Recommendations for the Tacoma Police Department

21CP Solutions

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SCOPE & APPROACH

A.   Scope of the Assessment

The City of Tacoma ("Tacoma" or "the City") engaged 21CP Solutions ("21CP") (1) to conduct an assessment of the Tacoma Police Department's ("TPD" or "the Department") current practices, procedures, and operations, and (2) to develop pragmatic, specific recommendations and reforms that TPD and the City can implement to strengthen the Department's relationship with Tacoma's community; ensure that the Department's activities and operations are safe, just, effective, lawful, and consistent with national, best, emerging, and transformational practices.

As this report notes, Tacoma's elected officials, community organizations, and members of TPD described to 21CP a commitment to comprehensively re-imagining public safety in Tacoma going forward. In particular, they anticipated a process of meaningful deliberation that explores what public safety means across Tacoma's diverse communities and what the best ways are to meet those needs. This would specifically involve deliberation as to whether TPD is best equipped to address various public safety issues – and whether the response to such issues could be better handled by other City entities, community organizations, or social programs.

21CP regularly advises communities to engage in this long-term process of defining public safety and exploring new and better ways of promoting community well-being. That many major Tacoma stakeholders appear to recognize the importance of such a process, and have committed to engaging in it, is noteworthy and commendable.

Although this report focuses on TPD policies, practices, procedures, and performance, nothing in this report forecloses the opportunity for the Tacoma community to define public safety and identify response mechanisms that may reduce the City's reliance on TPD in responding to various community problem. Because it may implicate significant changes to major systems and will require substantial community participation and engagement, meaningfully re-imagining public safety will require dedication and time.

As it appeared from discussions with Tacoma stakeholders that the critical discussion going forward is about *how* to re-imagine public safety rather than *whether* to do so, this report does not invest significant time focusing on the need or rationale for re-imagining Tacoma's system of public safety. Thus, after some initial recommendations aimed at ensuring that Tacoma clearly codifies a plan for determining and implementing changes in its overall public safety systems and resources to align with community needs, this report focuses on assessing the Tacoma Police Department and making specific recommendations as to what TPD can do today that can have a tangible impact in the Tacoma community tomorrow – even as the work of re-imagining public safety proceeds.

B. Approach

21CP's assessment and recommendations are based on an analysis of three primary sources of information or raw "data": paper, performance, and people.

First, 21CP requested and received an array of written materials and information about, and relating to, TPD's operations. This included policies, procedures, protocols, training curricula, annual reports, and other similar materials. These were evaluated in light of an array of emerging and best practices and national standards. We detail or reference the specific TPD materials, and the particular emerging and best practices through which we considered those materials, throughout the report.

We note that we necessarily could only consider the information provided, and our recommendations are based on that universe of information. Even as TPD was very responsive and cooperative, our information requests were voluminous – encompassing some 1,039 individual files, and each with multiple documents). As a result, it is likely that some relevant information was not provided and therefore could not be considered.

Second, 21CP endeavored to evaluate TPD's performance in practice. Specifically, 21CP endeavored to analyze specific types of incidents and encounters involving TPD. In light of community concerns surrounding the death of Manuel Ellis and the use of force by TPD in other incidents, 21CP reviewed a randomly-selected sample of use of force cases. The nature of that review, and the methodology employed, is addressed in this report's discussion of Use of Force performance. 21CP originally endeavored to conduct an analysis of another randomly-selected sample of officer misconduct investigations. However, because the City of Tacoma indicated that it needed to notify officers about sharing the contents of the investigative file involving incidents in which they were a part, there was some delay in receiving individual misconduct investigations. More importantly, when we did receive the files, they lacked recorded or transcribed interviews, and some were missing other evidence that we usually expect to see. After inquiry, we determined that we were provided complete case files, but learned that recorded interviews only occur in the empirically rare Internal Affairs cases. Bureau level investigations, which address the vast majority of cases, are not recorded. With TPD not requiring that officers systematically log information about non-voluntary contacts, crisis intervention incidents, and other types of activities – and with TPD only recently implementing body-worn cameras – our review of officer performance in particular incidents was limited. At least for some of these areas, TPD has identified that additional information may exist within the Department's Blue Team/IA Pro system – a relatively rudimentary but standard, widely-used officer performance database – that we were not provided. Discussions are underway with the City to facilitate a follow-up case review directly in this database to further refine conclusions and recommendations regarding complaint and use of force investigations.

Similarly, 21CP sought to evaluate TPD's performance in the aggregate. This involved analyzing various types of overall data on the Department's functions and officer

performance across incidents and time. We analyze various classes of overall, aggregate data throughout the report.

Third, 21CP conducted 161 conversations, focus groups, and interviews with Tacoma stakeholders. Participating stakeholders included Tacoma residents, elected officials, and representatives of community organizations – and representatives of BIPOC, LGBTQ, Hispanic and Latino, Asian Pacific, religious, and immigrant communities. It also included members of a variety of ranks, positions, and assignments within TPD.

The City of Tacoma and the Community's Police Advisory Committee ("CPAC") helped 21CP to identify an initial set of community groups, organizations, and individuals with whom to speak. Building from these initial stakeholders and wanting to have conversations with people from diverse backgrounds, across an array of roles within and outside TPD and with varying experiences of the police, 21CP created its own list of critical stakeholder groups to reach out to and engage. In most conversations, we asked participating stakeholders about whether there were other individuals or organizations with whom we should speak. Speaking with many of those community referrals helped expand the scope of the diversity of participating stakeholders through the process.

The individuals who spoke with us wanted to speak with us, making participation voluntary and self-selecting. Participants were not randomly selected, and the views of participants in our community conversations may or may not be reflective of Tacoma as a whole. Additionally, although we had a number of conversations, our process did not endeavor to talk with a statistically-significant number of Tacoma stakeholders. Consequently, it is nearly certain that some important views did not surface in our engagement simply because of the number of individuals and stakeholders with whom we were able to engage.

At the same time, however, the stakeholders who did engage with us were able to describe their experiences and histories with respect to policing in Tacoma. A number of the issues, concerns, suggestions, and ideas that individuals raised aligned with those of other participants. Because we heard substantial overlap and common themes across a number of conversations, we are confident that this report, and its recommendations, acknowledges, incorporates, or reflects the outlook of at least some material part of the Tacoma community. However, the process of continuing to re-imagine public safety and provide for community well-being will, as this report discusses, require more inclusive, sustained, and comprehensive community engagement than our evaluation encompassed.

Separately, 21CP invited stakeholder input at a dedicated Voices of Tacoma email address. We received a number of thoughtful emails and submissions from individuals and community stakeholders via this mechanism.

During the course of 21CP's engagement, 21CP did learn that some parts of the Tacoma community suffer from a kind of engagement fatigue. Over the years, repeated studies or efforts to seek input and engagement from Tacoma's marginalized and minority communities

has created doubt that feedback leads to observable change. Consequently, some groups requested incentives for their community – in recognition of investing their own time to provide assistance to the City, in order for them to engage. 21CP made the City and CPAC aware of this dynamic through the engagement. In the absence of available incentives, some stakeholder groups and individuals elected not to participate in engagement in this evaluation.

This report cites, characterizes, and sometimes quotes stakeholder participants. To ensure candid discussions and to preserve the confidentiality of participants who sometimes shared sensitive or traumatic experiences, 21CP did not log the identities of who said what during our stakeholder engagement – only their affiliations, for context, and the specific contents of what they said. Accordingly, this report refers to particular stakeholders in generic ways – as "a TPD officer," "a community member," or the like.

Although the assessment and this report aims to address many important aspects of the police-community relationship, core police practices, and day-to-day operations – and although it addresses what 21CP concluded to be the most significant issues that TPD encounters – it is not exhaustive, for a few reasons.

First, any large organization like a police department performs a broad and complex array of functions and services, making a single evaluation of every conceivable aspect of department's performance, operations, and administrative unrealistic. Large, substantial, and standalone evaluations could focus on technology, staffing, or business and administrative practices, providing an array of technical, micro-granular recommendations. The present report attempts to identify major recommendations in the areas of most urgent import.

Second, there are some areas of inquiry that, because of TPD's current practices, simply cannot be as detailed. For example, as this report discusses, the Department does not currently require officers to report all non-voluntary encounters such as *Terry* stops. Consequently, in one of the core areas in which concerns about bias and disparate impact surface – stops, searches, and seizures – 21CP could not conduct an analysis of how the Department is performing. Although we make several specific recommendations for new policies, reporting procedures, and training, we cannot identify or address whether this aspect of the Department's enforcement activity does or does not have a disparate impact on TPD's BIPOC communities.

This report aims to provide specific guidance, and practical recommendations, for TPD and the Tacoma community based on its unique needs, values, and experiences. However, Tacoma is not alone in confronting significant issues and concerns surrounding the role, actions, and performance of police in its community. We have conducted similar reviews for other jurisdictions addressing many of the same issues and challenges, and in some cases offered similar recommendations to what we outline here based on the same types of best and emerging, promising practices. However, even where we make analogous recommendations

in some instances and in some places in this report discuss the logic and rationale for those recommendations using the same or similar language, citations, etc. as we did in reports provided to those other communities, the particular circumstances of TPD and needs of Tacoma's diverse communities are the focus of our recommendations throughout this report.

We approach this report, as we endeavored to approach our work in Tacoma and our interactions with Tacoma stakeholders, with humility. Although we believe that our review of policies and protocols, examination of aggregate data and specific types of TPD performance, and engagement with community and Department stakeholders provides a sufficient and accurate foundation for recommendations grounded in best practices, we are not from Tacoma. Because of the ongoing public health situation, we were unable to spend the type of on-the-ground time with stakeholders from which we have typically derived tremendous benefit. It is possible that the limits of our approach, as with any approach of assessing the disparate functions of a large and significant organization, may lead us to overlook some details, miss some nuance, or bypass additional areas of importance.

This report does not have all of the answers. We do not have all of the answers. For that matter, it is unlikely that any one of Tacoma's many stakeholders alone has all of the answers. However, based on our conversations with the Tacoma community, understanding of emerging and best practices, and professional experiences addressing public safety in communities across the country, this report seeks to highlight specific areas that the Tacoma community, the City, and TPD can address to enhance community well-being and promote public safety in an ever-more inclusive, equitable, and just way.

CONTEXT & BACKGROUND

The Tacoma Police Department provides policing services for the more than 215,000 residents of the City of Tacoma.[1] As of March 2021, 333 sworn personnel and 38 civilians work for TPD. The Department is budgeted for 364 sworn positions, but has 25 unfilled officer positions, five unfilled detective positions, and one open Assistant Chief position. All civilian positions, except one Forensic Services Supervisor position, are filled.   The Department's largest Division is its Patrol Division, which is "staffed by five Lieutenants, 26 Sergeants, 15 Patrol Specialists, and 160 Patrol and Traffic Officers."[2] According to TPD, this translates to "approximately 21 Officers patrolling Tacoma at any given time."[3]

This section provides some context about policing in Tacoma and the TPD, including some relevant historical background and current community stakeholder views about policing. It also provides some background on TPD's status as a Commission on Accreditation for Law Enforcement Agencies-accredited agency.

A.   An Overview of Policing in Tacoma

Community needs, dynamics, and histories fundamentally shape policing. In its early boom, in the late 1800s, the City of Tacoma found itself at the center of vast immigration and development.[4] Within this context, "[i]n 1885, the citizens of Tacoma tried to run all Chinese residents out of town."

In the years following World War II, Tacoma experienced another uptick in migration from African-Americans. These new Tacomans were regularly denied loans by major banks when they attempted to purchase homes in white neighborhoods – a practice called "redlining."[5] Tacoma's First Black Mayor, Bill Moss, recounted:

> 'When you called a real estate office, you used what I call your 'white voice,"
> Harold Moss said, sharing his strategy for roping a white real estate agent into
> showing a home. If the couple managed to get inside a house, he said, the

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[1]   City   of   Tacoma,   Government,   City   Departments,   *Police*, https://www.cityoftacoma.org/cms/one.aspx?pageId=11953 (last visited Mar. 9, 2021).

[2] City of Tacoma, Government, City Departments, Police, Operations Bureau, *Patrol Division*, https://www.cityoftacoma.org/government/city_departments/police/operations_bureau/patrol_division (last visited Mar. 9, 2021).

[3] *Id.*

[4]   Pierce   County,   Explore,   About   Pierce   County,   Our   Community,   *History*, https://www.co.pierce.wa.us/197/History#:~:text=Tacoma%20was%20founded%20in%201872,blacks mith%20and%20approximately%20100%20citizens (last visited Mar. 12, 2021).

[5] Kate Martin, "How Racism Kept Black Tacomans from Buying Houses for Decades," *Tacoma News Tribune*   (Aug.   10,   2018),   https://www.thenewstribune.com/news/business/real-estate-news/article216269965.html.

owners' excuses would fly: 'They would hate me if I sold this house to a Negro,' or, 'I don't think you could get a loan.'[6]

Covenants and heterogeneous neighborhood design continued to segregate Blacks, as well as, in different ways, other immigrant populations, such as Asians and Italians.

By the mid-1970s, a number of activist groups in Tacoma were protesting and calling attention to inequality in Tacoma. A number of prominent community stakeholders in Tacoma have their origins in this area, such as the Black Collective, which had its origins as Concerned Black Citizens.[7]

Although TPD can trace its origins to the mid-1800s, and communities can point to long periods of struggle for equal treatment and access, a number of events and dynamics that have emerged within the last twenty years provide especially important context for our evaluation with respect to policing, the police-community relationship, and public safety services in Tacoma today:

- In 2003, Tacoma's then-Police Chief killed his wife in front of his two children before killing himself.[8] The incident prompted public discussion about the Department not responding appropriately to a claim of rape against the Chief and to his wife's domestic violence call in the days leading up to the murder, as well as his being "promoted despite a failed psychological examination."[9] It set the occasion for the City making a number of reforms with respect to policing and domestic violence response.[10]

- In 2014, "[r]esidents were outraged at the idea of police possibly collecting personal information and storing it . . . when the public learned that the Police Department had for years been quietly using Stingrays, controversial surveillance equipment that can sweep up records of every cellphone call and message from up to a half mile away."[11]

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[6] *Id.*

[7] Washington State Historical Society, *Tacoma's Struggle for Civil Rights* 5, https://www.washingtonhistory.org/wp-content/uploads/2020/04/tacoma-struggle-civil.pdf (last accessed Mar. 12, 2021).

