the philosophy that the minimum force that is necessary should be used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized.

556.40 THE USE OF DEADLY FORCE. An officer is authorized the use of deadly force when it reasonably appears necessary:

- * To protect himself or others from an immediate threat of death or serious bodily injury, or
- * To prevent a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, or
- * To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.

Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results.

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

Shooting at a Moving Vehicle. Firearms shall not be discharged from a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. For the purposes of this Section, the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants.

Shooting from a Moving Vehicle. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and in the immediate defense of life.

It is understood that this police may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgement, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to articulate clearly the reason for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

The above prohibitions exist for the following reasons:

- * Bullets fired at moving vehicles are extremely unlikely to stop or disable the moving vehicles.
- * Bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons.
- * The vehicle may crash and cause injury to officers or other innocent persons if the bullets disable the operator.
- * Moving to cover, repositioning and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for using deadly force.
- * Shooting accurately from a moving vehicle is extremely difficult and therefore unlikely to successfully stop or prevent a threat to the officer or other innocent persons.

556.50 JUSTIFICATION LIMITED TO FACTS KNOWN TO OFFICER. Justification for the use of deadly force must be limited to what reasonably appear to be the facts known or perceived by an officer at the time he decides to shoot. Facts unknown to an officer, no matter how compelling, cannot be considered at a later date to justify a shooting.

556.55 SUSPECTED FELONY OFFENDERS. An officer shall not fire at a person who is called upon to halt on mere suspicion and who simply runs away to avoid arrest. Nor should an officer fire at a "fleeing felon" if the officer has any doubt whether the person fired at is in fact the person against whom the use of deadly force is permitted under this policy.

556.60 YOUTHFUL FELONY SUSPECTS. This Department has always utilized extreme caution with respect to the use of deadly force against youthful offenders. Nothing in this policy is intended to reduce the degree of care required in such cases.

556.70 SHOOTING AT FLEEING MISDEMEANANTS. Officers shall not use deadly force to effect the arrest or prevent the escape of a person whose only offense is

classified solely as a misdemeanor under the Penal Code.

556.75 FIRING WARNING SHOTS. Generally, warning shots should not be fired.

556.80 DRAWING OR EXHIBITING FIREARMS. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms.

Note: During a special meeting on September 29, 1977, the Board of Police Commissioners adopted the following as a valid interpretation of this Section:

"Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm."

556.90 USE OF THE URBAN POLICE RIFLE AND SHOTGUN SLUG AMMUNITION. In performing its mission to protect the people of this City, the Department equips officers with weapons sufficient to control most field situations. In determining the type of weapons and ammunition routinely carried by field officers, a careful balance must be achieved between our urban setting and the degree of danger we face. For anticipated events which pose a higher degree of danger, special units are equipped and trained to use more powerful weapons consistent with the anticipated threat level. However, unanticipated field situations occasionally arise which require immediate access to specialized weapons in order to control the situation and protect the community as well as the officers responding to the incident.

In recognition of this need, the Department has authorized the field deployment of special weapons and ammunition. However, these weapons and ammunition may only be deployed by specially trained field officers including trained supervisors, and absent an immediate threat of death or serious bodily injury which precludes waiting for approval, supervisory approval is required prior to using these weapons and ammunition during a field situation.

The Urban Police Rifle (UPR) and Shotgun

Procedure No: 203-12

Date Effective: 01-01-00

DEADLY PHYSICAL FORCE

DEADLY PHYSICAL FORCE

The New York City Police Department recognizes the value of all human life and is committed to respecting the dignity of every individual. The primary duty of all members of the service is to preserve human life.

The most serious act in which a police officer can engage is the use of deadly force. The power to carry and use firearms in the course of public service is an awesome responsibility. Respect for human life requires that, in all cases, firearms be used as a last resort, and then only to protect life. Uniformed members of the service should use only the minimal amount of force necessary to protect human life. Where feasible, and consistent with personal safety, some warning, such as "POLICE - DON'T MOVE," should be given. Deadly force is never justified in the defense of property. Above all, the safety of the public and uniformed members of the service must be the overriding concern whenever the use of firearms is considered.

GUIDELINES FOR THE USE OF FIREARMS

- a. Police officers shall not use deadly physical force against another person unless they have probable cause to believe they must protect themselves or another person present from imminent death or serious physical injury.
- b. Police officers shall not discharge their weapons when doing so will unnecessarily endanger innocent persons.
- c. Police officers shall not discharge their firearms in defense of property.
- d. Police officers shall not discharge their firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to themselves or another person present.
- e. Police officers shall not fire warning shots.
- f. Police officers shall not discharge their firearms to summon assistance except in emergency situations when someone's personal safety is endangered and unless no other reasonable means is available.
- g. Police officers shall not discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the police officer or another person present, by means other than a moving vehicle.
- h. Police officers shall not discharge their firearms at a dog or other animal except to protect themselves or another person from physical injury and there is no other reasonable means to eliminate the threat.
- i. Police officers shall not, under any circumstances, cock a firearm. Firearms must be fired double action at all times.

Responses of the Mayor
and the Portland Police Bureau



**Office of Mayor Tom Potter
Portland, Oregon**

August 18, 2005

Gary Blackmer
City Auditor
1221 S.W. 4th Avenue, Rm140
Portland, Oregon 97204

Dear Mr. Blackmer:

Thank you for the opportunity to comment on the first of five annual reports assessing the Portland Police Bureau's progress in implementing the recommendations of the PARC Report.

It is clear that both the Bureau and the PARC team have spent considerable time and care reviewing, recommending changes, and implementing some needed changes over the past years. Although this is only the first follow up report, I am heartened at the tone and content of the Bureau's willingness to work in partnership and incorporate improvements to our established policies. It is important to continue to assess not only our operations, but also our philosophy, accountability, and standing in the community as we go about providing quality law enforcement service. Portland's residents expect nothing less than quality, ethical, compassionate service. I believe that the Police Bureau's men and women are up to the challenge. I also believe that only through continuous introspection and organizational transformation can we truly serve Portland's changing demographic, social, and economic landscape.

I would like to thank Chief Foxworth and his team for their good work and I look forward to working together in the coming years.

Sincerely,

Tom Potter
Mayor

cc: Chief Derrick Foxworth
Commissioner Sam Adams
Commissioner Randy Leonard
Commissioner Dan Saltzman
Commissioner Erik Sten



CITY OF
PORTLAND, OREGON
BUREAU OF POLICE

TOM POTTER, MAYOR
Derrick Foxworth, Chief of Police
1111 S.W. 2nd Avenue
Portland, Oregon 97204

Integrity Compassion Accountability Respect Excellence Service

August 22, 2005

Ms. Leslie Stevens, Executive Director
Independent Police Review
B 131 City Hall

SUBJ: Police Bureau Responses
Police Assessment Research Center

Dear Ms. Stevens:

I am pleased to provide you with our responses to the ten recommendations from the Police Assessment Research Center's (PARC) July 2005 report.

Since the first report from PARC with 89 recommendations, we have completed 78, one was referred, six are in progress and we have rejected four. I believe the Bureau has made significant progress on revising our policies and procedures regarding officer-involved shootings. We conducted a great deal of research and studied other agencies' policies and practices, and also conferred with many of our community partners on what would work best for Portland. We continue to have our community more and more involved in reviewing and providing feedback on our directives and new procedures and I regularly meet with organizations such as the Albina Ministerial Alliance, our policy advisory committees, and business and neighborhood groups to continue discussions on how to improve this agency.

This community policing foundation has helped our agency work with the community to identify areas where we can improve and to work together on those improvements. It is important that the Bureau and the community get there together.

Here are a few highlights on the progress we have made:

- Directive 1010.10 Deadly Physical Force has been significantly revised and includes sanctity of life preface and restrictions on shooting at moving vehicles.
- Directive 335.00 Performance Review and Use of Force Review Boards and Directive 341.00 Discipline Process now includes citizens and peers as voting members on the Use of Force Review and Performance Review Boards.
- We created a use of force report form to track and document all use of force incidents.
- New standard operating procedures are in place in Detectives, Internal Affairs and Training divisions to better document communications restrictions, investigative protocols, crime scene management and review board procedures.

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- The Training Division created a Citizens Training Council to provide feedback on training and tactics and continues to monitor the use of the Taser.

Below are the Police Bureau responses to the ten recommendations from PARC.

Recommendation 2005.1: The PPB should set a firm deadline for making its early intervention system operational and should prioritize its resources so as to ensure meeting that deadline.

We are in agreement with this recommendation. In order to implement, the Early Intervention System needs additional dedicated resources. The Police Bureau is currently considering a proposal offer to begin design of an early intervention system. Pending approval, the developer could begin implementation in September with a target date to begin full use of the system in early spring next year.

As a result of a nationwide search of other police departments, the Dept. of Justice, national law enforcement organizations and academic experts, for information on best models in early intervention systems, Phoenix Police Dept. and Denver Police Dept. have emerged among the best in the nation. After an on-site presentation by the developer of these two models, the Police Bureau has approached the developer to prepare a proposal to design a similar system for us.