[8] Rick Anderson, "Domicile of Dysfunction," *Seattle Weekly* (Oct. 9, 2006), https://www.seattleweekly.com/news/domicile-of-dysfunction/.

[9] "Brame Family Settles Lawsuit," *Seattle Times* (Sep. 13, 2005), https://www.seattletimes.com/seattle-news/brame-family-settles-lawsuit-against-tacoma/; Rick Anderson, "Domicile of Dysfunction," *Seattle Weekly* (Oct. 9, 2006), https://www.seattleweekly.com/news/domicile-of-dysfunction/.

[10] Stacey Mulick, "Promises Made, Some Promises Kept," *Tacoma News Tribune* (Apr. 21, 2013), *available at* http://www.courts.wa.gov/content/PublicUpload/eclips/4.22.13%20TNT2.pdf.

[11] Stacia Glenn, "After 17 Years, Tacoma Police Chief With 'Good Heart and Tough Job' Retires," *The Spokesman-Review* (Dec. 30, 2020), https://www.spokesman.com/stories/2020/dec/30/after-17-years-tacoma-police-chief-with-good-heart/#:~:text=But%20in%20November%202010%2C%20Tacoma,state%20to%20acquire%20the%20accreditation.

- In 2014, "an off-duty Tacoma police officer working security at a Pierce County mall" "slam[ed] 15-year-old Monique Tillman "into parked vehicles, forcibly shoving his forearm into her chest, grabbing her by the hair and body-slamming her into the pavement."[12] A federal court awarded her $500,000 in a lawsuit pertaining to the incident. The incident inspired community outrage and concern.

- The shooting of 24-year-old Bennie Branch by a TPD officer in 2019 has been the source of community anger and concern about TPD's "use of violence and lack of transparency."[13]

- Manuel Ellis "died at the scene" of a use of force incident with TPD officers on March 3, 2020 "from what the Pierce County Medical Examiner's Office later determined was" homicide, or specifically "oxygen deprivation caused by restraint."[14] During the incident, five officers (four from Tacoma and one off-duty sheriff's sergeant) were at the scene as Mr. Ellis, a 33-year-old Black man, was restrained and "complained he couldn't breathe."[15] As of this writing, the Washington State Attorney General's Office is reviewing the Washington State Patrol's investigation of the incident to determine if any involved officers will be charged criminally.[16] (21CP did not review any materials related to the investigation, but this report and its recommendations do take note of the facts identified by media and the nature of concerns related to the deadly force encounter that community and Department members raised in focus groups and one-on-one discussions.)

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[12] Christine Clarridge, "Teen Tossed 'Like a Child's Doll' By Tacoma Cop Awarded $500,000," *Seattle Times* (Mar. 23, 2018), https://www.seattletimes.com/seattle-news/crime/teen-tossed-like-a-childs-doll-by-tacoma-cop-awarded-500k/.

[13] Elizabeth Turnbull, "Following Tacoma Police Department Incident, New Calls for Justice regarding History of Excessive Force," *South Seattle Emerald* (Jan. 29, 2021), https://southseattleemerald.com/2021/01/29/following-tacoma-police-department-incident-new-calls-for-justice-regarding-history-of-excessive-use-of-force/; Michael Spears, "Bennie Branch's Family Raises Concerns About 2019 Deadly Tacoma Police Shooting Report," *KIRO7.com* (June 9, 2020), https://www.kiro7.com/news/local/bennie-branchs-family-raises-concerns-about-2019-deadly-tacoma-police-shooting-report/GGMTDKEILRGKZLMVPBM2DLRAFU/.

[14] Patrick Malone, "New Report Reveals Fifth Tacoma Officer Restrained Manuel Ellis, Who Died in Police Custody," *Seattle Times* (Dec. 30, 2020), https://www.seattletimes.com/seattle-news/new-report-reveals-fifth-tacoma-officer-restrained-manuel-ellis-who-died-in-police-custody/.

[15] *Id.*

[16] Stacia Glenn, "Charging Decision on Tacoma Officers Involved in Manuel Ellis' Death to Come By April," *Kiro7.com* (Feb. 24, 2021), https://www.kiro7.com/news/local/charging-decision-tacoma-officers-involved-manuel-ellis-death-come-by-april/FCJDMW53IZCTJJW6ZNN2MEAWPQ/.

In the months after Mr. Ellis' death, accounts from family and media revealed that he "struggled with addiction and mental illness" [17] – specifically, "schizophrenia, depression, and attention-deficit/hyperactivity."[18] The responding officers said they "believed Ellis was suffering from excited delirium."[19]

21CP observes here that, although it was not able to review the particular factual record surrounding the Manuel Ellis record, the significance of his death permeated many discussions with Tacoma officers and community members.

- Manuel "Ellis' name was frequently invoked during protests . . . following the death of George Floyd in Minneapolis police custody" in May 2020 – both locally and nationally.[20] On June 5, 2020, Tacoma's Mayor said that the four involved TPD officers should be "fired and prosecuted to the full extent of the law."[21]

- In June 2020, TPD and the City of Tacoma publicly committed to "implementing policies and practices that align with the National Campaign Zero's 'Eight Can't Wait' recommendations."[22]

- On January 25, 2021, a TPD officer "drove an SUV through a crowd," injuring two individuals and leading to protests against the police.[23]

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[17] Patrick Malone, "How Manuel Ellis Slipped Through the Cracks of the Mental Health System," *Seattle Times* (Sep. 22, 2020), https://www.seattletimes.com/seattle-news/times-watchdog/how-manuel-ellis-slipped-through-the-cracks-of-pierce-countys-mental-health-system/.

[18] Will James, "Who Was Manny Ellis? Family and Friends Saw a Man Searching for Peace and Redemption," *KNKX.com* (Dec. 28, 2020), https://www.knkx.org/post/who-was-manny-ellis-family-and-friends-saw-man-searching-peace-and-redemption.

[19] Alex Hider, "Manuel Ellis: Washington Medical Examiner Rules Man's Death in Policy Custody a Homicide," *KATC.com* (June 4, 2020), https://www.katc.com/news/america-in-crisis/manuel-ellis-washington-medical-examiner-rules-mans-death-in-police-custody-a-homicide.

[20] Patrick Malone, "New Report Reveals Fifth Tacoma Officer Restrained Manuel Ellis, Who Died in Police Custody," *Seattle Times* (Dec. 30, 2020), https://www.seattletimes.com/seattle-news/new-report-reveals-fifth-tacoma-officer-restrained-manuel-ellis-who-died-in-police-custody/; *see also* Matt Driscoll, "Tacoma's Manuel Ellis, Like So Many Before Him, Didn't Have to Die," *Tacoma News Tribune* (June 3, 2020), https://www.thenewstribune.com/news/local/news-columns-blogs/matt-driscoll/article243245811.html.

[21] Colin Dwyer, "Tacoma Mayor: Officers Who Arrested Manuel Ellis 'Should Be Fired and Prosecuted,'" *NPR.org* (June 5, 2020), https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/05/870298025/tacoma-mayor-officers-who-arrested-manuel-ellis-should-be-fired-and-prosecuted.

[22] City of Tacoma, Government, City Departments and Offices, City Manager's Office, Transforming Tacoma, City Council Priority: Community Safety, *8 Can't Wait Campaign*, https://www.cityoftacoma.org/government/city_departments/City_Managers_Office/transforming_tacoma/city_council_priority__community_safety_/8_can_t_wait_campaign (last visited Mar. 9, 2021).

[23] Daniel Gilbert & Mike Reicher, Tacoma Police Officer Under Investigation After Driving SUV Through Crowd," *Seattle Times* (Jan. 24, 2021), https://www.seattletimes.com/seattle-news/crime/tacoma-police-officer-might-have-used-deadly-force-when-driving-into-crowd-chief-says/.

It is with, and through, these historical lenses and current landscapes that 21CP obtained community and officer feedback in an effort to identify where policies, practices, and community engagement may be succeeding or failing.

B.   An Overview of Stakeholder Views About Policing in Tacoma

In interviews with command and line staff alike, TPD personnel represented that the Department works regularly to build trust and relationships with all communities of Tacoma. However, according to officers, TPD struggles with the appropriate staffing, resources, and tools to effectively manage the type of community engagement and community policing that most Tacoma residents would like to see.

Like many communities in the nation, Tacoma residents, councilmembers and police officers told us that, despite its best efforts, Tacoma continues to be faced with the challenges being discussed on a national stage in their community: marginalized communities feeling over-policed and lacking problem-solving interventions; constrained police funding; a top-heavy department that might be staffed differently in ways that might better serve the community's needs; use of force cases that create community concerns; and recruitment and hiring efforts that have not yet yielded the type of truly diverse and representative police force that many in the community desire.

The City of Tacoma, along with a variety of partners, including TPD, launched a multi-year project in 2015 known as Project PEACE (Partnering for Equity and Community Engagement).   The goal of Project Peace was to "build a foundation of trust between historically marginalized communities and law enforcement. The aims of the project are to:

- Foster relationships between the Police Department and local community;
- Provide transparency about policing processes and practices, and about ways of engaging the public;
- Promote effective crime reduction while strengthening public trust;
- Set the pace for future policing-related initiatives; and
- Allow the public to provide feedback to be considered during the Tacoma Police Department Strategic Planning Process.[24]

The project's planning and implementation involved more than 800 people across Tacoma's diverse communities. Several years later, TPD still uses the Project PEACE initiative as a touchstone and guide for facilitating community engagement and working to gain greater trust.

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[24] National Civic League, Promising Practices Database, *Project Peace – Tacoma, WA*, https://www.nationalcivicleague.org/promising-practices/project-peace-tacoma-wa/ (last visited Mar. 12, 2021).

Quarterly, TPD report out on their efforts to address the goals of their Project PEACE workplan across three identified categories: youth engagement, diverse communities and professionalism.[25] Unfortunately, due to the impacts of COVID-19 and the pandemic, the winter 2019-2020, one-page report on Project PEACE was published by TPD along with a notice discontinuing quarterly reporting.

When interviewed, almost every stakeholder in Tacoma spoke, to at least some extent, about Project PEACE. Some saw it as an important step forward for TPD in their effort to be intentional about community engagement and policing. Others, told us that, the engagements were not about listening – they instead felt "talked to." Some community members said that they do not feel the community has seen much evidence of success from the program. In particular, they noted that Project PEACE did not seem to be contributing to improvements with respect to issues of loitering, homelessness, mental health, and crime that they face daily in their communities.

At the same time, even among those who question the Project's effectiveness, some said that they credit the Department, and its 12 Community Liaison Officers ("CLOs"), for cultivating meaningful relationships with the community.[26] Prior to the current public health emergency, TPD and its CLOs attended over 80 standing community meetings each month. TPD command staff told us that CLOs, along with patrol and 3-1-1, work to identify recurring issues or calls for service – investigating the situation with an eye toward addressing systemic issues, such as an absentee landlord neglecting an abandoned property and providing a setting for loitering. Leadership of neighborhood associations generally praised CLOs for the regular participation in community meetings and their ability to "dig in" and solve issues facing the community.

Even as many community stakeholders have positive views of CLOs, they also noted that these officers' engagement is more of the exception than the rule. Most patrol officers are seen, both within and outside the Department, as running from one call for service to the next. In the moments when they are not fielding calls or responding to emergencies, officers are seen patrolling from their vehicles. This allows, as multiple community members observed, for relatively limited community engagement, collaboration, and relationship-building with the bulk of TPD's patrol officers.

Thus, even among those community members who give TPD credit for the work of CLOs, there appears to be a clear distinction between the Department's ongoing engagement efforts and its core enforcement or response activity. 21CP heard a number of foundational concerns among diverse stakeholders that TPD's approach to policing, and its understanding of community needs and issues, may not be aligned with Tacoma's residents. As one community member indicated:

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[25] City of Tacoma, Government, City Departments and Offices, Police, *Project PEACE*, https://www.cityoftacoma.org/cms/One.aspx?portalId=169&pageId=86290 (last visited Mar. 12, 2021).
[26] Currently, there are three CLOs per sector. TPD notes that, under previous staff levels, there were four per sector.

> I do not think we have a shared understanding of why we have police and their purpose. There is a lot of difference in the underlying assumptions about what that means for our community and why it exists.

A sense of inequity among neighborhoods and communities frequently surfaced. One resident reported:

> We often have challenges because there is a precinct on the wealthy side of our street and one on the other side [and we feel] we constantly face a stand-off of who responsibility we are. We often call and they don't come because no one wants to own it.

Members of BIPOC communities say that TPD is not responsive when they are needed and, at the same time, are overly and unduly intrusive in their communities at other instances. As one community member suggested, "There is a sense of personal targeting, . . . like . . . they are seeking me out." From community stakeholders and elected officials, 21CP heard concerns that members of BIPOC communities, and especially Black Tacomans, bear an unequal and unfair burden of law enforcement and that the outcomes of these interactions for such individuals reveal systemic racism in TPD.

Throughout this report, we describe and summarize the types of views that the community articulated in focus groups and interviews. Even as opinions about policing and law enforcement were as diverse as Tacoma's communities, there was a widely-shared, though certainly not uniform, belief that TPD is not performing as equitably, justly, and transparently – and with sufficient accountability – as it should. For many, the killing of George Floyd in Minneapolis in May 2020 and the national outcry that followed highlighted the need for Tacoma to address inequities and bias in policing.

Within this context, a theme that emerged across a number of interviews with TPD personnel is the sense that the department is alienated from – even "under siege" by – the rest of the City of Tacoma. A number of the Department's personnel believe that they are "hated" by the City's elected officials and leaders, finding comments from some City officials in the Summer of 2020 as particularly dispiriting. One officer said that officials "came out and destroyed us" with public comments and email messages, even though they "had no idea what was going on" or "what policing is like." Another noted that they, like many others, are "critical about leadership" in the City with respect to their opinions of law enforcement matters. Other personnel appeared to cite the general national context surrounding policing currently as a source of problems for the Department:

> I think that we're in a very precarious situation[s] right now where we are faced with difficulties . . . There are good, well-trained police officers who are leaving . . . .

As another officer observed, "on a scale of one to ten, stress is at a twenty," among people within the Department. A number of TPD officers lamented that community stakeholders and elected officials, in their view, paint them with a broad brush based on national dynamics and a small number of local incidents and, in doing so, fail to see the superior community service that they regularly provide. Many TPD officers say that the Department's community relationships are, in their view, not as poor as many in the City's leadership believe.

At the same time, other officers and, indeed, some of the officers who were critical about City leadership's relationship with TPD, say that they feel well-supported and enjoy working at the Department. As one officer noted, "Working at a police department sucks. Working at the Tacoma Police Department is great." For one thing, "[m]y benefits are a ten." For another, officers benefit from "awesome physical facilities" and appropriate equipment: "We've always been well-equipped . . . I think we're pretty well taken care of in terms of our gear." Personnel generally think highly of their peers. As one officer noted, "we've hired the right people who look out for each other."

We note here that we spoke to some Black members of TPD who identified a sense of isolation within the Department: "As a Black police officer, it gets awful lonely . . . It doesn't feel like there's as much camaraderie." Multiple officers noted that the Department had lost several Black officers and was likely to continue to lose these officers going forward unless additional support is provided and dynamics change such as creating a Black Officers Union or identity group to allow officers the important experience of representation and understanding from their fellow Black peers and Black leadership.

Some TPD personnel expressed optimism about the future:

> We have to prove we are open to listening and being what the people need. We have to let the people know we care – we will change as we hear from them.

To this end, a number of stakeholders cited TPD's implementation in 2020 of reform measures advocated by Campaign Zero's Eight Can't Wait Campaign, "designed to re-enforce the prioritization of de-escalation and anti-racism in community policing."[27] Additionally, as of January 1, 2021, TPD is implementing body-worn cameras for all officers. This report elsewhere discusses many details of these efforts.

Even as stakeholders credit TPD's recent reforms, many cite a need for Tacoma to think more comprehensively about what public safety is in Tacoma, what the best ways are of providing for that safety going forward, and how TPD fits into the public safety response picture. For example, several community stakeholder groups submitted lists of demands to 21CP through the Voices of Tacoma email, that identified a number of critical areas of concern:

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[27] City of Tacoma, Government, City Departments and Offices, City Manager's Office, Transforming Tacoma, City Council Priority: Community Safety, *8 Can't Wait Campaign*, https://www.cityoftacoma.org/government/city_departments/City_Managers_Office/transforming_tacoma/city_council_priority__community_safety_/8_can_t_wait_campaign (last visited Mar. 9, 2021).

- Limited interpreter services available to immigrant population and the repeated use of children to communicate or serve as interpreters;
- Limited investment in cultural education for officers about indigenous and immigrant communities;
- Trainings around interacting with people experiencing mental health challenges that result in homelessness for the average patrol officer;
- The development of well marketed ride-a-long programs to increase community and leadership education on the role of TPD in Tacoma's public safety goals;
- All officers should have regular access to mental health practitioners/supports when engaging in crisis intervention calls, not simply the Homeless Outreach Team (the "HOT Team");
- Improved police response to car break-in, license plate theft, and home break-ins; and
- Appropriate response to mass gatherings and protest.[28]

Although this report does not address all of the above issues, TPD should ensure that the process of re-imagining public safety and the development of a recommended Community Safety Plan, described below, includes community deliberation on these concerns and community needs.

C. CALEA Accreditation

Tacoma has been accredited by the Commission on Accreditation for Law Enforcement Agencies ("CALEA") in 2010, 2013, 2016, and 2020.

"CALEA was founded in 1979 by the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs' Association, and the Police Executive Research Forum."[29] The process of CALEA accreditation involves, primarily, an agency assessing itself against a set of codified standards.[30] CALEA representatives then conduct a one-week, on-site visit. CALEA does not provide an agency with policies, procedures, or protocols; instead, it provides a mechanism for the Department to assess itself along many dimensions and for CALEA representatives to verify compliance with these standards. Many CALEA standards relate

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[28] Letter from Mental Health Practitioner Working Group and the Designing Language Access Groups to 21CP Solutions.
[29] S. Daughtry Jr., "Time to Take Another Look at Law Enforcement Accreditation," 63 *Police Chief* 20 (1996).
[30] *Id.* ("The heart of the accreditation process is the 'self-assessment' phase, in which the agency measures its efforts against each standard and prepares a brief file that documents compliance.")

to organizational, managerial, and administrative concerns like "personnel administration," "detainee and court-related services," and "auxiliary and technical services."[31]

Accreditation is not necessarily widespread across law enforcement. Departments must initiate the process, and they pay to proceed through accreditation. Consequently, as Tacoma's *News Tribune* summarized:

> [O]nly 2 percent of police agencies across the country can claim CALEA bragging rights, and only eight of 269 public safety agencies in Washington have earned accreditation. TPD is the only recipient in Pierce County.[32]

Proponents of accreditation say that:

> The benefits of accreditation are improved police effectiveness, identification of problem areas, the development of documentation of performance, decreased insurance premiums, decreased liability potential, and demonstration to the community that its police department runs a state-of-the-art operation.[33]

Such advocates "claim that accreditation facilitates the diffusion of best practices and builds a culture of professionalism in an agency."[34]

There is some evidence that accreditation may be beneficial, especially with respect to how people view the professionalism of a police department. Some studies have identified meaningful differences in accredited agencies with respect to police officer selection and training.[35] When surveyed, police departments say that they "view accreditation as beneficial to their departments."[36] However, other studies cast doubt on whether accreditation is linked to enhanced performance. Because accreditation "standards reflect[] greater concern with internal organization issues than with substantive community problems," being CALEA accredited does not automatically correspond to better policing outcomes.[37]

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[31] Jim Burch, National Police Foundation, "CALEA Accreditation – A Platform for Excellence and Reform," https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/ (last visited Mar. 8, 2021).

[32] "Should Tacoma Police Keep National Bragging Rights? You Have a Say In That," *New Tribune* (June 16, 2020), https://www.thenewstribune.com/opinion/editorials/article243566112.html.

[33] R.L. Snow, "Accreditation: A 21st Century Necessity?," 40 *Law and Order* 84, 84 (1992).

[34] Manuel P. Teodoro & Adam J. Hughes, "Socializer or Signal?: How Agency Accreditation Affects Organizational Culture," 72 *Public Administration Review* 583, 583 (2012).

[35] Stephen A. Baker, *Effects of Law Enforcement Accreditation: Officer Selection, Promotion, and Education* (1995).

[36] S. Cheurprakobkit, "Law Enforcement Accreditation," 3 *Telemasp Bulletin* 2 (May 1996).

[37] G.W. Cordner & G.L. Williams, "Community Policing and Accreditation: A Content Analysis of CALEA," *in Quantifying Quality in Policing* (Larry T. Hoover, ed.) (1996)).

For instance, a 2001 study found that an agency's accreditation was not statistically related to the organization's number of use of force incidents.[38] A separate examination of police departments in Florida found that "accreditation status does not affect violent and property crime clearance rates," with such rates more affected by an agency's number of officers and "law enforcement expenditures per capita."[39] Another study of 628 departments found "that no difference exists between CALEA-accredited agencies and non-accredited agencies in: (1) the total number of complaints received; (2) the number of sustained citizen complaints."[40] Other research found that "agency accreditation was not associated with the degree to which officers engaged in community oriented policing activities."[41] A further study found "no association between accreditation and officers' own values."[42]

To this extent, then:

> Police agency accreditation endures because it provides a veneer of professional assurance while accepting a wide range in the substance of formal policies, most of which have little consequence for the day-to-day practices of police . . . Its greatest significance is in the symbolic realm, not the everyday experiences of the police and the public.[43]

It appears that the CALEA process is important to TPD, with the Department's Policy manual including running references beside various policy sections to the relevant CALEA standards that the Department believes the section satisfies. To the extent that the CALEA framework and requirements help the Department organize its operations, this may be useful.

Ultimately, however, "CALEA provides agencies with a blueprint for 'what, not how'"[44] – leaving police departments to determine for themselves the best ways for *how* to precisely address issues for their communities. The body does not certify the *effectiveness* of what a department like TPD is doing to realize the *outcomes* that its community wants. CALEA is a framework, not a prescription. A department's assertion that something has been "CALEA-

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[38] Geoffrey P. Alpert & John M. MacDonald, "Police Use of Force: An Analysis of Organizational Characteristics," 18 *Justice* Quarterly 393, 405–06 (2001).

[39] William M. Doerner & William G. Doerner, "Police Accreditation and Clearance Rates," 35 *Policing* 1, 1 (2012).

[40] Ross A. Wolf, "Accreditation in Police Agencies: Does External Quality Assurance Reduce Citizen Complaints?," 90 *The Police Journal* 1 (2016).

[41] Richard R. Johnson, "Examining the Effects of Agency Accreditation on Police Officer Behavior," 15 *Police Organization Review* 139 (2013).

[42] Manuel P. Teodoro & Adam J. Hughes, "Socializer or Signal?: How Agency Accreditation Affects Organizational Culture," 72 *Public Administration Review* 583, 583 (2012).

[43] S. Mastrofski, "Police Agency Accreditation: A Skeptical View," 21 *Policing* 202, 205 (1998).

[44] Jim Burch, National Police Foundation, "CALEA Accreditation – A Platform for Excellence and Reform,"   https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/ (last visited Mar. 8, 2021).

certified" does not necessarily mean that it aligns with best practices; that it is effective in realizing positive outcomes; or that it aligns with the values and needs of the community.

As such, the accreditation process is not a ceiling for TPD's efforts to provide the Tacoma community with just, fair, effective, and equitable public safety services. Therefore, and as previously described, this report looks to best practices, the promising experiences of peer departments, research, evidence, data, and the experiences of Tacoma stakeholders to identify opportunities for the Department to better serve Tacoma's many communities.

AREA 1: ADDRESSING COMMUNITY NEEDS

Police departments exist to serve the community, to address community needs, and help solve community problems. This report therefore begins with a brief discussion of what the needs of the Tacoma community appear to be when it comes to public safety services and of how the best mechanisms for ensuring that such needs receive the best, most equitable, and most effective responses.

TPD provided information about calls for service that it received during the period of January 1, 2018 through November 2020. Over that span, there were roughly 330,000 Calls for Service classified into one of seven overarching categories.

Two out five (42 percent) of calls by TPD residents for service over that span were for "responsive" incidents. These types of incidents encompass police responses to suspicious persons, disturbances, welfare checks, and burglar alarms, all instances in which the officer is unlikely to have initiated the engagement. Traffic-related calls for service made up another one-fifth (21 percent) of incidents followed by miscellaneous policing incidents such as those deemed informational, stops and searches, and security checks.

Incidents involving crime are categorized according to the FBI's Uniform Crime Report ("UCR") definitions. Part I crimes include person crimes – made up of criminal homicide, aggravated assault, rape, and robbery and property crimes- made up of burglary, theft, and auto theft. Other offenses, such as most domestic incidents, trespassing, and drug enforcement, are categorized as non-UCR Part I offenses. Finally, incidents such as suicide and death are categorized as medical incidents.

Table 1. TPD Calls for Service by Category, January 2018 – November 2020

Category	Calls for Service	Percent of Total
Responsive	138,162	41.9%
Traffic	67,644	20.5%
Miscellaneous Policing	50,891	15.4%
Non-UCR Part I Offense	39,135	11.9%
Property Crime	20,730	6.3%
Person Crime	7,006	2.1%
Medical	6,327	1.9%

Source: 21CP Analysis of TPD Data

As Table 1 summarizes, nearly 98 percent of all calls for service in Tacoma do not involve crimes against persons. Indeed, the vast majority (approximately 80 percent) of incidents that TPD handles do not involve Part I criminal offenses whatsoever.

To this end, Tacoma is similar to many other cities where available data suggests that officers spend comparatively little of their time addressing violent crime. For instance, an analysis of officer activity in New Orleans, Sacramento, and Montgomery County in Maryland found that officers "spent roughly 4 percent of their time" addressing "serious violent crimes."[45] This is largely because "[s]erious violent crimes have made up around 1 percent of all calls for service in these police departments."[46] "The vast majority of calls [to police] have nothing to do with crime," instead "involv[ing] disorderly crowds, domestic disputes, traffic accidents, minor disturbances, and a whole array of . . . calls where the officer arrived on the scene only to discover nothing was happening."[47]

Therefore, we were pleased to hear from the Tacoma CPAC about the process underway to re-imagine public safety in Tacoma. In particular, we understand that a primary mechanism for this process is the crafting and refinement of a Community Safety Plan, and that this Plan will be created through a community-driven and resident-focused process that allows for substantial collaboration and engagement across Tacoma. Additionally, under its "Heal the Heart: Becoming an Anti-racist Community Through Cross-sector Systems Transformation" plan, the City has committed to addressing racial disparities through "comprehensive and sustained transformation of all of the institutions, systems, policies, practices, and contracts impacted by systemic racism, with initial priority being given to policing in the City of Tacoma."[48] The City has also entered into a partnership with the National Network for Safe Communities at John Jay College, which will support the City in designing and implementing a police-community reconciliation strategy. Consequently, there are several efforts underway to re-imagine public safety in Tacoma, and the City's commitment to a process of exploring how best to provide for the safety and well-being of all Tacomans is notable.

The following recommendations provide some general suggestions, based primarily on stakeholder input and feedback, for what this process, which will likely take some sustained time to allow for diverse community voices to be appropriately included, should take care to include or incorporate. The process may also consider making incentives available to marginalized communities, who are often surveyed and studied but rarely compensated for their time and efforts, to support broad-based and equitable engagement.

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[45] Jeff Asher and Ben Horwitz, "How Do the Police Actually Spend Their Time," *New York Times* (June 19, 2020), https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html.
[46] *Id.*
[47] Roge Karma, "We Train Police to be Warriors — and Then Send Them Out to be Social Workers," *Vox* (Jul. 31, 2020), https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training.
[48] City of Tacoma Resolution No. 40622.