The project vision is the creation of a database that will automatically interface with other data systems for the rapid, centralized collection of information on important elements of employee behavior. This would allow supervisors to see any trends or problems as they develop and suggest intervention strategies to support employees and make corrections or improve performance. In determining the need for intervention, supervisors will be able to consider data in numerous categories that will include incidents of citizen complaints, use of force, accidents, civil claims, arrests made by the officer and information on citations issued. Additional data will include employee work and assignment history, work hours and leave data.

I plan to form an Office of Professional Standards with a dedicated unit to ensure accountability and compliance. I will also recommend this as a budget add package to City Council during the next budget cycle.

Recommendation 2005.2: The PPB should promptly draft procedures to govern the administrative investigations by the Training Division concerning officer-involved shootings, in-custody deaths, and injuries resulting in hospitalization, and it should supplement its procedures for such investigations by the Internal Affairs Division so that they are at least as thorough as its procedures for misconduct investigations.

We agree with this recommendation. The Internal Affairs Division (IAD) has new Standard Operating Procedures (SOPs) in place and is currently developing a checklist. The Training Division has a checklist and will include in their SOPs. Detectives SOP #37 and DIR 1010.10 Deadly Physical Force already include procedures on administrative investigations.

The Police Bureau will conduct a pilot project on the Force Investigation Team (FIT) proposal this fall. The proposal will review how we investigate and review deadly physical force

incidents. We believe it is necessary for the Detective Division to remain in charge of any investigation (and to comply with Oregon requirements that the District Attorney is in charge of all homicide investigations as well as having authority over the criminal investigation of police use of deadly force). Our Portland model has Internal Affairs and Training responding to officer involved and in-custody death scenes. Both Internal Affairs and Training will be provided information from Detectives to minimize concerns over immunity or influencing the criminal investigation. Detectives will brief Internal Affairs and Training as the investigation progresses. All case files will be made available to Internal Affairs and Training at the conclusion of the criminal investigation and grand jury findings.

The Detective Division completed a survey of major cities on the issue of when the administrative investigation began in relation to the criminal investigation. Out of the 14 agencies contacted, 13 had at least one member of their administrative investigation team respond to the scene of the incident. Only three of the 13 agencies (Memphis, Newark and New York) took an active role (interviewing witnesses or officers) in the investigation. The remaining ten agencies had representatives observe the scene or may monitor interviews.

The District Attorney's office cautions the Police Bureau against allowing the administrative investigation to influence the criminal investigation. Please read attached letter from Multnomah County District Attorney Michael Schunk. We are not going to use an overlay model based on the District Attorney's letter.

Recommendation 2005.3: PPB policy should make clear that administrative investigations of in-custody deaths and uses of force resulting in hospitalization are mandatory by eliminating the contradictory provisions from Section 335.00 that make them discretionary.

We agree and we are making changes to DIR 335.00 Performance Review and Use of Force Review Boards to make it mandatory for Internal Affairs and Training to investigate in-custody deaths. Training and Internal Affairs will include language in their SOPs and will clarify language regarding investigations required for hospitalizations resulting in the patient being admitted. In some cases, an individual booked into jail will require hospitalization. We need to clarify the types of command notifications and we will continue to research this issue.

In DIR 335.00 Performance Review and Use of Force Review Boards, we will make a pen change to remove the words "as needed" from the Procedures section.

Recommendation 2005.4: PPB policy should prohibit involved officers from being transported by their assigned partners and should require, when feasible, that the transportation be done by a supervisor or a detective.

We disagree with this recommendation. Our current policy is adequate. DIR 1010.10 Deadly Physical Force, under the Involved Member Responsibilities, section g, says an uninvolved member will be assigned to transport each involved or witness member.

The Communication Restriction Order prohibits communication among members. Detective investigators also ask the involved and witness members during the interview process if anyone

has discussed the details of this case with them or have they learned information about the incident from sources other than that of their own observations. This was a question that was added at the request of PARC. We believe that there are sufficient protocols and procedures in place.

Recommendation 2005.5: PPB procedures should require (a) that a supervisor and sufficient cover officers be present before members try to extract an apparently unarmed person from a vehicle, and (b) that tactics calculated to protect the safety of both the officers and the occupant of the vehicle be employed.

We disagree with the requirement to have a supervisor present. While having a supervisor present is desirable, it is unreasonable to expect that all vehicle extractions would require a supervisor to be present or that one would be available.

We currently have two sergeants assigned to a shift. We thoroughly train our officers on vehicle extraction methods, cover, and high risk stop tactics. Training discourages solo officers from extracting individuals from vehicles. Depending on circumstances, we want to leave some discretion and judgment to the officer on scene. The officer's experience, training and circumstances provide the ability to make an informed decision at the time. DIR 1010.20 Physical Force includes language on extracting individuals from vehicles and the 2004-05 in-service training included tactics on extracting individuals from vehicles.

Recommendation 2005.6: The PPB should develop a policy that prohibits it from responding to routine patient management situations in mental health facilities, and the Bureau should advise all mental health providers in the City of Portland of that policy.

We are not in the position to refuse to respond to a call for service; however, we are putting into place appropriate protocols for officer, patients and mental health staff safety. Not showing up is not an option. Draft directive 850.25 Police Response to Mental Health Facilities outlines the Multnomah County protocols that the Police Bureau and the mental health providers follow in responding to patient management situations. The policy says that "Only those calls from crimes in progress, armed individuals on premises or property, or serious assaults to residents or staff will result in a call for police services."

Currently the Police Bureau is developing a partnership agreement with Multnomah County Mental Health Department and Project Respond that defines the roles and responsibilities of each partner in the management of patients in mental health facilities and outlines the protocols for specific calls for service.

Recommendation 2005.7: The PPB should clarify its policies relating to medical attention and rendering aid to make clear that officers who have used deadly force are required to ensure that medical aid is rendered to injured persons as soon as possible, unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or the medical personnel.

We agree with this recommendation and have already incorporated rendering medical aid to injured persons in the following directives: DIR 630.50 Emergency Medical Aid and DIR 1010.10 Deadly Physical Force. In DIR 1010.10, under section Post Use of Force Medical Attention, it says that “When a person has been injured by the use of force by a Bureau member or there is a potential for injury to that person, a member shall continually monitor the subject, if tactically feasible or appropriate. “ It also says that “the member shall monitor the subject for changes in their skin color, breathing and levels of consciousness. If any significant changes in any of these areas are observed, the member shall notify EMS immediately.”

Recommendation 2005.8: The PPB should promulgate the policies and procedures necessary to require an administrative investigation by Internal Affairs and a explicit determination by the Use of Force Review Board as to whether there was compliance with the policies for ensuring that medical aid is appropriately and timely rendered, following the use of deadly force and whenever a person is seriously injured.

This recommendation is covered in the Internal Affairs reports and Internal Affairs is incorporating into their SOPs. It is included in draft DIR 940.00 After Action Reports and the Detectives checklist. All information is considered by the Use of Force Review Board.

Recommendation 2005.9: Supervisors in the Detective Division should review the work done by investigators to ensure that deadly force cases are appropriately investigated, and the results are properly documented.

We consider this recommendation completed. DIR 1010.10 Deadly Physical Force and the Detectives SOP #37 and the Homicide sergeant’s checklist include these protocols. The pre-interview has been eliminated. The homicide sergeants review all the investigators reports. A new interview monitoring system in place will supplement our current procedures to ensure there are checks and balances.

Recommendation 2005.10: The PPB should adopt procedures requiring (a) that deadly force investigations be led by an officer of a rank equal to or greater than the rank of the most senior officer playing a role in an incident, and (b) that interviews of witness officers of command rank be conducted by, or in the presence of, an officer of at least equal rank to the member providing evidence.

We consider this recommendation completed. We have adopted this procedure and it is included in the Detectives SOP #37. Internal Affairs added this procedure to their SOPs.

In addition to these responses, I am also attaching an updated matrix of the PARC report of 89 recommendations. I hope you have an opportunity to review our responses.

I believe that the Bureau’s goals and values reflect a standard of accountability. We successfully partner with the diverse communities here in Portland and our new policies reflect the communities’ feedback on improving police performance.

I reflect back on themes that emerge from a strong organization dedicated to the community policing philosophy including:

- We need to recognize the challenges to making changes within our agency that rely on commitment from the organization and the leadership.
- We need to establish a clear set of goals, values and strategies for the organization that meet the needs of everyone involved.
- A new use of force policy alone does not ensure change to any organization. While all organizations may resist change, any improvements will involve transforming the culture of the organization.
- Likewise, we need to engage the police unions as partners in moving forward.
- Partnerships within the community – the community must be involved in any and all policy decisions.

By working together, we stress the importance of being open and transparent to Bureau members and to the communities we serve.

I look forward to meeting with you to discuss the status of PARC's current review of officer involved shootings and provide you with further updates on our progress.

Sincerely,

A handwritten signature in cursive script that reads "Derrick Foxworth".

DERRICK FOXWORTH
Chief of Police

DF/mp

cc: Mayor Tom Potter
AC Jim Ferraris
AC Stan Grubbs
AC Jim McDaniel
Capt. Rod Beard, IAD
Jane Braaten, PSD Manager

attachment: August 2005 PARC matrix

Status of Police Assessment Resource Center (PARC) Recommendations

As of August 2005

Definitions:

Done: reviewed, and fully or partially implemented

Refer: This recommendation is considered a city responsibility.

In progress: has not been completed or fully implemented.

Rejected: Bureau disagrees with recommendation.

Summary Status of Recommendations:

Done: 78

Refer: 1

In progress: 6

Rejected: 4

Number	Recommendation	Status	Date	Assigned	Details
3.1	Add a preamble or mission statement to the written deadly force policy, underscoring the Bureau's reverence for the value of human life and its view that deadly force is to be used only where no other alternatives are reasonably available.	Done	8/1/2005	Services	We consider this recommendation completed. DIR 1010.10 includes sanctity of life statement. We have reviewed this recommendation with our partners in the City Attorney's office and in the community. Portland officers find an alternative to the use of deadly force in the majority of situations in which it is justified, and most often use deadly force only as a last resort. During many events that require an officer to consider deadly force, especially those that develop quickly, the thinking demanded by a "last resort" standard is inappropriate and dangerous for all involved. A performance standard that would force officers to engage in the thinking process required by a "last resort" standard would degrade the quality of thinking by officers during these difficult events. It would also unnecessarily expose the City to liability exposure by creating an unrealistic standard of care, and could not be successfully defended in challenges to discipline. As an agency, we will continue to search for and adopt tools, techniques and procedures that help officers avoid the use of deadly force when practical.

Footnotes:

* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
3.2	Expand written deadly force policy to provide that certain uses of force, such as strikes to the head or other vital areas with impact weapons, may not be used unless the officer is justified in using deadly force.	Done	8/1/2005	Services	We consider this recommendation completed. DIR 1010.10 states that "members must be mindful of the risks inherent in employing deadly force" and that "flashlights, baton, body parts, and other statutorily defined dangerous weapons may constitute deadly physical force." Training incorporates this policy into current lesson plans.
3.3	Revise deadly force policy to prohibit officers from using deadly force to stop a fleeing felony suspect unless they have probable cause to believe that the suspect (1) has committed an offense involving the actual or threatened infliction or threat of serious physical injury or death, and (2) is likely to endanger human life or cause serious injury to another unless apprehended without delay. In addition, the policy should make clear that even in those circumstances, deadly force should not be used where (1) other means of apprehension are reasonably available to the officers, or (2) it would endanger the lives of innocent bystanders.	Done	8/1/2005	Services	We believe DIR 1010.10 is more restrictive than the Supreme court decision in Tennessee v. Garner and more restrictive than PARC's recommended language. Deadly force may be the most reasonable of one or more options available to an officer in a particular situation. We have added more restrictive language governing the use of deadly force: "A member may use deadly force to affect the capture or prevent the escape of a suspect where the member has probable cause to believe that the suspect poses a significant and immediate threat of death or serious physical injury to the member or others."
3.4	Consider whether it would be appropriate to revise written deadly force policy to expressly require officers to refrain from taking actions that unnecessarily lead to the use of deadly force.	Done	8/1/2005	Services	We believe we have complied with this recommendation. PARC states that the "PPB is a national leader on this issue." Training lesson plans reflect our current policy. It is stated in DIR 1010.10, under the Policy section as: "Members must be mindful of the risks inherent in employing deadly force. A member's reckless or negligent use of deadly force is not justified in this policy or state statute. Members are to be aware that this directive is more restrictive than state statutes. Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics."

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
3.5	Revise deadly force policy to clearly articulate when officers may draw or point their firearms and when they should re-holster them. In addition, require officers to report in writing each instance in which they draw and point a firearm at another person.	Done	8/1/2004	Services	The Use of Force form became effective in Aug 2004. We have vetted to our Bureau members, to the community and to City Council on what are the appropriate policies. The community and the City Council agreed that officers would write a report when he/she points a firearm at a person. We would be happy to review PARC's guidelines as to when officers may appropriately draw, point and re-holster their weapons. We have a Use of Force Report form to track incidents of less lethal and deadly force uses. The current system requires the primary officer to complete a Use of Force Report form whenever he/she draws and points a firearm. We believe the new Use of Force Report form provides for the primary officer to note that the incident was a multiple officer response. We believe the multiple officer scenarios are rare, and would include incidents such as executing search warrants and high risk stops. We will continue to review and evaluate our current policies.
3.6	Require officers to record their use of force on a separate Use of Force Report. Use the information from these reports to analyze and manage officers' use of force. Log and track information from such reports in its early warning system.	Done	8/1/2004	Operations/ Services	We are in agreement with this recommendation. The Use of Force form became effective in Aug 2004. We do collect this data and have the ability to retrieve and it will be incorporated into the Early Intervention System that the Bureau is developing. In order to implement, the Early Intervention System needs additional dedicated resources. I plan to consider forming an Office of Professional Standards with a dedicated unit to ensure accountability and compliance. I will also consider recommending this as a budget add package to City Council during the next budget cycle.
4.1	Replace Homicide-only investigative model with one that takes a multidisciplinary approach to deadly force and in-custody death cases. The IA Overlay model as enhanced by the LASD, or the enhanced Specialist Team model used in Washington, D.C., may work well in Portland.	Done	9/2/2003	Investigations/ Services	The Bureau expended much time researching existing overlay models of officer-involved shootings and in-custody deaths. After our research, Portland developed the homicide plus model. Training and Internal Affairs command will respond to the scene as part of the FIT program. The officer-involved shooting investigation now includes representatives from the Training Division and Internal Affairs.

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.2	Revise investigative policies regarding firearms discharges at animals and non-injury accidental discharges to require supervisors arriving at the scene to immediately notify the deadly force investigation unit of the incident. The deadly force unit should either respond to the scene and take over the investigation, or be required subsequently to review the chain of command's completed investigation for completeness and objectivity.	Done	8/1/2005	Services/ Operations	We disagree with PARC on requiring the homicide detective team to respond to the scene of animal destruction. The current oversight and review is adequate. An officer involved shooting is defined as when deadly physical force (i.e., a firearm) is used by a police officer against a person. The destruction of animals, as well as negligent discharges, are not considered officer involved shootings. All deadly physical force incidents including officer involved shootings are reviewed by the Review Level Board. The review of animal shootings and negligent discharges where no one is struck or endangered will be reviewed by the member's chain of command up through the Branch chief for disposition. If the recommendation is out of policy and suspension or greater, it should go to the Review Board. Such cases may also be reviewed by the Review boards at the discretion of the Branch chief or Chief of Police. DIR 1010.10 includes a section on the responsibilities on the destruction of animals and references DIR 631.70 Investigations of Animal Problems for further details. It also includes investigative responsibilities.
4.3	Revise policies to make clear that investigators should <i>always</i> strive to obtain a contemporaneous, tape-recorded interview of involved officers. Such a policy would not only ease doubts about officer collusion, but place officers and civilians on the same footing. In addition, in those cases where an officer declines to provide a contemporaneous interview, investigators should be required to thoroughly document their efforts to obtain the interview, including (1) when the request was made, (2) to whom it was directed, and (3) the reason(s) for the declination.	Done	8/1/2005	Investigations	We consider this recommendation completed. DIR 1010.10 Deadly Physical Force includes new language ensuring member interviews are tape-recorded. Detective SOP #37 includes language specific to tape recording interviews. We are continuing to work with the bargaining units to establish a binding agreement regarding timeliness of interviews. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. Portland has adopted its own unique model which is similar to Phoenix. As you know, Phoenix is a right-to-work state. And Portland has some challenges such as the importance of working with our collective bargaining units on these issues, the immunity issues.

Footnotes:

* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.4	Meet with the leadership of the police unions to work out procedures for taking voluntary statements from involved officers in the hours immediately following a shooting or in-custody death incident. Interviews would not be conducted until after the officers have been given an opportunity to consult with a lawyer and/or union representative. The unions should encourage involved officers to provide investigators with contemporaneous statements, and likewise should encourage the lawyers they furnish to their members to facilitate such prompt statements.	Done	9/2003	Investigations	Since 2004-05, in officer-involved shootings, officer statements have been taken within 24 to 36 hours. Over the past two years, we have met with union representatives to establish a binding agreement regarding timeliness of interviews. There are some challenges to work through on these issues such as immunity. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. Portland has adopted its own unique model which is similar to Phoenix. As you know, Phoenix is a right-to-work state. See referenced PPA letter dated 8/19/05.
4.5	Study the Phoenix system of obtaining contemporaneous statements, in which all involved or witness officers are ordered to speak to Internal Affairs investigators no later than a few hours after the deadly force or in-custody death incident, regardless of whether they agreed to provide a separate, voluntary statement to Homicide investigators. The IA interview, which is walled off from Homicide and the District Attorney, is used solely in connection with the agency's administrative and tactical review of the incident.	Done	8/1/2005	Investigations/ Services	We generally agree. A lot of progress has been made in the spirit of labor-management collaboration. We are continuing to work with the bargaining units to establish a binding agreement regarding timeliness of interviews. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. And Portland has some challenges such as the importance of working with our collective bargaining units on the immunity issues. We created DIR 335.00 Performance Review and Use of Force Review Boards after the Phoenix visits and our research.