Recommendation 1.   The role of TPD in helping to promote community safety needs to be specifically and clearly defined – such that all TPD personnel and community members understand their individual roles.

As this report discusses throughout, there does not appear to be a single, shared vision of community safety in Tacoma, nor a uniform understanding of how TPD helps to promote and further that vision. Community members and police personnel alike indicated in interviews and focus groups that officers often run from answering one call to the next. If not answering calls, they patrol from their vehicles. This allows for limited community engagement, collaboration, and relationship-building, which works against the sense that there is a shared, community-driven framework for policing and public safety in the City.

Any work at re-imagining public safety in a comprehensive way should begin by defining what public safety means to Tacoma's diverse communities and should identify clearly the roles that TPD play in promoting such public safety and community well-being.

Recommendation 2.   TPD's approach to collaborating with the community, responding to community needs and issues, and fostering community relationships should be specifically memorialized in a written, strategic plan (the "Community Safety Plan") accessible to both community and police personnel.

As referenced in this report's introduction, Tacoma's stakeholders appear aligned on the need to engage in a meaningful, structured, and deliberative process of re-imagining public safety in Tacoma. Among other things, this includes identifying community needs and issues, how they are currently addressed, and what the best or most optimal responses should be to those needs and issues going forward. It may be that the best response to some community problems will be government or community services, and not TPD, while other issues may still be best addressed by the Department.

To that end, 21CP understands that Tacoma is working toward developing and refining a Community Safety Plan ("the Plan"). To ensure that stakeholders drive toward definitive determinations and structured processes to improve public safety and enhance community well-being, the City should ensure that the Plan, most fundamentally, delineates community needs, identifies how TPD may help to serve those needs, and identifies how mechanisms other than TPD may help to serve those needs.

In the process of developing the Community Safety Plan, the City, as well as TPD, should consider the following:

> *Recommendation 2.1. TPD should develop training for all personnel that reflects and furthers the goals of the Community Safety Plan. Diverse representatives of the Tacoma community should be involved in both the development and implementation of such training.*

Currently, community policing training provided to officers in the Academy does not seem to be reinforced as much as it should be in the Department and across officers' careers. As TPD fundamentally overhauls its approach to training, in the manner identified elsewhere in this report, it should provide regular, ongoing, skills-based training and professional development focused on community problem-solving and engagement.

> ***Recommendation 2.2. The Community Safety Plan needs to establish a specific strategy for engaging people experiencing homelessness and those living in encampments.***

Nearly every interview that 21CP conducted with Tacoma residents addressed the issue of homelessness. It was clear that various Tacoma stakeholders have very different views about how to address the issue and what the appropriate role of the police should be. The topic of the best mechanisms for addressing issues of homelessness and housing insecurity should be incorporated into the Community Safety Plan.

> ***Recommendation 2.3. TPD should continuously evaluate how effectively it is fulfilling its roles and responsibilities, as set out in the Community Safety Plan, that can be regularly presented to both members and the community through various engagement efforts.***

Currently, it appears that communications about TPD's performance, both internally and externally, focus on presenting crime statistics and other passive, basic information.

However, 21CP heard from a number of community members that they welcome active problem-solving dialogues, collaboration, and ongoing reporting with follow-up on how the problems identified were addressed. Indeed, one of the reasons that it appeared that many community members approvingly referenced Project PEACE in focus groups and interviews is that engagement surrounding the Project appears to allow for this type of active problem-solving.

TPD policy currently requires monthly status reports[49] and regular external and internal surveys.[50] However, it is not clear whether these are being reliably conducted and/or circulated. To the extent that they are, they do not figure prominently in TPD operational decisions, as neither TPD personnel nor community members seem to be familiar with the results. To the extent that this type of engagement is occurring, or should occur, it might be formally incorporated into the Community Safety Plan as one of many mechanisms for ensuring opportunities for feedback, collaboration, communication, and transparency.

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[49] TPD Policy Manual Sub-Section P6.1.4.
[50] *Id.* Sub-Section P6.1.9.

Recommendation 2.4. As part of the Community Safety Plan, TPD should consider creating a problem-solving database reflecting the methodologies strategies, and/or steps that were utilized to resolve community problems.

TPD currently maintains a "top ten list" on its website regarding their most requested services.[51] However, this list does not provide as much explanation as there can and should be regarding how TPD has endeavored to address community issues previously, or how it is addressing less-common or more neighborhood- or community-specific issues. The Community Safety Plan might identify mechanisms through which TPD can formally document identified problems, and steps that it takes to address them, whether as a Department itself or by integrating and interfacing with other government and community services.

Recommendation 2.5. TPD needs to enhance its outward-facing communication efforts to reflect and promote the Community Safety Plan.

TPD's website does not currently reflect its Community Policing plan, which leaves Tacomans without valuable information and insight into how the Department is trying to address public safety issues and community problems. The website does have a Project PEACE report out section but it is not situated under the community policing and, as previously mentioned in this report, has not been updated for over a year. As a City-wide Community Safety Plan is developed and refined, it will be useful for the City to establish an accessible Community Safety portal on its website, and to develop non-web-based resources for those without ready internet access, that addresses community safety, well-being, and neighborhood problem-solving and the Plan's specific components.

Recommendation 3. TPD should identify and properly resource liaisons for residents whose specific backgrounds, identities, or characteristics set the occasion for specific needs.

We note here briefly that a number of stakeholders, within the Department and in the Tacoma community, noted that TPD has been taking affirmative steps recently to expand the diversity of the Department. To continue to strengthen these efforts, it may be useful for TPD to identify specific points of contact within the Department that can serve as resource liaisons for individuals, as well as potential new officers, with specific backgrounds, identities, and characteristics that can allow TPD to better reflect the rich diversity of Tacoma. The Department should ensure that it makes appropriate resources available to support the effort – including sufficient overall funding for the positions, professional

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[51] City of Tacoma, Government, City Departments and Offices, Police, Operations Bureau, Community Policing Division, https://www.cityoftacoma.org/government/city_departments/police/operations_bureau/community_policing_division (last visited Mar. 15, 2021).

development support, peer mentorship opportunities with other liaisons, practical accommodations with respect to shift scheduling, and the like.

AREA 2: CRITICAL OPERATIONS

I.	USE OF FORCE

A.   Policy

1. Officer Use of Force

Recommendation 4.   TPD should revise its use of force policies to make clearer to officers when force is and is not authorized.

TPD's current use of force policy uses a graphical "force model" that presents various types of subject actions, presented in a hierarchy from "compliant" to "life threatening," and corresponding "reasonable officer response[s]," presented in a hierarchy from "cooperative controls" to "deadly force."[52] The force model presents various types of officer responses as "enforcement electives" that align with various subject actions.

Figure 2: Current TPD Graphical Force Model
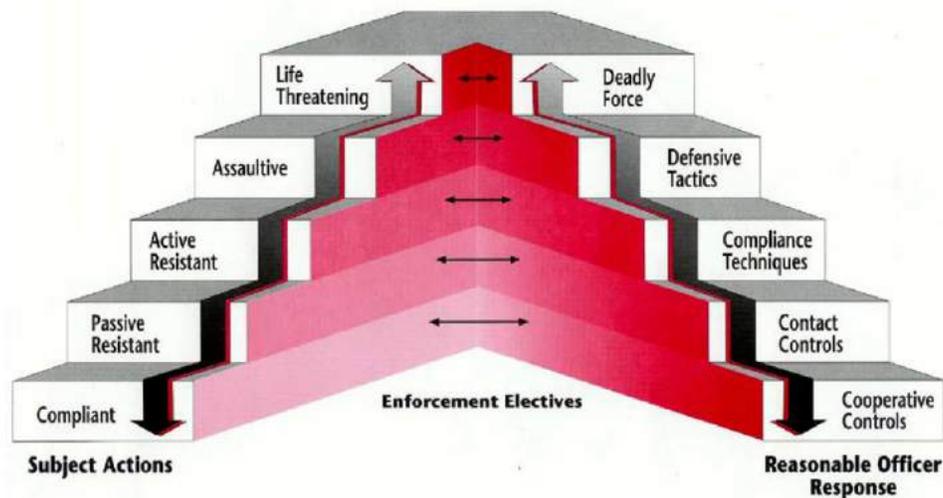
Source: TPD Policy Manual Sub-Section 3.1

This force model is displayed, to the point of redundancy, numerous times in the current policy at the start of standalone sections that are organized around corresponding pairs of subject actions and reasonable officer responses, including: "complaint–cooperative

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[52] TPD Policy Manual Sub-Section 3.1, P3.1.

controls,"[53] "passive resistant–contact controls,"[54] "active resistant–compliance techniques,"[55] "assaultive–defensive tactics,"[56] and "life threatening–deadly force."[57]

21CP has significant concerns that this "force model," while the model is "designed to proportionally align Officer's use of force with subjects actions,"[58] it is confusing, insufficiently precise, and risks reinforcing to officers that particular force responses are *required* or automatically authorized upon subjects exhibiting certain levels of resistance or threat.

On the one hand, the policy provides that "circumstances will dictate [an officer's] response," with "escalation, stabilization, and de-escalation" effectuated "as the subject's actions change."[59] This suggests an appropriate emphasis on officer responses to be carefully calibrated or proportional to the threat that a subject poses.

However, on the other hand, "[t]his model, while requiring Officers to maintain controlled superiority over a subject, supports the practice of progressive application of force as part of a continuous risk assessment process."[60] The policy expressly links specific subject actions to particular officer responses as "enforcement electives." Although various policy sections note that enforcement electives for higher levels of subject threats include lower-level officer responses, the model repeatedly and expressly links specific classes of subject actions with specific classes of officer responses. That direct pairing runs the risk of suggesting that *only* particular classes of officer response are appropriate in light of various subject threats – even in where less significant force may be feasible and appropriate under the circumstances.

Additionally, some of the listed enforcement electives are not necessarily uses of force – such as "advanced communication skills," "mental preparation, special positioning," and "communication skills." Although these tactics are properly considered as viable strategies to deploy during interactions with members of the public, they are better framed in the context of de-escalation (*see* Recommendation 6, below) rather than defined as a category of force.

Graphical representations of force decision-making may be intended to make legal requirements to use the force, that is necessary to counter a subject's actions, more understandable. However, departments and police organizations are increasingly skeptical of rigid force matrices or continuums. Often, these "[c]ontinuum models were developed decades ago when the courts provided little guidance on use of force . . . and in fact may be in

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[53] *Id.* Sub-Section 3.1, P3.1.2.

[54] *Id.* Sub-Section 3.1, P3.1.3.

[55] *Id.* Sub-Section 3.1, P3.1.4.

[56] *Id.* Sub-Section 3.1, P3.1.5.

[57] TPD Policy Manual Sub-Section 3.1, P3.1.6.

[58] *Id.* 3.1, P3.1.

[59] *Id.*

[60] *Id.* Sub-Section 3.1, P3.1 (original emphasis omitted).

conflict to what would be considered 'objectively reasonable' by the legal standards of today."[61]   Consequently, organizations like the Police Executive Research Forum (PERF) have recommended against "rel[iance] on rigid, mechanical, escalating continuums of force" because:

> [C]ontinuums suggest that an officer, when considering a situation that may require use of force, should think, 'If presented with weapon A, respond with weapon B. And if a particular response is ineffective, move up to the next higher response on the continuum.'. . .
>
> [A]ssessing a situation and considering options as circumstances change is not a steady march to higher levels of force if lower force options prove ineffective. Rather, it entails finding the most effective and safest response that is proportional to the threat. Continued reliance on rigid use-of-force continuums does not support this type of thinking.[62]

Because TPD's graphical representation of the force model, and the Use of Force policy's structure, runs a significant risk of implying that certain types of force responses are required in the face of particular subject actions, TPD should re-examine the force model and expressly emphasize core use of force concepts, strategic de-escalation tactics, and dynamic decision-making skills across all use of force policy, practices, and training.

In making this recommendation, we are mindful that one of the Eight Can't Wait Campaign's specific reforms is the use of a force continuum or matrix.[63] Regardless of the merits of use of force matrices, continuums, or other such graphical representations of core force concepts, TPD's current policy simply relies far too much on the graphical force model at the expense of articulating clear "rules of the road" for what officers can and cannot do. Where continuums tend to work, they do so in the context of policies that require force to be necessary, proportional, reasonable, and used only when de-escalation has been tried and failed or is not feasible under the circumstances – not in and of themselves.

TPD's graphical force model in not merely an instructional tool or illustrative aid. Instead, it is possibly the force policy's most prominent feature – appearing six times in the ten pages of policy devoted to when officers may and may not use force. Rather than relying on the force model as the dominant means of trying to ensure that all force is necessary, proportional, reasonable under the circumstances, and used consistent with principles of de-

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[61] Ed Flosi, "Use of Force: Downfalls of the Continuum Model," *Police1.com* (May 30, 2012), https://www.police1.com/use-of-force/articles/use-of-force-downfalls-of-the-continuum-model-dtXx4gU5SWkIvJwW/.

[62] Police Executive Research Forum, *Guiding Principles on Use of Force* 19–20 (2016) [hereinafter "PERF Guiding Principles"].

[63] Campaign Zero, *Police Use of Force Policy Analysis* 4 (Sept. 20, 2016), https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e1b5cc2994ca4ac1d97700/1474409936835/Police+Use+of+Force+Report.pdf.

escalation, TPD policy should expressly define, describe, and use these concepts in a revised force policy. The following recommendations address these considerations in turn.

Recommendation 5.   TPD's Use of Force Policy should better define and explain the requirement that force be used only when necessary.

Current TPD policy defines "necessary" according to State of Washington law, where it "means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended."[64] However, the concept is essentially only referenced at the beginning of the policy: "Officers . . . may use force when necessary, and shall use only that force which is reasonable."[65]

TPD policy should instead clarify the requirement – clear in Washington State law – that officers may use force *only when* no reasonably effective alternative exists.[66] That is, the requirement that force be deployed only in the absence of reasonable alternatives should be expressly articulated and explained in policy, rather than once, in passing, as in the Department's current policy. For instance, the Seattle Police Department provides that "[o]fficers will use physical force only when no reasonably effective alternative appears to exist" in order to achieve a legitimate and lawful objective.[67] Any force, regardless of level of severity or magnitude, must be subject to the necessity requirement. The Cleveland Division of Police requires that officers "use force only as necessary, meaning only when no reasonably effective alternative to the use of force appears to exist" – regardless of type or severity of force.[68]

Recommendation 6.   TPD should revise and expand its treatment of de-escalation in its Use of Force Policy.