Footnotes:

* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.6	Issue a policy expressly forbidding all officers who participated in or witnessed an officer-involved shooting or in-custody death from discussing the incident with any person (including other involved or witness officers) other than their immediate supervisor, unit commanding officer, union representative, attorney, a medical or psychological professional, and investigators until they have completed comprehensive, taped interviews in the criminal and, if needed, administrative investigations. In discussing the incident with their immediate supervisor or unit commanding officer during this period, officers should provide only that information necessary to secure the scene and identify the location of physical evidence and witnesses.	Done	5/05 - CRO and 8/1/2005	Investigations	We agree that we have complied with this recommendation. Communication restriction orders have been issued since Sept. 2003. DIR 1010.10 includes language that restricts involved members from discussing the facts of the case when involved in a deadly physical force or in-custody case. The Communications Restriction Order has been modified to include new language for TIC members that restrict TIC to only discussing emotional well-being. The new language agrees with the standard operating procedures for TIC. The CRO now reads: "You should avoid directly discussing factual aspects of the incident with TIC members, as the TIC members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting you." Also, in DIR 1010.10 it reads: "f. Members may speak with Traumatic Incident Committee (TIC) members. Members should avoid directly discussing factual aspects of the incident with TIC members, as the TIC members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s)."
4.7	Issue a policy forbidding all officers from volunteering or communicating any information to involved or witness officers before the deadly force investigation has been completed. In addition, just as a judge may order jurors to avoid media and other discussions of a pending case, so too should PPB issue a policy directing involved or witness officers to avoid exposure to other accounts of the incident (even if unsolicited) until they have provided investigators with a comprehensive, tape-recorded statement. In addition, PPB should require its investigators to thoroughly cover in each officer interview what information the officer had received from other officers or outside sources.	Done	8/1/2005	Investigations	DIR 1010.10, the Communications Restriction Order and the Detectives SOP #37 include language that restricts members from viewing media coverage. The directive also restricts Bureau members from talking to involved or witness officers about the incident. The CRO now recommends that members refrain from reviewing any media coverage prior to the interview with detectives. This will help to keep their recollections fresh and is also helpful to avoiding undue duress watching inaccurate media accounts. The CRO reads: "A thorough investigation based on each individual's independent recall and perception will lend credibility to each member's testimony and the investigation as a whole. In following this theme, it is strongly recommended that you do not review media coverage or other outside information regarding this incident."

Footnotes:

* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.8	Require that supervisors arriving at the scene of an officer-involved shooting or in-custody death incident ask each officer at the scene what, if any, discussions regarding the incident have occurred prior to the supervisor's arrival. The supervisor should then brief investigators immediately after they arrive at the scene concerning the answers to those inquiries.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force and Detectives SOP #37 include the responsibilities of the supervisors arriving at scene. Homicide investigators assume responsibility for the scene once they arrive. The highest ranking supervisor on scene is in charge until the Homicide detail arrives.
4.9	Require that involved and witness officers be physically separated immediately after the scene has been secured, and that officers remain sequestered (<i>i.e.</i> unable to communicate with each other) until they have submitted to a comprehensive, taped interview by investigators.	Done	8/1/2005	Investigations	We agree that the involved member's partner will not transport. The involved member should be transported by an uninvolved member. We also agree that separation, when practical, may be the better option. There are advantages to having supervisors monitor 10 witnesses in one room, rather than 10 different sites. DIR 1010.10 prohibits officers from leaving scene. DIR 1010.10 and Detective SOP #37 says the Homicide Sergeant-in-charge will ensure the involved officers remain at the scene and are kept separate. The on-scene supervisor will ensure separation of all witness and involved members. It is important to remember that physical separation is not the only option. The goal is to ensure that there is no communication between those involved about the incident. DIR 1010.10 now says "Separation of all witness and involved members is necessary in order to safeguard the integrity of the investigation. If members are separated but within sight of each other, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place."
4.10	Memorialize in policies the requirement that members of the Traumatic Incident Committee (TIC) Team - and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident - remain outside of the crime scene absent express authorization from on-scene investigators.	Done	8/1/2005	Investigations/ Services	We believe our current policies (DIR 640.10 Crime Scene Procedures and DIR 1010.10) comply with this recommendation. In addition, Detective SOP #37 provides specific direction to the Homicide Sergeant-in-charge for scene management. The EAP/SOPs restrict TIC members from the crime scene. DIR 1010.10 Deadly Physical Force includes restrictions on managing personnel at the scene.

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.11	Memorialize in policies a rule expressly prohibiting members of the Traumatic Incident Committee (TIC) Team - and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident - from discussing the incident with involved or witness officers until the officers in question have submitted to a comprehensive, taped interview with investigators.	Done	8/1/2005	Services	We agree that we have complied with this recommendation. The Communications Restriction Order has been modified to include new language for TIC members that restrict TIC to only discussing emotional well-being. In DIR 1010.10, the section on communication restrictions have been revised and clarifies the role of TIC team members. TIC team members are still encouraged to provide peer support after traumatic incidents, while following the guidelines in the communication restrictions. DIR 1010.10, is new language that reads: "e. Members not involved in a deadly force or in-custody death incident, shall not communicate with a member who has been designated as an involved or witness member, about factual aspects of the investigation at hand, unless authorized to do so and until the involved or witness member is no longer under a CRO."
4.12	Revise policies to ensure that all officer witnesses submit to a taped interview and that all civilian witnesses are interviewed whenever possible. Transcripts of all interviews should be included in the case file.	Done	8/1/2005	Investigations	We tape record all interviews in its entirety. In DIR 1010.10, under Witness Member Responsibilities, it reads: "f. Witness members will be required to submit to an interview prior to going off shift. If injured, the witness will be interviewed when medically stable. Exceptions must be approved by the Detective Division Commander. Those exceptions must be limited to those situations where the number of witnesses or the complexity of the crime scene, make it necessary for the investigators to obtain additional details of the incident prior to beginning an interview." Regarding transcripts of all interviews to be included in case file, the DIR 1010.10 reads: "f. Complete a Summary Report and case notebooks to include all transcripts of taped statements." Detective SOP #37 states that all interviews of involved members where facts of the case are discussed will be tape recorded. Transcripts of all interviews are included in the case file. Every attempt will be made to tape-record civilian interviews.

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.13	If a civilian witness refuses to submit to a taped interview, investigators should (1) not begin the interview until the witness has signed a form acknowledging that he or she has refused to be interviewed on tape; and (2) present the civilian with a written copy of the investigator's summary if the interview and allow the citizen to review and sign the investigator's summary for accuracy. The civilian should be permitted to make any corrections or amendments to the statement he or she feels is necessary. A copy of both the original and corrected/amended witness summary should be included in the investigative file.	Rejected	8/1/2005	Investigations	We do not believe that this is an appropriate investigative technique for our purposes. This technique raises the following concerns. 1. Witness may recant their statement. 2. Witness may be influenced by outside entities. 3. It is not an investigative best practice. 4. No sufficient research to substantiate recommendation. Homicide investigators tape record interviews with civilian witnesses unless they refuse. Detectives SOP #37 says to document incidents where witnesses refuse. Some delays are necessary in order to prepare interview questions, prepare for multiple officers interviews, manage an extensive crime scene, or deal with physical or emotional incapacitation of witnesses. DIR 1010.10 and Detective SOP #37 have been amended to require transcripts of all taped statements to be included in the case file.
4.14	Investigators should seek to video- or audiotape all officer walk-throughs. If the interview is audio- rather than video-taped, all gestures and relevant physical actions by the officer doing the walk-through should be described on the tape. By taping all walk-throughs, subsequent reviewers (from the grand jury to PPB executives) will be able to assess the quality of the walk-through, including the quality of investigators' questions. In addition, taping the walk-through will enable reviewers to identify any inconsistencies between an officer's statement at the scene and his later, more detailed interview with Homicide. Transcripts of the officers' statements during the walk-through should be included in the case file.	Rejected	8/1/2005	Investigations	Due to the legal and contractual context of the on scene briefing, it is necessarily limited and intended to gather general information on the location of evidence, direction of fire, field of fire, location of witnesses, and officer position. Mandatory tape recording will jeopardize the participation of the involved member. Of particular concern with an involved member, participation in the on-scene briefing is voluntary. Mandating recordation could jeopardize the participation of the involved member. The PPA or the member's attorney may refuse to allow the member to participate if the on scene briefing is recorded. It is also difficult to appropriately capture all necessary information from the on scene briefing on tape. Regardless, all of the information garnered from the on scene briefing is covered in detail during the tape recorded interview with the investigating detectives. To tape the on scene briefing would be redundant.

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.15	Video- or audio-tape the entirety of all interviews with officers and civilians. Eliminate policy and practice of conducting untaped "pre-interviews" of officers or civilians.	Done	8/1/2005	Investigations	DIR 1010.10 and Detective SOP says that Investigators will not conduct pre-interviews. Detective SOP #37 states that all interviews of involved members where the material facts are discussed will be tape recorded. We do not conduct pre-interviews of officers or civilians. In addition to the above comments, we want to emphasize that the procedural process is the same regardless of citizen or Bureau member. Our current practice of explaining procedures off tape is helpful to both citizens and Bureau members. Individuals need to be aware of the process and will be more comfortable when responding to a taped interview if they understand the process that they will be going through. It is prudent to have investigators have that latitude of explaining the process. However, we want to emphasize that 100% of the investigative interview is taped. We will research this to find out what other agencies have this practice. We concur that there should be no disparity. Transcripts of all interviews are provided to the Multnomah County District Attorney and the City of Portland attorney.
4.16	Improve the already useful existing Deadly Force Interview Checklist by adding policy and tactical questions, including: (1) whether the officers can think of (a) alternative approaches that might have minimized risk to themselves and others, and (b) potential improvements in training; (2) a description of when and why the officers decided to (a) draw their guns; (b) point their guns; or (c) lower or re-holster their guns; (3) describing the grip and shooting stance used by the officers, including gun/flashlight technique; (4) indicating whether the shots were sighted; (5) describing the availability and use of cover and concealment; and (6) identifying distances from suspects with weapons other than guns, and opportunities for tactical retreat.	Done	8/1/2005	Investigations	We agree that we have complied with this recommendation. Lower and re-holster, grip and shooting stance have been added to the interview checklist. The checklist has been modified and adopted in Detective SOP #37 on officer involved shootings.

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4.17	Require investigators to cover all areas on the modified interview checklist in all interviews.	Done	8/1/2005	Investigations	The checklist has been modified and adopted in Detective SOPs on officer involved shootings. We current assign the following personnel to complete the checklists: Interview checklist – homicide detectives Investigative checklist – homicide sergeant (admin) Supervisor checklist – on-scene supervisor/command
4.18	Prepare an Interview Checklist, similar to the Deadly Force Interview Checklist, to be used during in-custody death and serious force investigations.	Done	8/1/2005	Investigations	We agree with this recommendation and have added a section to the Detectives SOP #37 and interview checklist that is specific to in-custody deaths. We did not develop a stand alone checklist for in-custody deaths because many of the same questions asked for an officer involved shooting are asked in the investigation of an in-custody death.
4.19	Establish policies that ensure that each officer who was involved in or witnessed an officer-involved shooting or in-custody death incident does not participate in a Critical Incident Stress Debriefing (CISD) meeting prior to submitting to a comprehensive, tape-recorded interview in the investigation of the incident.	In progress	8/1/2005	Services/ Investigations	Detective SOP #37 requires tape recorded interviews and written communications restrictions. Members do not participate in a Critical Incident Debriefing until after the tape recorded interview, the Grand Jury renders a decision and the Communications Restriction Order is lifted.
5.1	Adopt strict rules forbidding non-essential personnel from entering or remaining within the inner or outer perimeter of an officer-involved shooting or in-custody death.	Done	8/1/2005	Investigations	DIR 640.10 Crime Scene Procedures and DIR 1010.10 Deadly Physical Force, Use Of, Including Reporting Requirements requires the exclusion of unauthorized persons. Detective SOP #37 requires the Homicide Sergeant-in-charge to manage the scene and ensure a log is kept. DIR 1010.10 states that the on-scene supervisor will establish a single entry point into and out of the scene and that a crime scene log is maintained at the entry point.
5.2	Ensure officials investigating officer-involved shooting and in-custody death cases promptly collect all relevant physical evidence at the scene. Such mechanisms should include, without limitation, (a) written guidelines, such as investigators' manual, that specify investigators' evidence collection duties; (b) annual refresher training for investigators (and their supervisors) in forensic techniques and crime scene investigation; (c) on-scene investigation checklists and Incident Summary Forms to be included within each case file; and (d) methods for holding investigators accountable for their errors or omissions.	Done	8/1/2005	Investigations	a. DIR 1010.10, the detective checklist, and the on-scene checlist specify investigator's evidence collection duties; b. Training for investigators and supervisors includes detective academy of 80 hours, basic homicide class, bringing trainers to division, hosting homicide training. The Bureau continues to research and identify additional training and funding to support that training; c. Detective SOP #37 include checklists and summary forms; d. A review process is in place and any identified omissions will be discovered in the review process. Supervisory oversight is outlined in the directives.

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Number	Recommendation	Status	Date	Assigned	Details
5.3	Require criminalists to bring to the scene of officer-involved shooting and in-custody death cases all tools necessary to identify and collect physical evidence at the scene. Such equipment should include, among other items, (a) metal detectors to help locate weapons and ammunition, and (b) bullet trajectory analysis equipment sufficient to track and document the trajectory of ammunition regardless of caliber or make.	Done	2001	Investigations	Major crime scene vehicles contain all the mentioned equipment.
5.4	Collect muzzle Gun Shot Residue (GSR) evidence in officer-involved shooting and in-custody death cases in which the location and angle of gunfire is relevant. Such evidence should be collected not only from skin, hair, and clothing, but from hard surfaces believed to be in close proximity to the weapon at the time of discharge. In addition, PPB should collect primer GSR evidence in all officer-involved shooting or in-custody death cases where there is (1) some dispute about the identity of the person(s) who fired a gun or (2) a claim by a civilian that an officer planted a gun at the scene. If Oregon State Crime Laboratory remains unable to perform primer GSR analysis, then the PPB, like numerous agencies across the country, should seek to have the analysis performed at commercial or university laboratories.	Done	9/2003	Investigations	It is not our practice to go outside of the Oregon State Police Crime Lab. An exception would be if there was a special analysis or request made by the District Attorney. The current practice is to obtain Gun Shot Residue (GSR) evidence under applicable circumstances. Examples to consider are clothing, bullet entry holes. Per Oregon State Police Crime Lab, Gun Shot Residue examination of hands is extremely unreliable due to false positives, time values of collection and environmental factors. Oregon State Police Crime Lab has not done GSR (Dermal Nitrate) since 1999.
5.5	Enforce the requirement of Section 1010.10 that investigators conduct a bullet trajectory analysis for each shot in an officer-involved shooting where the bullet strikes one or more areas of the crime scene. The PPB should do so even where there is no dispute among witnesses regarding the underlying incident.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force, Use of, Including Reporting Requirements includes a section on Detectives Responsibilities that states: "collect and submit all weapons involved in a deadly force incident, including SERT weapons, to the Oregon State Crime Lab for appropriate testing, documenting their condition as found to include serial number, rounds in chamber, and number of rounds in each magazine. Detective SOP #37 requires that trajectory analysis will be conducted and reported in accordance to the directive and the Homicide Sergeant-in-charge will ensure compliance.

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5.6	Develop detailed checklists or Incident Summary Forms - one for officer-involved shootings and one for in-custody deaths - along the lines used by the Miami-Dade Police Department and the Los Angeles County Sheriff's Department, which require investigators to report key information regarding every officer-involved shooting or in-custody death case.	Done	8/1/2005	Investigations	Detective SOP #37 and DIR 1010.10 include checklists and summary reports for officer-involved shootings.
5.7	Prepare detailed crime scene sketches of the entire crime scene (or scenes). Such sketches should identify physical evidence at the scene and provide all relevant measurements. In all cases, investigators should include the sketches in the investigative file.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force, Use of Including Reporting Requirements includes requirements of crime scene sketches. Detective SOP #37 require crime scene sketches and maintenance in the Bureau incident file.
5.8	Require investigators to ask all involved parties and all witnesses to draw their own sketches of the scene (or annotate sketches already prepared by the investigative team) during their taped interviews. In addition, investigators should ensure the witnesses note the movement of the involved parties (e.g., note the positions taken by Officer A as A-1, A-2, etc.). Finally, investigators should verbally describe on tape when the witness makes or refers to a particular notation (e.g., "the witness is now noting his location as B-1 on the sketch.").	Done	8/1/2005	Investigations	Detective SOP #37 include this practice when necessary and they are required to be maintained in the official file.
5.9	Investigations should focus not only on whether the officers' use of deadly or high-risk force was appropriate, but also on the officers' policy and tactical decisions that led to the incident. A principal goal of investigations should be to collect evidence sufficient for managers and executives to assess whether the officers could have met legitimate law enforcement objectives in a manner less likely to have lead to the use of deadly or other high-risk force.	Done	8/1/2005	Investigations/ Services	DIR 1010.10 Deadly Physical Force, Use of Including Reporting Requirements, Detectives SOP #37, DIR 335.00 Performance Review and Use of Force Review Boards, DIR 341.00 Discipline Process and IADs/SOPs include requirements for officer-involved shooting investigation. Detectives now ask a broad range of questions per the recommendation. The Use of Force Review Board will consider the following issues identified in the investigation: policy; training; supervision; tactics; medical aid; and equipment.

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Number	Recommendation	Status	Date	Assigned	Details
5.10	Identify and conduct thorough, unbiased, and tape-recorded interviews of all witnesses - including emergency and medical professionals who performed examinations or rendered treatment - in deadly force or in-custody death incidents. In addition, PPB should also carefully monitor the quality and fairness of interviews conducted by members of the East County Major Crimes Team assisting them in such investigations.	Done	8/1/2005	Investigations	Detective SOP #37 requires that all interviews of involved members be tape recorded. Investigations relies on the written reports submitted by emergency and medical professionals. The Homicide Sergeant-in-charge will supervise all investigative functions including those agencies who assist. This will also be reviewed up the chain of command. The Use of Force Review Board will consider the following issues identified in the investigation: policy, training, supervision, tactics; medical aid; and equipment.
5.11	Include in the file for an officer-involved shooting or in-custody death all relevant evidence and information, including, without limitation, (a) color copies of pertinent crime scene photographs;(b) all videotapes taken of the scene; (c) all autopsy, toxicology, and medical reports obtained by investigators (or memorandum explaining why it was impossible to obtain such reports); (d) transcripts and audiotapes of all 911 calls and radio broadcasts (as well as relevant MDT transcripts); and (e) a memorandum presenting in summary fashion certain background information on the involved officers including (i) date of hire and prior law enforcement experience; (ii) training history; (iii) assignment and promotion history; (iv) prior shootings or in-custody death cases, if any; and (v) a record of any discipline, pending investigations, and awards or commendations.	Done	2002	Investigations/ Services	DIR 1010.10 and Detectives SOP #37 cover a through d. Evidence or case file protocols have been implemented by the Detective Division. The Bureau tracks and has available access to the information contained in section e. The report would include date of hire, training history from checklist and relevant information would be included.
5.12	Each investigative file should contain a detailed, comprehensive summary of the investigation. Although the summary should be impartial and take a neutral tone, it should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force and Detectives SOP #37 include this information.
5.13	Completed investigative files should (a) number each page sequentially; (b) contain a detailed index; and (c) include an Investigator Log identifying each investigator's day-to-day work on the case.	Done	8/1/2005	Investigations	The pages of completed investigative files are numbered sequentially and the files contain a detailed index. The Bureau uses a detective homicide checklist.