"De-escalation" is not a defined term in TPD's current force policy. Where it is discussed, the policy suggests that de-escalation is something that happens *after* a threat has diminished or been eliminated – rather than clarifying "de-escalation" to be a set of tactics and strategies that can successfully resolve a situation, minimize or eliminate a threat, and advance public

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[64] TPD Policy Manual Sub-Section 3.1.1 (quoting and citing RCW 9A.16.010).

[65] *Id.* Sub-Section 3.1, P3.1 (original emphasis omitted). Other references to "necessary" or "necessity" reference a more colloquial usage and relate to the summoning of medical assistance (P3.1.3(C)), the making of comments during a review of force (P3.1.3(C)), and the initiation of post-Taser application procedures (P3.1.4(E)). A final reference to necessity is a somewhat confusing policy provision ostensibly aimed at prohibiting the use of Tasers and 40mm extended range projective launchers when deadly force is justified, unless another officer is present and capable of backing up with lethal force the officer applying less-lethal force in the event that the less-lethal force is ineffective (P3.1.4(C), (D)).

[66] *See* RCW 9A.16.010.

[67] Seattle Police Department Manual, Section 8.200: Using Force (rev. Sep. 1, 2015), https://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force.

[68] Cleveland Division of Police, *General Police Orders, Use of Force: General* at 1, https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf.

safety without, or with less significant, force. The policy describes officer "escalation, stabilization, and de-escalation," stating that "[w]hen situations are reasonably stabilized, application of force must proportionally de-escalate or cease in accordance with the subject actions, when control is gained or threat is removed."[69] Although officers should discontinue the use of force or adjust force response in light of a subject's compliance or the nature of the threat reducing, this policy language suggests that officers must only think about de-escalating situations when the situation is already "reasonably stabilized."[70]

TPD should revise its force policy to position de-escalation prominently as an all-encompassing philosophy rather than merely as part of a post-threat protocol. As the International Association of Chiefs of Police (IACP) have observed, "[t]he term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal."[71]

In particular, TPD policy should make de-escalation an affirmative duty applying to all officer-community encounters – not something that officers "are expected to" do or "should" do but something officers *must* or *shall* do. Such a duty to de-escalate is consistent with best practices nationally. For instance:

- **IACP National Consensus Policy on Use of Force** – "An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force."[72]

- **American Law Institute Principles on Use of Force.** – "Agencies should require, through written policy, that officers actively seek to avoid using force whenever possible and appropriate by employing techniques such as de-escalation."[73]

- **Seattle Police Department** – "When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics in order to reduce the need for force."[74]

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[69] TPD Policy Manual Sub-Section 3.1 (original emphasis omitted).
[70] *Id.*
[71] International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter "IACP Consensus Policy"].
[72] IACP Consensus Policy at 3.
[73] *Principles of the Law: Policing* §5.04 (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), *available at* https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.
[74] Seattle Police Department Manual, Section 8.100: Using Force (rev. Sep. 15, 2019), https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation.

- **New Orleans Police Department** – "When feasible based on the circumstances, officers will use de-escalation techniques, disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases."[75]

The revised treatment of de-escalation should emphasize that this duty is applicable across all incidents and officer performance, regardless of whether the incident ultimately involves force. Some departments, like the **Seattle Police Department** and the **Cleveland Police Department**, have established a separate, standalone de-escalation policy in addition to a general use of force policy. TPD may want to consider developing such a standalone de-escalation policy that articulates the de-escalation duty and, importantly, inventories the array of de-escalation techniques and strategies, including but not limited to slowing actions down, tactical repositioning; calling for additional resources; deploying strategic communication skills; and using time, distance, cover, and concealment.

Recommendation 7.   Consistent with the concepts of de-escalation and necessity, TPD should consider expressly requiring that officers exhaust all other means reasonably available to them under the circumstances before using deadly force.

TPD policy indicates that officers may use deadly force "as a last resort."[76] However, the policy should describe in greater detail precisely what this means – and when an officer can recognize that a "last resort" situation is present. Specifically, TPD should define and clarify that "as a last resort" means when all reasonably available alternatives have been exhausted. Several police departments require that their officers exhaust all reasonably available alternatives before using deadly force:

- **Philadelphia Police Department** — "The application of deadly force is a measure to be employed only in the most extreme circumstances and all lesser means of force have failed or could not be reasonably employed."[77]

- **Campaign Zero Model Policy** – "[O]fficers shall NOT use deadly force against another person unless ALL of the following conditions are met: . . . The law enforcement officer has exhausted all reasonable alternatives to the use of deadly

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[75] New Orleans Police Department Use of Force Policy, at 5, *available at* https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/.
[76] TPD Policy Manual Sub-Section 3.1.6; *accord* City of Tacoma, 8 Can't Wait Campaign, https://www.cityoftacoma.org/government/city_departments/City_Managers_Office/transforming_tacoma/city_council_priority__community_safety_/8_can_t_wait_campaign (last visited Jan. 13, 2021).
[77] Philadelphia Police Department Directive 10.1, at 1.A., *available at* https://www.phillypolice.com/assets/directives/PPD-Directive-10.1.pdf.

force, including de-escalation, other reasonable means of apprehending the suspect, defending themselves or others . . . . "[78]

Indeed, TPD should also consider clarifying that the use of force as a last resort applies equally as a concept regardless of whether the force is deadly force or less-lethal force:

- **Camden County Police Department** – "Officers should not exercise force unless it is necessary and as a last resort. Officers should exhaust all other reasonable means before resorting to the use of force. Using force only as a last resort means that officers not engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed. Using force only as a last resort also means that an officer shall not use force if a safe alternative would achieve the law enforcement objective."[79]

- **Newark, New Jersey Police Department** – "Police Division members . . . will make efforts to exhaust all reasonable means available before resorting to the use of force, as long as the member's safety and that of other persons is not compromised."[80]

- **Campaign Zero Model Policy** – "Law enforcement officers . . . shall only use physical force when no other viable option is available and when all non-physical options are exhausted."[81]

Recommendation 8.   TPD policy should require that officers provide verbal warnings to subjects before using any type of force when feasible under the circumstances.

Current TPD policy indicates that, "[i]f time, officer safety, tactics, and circumstances permit, an Officer will provide a warning to the subject prior to discharging their firearm."[82] The Department indicates that its firearms qualification process includes, as a "required and evaluated performance objective," the provision of an "audible and clear warning of the intent to use lethal force . . . before first round is fired."[83]

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[78] Campaign Zero, Model Use of Force Policy, Section III, https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5defffb38594a9745b936b64/1576 009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf (last accessed Jan. 13, 2021).

[79] Camden County Police Department, Use of Force Policy at 10, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566 345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf (last rev. Aug. 21, 2019).

[80] Newark Police Division, General Order No. 18-20 (Nov. 18, 2018), https://www.newarkpdmonitor.com/wp-content/uploads/2019/04/Use-of-Force-Policy.pdf.

[81] Campaign Zero, Model Use of Force Policy, Section II, https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5defffb38594a9745b936b64/1576 009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf (last accessed Jan. 13, 2021).

[82] TPD Policy Manual Sub-Section 3.1.6.

[83] Tacoma Police Department, T.P.D. Pistol Qualification Course, ASB-MPC3004 (provided to 21CP solutions by TPD, Jan. 7, 2021).

To be consistent with the law and best practices, and to build upon the encouraging steps that the Department has taken with respect to training on verbal warnings, TPD should update its policy to require that officers give verbal warnings to subjects, whenever feasible under the circumstances, prior to using *any* type of force – not just firearms.

The United States Supreme Court has predicated the use of deadly force against felony suspects fleeing escape on, "where feasible, some warning ha[ving] been given" by the officer.[84] This is consistent with United Nations Basic Principles on the Use of Force and Firearms and its provision that "when law enforcement is faced with an imminent threat of death or serious bodily injury, officers must," among other things, "give a clear warning" unless doing so "would unduly place the law enforcement officers at risk," would create a risk of death or serious harm to others, or would be "clearly inappropriate or pointless in the circumstances."[85]

21CP observes here that some organizations and departments focus exclusively on officers providing warnings before using deadly force.[86] The need and logic behind this requirement extends, however, easily to the application of all types of force – especially given that the use of less-lethal force will typically correspond to less-severe threats and circumstances in which an officer has more time and ability to provide a warning and to determine whether the subject complies with the warning before applying force. That is, the feasibility of providing a warning may be substantially greater or more common in situations involving less-significant force and threats than those involving deadly force and threats. Consequently, the more general rule to provide a warning whenever feasible before using any force provides simpler, straightforward guidance to officers and will help ensure that providing such warnings become an automatic approach and procedure across all circumstances.

A number of police departments require a warning before any force is used, whether that force is lethal or less-lethal, severe or comparatively less severe:

- **Cleveland Division of Police** – "Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their

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[84] *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

[85] Amnesty International, "Deadly Force: Police Use of Lethal Force in the United States" at 23 (2015) (summarizing UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990)).

[86] *See, e.g.*, Campaign Zero, *Model Use of Force Policy*, Section II, https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5defffb38594a9745b936b64/1576 009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf (last accessed Jan. 13, 2021) (offering warnings as an alternative to physical force and requiring verbal warnings before deadly force but not expressly mandating warnings before the use of non-deadly force); Lexipol, *Police Use of Force: Safer Communities Through Sound Policies*, https://useofforce.lexipol.com/law-enforcement/ (last visited Jan. 13, 2021) (noting a July 2020 amendment to Lexipol model policies seeking "to clarify that warnings should be used whenever reasonable before deploying deadly force").

authority prior to the use of force."[87]   We observe here that TPD's policy should specifically require the warning that force will be used imminently if the subject does not comply, and not simply a "warning to submit to [officers'] authority" without reference to force.

- **Northampton (Mass.) Police Department** – "When feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands. A verbal warning is not required in circumstances where the officer has to make a split second decision, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy."[88]

Even where departments do not have a blanket requirement to provide a warning before any use of force, warnings are typically required before the use of less-lethal instruments like Tasers and OC spray:

- **Philadelphia Police Department** – "A verbal warning shall be given to a person prior to activating the ECW unless to do so would place any other person at risk."[89]

- **Sonoma County Sheriff's Office** – "A verbal warning of the intended use of the Taser should precede its application, unless it would otherwise endanger the safety of Deputies or when it is not practicable due to the circumstances."[90]

- **Seattle Police Department** – "Officers shall issue a verbal warning to the subject, fellow officers and other individuals present prior to using OC spray."[91]

Again, especially in the context of less-than-lethal force, a verbal warning serves multiple purposes. It warns the subject. It warns other law enforcement present, helping to ensure response coordination and prevent inadvertent officer injury. Especially in the context of a Taser application, it can help guard against sympathetic fire by officers providing cover with

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[87]   Cleveland   Division   of   Police,   Use   of   Force: General,   *available   at* https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479 300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf.

[88] Northampton (MA) Police Department, AOM Chapter 0-101.

[89] Philadelphia Police Department, Directive 10.3: Use of Lethal Force: The Electronic Control Weapon (ECW), *available at* https://www.phillypolice.com/assets/directives/PPD-Directive-10.3.pdf.

[90] Sonoma County Sheriff's Office, Office-Wide Policy and Procedure Manual, Taser Use, *available at* https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/590a3284be6594e6a30bbd23/149 3840516709/Taser+Use.pdf.

[91]   Seattle   Police   Department   Manual,   Section   8.300:   Use   of   Force   Tools,   *available   at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools (also requiring verbal warning before deployment of beanbag shotgun, canine, taser, and firearm deployment).

firearms and can let other officers know that they should prepare to "cuff under power," or use the Taser application to secure the subject.[92]

Recommendation 9.   TPD policy should expressly address the concept of proportionality and specifically indicate that all force must be proportional to the nature of the threat that a subject poses under the circumstances.

TPD's continually-presented "force model" appears to embrace the concept of using force that is indexed to, or aligned with, the nature of the subject's actions – which aligns with the concept of proportionality. However, this concept and term should be expressly highlighted as a critical requirement of force.

"Proportionality requires that any use of force correspond to the risk of harm the officer encounters, as well as to the seriousness of the legitimate law-enforcement objective that is being served by its used."[93] The "requirement of proportionality operates in addition to the requirement of necessity" and "means that even when force is necessary to achieve a legitimate law-enforcement end, its use may be impermissible if the harm it would cause is disproportionate to the end that officers seek to achieve."[94]

A 2017 survey found that over half of the country's fifty largest police departments have a proportionality requirement.[95] Some policies use the term "proportional." Others describe the concept in different ways.

- **Seattle Police Department** – "Officers shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject . . . . The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others . . . The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it."[96]

- **New York Police Department** – "Only the amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally

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[92] AXON Help Center, General Taser CEW Procedures, User a Taser CEW, *Cuffing Under Power*, https://help.axon.com/hc/en-us/articles/360016312533-Cuffing-under-Power#:~:text=Applying%20handcuffs%20to%20a%20subject,safety%20to%20officers%20and%20subjects (last visited Mar. 6, 2021).
[93] *Principles of the Law: Policing* §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), *available at* https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.
[94] *Id.*
[95] Brandon L. Garrett & Seth W. Stoughton, "A Tactical Fourth Amendment," 103 *Virginia Law Review* 211 (2017).
[96] Seattle Police Department Manual, Section 8.000: Use of Force Core Principles, *available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles.

disturbed person into custody . . . . All members of the service at the scene of a police incident <u>must</u> . . . use minimum necessary force."[97]

The concept of proportionality is neither defined nor meaningfully explained in TPD policy. Instead, the policy observes that the graphical force model, discussed above, "is designed to proportionally align [an] Officer's use of force with subject actions."[98] Elsewhere it requires officers to "proportionally de-escalate or cease in accordance with the subject actions, when control is gained or threat is removed." Therefore, proportionality, like de-escalation, is only considered post-resolution.[99]

The policy defines "contact controls" as "tactical skills" – without inventorying what those specific types of skills might entail – "designed to be deployed upon passively resistant subjects to proportionally gain control and cooperation."[100] Here, too, the concept of proportionality is informing the force model, but officers are guided to apply the model rather than the underlying force principle or concept.

The premise of TPD's force model is an appropriate understanding of the need for force to be proportional, the Department should revise its policy to expressly address and require officer force to be proportional.

Recommendation 10. TPD should substantially revise its treatment of the core concept of "objective reasonableness."

The concept of "objective reasonableness" is at the core of jurisprudence on officer use of force. In *Graham v. Connor*, the Supreme Court articulated the basic, minimum standard under the United States Constitution for police officers to use force. Force is evaluated according to what a reasonable officer would do in light of all of the circumstances that the officer who used force encountered.[101]

Some police departments maintain force policies that do little more than instruct officers on this legal standard – telling officers that they may use whatever force is reasonable under the circumstances. However, Tacoma's policy, like that of many other departments, appears oriented toward providing officers with more specific and particular guidance on precisely when various types of force responses are reasonable under particular circumstances or in the face of specific types of threats. To the extent that TPD's policy goes further than a simple recitation of *Graham v. Connor*, the Department should be commended.

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[97] New York Police Department, *General Regulations, Procedure No. 203-11: Use of Force* at 1 (Aug. 1, 2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf.

[98] TPD Policy Manual Sub-Section 3.1.

[99] *Id.*

[100] TPD Policy Manual Sub-Section 3.1.3.

[101] *Graham v. Connor*, 490 U.S. 386 (1989).

However, the Department's policy only references the foundational concept of objective reasonableness in passing – and does so too imprecisely. For instance, TPD's force policy suggests that the "objective reasonableness standard" stands for the proposition that "the force used by an officer must be balanced against the heinousness of a person's activities and the threat they pose."[102] This is, first and foremost, inaccurate. TPD would be better served to include a more textbook, straightforward definition of the term:

- **Seattle Police Department** – "**Objectively Reasonable:** The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event."[103]

- **Philadelphia Police Department** – "**Objectively Reasonable:** Is a Fourth Amendment standard whereby an officer's belief that they must protect themselves or others from death or serious bodily injury is compared and weighed against what a reasonable or rational officer would have believed under similar circumstances."[104]

- **Camden County Police Department** – "The Fourth Amendment requires that an officer's use of force be 'objectively reasonable.' Under this standard, an officer may use force that a reasonable officer would when facing similar circumstances."[105]

The suggestion that the "objective reasonableness" inquiry involves a weighing, in part, of "the heinousness of a person's activities" is unhelpful at best and inconsistent with law at worst. A number of factors may enter into the reasonableness analysis, but the extent to which an officer can make an instantaneous moral judgement that a person's actions are "hatefully or shockingly evil"[106] is not generally one of them.

TPD's policy should more precisely inventory the types of significant factors that bear on the reasonableness analysis:

- **Las Vegas Metropolitan Police Department** – The reasonableness inquiry in reviewing use of force is an objective one. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances

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[102] TPD Policy Manual Sub-Section 3.1.1.

[103] Seattle Police Department Manual, Section 8.050: Use of Force Definitions (rev. June 19, 2020), http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions.

[104] Philadelphia Police Department Directive 10.3 §3(K) (last rev. Sept. 18, 2015), https://www.phillypolice.com/assets/directives/D10.3-UseOfLessLethalForce.pdf.

[105] Camden County Police Department, Use of Force Policy at 2, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf (last rev. Aug. 21, 2019).

[106] Heinous, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/heinous (last visited Jan. 14, 2021).

confronting them. The officer's perception will be a consideration, along with other objective factors that may affect the reasonableness of the force. These factors may include but are not limited to:

> 1. The severity of the crime(s) at issue.
> 2. Whether the subject poses an immediate threat to the safety of the officer(s) or others.
> 3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
> 4. The influence of drugs/alcohol or the mental capacity of the subject.
> 5. The time available to an officer to make a decision.
> 6. The availability of officers/resources (including the number of officers present at the time) to deescalate the situation.
> 7. The proximity or access of weapons to the subject.
> 8. The environmental factors and/or other exigent circumstances.

The officer will use a level of force that is necessary and within the range of "objectively reasonable" options. When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner. Reasonable and sound judgment will dictate the force option to be employed. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.[107]

- **Seattle Police Department** – **"**Factors to be considered in determining the objective reasonableness of force include, but are not limited to:
  - The seriousness of the crime or suspected offense;
  - The level of threat or resistance presented by the subject;
  - Whether the subject was posing an immediate threat to officers or a danger to the community;
  - The potential for injury to citizens, officers or subjects;
  - The risk or apparent attempt by the subject to escape;
  - The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
  - The time available to an officer to make a decision;
  - The availability of other resources;
  - The training and experience of the officer;
  - The proximity or access of weapons to the subject;

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[107] Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, *available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects;
- The environmental factors and/or other exigent circumstances; and
- Whether the subject has any perceived physical disability."[108]

Because the concept of "reasonableness" can involve a number of considerations, many departments, like the ones above, find it useful to provide officers, and the community, with more specific types of factors that may be weighed in the reasonableness analysis.

Separately, TPD policy defines the "Reasonable Officer Standard," purportedly "based on the Objective Reasonableness Standard," as the "[s]tandard of professional conduct relating to force application based on training, experience, facts and perceptions known to the Officer at the time."[109]

As drafted, this provision risks misguiding officers on the core concept of objective reasonableness. *Graham* articulates that that the "reasonableness inquiry . . . is an objective one," not a subjective one.[110] The inquiry is not into what the officer in question actually perceived or knew but, rather, "from the perspective of a reasonable officer on the scene."[111] If a reasonable officer would have known or perceived something, but the officer in question did not, then it is what the hypothetical reasonable officer under the circumstances would have perceived that governs whether force was reasonable. The inquiry does not give any "regard to [the involved officer's] underlying intent or motivation," instead focusing on what a reasonable officer would have done under the same circumstances. This is not altogether dissimilar to the "reasonable person" standard that the law applies more generally in the context of unintentional harms to others – where the inquiry is what a reasonable person, in the shoes of the individual actually involved, would have done under the circumstances.[112]

We observe here that the Department's graphical force model appears aimed at correlating particular actions or threats to a "reasonable officer response." Even as the force model appears intended to guide officers to selecting force options that would generally be reasonable, officers nonetheless need specific guidance on the overriding imperative that whatever force they use be "'objectively reasonable' in light of the facts and circumstances confronting them."[113] A force model or continuum does not, and cannot, take the place of an officer's understanding of objective reasonableness. Consequently, TPD's policy should expressly discuss and address objective reasonableness.

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[108] Seattle Police Department Manual, Section 8.050: Use of Force Definitions (rev. June 19, 2020), http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions.

[109] TPD Policy Manual Sub-Section 3.1.1.

[110] 490 U.S. 387, 397 (1989).

[111] *Id*. at 396.

[112] Stephen G. Gilles, "On Determining Negligence: Hand Formula Balancing, the Reasonable Person Standard, and the Jury," 54 *Vanderbilt Law Review* 813, 822-23 (2001) ("For as long as there has been a tort of negligence, American courts have defined negligence as conduct in which a reasonable man . . . would not have engaged.").

[113] *Graham v. Connor*, 490 U.S. 386, 397 (1989).

Recommendation 11.   TPD policy should explain that force may be used only to help serve a lawful purpose.

For a use of force to be lawful, it must have a "lawful purpose":

- **Detroit Police Department** – "Use of force is authorized only when it is objectively reasonable and for a lawful purpose."[114]

- **Tucson Police Department** – "A use of force must be for a lawful purpose. Officers may use force in the performance of their duties to:
  - Effect a lawful arrest, detention, or search;
  - Overcome resistance or prevent escape;
  - Prevent the commission of a crime;
  - Defend themselves or others;
  - Gain compliance with a lawful order; or
  - Prevent a person from injuring himself/herself—however, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an imminent threat of serious bodily injury or death to another person."[115]

Currently, the concept of "lawful purpose" only appears in the TPD policy's definition of "necessary" that is imported directly from Washington State law. This concept should be fully explained in a revised force policy in a manner similar to the examples of TPD's peer agencies cited above.

Recommendation 12.   TPD policy should specifically prohibit various problematic types of force.

Consistent with the general recommendation that TPD should provide more specific policy guidance on force beyond their current model, the Department should specifically prohibit various problematic types of force. Such clear guidelines would help officers conform their conduct to specific "rules of the road" more automatically in fast-moving situations.

21CP was pleased to note that Tacoma's current policy expressly prohibits the use of chokeholds and other similar physical maneuvers that "stop or restrict the flow of oxygen or blood" to an individual's head unless the officer is in a situation where deadly force would be authorized.[116] This strict limitation on a specific class of behavior makes it more likely that officers will select reasonable, necessary, and proportional force. For the same reasons that

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[114] Detroit Police Department, Manual, Chapter 304: Use of Force, § 304.2-2 (2020 rev.), https://detroitmi.gov/sites/detroitmi.localhost/files/2020-08/304.2_Use%20of%20Force_BOPC.pdf.
[115] Tucson Police Department, General Orders, Section 2000: Use of Force, §2020 (last rev. Nov. 24, 2020), https://www.tucsonaz.gov/files/police/general-orders/2000USE_OF_FORCE.pdf.
[116] TPD Policy Manual Sub-Section 3.1, P3.1.6(E).

the Department has prohibited chokeholds, the Department should consider other general prohibitions aimed at preventing unnecessary, disproportionate, and/or unreasonable force.

a. **Techniques and/or modes of transport that run a substantial risk of positional asphyxia.** Current TPD policy is silent on the issue of situating subjects in a manner that heightens the risk of positional asphyxia – or "death as a result of body position." Typically such practices are described as a face-down body position, "that interferes with one's ability to breathe."[117] While avoiding such techniques is especially important following deployment of Tasers and OC spray, the risk of positional asphyxia can be present across all force encounters:

- **New York Police Department** – "After an individual has been controlled and placed under custodial restraint using handcuffs and other authorized methods, the person should be positioned so as to promote free breathing. The subject should not be maintained or transported in a face down position."[118]

TPD policy should provide guidance to officers regarding the fact that, in instances where officers need to restrain an individual momentarily in a face-down position to apply handcuffs, "the more weight" applied to a subject's back, "the more severe the degree of compression" on an individual's airway and the greater likelihood that an individual will be unable to breathe.[119]

b. **Shooting from (in addition to at) moving vehicles.** Current TPD policy provides that "[d]eadly force should not be used against a subject in a moving vehicle unless it is necessary to protect against imminent danger to the life of the Officer or others."[120] This should be expanded to include a prohibition against shooting *from* moving vehicles:

- **New Orleans Police Department** – "Officers shall not discharge a firearm from a moving vehicle or at a moving vehicle unless the occupants of the vehicle are using deadly force, other than the vehicle itself, against the officer or another person, and such action is necessary for self-defense or to protect the other person; shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and, where possible, shall attempt to move out of the path of a moving vehicle before discharging their weapon. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle."[121]

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[117] National Law Enforcement Technology Center, National Institute of Justice, "Positional Asphyxia—Sudden Death" (June 1995) at 1, https://www.ncjrs.gov/pdffiles/posasph.pdf.

[118] New York Police Department, General Regulations, Procedure No. 203-11: Use of Force at 1 (Aug. 1, 2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf.

[119] National Law Enforcement Technology Center, National Institute of Justice, "Positional Asphyxia—Sudden Death" (June 1995) at 1–2, https://www.ncjrs.gov/pdffiles/posasph.pdf.

[120] TPD Policy Manual Sub-Section 3.1, P3.1.6(E).

[121] New Orleans Police Department Use of Force Policy, Section IV.C, 300.5.1, Shooting At or From Moving Vehicles.

- **Las Vegas Metropolitan Police Department** – "It is the policy of this Department that officers will not discharge a firearm at/from a moving vehicle unless it is absolutely necessary to preserve human life."[122] The only exception is "in the event that the operator of the vehicle presents an imminent threat of danger to the officer or others" and "deadly force is the only option," even after officers "make every attempt to move out of the path of an oncoming vehicle . . . rather than discharging their firearms."[123]

Policy should also specifically instruct officers to avoid positioning themselves in front of a moving vehicle.

c. **Prohibit specific types of force that are inconsistent with the core concepts of reasonableness, necessity, and proportionality, unless a reasonable officer under the circumstances would determine that deadly force was authorized.**

21CP heard from TPD officers that they want more specific guidance, before the fact, about what is expected of them – and assurance that, if they follow the rules, they can count on them being fairly and neutrally applied. Detailed force policies that spell out specifically what officers can and cannot do will aid officers in meeting performance expectations, increase a sense of internal procedural justice, and help the community better understand what to expect from their interactions with police – all while potentially reducing a department's overall use of force.[124]

In a number of situations, use of force is not reasonable, necessary, and proportional. In others, the use of force will not be authorized where there is no sufficient lawful purpose or sufficient government interest warranting its application. TPD policy can, and should, provide clear guidance to officers as to when force is not authorized.