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5.14	Keep all records, documents, and materials obtained or created in connection with an investigation of an officer-involved shooting or an in-custody death as part of the official file.	Done	9/2/2003*	Investigations	Detective SOP #37 state that all records, documents and materials obtained, prepared or created in connection with an investigation of an officer-involved shooting or in-custody death will be made and remain part of the official Bureau file on the incident. City archiving guidelines will be followed. DIR 335.00 Performance Review and the Use of Force Review Boards specifies that materials will be maintained by the Use of Force Review Board Coordinator for presentation to the Board. Copies are sent to IPR.
5.15	Create an independent, professionally staffed, and adequately funded mechanism for civilian oversight of investigations of administrative issues and analyses of tactical decisions arising out of officer-involved shootings or in-custody deaths. At a minimum the oversight mechanism would monitor (a) Crime scene processes and procedures (this would involve rolling out to the scenes of officer-involved shootings and in-custody deaths); (b) Evidence collection and preservation; (c) Witness identification and interviewing; (d) Investigative file integrity and preservation; and (e) Presentation of evidence to the Review Level Committee.	Refer	2003	Services	Refer to IPR for a response. We consider this a recommendation to the City of Portland. The City of Portland has a mechanism in place with the creation of IPR and PARC. The Bureau's has new directives on the Use of Force Review Boards and Discipline Process. IAD and Training are included as non-voting members on the Review Boards and IPR sits on the Review Board as a non-voting member.
6.1	Extend policies relating to reviews of deadly physical force - both after action reports and Review Level Committee - to include in-custody death incidents.	Done	7/5/2005	Services	The Use of Force Review Board reviews in-custody deaths. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports include review policies for in-custody deaths.
6.2	Ensure after action reports are completed in all officer-involved shooting and in-custody death cases, and that unit commanders are held accountable if the reports are not completed in a timely fashion.	Done	7/5/2005	Operations/ Services	We consider this to be ongoing. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports state that commanders are responsible for reports in use of force incidents.
6.3	Enforce policy that requires unit commanders, rather than their subordinates, to prepare and sign after action reports in deadly force cases.	Done	7/5/2005	Operations/ Services	We consider this to be ongoing. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports state that commanders are responsible for reports in use of force incidents.
6.4	Create a model after action report - from an actual or a hypothetical case - to demonstrate to unit commanders both the form and type of analysis that such reports should employ.	Done	8/1/2004	Operations/ Services	An after action report form was created and posted to Intranet in August 2004. Draft directive 940.00 After Action Reports is in review.

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6.5	Ensure after action reports rely on the facts developed by the investigation of the incident (unless the unit shows that those facts are erroneous or incomplete), and that copies are distributed to the RU manager.	Done	8/1/2004	Operations/ Services	After action report forms are distributed to the RU manager. Draft directive 940.00 After Action Reports is in review.
6.6	Devise an accountability process to ensure after action reports comply with the content requirements of Section 1010.10 and engage in meaningful analysis.	Done	8/1/2005	Operations/ Services/ City Attorney	We consider this to be ongoing. DIR 1010.10 references after action reports. Draft directive 940.00 After Action Reports is in review.
6.7	Revise Section 1010.10 to make the unit commander a non-voting member of the Review Level Committee when it reviews officer-involved shootings, other deadly force cases, and in-custody death incidents.	Rejected	7/5/2005	Chief's Office	We disagree with this recommendation. DIR 1010.10 Deadly Physical Force and DIR 335.00 Performance Review and Use of Force Review Boards includes the RU manager as a voting member. RU managers are individuals who hold certain positions and levels of responsibility to the organization and should be accountable in officer involved shootings, in-custody deaths and other deadly force cases. This issue was vetted to our community and they agreed that RU managers need to be included as a member of the Review Level Board.
6.8	Make a civilian from outside the Bureau a voting member of the Review Level Committee. The outside committee member should be chosen in a manner decided by the City's elected officials.	Done	7/5/2005	Services	We consider this completed. DIR 335.00 Performance Review and Use of Force Review Boards includes citizens and peers as voting members.
6.9	Amend policy and practice to make the commanding officer of the unit conducting administrative investigations of officer-involved shootings and in-custody deaths, and the commanding officer of the Training Division, non-voting members of the Review Level Committee.	Done	7/5/2005	Services	We disagree with the recommendation to have RU managers as non-voting members. RU managers should be accountable in officer-involved shoots, in-custody deaths and other deadly force cases and should be included as a voting member in Review Level. In DIR 335.00 Performance Review and Use of Force Review Boards, we have clarified the roles and our practices to include Training and Internal Affairs. Command personnel from the Training and Internal Affairs divisions have never been non-voting members
6.10	Present all officer-involved shooting and in-custody death incidents to the Review Level Committee. Develop a tracking system to ensure that all such incidents are presented.	Done	7/5/2005	Services/ Investigations	Officer-involved shootings and in-custody death incidents are reviewed by the Review Level Board. The Review Board Coordinator tracks cases through the Administrative Investigative Management software system.

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6.11	Amend policy to require full written findings be provided to the Chief to explain and document each Review Level Committee determination of officer-involved shooting or in-custody death cases.	Rejected		Services	We disagree with this recommendation. Our system includes a review by the Services Branch chief who meets with the Chief on the recommendations from the Review Level Committee. The Chief does receive a full report. We reject the recommendation about the voting logs, the citizen members were concerned that their names would be made public.
6.12	Develop procedures for the Review Level Committee that require members to vote based on their best judgment of the relevant facts and circumstances and that encourage dissent when appropriate.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards outline procedures for the Review Level Committee and it states: " Board members' votes are based on their best judgment of the relevant facts and circumstances and dissenting points of view will be noted."
6.13	Investigators who conduct the administrative investigations should take the lead in presenting officer-involved and in-custody death cases to the Review Level Committee.	Done	7/5/2005	Chief's Office	Investigators are taking the lead in presenting cases to Review Level and are the lead in presenting to the Review Level Board.
6.14	Administrative investigators present a complete file - regardless of the form of the evidence, and specifically including video and audiotapes and photographs - to committee members in advance of the committee meeting, and should likewise present all evidence deemed pertinent to the Review Level meeting, regardless of the form that evidence takes.	Done	7/5/2005	Services/ Investigations	DIR 335.00 Performance Review and Use of Force Review Boards states that IAD will prepare a review file for each case that contains all reports and documents from Detectives, IAD, and Training.
6.15	Before a meeting of the Review Level Committee on an officer-involved shooting case or an in-custody death incident, the Training Division should prepare a written analysis of the tactical and training issues involved and circulate that analysis to committee members in advance of the meeting.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards states that Training will provide copies of all reports and documents to Review Level Board. Internal Affairs Division's SOPs state that these documents are provided to the Review Level Board. Training's draft SOPs states that documentation will be provided.
6.16	Amend policy to increase the options the Review Level Committee has for outcome determinations so that those options cover different levels of review: legal, policy and tactical.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards under section UFRB Functions, c. states that the UFRB may make recommendations on the completeness of the investigation, the findings, the charges and level of discipline. UFRB may also suggestion action items on training or policy issues.
6.17	Review Level Committee should seek to obtain additional information whenever the committee determines that such information would assist it in fulfilling its responsibilities.	Done	7/5/2005	Services	The Review Level Committee determines what additional information is necessary on a case-by-case basis. The Use of Force Review Board Coordinator facilitates information gathering for the Board members.