A number of major city police departments specifically prohibit certain types of force or the application of force in particular circumstances. For example, the **Cleveland Division of Police**'s use of force policy requires that, "[c]onsistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, Officers shall not," among other things, use force against individuals who only verbally confront officers, who are handcuffed

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[122] Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, *available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

[123] Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, *available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

[124] *See, e.g.*, William Terrill, Eugene A. Paoline III, and Jason Ingram, Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes, 34 *Justice Quarterly* 193, 193 (May 2011), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf (concluding that detailed use of force policies are associated with a lower incidence of force).

or otherwise restrained, or to subdue a subject not suspected of any criminal conduct. [125] The **Camden County Police Department's** Use of Force policy similarly provides a set of clear prohibitions against certain classes or types of force, providing that "[o]fficers *may not* use or threat to use force for the following reasons" that include "resolv[ing] a situation more quickly" and "to punish . . . or retaliate" against a subject.[126]

21CP recommends that Tacoma revise its policy to prohibit specific types of force that are almost never reasonable, necessary, and proportional, including but not limited to the:

1. **Use of force to subdue a subject who is not suspected of any criminal conduct.**
2. **Use of force against individuals who are solely engaged in exercising their First Amendment rights.**
3. **Use of retaliatory force.**
4. **Use of force against subject(s) who only verbally confront officers.**
5. **Use of force against subject(s) who are handcuffed or otherwise restrained, as the threat that the individual could pose has been dramatically reduced, if not eliminated, because of the restraint.**
6. **Use of force to overcome only passive resistance.**
7. **Use of firearm as an impact weapon.**
8. **Firing of warning shots.**
9. **Use of head strikes with hard objects.**

Some officers and community members express concern that these types of clear prohibitions on particular types of force will prevent officers from defending themselves against significant threats. The potential for situations to devolve into a "fight for your life" situation is a common concern. To acknowledge that there may be exceptional circumstances in which an officer has no other choice to defend themselves but to use whatever tool is at their immediate disposal, a number of policies contemplate that an officer might need to resort to typically-unauthorized force:

- **Cleveland Division of Police** – "In rare and exceptional situations where, under the facts and circumstances confronting the officer, a reasonable officer would believe that (a) the use of deadly force would be objectively reasonable, necessary, and proportional according to this policy, and (b) the subject's actions constitute an immediate danger and grave threat to the officer or others, and (c) no other force options, techniques, tactics, or choices consistent with the Division's policy are available, it may be necessary for an officer to take extraordinary or

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[125] Cleveland Division of Police Manual, Use of Force: General, https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf (emphasis added).

[126] Camden County Police Department, Use of Force Policy at 4, https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf (last rev. Aug. 21, 2019).

unanticipated actions in order to overcome the threat. In these rare and exceptional situations, officers must specifically articulate and justify with particularity the specific tactic(s) or action(s) employed and the reasons why their actions met each of the criteria (a), (b), and (c) set forth above. The officer's actions, including all actions preceding the use of deadly force, shall be subject to strict review."

This type of policy language clarifies and acknowledges that officers might, in very limited instances, have to consider applying typically-prohibited force to counter a deadly threat because no other options are available. TPD will need to ensure that this type of exception does not undo or undermine the purpose of a broad prohibition of particular force types. However, the inclusion of language that addresses atypical instances where officers might need to apply the prohibited force types can fairly address a real potential concern for rank-and-file officers.

Recommendation 13.   TPD should consider having policies, or at least policy sections, that specifically and separately address any and all less-lethal instruments or techniques that it authorizes.

All use of force, regardless of the type of instrument that an officer uses or the method of force applied, must be reasonable, necessary, and proportional under the circumstances. However, specific force instruments are associated with specific risks and considerations. An agency's policy must specifically address the attributes or characteristics of particular force instruments.

TPD's current, general Use of Force policy includes specific expectations regarding CEWs (Tasers) and 40mm Less-Lethal Launchers.[127] Other force instruments, including OC spray, chemical munitions, batons, and impact tools, are referenced but not specifically addressed with respect to when their use is authorized.[128]

TPD should maintain specific guidance on each of the less-lethal instruments and techniques that it authorizes. Guidance is especially important with respect to Tasers, OC spray, 40mm launchers, batons, and other impact weapons. The specific provisions that should be included with respect to each of these individual instruments are too numerous for inclusion here. 21CP recommends that TPD review the specific policy guidance that police agencies like the **Seattle Police Department**[129] and **Baltimore Police Department[130]** maintain which provide force instrument-specific policy requirements.

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[127] TPD Policy Manual Sub-Section 3.1, P3.1.4(C).

[128] *Id.* Sub-Section 3.1, P3.1.4(E); 2.3.3.

[129] Seattle Police Department Manual, Section 8.300: Use of Force Tools (rev. June 19, 2020), http://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools.

[130] *See generally* Baltimore Police Department Manual, Policy 1115 (rev. Nov. 24, 2019), https://www.baltimorepolice.org/1115-use-force (listing other force instrument-related policies).

Recommendation 14.   TPD's Use of Force Policy should include much more specific guidance to officers on the use of Tasers.

Tasers – which the TPD designates as "Electronic Control Tools" (other jurisdictions refer to Tasers as "Electronic Control Weapons," or "ECWs") – have become "the standard nonlethal tool" for law enforcement.[131] The rapid police adoption of Tasers "has been driven by two major beliefs: first, that [Tasers] effectively facilitate arrests when suspects actively resist law enforcement; [and] second, that [Tasers] represent a safer alternative to other force methods."[132] Larger studies, and the experiences of departments that have adopted Tasers, have suggested that the availability of Tasers can reduce the rate of both officer and subject injury.[133] Introducing rapid, non-continuous electrical pulses,[134] the Taser "overwhelm[s] the normal nerve traffic, causing involuntary muscle contractions and impairment of motor skills."[135] Practically, this process, often called electro-muscular incapacitation, temporarily incapacitates the subject and allows officers to gain compliance.[136]

Table 2. Uses of Force By Type, 2015 – 2020

Type	Uses of Force	Percent of Total
Physical Controls	529	36.7%
Verbal Commands	407	28.2%
Electronic Control Tool (Taser)	268	18.6%
Restraint Devices	86	6.0%
Draw and Direct	50	3.5%
Chemical Irritant	28	1.9%
Impact Tool	28	1.9%
Firearm	17	1.2%
All Others	29	2.0%

Source: 21CP Analysis of TPD Use of Force Data

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[131] Introduction, *TASER Conducted Electrical Weapons: Physiology, Pathology, and the Law* xii (Mark W. Kroll and Jeffrey D. Ho eds., 2009).

[132] National Institute of Justice, *Study of Deaths Following Electro Muscular Disruption* vii (2011).

[133] *See, e.g.*, Bruce Taylor et al., Police Executive Research Forum, *Comparing Safety Outcomes in Police Use-of-Force Cases for Law Enforcement Agencies That Have Deployed Conducted energy Devices and a Matched Comparison Group That Have Not: A Quasi-Experimental Evaluation* 1 (2009) (finding lower rates of subject and officer injuries among agencies using tasers after controlling for various incident and agency-level factors, such as subject characteristics and the internal taser policies of involved agencies).

[134] *Beaver v. City of Federal Way*, 507 F. Supp. 2d 1137, 1142–43 (W.D. Wash. 2007).

[135]   "How   the   Taser   Works,"   *Boston.com*   (Feb.   23,   2013), https://www.boston.com/uncategorized/noprimarytagmatch/2013/02/23/how-the-taser-works.

[136] U.S. Department of Defense, Non-Lethal Weapons Program, Joint Intermediate Force Capabilities Office, *Human Electro-Muscular Incapacitation FAQs*, https://jnlwp.defense.gov/About/Frequently-Asked-Questions/Human-Electro-Muscular-Incapacitation-FAQs/ (last visited Jan. 16, 2021).

Tasers were the third most-frequent force type that TPD used between 2015 and 2020, with physical controls and verbal commands more common, as Table 2 summarizes. TPD officers used a Taser in approaching one out of five (18.6 percent) incidents that involved force.

TPD provides some policy guidance to officers on using Tasers.[137] The force policy includes appropriate guidance, consistent with best practices, that Tasers should not, "unless there are compelling reasons to do so which can be clearly articulated," be used against subjects operating a motor vehicle, holding a firearm, who are "at the extremes of age" or physically disabled, or "where deadly force is clearly justifiable unless another officer" can potentially provide lethal force if the Taser is ineffective.[138]

Other guidance on when *not* to user the Taser is sound but incomplete. The policy prohibits Taser use "against an actively resistant subject":

- When the officer knows a subject has come in contact with flammable liquids or is in a flammable atmosphere[;]
- When the subject is in a position where a fall may cause substantial injury or death[;]
- Punitively for purposes of coercion, or in an unjustified manner[;]
- When a prisoner is handcuffed[;]
- To escort or jab individuals[;]
- To awaken unconscious or intoxicated individuals[; and]
- When the subject is visibly pregnant, unless deadly force is the only other option.[139]

The above considerations are important, but it is unclear why the prohibitions only apply when an individual is exhibiting active resistance. The policy is silent as to whether Tasers may be used against individuals who are *passively* noncompliant and not exhibiting any active resistance or aggression. To the extent that the Taser is inappropriate against an actively resistant subject in the above circumstances, that should expressly apply to individuals regardless of their level of resistance.

TPD should revise its policy on Taser usage to include a number of other specific provisions, which align with best practices. These provisions include:

- **Limiting the use of CEWs to three, standard five-second cycles, with individual cycles separately justified in use of force reporting.**
- **Prohibiting the use of CEWs in "drive stun" mode.**
- **Prohibiting the use of CEWs against individuals who:**

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[137] TPD Policy Manual Sub-Section 3.1, P3.1.4(C).
[138] *Id.*
[139] *Id.*

- o **Could fall and suffer impact injuries to the head or other sensitive areas;**
- o **Are located on elevated or unstable platforms (e.g., vehicles, trees, roofs, ladders, ledges, cranes, loading docks, and stairs);**
- o **Are running;**
- o **Are operating a vehicle or machinery;**
- o **Are located in water, mud, and or marsh environments if the ability to move is restricted;**
- o **Are located in the proximity of potentially flammable materials;**[140] **or**
- o **Are physically infirm.**
- **Prohibiting the use of CEWs against any individual who is handcuffed or otherwise restrained**, rather than, as in current policy, only "[w]hen *a prisoner* is handcuffed."[141]   This is consistent with 21CP's recommended, general prohibition against the use of force against restrained subjects.

TPD indicated to 21CP that many of these more specific protocols with respect to using the Taser are included in its training protocols. While it is important that officers are provided guidance on the specific points outlined above in training, providing clarity of expectations in policy is necessary to ensure compliance and ease of reference.

TPD would benefit further by providing more specific CEW *policy* guidance and accountability. For instance, based on a review of misconduct investigations discussed elsewhere in this report – TPD officers often find Taser deployment ineffective. Additionally, it appears that officer performance that is contrary to training is not normally grounds for officer discipline, counseling, or re-training. While violations of departmental *policies* activate remedial measures or accountability mechanisms it seems that actions contrary to training do not. Officers could certainly benefit from additional guidance that makes the deployment of Tasers more effective in resolving incidents and inspiring subject compliance. Accordingly, the important guidance to TPD officers for the safe and legal use of any force tools, like CEWs, should be included as express departmental expectations – in policy, as well as procedures and training.

Recommendation 15.   TPD's policies, procedures, and training should expressly require a medical-based response when officers encounter individuals believed to be experiencing "excited delirium."

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[140] Current policy prohibits Taser deployment, against actively resistant subjects, "[w]hen the officer knows a subject has come in contact with flammable liquids or is in a flammable atmosphere." TPD Policy Manual Sub-Section 3.1, P3.1.4(C). Although the reference to a "flammable atmosphere" appropriately acknowledges the risk of a Taser's electrical charge sparking a fire in the presence of flammable materials, the term "flammable atmosphere" is less clear than "in the proximity of potentially flammable materials."

[141] TPD Policy Manual Sub-Section 3.1, P3.1.4(C) (emphasis added).

A few of TPD's current policies and procedures reference the concept of "excited delirium." For instance, in the use of force policy's discussion of "post-application" procedures for the Taser, officers are instructed to, "[m]ake sure to inform [the Tacoma Fire Department] if the subject is showing any signs of excited delirium."[142] A section of TPD's Procedures Manual addressing "Handling Individuals Suspected of . . . Mental Disorders" also addresses "excited delirium" but does not provide specific guidance about what to do if the condition is suspected.[143]

The validity and utility of the concept of "excited delirium" is a subject of some debate within the policing, emergency response, and medical professions.[144] If TPD continues, like some other police departments,[145] to find the concept useful as a means of having officers identify individuals who may be in a particularly vulnerable mental and/or physical state, TPD should establish medical response protocols that instruct officers to gain the assistance of EMT, Fire, or other professionals where feasible.

Recommendation 16.   TPD's general use of force policy and its specific firearms policy should better address issues involving exhibiting and pointing firearms.

TPD's policies should provide specific guidance on when to unholster, draw, and exhibit firearms – and should ensure that these instances are reported. Recognizing that "drawing or exhibiting a firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm," agencies like the **Seattle Police Department** have implemented prohibitions on officers drawing or exhibiting a firearm unless "the officer has reasonable cause to believe it may be necessary for his or her own safety or for the safety of others."[146] The **Los Angeles** and **Las Vegas Metropolitan Police Departments** have nearly identical policy requirements.[147]

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[142] TPD Policy Manual Sub-Section 3.1, P3.1.4(E)(3).

[143] TPD Procedures Manual, "Mental Disorders, Handling Individuals Suspected Of" (last rev. Mar. 2016).

[144] *Compare* Joshua Budhu, Méabh O'Hare, & Atlaf Saadi, "How 'Excited Delirium' Is Misused to Justify Police Brutality," *Brookings.edu* (Aug. 10, 2020), https://www.brookings.edu/blog/how-we-rise/2020/08/10/how-excited-delirium-is-misused-to-justify-police-brutality/ *with* Roger W. Byard, "Ongoing Issues With the Diagnosis of Excited Delirium," 14 *Forensic Science, Medicine and Pathology* 149 (2018), https://link.springer.com/article/10.1007/s12024-017-9904-3#ref-CR18.

[145] Seattle Police Department Manual 16.135, *available at* https://www.seattle.gov/police-manual/title-16---patrol-operations/16135---excited-delirium.

[146] Seattle Police Department Manual, 8.300, *available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools.

[147] Los Angeles Police Department, Use of Force Policy Section 556.10, available at http://www.lapdonline.org/lapd_manual/volume_1.htm#556; Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, *available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

Further, the Department's definition of reportable force should emphasize that pointing a firearm *at* someone is a "seizure" under the Fourth Amendment[148] – because a reasonable person in the situation would not feel free to leave. Departments from **Oakland** to **Seattle** to **Cleveland** all consider pointing a weapon *at* an individual to constitute reportable use of force.[149]

Separately, we observe that pointing a weapon *at* an individual is different than having a firearm unholstered and in a *sul* or "low ready" position – which TPD may elect to track from an officer activity standpoint but separate and apart from a use force. Thus, TPD should track pointing *at* an individual as force and should consider separately tracking instances in which a firearm is unholstered.