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6.18	Create systems that ensure all lessons learned - both successes and failures - are systematically identified and followed-up on.	Done	7/5/2005	Services/ Operations	Reports and follow-up are tracked and maintained by the Review Board Coordinator through the Administrative Investigative Management (AIM) software system.
6.19	Revise awards policy and procedures in officer-involved shootings and in-custody death cases to ensure that the Award Review Committee and the Chief are aware of all facts and circumstances relevant to the appropriateness of an award that were revealed in the investigation of the incident, in the after action report, and in the Review Level Committee proceedings.	In progress		Services	The draft DIR 210.90 Recognition and Awards says that any use of force findings will be attached to the Awards Committee's recommendations to the Chief. This is forwarded to the Branch chief for review before forwarding to the Chief. The Chief will review all information and will make the final determination of awards.
6.20	Revise awards and Review Level policy and procedures in officer-involved shooting and in-custody death cases to require the Awards Review Committee facilitator to advise the Review Level Committee in writing of any information revealed in the awards review process that was not in the investigative file, the after action report, or the Review Level Committee's records. Upon receipt of notice of such new information, the Review Level Committee should consider whether to reopen its review of the incident, with or without further administrative investigation.	In progress		Services	The Awards Committee does not conduct an investigation of use of force cases. This committee reviews the same written materials in the Review Level Board process. If the Awards Committee facilitator knowingly comes across information not provided to the Review Level Committee, that information will be forwarded to the Services Branch chief for review.
7.1	Ensure that operational personnel devise a sound plan before action is taken in response to critical incidents whenever it is feasible to do so.	Done	1997	Operations/ Services	We consider this ongoing. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 "post shooting procedures" under approach and control. This was updated in 2003. Plans are also documented in an after action report. This was reinforced in the 04-05 in-service training and include the six fundamentals of patrol tactics: have a leader, have a plan, communicate, be adaptable, correct mistakes and do not assume.
7.2	Reduce the risk generated by deficiencies in communication; PPB must take steps to ensure that their occurrence is minimized.	Done	2000	Services	We consider this ongoing. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 and defines areas of control, assignment of tasks such as cover, custody, less lethal. This was reinforced in the 04-05 in-service training. This will be covered in the 2005-06 in-service as well.

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7.3	Supervisors should become involved in critical incidents at the earliest possible stage. Dispatchers should inform a sergeant as soon as any potential critical incident reports are received, and officers should be directed to inform a supervisor without delay whenever they encounter such an incident. Supervisors should also be directed to identify every potentially high-risk building search or warrant service as a critical incident requiring an effectively managed response.	Done	2000	Services	This is on-going. Critical Incident notifications are covered at the sergeant's academy, in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics. DIR 612.00 covers critical incident management which would require having adequate assets on scene for critical incidents.
7.4	Ensure that, whenever feasible, supervisors are responsible for the determination and coordination of strategic and tactical responses to critical incidents, and should direct the actions of involved offices.	Done	2000	Services	This is on-going. Critical Incident notifications are covered at the sergeant's academy, in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics. BOEC protocols outline notification process. Refer to DIR 612.00 on BOEC and radio protocols.
7.5	Hold supervisors accountable for the performance of officers under their command during critical incidents.	Done	2000	Chief's Office	The on-scene commander remains in charge until a supervisor arrives to take command and is first fully briefed and prepared to take command. DIR 315.30, DIR 720.00, draft directive 940.00 After Action reports include language that addresses how supervisors are held accountable.
7.6	Identify all high-risk building searches, high-risk warrant services, and calls regarding armed civilians as critical incidents.	Done	2003	Services	This is on-going. These high-risk searches, services are considered critical incidents and are stressed in training. Critical Incident notifications are covered at the sergeant's academy and in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics.
7.7	Future supervisory training should emphasize the relevance of critical incident training to these types of incidents, and the Bureau should ensure that supervisors consistently manage operations according to the sound principles such training promotes.	Done	2003	Services/ Operations	Supervisory academy includes critical incident management with SERT and HNT. Command staff reviews performance in critical incidents at Review Level which requires on-going communication and emphasis. This includes a tactical debriefing.
7.8	Ensure field performance consistently reflects tactical training in all areas, and particularly in relation to identified problems relating to high-risk vehicle stops, the use of cover, crossfires and bystander endangerment.	Done	1999	Services/ Operations	This is on-going. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 and defines areas of control, assignment of tasks such as cover, custody, less lethal. This was reinforced in the 04-05 in-service training.

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7.9	Ensure that supervisors consistently manage vehicle pursuits to a high standard and that officers communicate effectively during pursuits.	Done	1997	Operations	Contained in current policy in DIR 630.05 Vehicle Pursuits and in draft directive 940.00 After Action Reports.
7.10	Ensure officers maintain sufficient distance when pursuing armed suspects in a vehicle.	Done	1997	Services/ Operations	Contained in DIR 630.05 Vehicle Pursuits, and in scenario-based training. Requires on-going training commitment.
7.11	Adopt and vigorously enforce a foot pursuit policy mandating the use of sound tactics by officers who encounter fleeing suspects.	In progress		Services/ Operations	We agree with this recommendation and Training Division drafted a foot pursuit policy and it is being reviewed and staffed.
7.12	Ensure officers make appropriate use of cover when confronting threats.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.13	Ensure the incidence of crossfires is minimized.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.14	Ensure the incidence of endangerments to bystanders is minimized.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.15	Revise policy on the use of firearms against moving vehicles. Include preface explaining that shooting at moving vehicles is dangerous and generally ineffective, and should embody the following guidelines: Officers shall not fire at moving vehicles except to counter an imminent danger of death or serious bodily harm to the officer or another person; Officers shall only fire at a moving vehicle when no other means of avoiding or eliminating danger are available at that time; Officers shall not place themselves, or remain, in the path of moving vehicle; Officers shall take account risks to vehicular and pedestrian traffic, and to any other bystanders, before deciding whether to fire at a moving vehicle; Officers shall take into account the risks to vehicle occupants, who may not be involved (or may be involved to a lesser extent) in the actions necessitating the use of deadly force before deciding whether to fire at a moving vehicle.	Done	8/1/2005	Services	We agree with this recommendation. This criteria does not allow members to use poor tactics or positioning as justification for discharging a firearm at a moving vehicle. DIR 1010.10 is clear in its language, which says: "Members must be mindful of the following when considering the use of deadly physical force involving a vehicle: a. Bullets fired at occupants of moving vehicles are extremely unlikely to stop or disable the moving vehicle. b. Bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons. c. The vehicle may crash and cause injury to officers or other innocent persons if the bullets disable the operator. d. In limited circumstances moving to cover, repositioning and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for use of deadly physical force. e. Shooting accurately from a moving vehicle is extremely difficult and therefore unlikely to successfully stop or prevent a threat to the member or other innocent person.

Footnotes:

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** 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
7.16	Take steps to minimize the risk of accidental discharges. Pay closer attention to the issue in training, field operations and shooting-review process.	Done	8/1/2005	Services	DIR 1010.10 requires officers to submit reports on all negligent discharges are also subject to disciplinary action. Techniques for avoiding them are incorporated into firearms training. Draft directive 940.00 After Action Reports document these incidents.
7.17	Reconsider current training in maneuvers that involve weak-handed shooting in light of experience that shows the poor level of accuracy associated with its use and find ways to reduce single-hand shooting.	Done	2005	Services	Training protocols instruct for two-hand shooting techniques. There is instruction on basic firearms, active shooter, and PRISim. In the 04-05 in-service there was 16.5 hours of firearms instruction (10 hours of Taser, 4.5 hours range, 2 hours of PRISim). For the 05-06 in-service there is 13 hours of firearm instruction (4.5 hours range, 4 hours PRISim, 4.5 hours active shooter). The Bureau believes that officers need instruction on the two-hand shooting due to tactical advantages and the primary hand/arm becomes unable to function due to injury. This comes from the Miami FBI shoot-out where two agents were killed and many more injured. There are many reasons that support teaching the skill of firearms and use of both hands.
7.18	Abandon use of term "lethal cover" in relation to less-lethal training and directives and make explicit that officers should use whatever force option is appropriate to cover officers deploying less-lethal weaponry.	Done	8/1/2005	Services	The Bureau uses the term "immediate cover." The Training Division lesson plans on use of force, patrol tactics, defensive tactics, Taser and less-lethal include immediate cover techniques and planning.
7.19	Monitor and evaluate the effectiveness of all less-lethal hardware, tailor the availability and deployment of such weaponry to ensure operational personnel have ready access to the most effective and appropriate options when called upon to use force.	Done	1997	Services	The Taser pilot project began in 2002 and as a result, in June 2005, patrol officers were provided with Tasers. All less-lethal weapons are identified by the yellow markings. DIR 1051.00 Tasers includes responsibilities and use of this less lethal weapon. In-service training conducted in 2004-05 certified all officers on the use of all less-lethal weapons. The Use of Force Report form tracks and records deployment of Taser and other less-lethal weapons. Training keeps a database and tracks each deployment.
7.20	Provide all operational personnel with a radio earpiece.	In progress	2005	Chief's Office	Fiscal reports Operations Branch has processed the purchase of 600 radio earpieces in addition to another 125 purchased earlier through Homeland Security funding.

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Number	Recommendation	Status	Date	Assigned	Details
7.21	Establish helicopter unit as an important element of a risk management program.	Done	2005	Investigations	The Bureau has recently purchased a second fixed wing aircraft. At this time, one aircraft is equipped with a 'Forward Looking Infra-red" (FLIR) unit and a second FLIR will be purchased with grant funds for the second aircraft. The FLIR equipped aircraft has been used several times to support patrol officers and SERT officers on high risk calls and incidents involving armed subjects. This aircraft has been instrumental in capturing high risk suspects by providing a tactical advantage from the air. We recognize the versatility of a helicopter unit; however, fiscal restraints and concerns from City Council and the community prohibit the Bureau from moving forward with PARC's recommendation. Currently there is no adequate funding to maintain such a unit. The Bureau has entered into a metro air support agreement which allows for sharing of our aircraft cooperatively with other agencies.
7.22	Ensure Crisis Intervention Team (CIT) officers consistently exercise their specialist skills when dealing with CIT-related incidents.	Done	2000	Services	The 2004-05 in-service officer training included 2 hours of CIT instruction with Project Respond, 1 hour of epilepsy training and 2 hours of communication. There are 125 certified officers as of June 2005. CIT is to move to Training to be sure concerns are folded into patrol tactics training. A 40-hour CIT certification training is being developed for the fall 2005. For the 2005-06 in-service, two hours of mediation, three hours of perspectives in profiling will be taught. A CIT newsletter is widely distributed and a database tracks incidents and outcomes.
7.23	Examine current practices in order to identify means of improving deployment rates of, and better capitalizing on the skills possessed by its pool of Crisis Intervention Team (CIT) officers.	Done	1995	Services	This is considered on-going. The Bureau of Emergency Communications protocols dispatch Crisis Intervention Team (CIT) officers to all known CIT-related incidents.

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Number	Recommendation	Status	Date	Assigned	Details
7.24	Ensure officers consistently perform according to both policy and training in order to minimize the future occurrence of in-custody deaths.	Done	2003	Services	This is considered on-going. The last in-custody death occurred in 1999, and previous to that, it was 1997. Other policies that speak to the issue of in-custody deaths are DIR 335.00 Performance Review and Use of Force Review Boards, DIR 630.50 Emergency Medical Aid, DIR 870.20 Handcuffing, Searching and Transportation of Persons Under Arrest or Detained. Draft directive 940.00 After Action Reports and DIR 1010.10 Deadly Physical Force contain policies and procedures that address this issue.
8.1	Proactively study data on officer-involved shooting and in-custody death incidents to assist its efforts to prevent avoidable shootings and deaths.	Done	7/5/2005	Services	This is on-going. DIR 335.00 Performance Review and Use of Force Review Boards, draft directive 940.00 After Action Reports and DIR 1010.10 Deadly Physical Force contain policies and procedures that address this issue. Chief is studying adding a new division of Professional Standards that include an audit function and would fold in Internal Affairs, Early Intervention System and any inspection functions.
8.2	Develop procedures and systems to accurately and completely capture and aggregate data on officer-involved shooting and in-custody death incidents in a manner that facilitates analysis of those data.	Done	2005	Services	Through the review process some of this information is collected. We are working on a management information systems as a part of the Early Intervention System. The Use of Force Report form tracks and documents officer-involved shooting and in-custody death incidents. The Bureau will continue to monitor, analyze and evaluate on an on-going basis and report on trends, training and policies.
8.3	Retain all records related to officer-involved shooting and in-custody death incidents for at least 25 years. Any otherwise applicable provision that requires longer retention than the period set for officer-involved shooting and in-custody death records should continue to be controlling.	Done	7/5/2005	Services/ Investigations	Detective SOP #37 states that records, documents and materials obtained, prepared or created in connection with an investigation of an officer involved shooting or in custody death will be made and remain part of the official Bureau file on the incident. Records permanently maintains all in-custody and officer-involved investigative reports. Copies of all case files are sent to IPR.
8.4	Create procedures and systems that allow location of whatever records it possesses.	In progress		Services	The Review Board Coordinator will develop SOPs for archiving and storage of records. The Assessment Investigations Management (AIM) system will provide for retrieval of reports. The Records Division and the City Auditor will provide guidance on implementation.

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Number	Recommendation	Status	Date	Assigned	Details
8.5	Independent Police Review (IPR), in consultation with the Bureau, should create procedures to obtain the records needed for future reviews of officer-involved shootings and in-custody deaths on a reasonably contemporaneous basis. IPR should store those records until needed for the review.	Done	2004	Services	Copies of all case files are sent to IPR to store. Review of archiving, access and distribution will be reviewed with City Auditor. The Review Board Coordinator will facilitate records requests for these investigation reports. DIR 1010.10, Detectives SOPs and draft Review Board SOPs contain the process.

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August 18, 2005

Chief Derrick Foxworth
Portland Police Bureau
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Portland, OR 97204

Dear Chief Foxworth:

You have asked this office to review the Police Assessment Resource Center's ("PARC") recommendation that whenever there is the use of deadly physical force by an officer and that officer or officers refuse to talk that the matter be turned over immediately to internal affairs. The suspect officers would be ordered to talk, and there would be a dual investigation; one criminal; one internal. The conclusion of PARC is that by involving internal affairs early they get a better idea of the crime scene and surrounding facts, they can get better information earlier, including a statement from all the officers, and therefore would be "able to influence the investigation as it proceeds."

I agree with PARC that the earlier involvement of internal affairs and compelled statements by suspect officers could result in a better and quicker understanding of what happened. However, it would likely result in the state not being able to prosecute an officer if we believed that a crime had been committed given the nature of internal affairs investigations and the law in Oregon.

The current deadly-force procedure utilized by the Portland Police Bureau has been the result of on going negotiations between your administration and this office. Part of this has been the result of the law in Oregon, which changed dramatically in the mid 1980s. In 1984-85 the Oregon appellate courts in State v. Soriano, 68 Or App 642 (1984), affirmed 298 Or 392 (1985) held that in Oregon we could only offer transactional (absolute) immunity if we were compelling someone to testify, even though we had

statutes that specifically authorized use (limited) immunity. The court outlined what it saw as the dangers of giving anything less than absolute immunity:

“First of all, use and derivative use immunity does not clearly protect against non-evidentiary as well as evidentiary use of the immunized testimony. A prosecutor who is aware of a witness’ immunized statements is likely to allow that knowledge to affect discretionary decisions: whether to pursue the investigation, what direction to take in doing so, whether to prosecute the witness, whether to plea bargain, and, if so, what to seek in the bargaining. It is hard to see how the most conscientious prosecutor could avoid letting the knowledge that the witness had admitted the crime while immunized affect these decisions.” Soriano at 662-3. (Emphasis mine)

Soriano raised the question whether immunity under Garrity v. New Jersey 385 U.S. 493 (1967) gave an officer use immunity or transactional immunity. The cases immediately following Soriano seemed to indicate that transactional immunity would be confirmed with any compelled statements.

However, the later cases backed away from that proposition. Unfortunately, there is no case on point and the question is still unresolved (See State v. Graf, 316 Or 544 (1993)). The police unions have consistently stated they want the statements to be immunized to fully cooperate. They obviously want to test the law.

The second problem is that even if you could grant use (limited) immunity our experience is that the command personnel are generally aware of the internal investigation. It is very difficult to contain this kind of information within any kind of law enforcement agency. Under the existing law neither the statements made by the officer or things derived from those statements can be used. The burden is on the state to prove that there is no improper evidence. See Soriano, above, and U.S. v. North, 910 F. 2d. 843, 863 (D.C. Cir. 1990). This can be difficult, if not impossible, to sometimes show, especially if people in the command structure were aware of the internal affairs investigation. In the North case the court made the following observation on immunized statements and criminal prosecution:

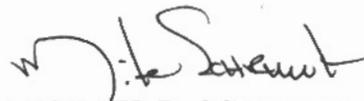
“The government must occasionally decide which it values more: immunization (perhaps to discharge institutional duties, such as congressional fact-finding and information-dissemination) or prosecution. If the government chooses immunization, then it must understand the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.” North at 862. (Emphasis added)

August 18, 2005

We, like PARC, would like to get the best information as quickly as possible. However, we believe that it is fundamental to a criminal investigation that the constitutional rights of the suspect officers be respected. In Oregon, unlike many other states, the effect of giving use (limited) immunity can sometimes amount to transactional (absolute) immunity. In addition, even if you can give limited immunity, the burden of proving nothing in the criminal prosecution was derived from compelled statements may be impossible. It is not our intent to find this out by losing a case where we have brought criminal charges. Our process may take longer but it ensures that if someone has committed a crime we will be able to prosecute.

If you have any further questions please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. D. Schrunk". The signature is written in a cursive style with a large initial "M" and "D".

MICHAEL D. SCHRUNK
District Attorney

MDS:plc



Robert J. King
President
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Secretary-Treasurer

Portland Police Association
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August 19, 2005

Chief Derrick Foxworth
Portland Police Bureau
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Portland, OR 97204

Chief Foxworth:

Recently, questions have been raised by the Police Assessment Resource Center as to the appropriate model to follow for deadly force investigations. In particular, PARC has raised questions about the timing of the statements of involved officers in the variety of models under consideration.

The Portland Police Association is committed to the principle that involved officers should give timely statements after deadly force incidents. Through the PPA's efforts, the time between a deadly force incident and the collection of statements from all involved officers has declined to, in most instances, less than 48 hours.

The PPA has only one caution with respect to this matter. For many years, the Multnomah County District Attorney's Office has made clear that involved officers should not be ordered by the Bureau to give statements about a deadly force incident. From the perspective of an involved officer, this means only one thing -- that the DA's office still considers it possible that the officer will be prosecuted for the officer's activities in the deadly force incident, and does not wish to confer on the officer the immunity that would automatically attach if an order to give a statement were issued. Since the privilege against compulsory self incrimination is a personally-held constitutional right, that right cannot be waived in any fashion by the PPA. This means that, ultimately, the decision to give a voluntary statement, and the decision as to the timing of that statement, will rest with the officer, and not with the PPA.

Thank you for your consideration of this matter.

Robert J. King