21CP observes here that, depending on the circumstances, officers are often justified in exhibiting their firearm, or pointing a firearm at an individual. In many instances, the safety of officers and bystanders requires a firearm to be immediately available to officers. The purpose of this recommendation is not to discourage uniformly the exhibiting or pointing of a firearm. Instead, the recommendation here is simply that TPD align its policies to legal requirements and to ensure that officers report when they do exhibit or point their firearm so that the Department can better capture and understand officer performance.

Recommendation 17.   TPD's Use of Force policy should include provisions that better ensure the safety of other officers and bystanders when officers use firearms.

TPD's current policies do not provide sufficient guidance or warning about the risks of firearm discharges to other officers or bystanders who may be positioned nearby. A revised policy should require that officers consider their surroundings, or "backdrop," to the extent reasonable under the circumstances before using a firearm – and should not discharge their firearm unless the target is clearly in view.[150] An approach that the Department might take is to emphasize the weighing of risks to bystanders in the basic decision-making calculus, a subject that is absent from the Department's current policy.

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[148] *Thompson v. Rahr*, 885 F.3d 582, 586 (9th Cir. 2018) (concluding that the pointing of a firearm at an individual was not objectively reasonable and that the force was "not minor"); *accord Baird v. Renbarger*, 576 F.3d 340 (7th Cir. 2009) (finding that the pointing of a gun at an individual could be unreasonable under the Fourth Amendment without a threat to the safety of officers or others); *see also* Oakland Police Department Manual, General Order K-3, Use of Force Policy at 7, http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf ("The pointing of a firearm at a person is a seizure and requires legal justification.").

[149] Seattle Police Department Manual, 8.300, *available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools; Cleveland Division of Police, General Police Orders, Use of Force: General at 1,https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf; Oakland Police Department Manual, General Order K-3, Use of Force Policy at 6, http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf.

[150] See U.S. v. City of Ferguson, Consent Decree, No. 4:16-cv-00180-CDP (D. Mo., 2016), ¶ 143.

Recommendation 18.   TPD policy should eliminate reference to certain "enforcement electives" as "use of force" responses or tools, including "search techniques, "opposite sex searches," "frisk techniques," and "transport controls" – all of which refer to various enforcement-related concepts that are separate, and distinct, from use of force considerations.

TPD's force policy includes various "enforcement electives" for each level or step in the graphical force model. These "are those tools, tactics, and techniques made available at each level of force application" for an officer to consider in response to a particular type of subject action.[151]   Because they are not use of force or de-escalation techniques *per se*, do not necessarily relate primarily to the use of coercion to gain a subject's compliance, and implicate some distinct constitutional and legal concerns, some of the listed "enforcement electives" risk confusing officers by muddying the waters as to the type of officer actions that the force policy governs.

Specifically, all of "search techniques," "opposite sex searches," and "frisk techniques" are listed as enforcement electives that may be appropriate to apply to a "compliant" subject.[152] These types of searches are typically considered as "seizures" that, like the application of physical force are governed by the Fourth Amendment. However, they also involve a host of detailed constitutional, federal, and state-law guidelines. Without context and explanation of the various requirements and considerations that an officer must take into account before and during the conduct of suspect searches, the policy risks suggesting that officers may always perform such searches of compliant subjects. This is especially troubling given TPD's lack of policy guidance on conducting stops, searches, and arrests, as detailed elsewhere in this report. Similarly, reference to "transport controls" as an enforcement elective in the force policy overlooks that the transport of individuals activates distinct concerns not typically analyzed according to a use of force analysis focusing on objective reasonableness, necessity, proportionality, and de-escalation.

Certainly, the conduct of stops, searches, and arrests, and the transport of individuals, can be routine and necessary parts of law enforcement. However, the inclusion of such topics as use of force options is misleading and potentially confusing. 21CP recommends that the Department (1) eliminate reference to those issues that do not more directly relate to physical and verbal coercion, and de-escalation tactics and strategies, in a revised force policy, and (2) develop robust policies addressing stop, search, and arrest, including the transport of detainees (*see* Recommendation 32 below).

Recommendation 19.   TPD should more concretely articulate a requirement that officers must render and/or request medical assistance when necessary after force is used.

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[151] TPD Policy Manual Sub-Section 3.1, P3.1.2 (original emphasis omitted).

[152] *Id.* Sub-Section 3.1, P3.1.2(B) (original emphasis omitted).

TPD's force policy indicates, as "special instructions" corresponding to some but not all types of force within the Department's current force model, that officers, "[i]f necessary," should "request or transport" a subject "for medical aid"[153] or "request qualified medical assistance."[154] Absent from TPD's current policies are any guidance, instructions, or affirmative requirements for officers to render medical aid following the application of force.

Police agencies increasingly are providing specific policy requirements for officers relating to medical aid within the core use of force policy, understanding that subjects, bystanders, and officers carry a higher than typical risk of injury during a use of force encounter:

- **New Orleans Police Department** – "Immediately following a use of force, officers and supervisors shall inspect and observe subjects for injury or complaints of pain. Officers shall obtain medical assistance for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. This may require officers to render emergency first aid within the limits of their individual skills, training and available equipment until professional medical care providers arrive on the scene. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored by the officer involved in the incident or an on-scene assisting officer until medical personnel can assess the individual. NOPD officers shall request medical assistance without delay when a subject has visible injuries or the subject complains of injury."[155]

- **Philadelphia Police Department** – "After employing any force, including lethal or less lethal weapons, officers shall render appropriate medical aid and request further medical assistance, when necessary for the suspect and any other injured individuals, as soon as it is safe to do so. Any aid provided shall be documented in the appropriate report."[156]

A revised TPD force policy should clarify that, after the application of force, officers have an affirmative duty to provide medical assistance within the scope of their training *and* summon medical aid as soon as possible under the circumstances. Although it is true that currently the TPD provides various instructions for officers to request medical aid, the policy should provide guidelines to officers to provide, as first responders themselves, medical aid in the manner of policies like those of **Philadelphia** and **New Orleans** referenced above.

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[153] *Id.* Sub-Section 3.1, P3.1.5(C); *accord id.* P3.1.3(C), P3.1.4(E),

[154] *Id.* Sub-Section 3.1, P3.1.5(D).

[155] New Orleans Police Department Use of Force Policy, at 6, *available at* https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/.

[156] Philadelphia Police Department, Directive 10.2 at 5, http://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf.

Recommendation 20.   TPD policy should impose a duty on officers to intervene when they observe other officers at risk of violating the Department's use of force policy.

Many departments across the country have implemented policies articulating an affirmative duty of officers to intervene when they observe potentially improper force. [157]   Such a duty enhances front-line accountability and can work to potentially prevent the application of force inconsistent with policy. "Duty to intervene" policies have been associated with fewer officer-involved deaths,[158] and most officers indicate that they should be required to intervene to stop excessive force.[159]

The latest revision to TPD's use of force policy, effective November 2020, includes new language imposing this type of duty to intervene – called a "duty to intercede" in the Department's use of force policy:

> An Officer present and visually observing another Officer using force that is clearly excessive under Department policy shall intercede and attempt to prevent or stop the use of excessive force, if it is safe and feasible to do so. An Officer's duty to intercede will be reviewed under an objectively reasonable officer standard. An Officer who visually observes another Officer use force that is clearly excessive under this policy shall promptly report those observations and actions to their immediate supervisor and record those observations and actions in an official report. The immediate supervisor shall make a preliminary determination as to whether force was excessive under Department policy and whether the interceding Officer acted in accordance with this Department policy.[160]

21CP finds this language insufficient for a number of reasons. First, the duty to intercede is activated upon an officer observing force that "is *clearly* excessive under Department policy."[161]   This runs the risk of placing officers in the potentially challenging position of needing to determine, possibly in the context of a rapidly-evolving situation, whether another officer's actions are "clearly" and definitively inconsistent with policy. Even as the duty is situated in terms of what a reasonable officer under the circumstances would appreciate and determine, the idea that a policy violation must be "clear" before an officer can intercede risks placing an impermissibly high bar on intervention.

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[157] Campaign Zero, Police Use of Force Policy Analysis (September 20, 2016) at 11.

[158] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 141 (2019).

[159] *Id.* (citing Rich Morin et al., Pew Res. Ctr., *Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police* 13 (2017)).

[160] TPD Policy Manual Sub-Section 3.1, P3.1.1.

[161] *Id.* (emphasis added).

Second, the policy seems less geared toward intercession or intervention – that is, stopping something from happening or actively becoming involved to advance a different outcome – and more geared toward officers reporting potential misconduct. The duty articulated in TPD policy is not to employ the tools of active bystandership to try to directly influence the actions of other officers toward different actions or outcomes. Instead, it is a duty to "report those observations" and "record those observations" – after-the-fact rather than taking in-the-moment action.[162]

TPD should revise its policy to impose the duty to intervene whenever an officer observes another officer running a reasonable, or (in the alternative) a foreseeable, risk of violating the Department's use of force policy, and a reasonable officer would determine that intervention is safe and feasible under the circumstances. The point here is that TPD policy currently only imposes a duty to intervene when an officer determines that something is "clearly excessive" – which is too high and too precise of a standard to empower officers who believe that a peer is doing the wrong thing to intervene and to know that the Department will support that type of peer intervention.

To this end, to ensure that officers have the skills, tactics, practice, and confidence to effectively intervene where warranted, TPD should consider providing officers with the type of training on peer intervention provided by the Active Bystandership for Law Enforcement ("ABLE") Project to departments across the country.[163] Again, the Department needs to give officers the tools, through policy and skill-building training, to step into a potentially problematic situation and steer it toward a better outcome more aligned with the Department's expectations.

In conversations with TPD personnel, many TPD officers said that they do not believe that TPD provided adequate guidance or training on the Department's current duty to intervene policy. The Department needs to ensure that officers both understand policy expectations and receive the type of skills-based training that gives officers the tools they need to implement and comply with the policy.

Recommendation 21.   TPD policy should ensure that officers report potential misconduct related to force to Internal Affairs and/or a supervisor.

Regardless of whether officers are able to intercede actively in a given force situation, TPD policy must clearly articulate the requirement that officers report any potential violation of TPD force policy to Internal Affairs and/or a supervisor. The Department should ensure auditing measures aimed at confirming broad-based compliance with the reporting of any possible officer misconduct.

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[162] *Id.*

[163] Georgetown Law Innovative Policing Program, *Active Bystandership for Law Enforcement (ABLE) Program*, https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/ (last visited Jan. 16, 2021).

2. *Use of Force Reporting*

Recommendation 22. TPD policy should require that officers report any and all uses of force by providing a detailed use of force narrative and key data. Officers on the scene or responding to incidents where force is used, but who do not themselves use force, should file a force report regarding the incident in all instances.

Currently, TPD policy requires the reporting of many, though not necessarily all, applications of force.[164] Purportedly, descriptions of any type of force must at least be reflected in the "narrative section of the Incident Report when written."[165] As a general rule, however, such incident reports will only be written in some circumstances, potentially leaving some deployed force unrecorded, and force captured only in a narrative of a more general police report will often not be subject to the type of supervisory review and data aggregation as specific use of force reports.

TPD policy describes various reporting obligations based on the "reasonable officer response" level in the force model. For most force types, officers are to describe the force in a narrative section of an Incident Report, with the officer's supervisor using the narrative to "make an entry into Blue Team," the Department's use-of-force reporting and data platform. In 21CP's experience, incident report narratives may not, unless officers receive proper training and supervision, address the decision to use force in the level of detail that is required and useful to the Department. Likewise, having supervisors transpose long-form written narratives into data fields within Blue Team is far more time-consuming and imprecise than having officers themselves enter data and information fields within Blue Team along with a force-specific narrative. To the extent that the force-specific narrative necessarily relates to or involves elements of the larger incident report, which often also focuses on the subject's criminal offenses and related information, officers may copy or import language from the incident report to avoid overly duplicative efforts. Many departments find that officers providing force-specific narratives and completing information in various data fields about the nature of the subject and encounter yields more comprehensive force reports. This, is, in fact, the precise workflow that Blue Team is designed to support.

In short, then, officer force reporting should include the provision of a force-specific narrative as well as data or information about the force across all applications.

Further, during 21CP's review of use of force case files summarized below, 21CP reviewers found that the quality of officer reports could vary with respect to the level of specificity about force decision-making based on the officer. A specific use of force reporting process, which may incorporate many elements of an Incident Report or even attach the Incident Report but also include more specific discussion of particular force decision-making points and specific

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[164] TPD Policy Manual Sub-Section 3.1, P3.1.8(B).
[165] *Id.*

data points captured in an aggregate form (through check-boxes and the like), will help to ensure more uniformly high-quality officer force reports.

Finally, in 21CP's force review, some case files did not contain statements or reports from all officers who were involved, on the scene, or who otherwise responded to the force incident. TPD should require in policy that any and all officers who use force, witness force being used, are on the scene when force is used, or who respond to the scene where force has been used to file a report involving the incident in all instances that provide their account of their involvement and what transpired from their perspective.

Recommendation 23.   TPD policy should better outline what officers must describe and articulate in narratives regarding the use of force.

The force review summarized below found that, in most instances, officer force reports appeared to cover the relevant bases. Still, it may be useful for TPD policy, to include specific guidance on what an officer's force report should contain:

- **New Orleans Police Department** – "Depending on the level of reportable use of force, as set forth below, an Involved Officer (IO) and/or Witness Officer (WO) may be required to prepare a Force Statement. The officer shall independently prepare his or her Force Statement and include facts known to the officer, to include:
    - (a) A detailed account of the force incident from the officer's perspective;
    - (b) The reason for the initial police presence, e.g.: response to (nature of) call, on-view suspicious activity (describe the suspicious activity), flagged by a citizen (nature of citizen's concern), shots fired, or screams heard, etc.;
    - (c) A specific description of the acts that led to the use of force;
    - (d) The specific description of resistance encountered;
    - (e) A description of every type of force used or observed;
    - (f) Names of all assisting officers and supervisors participating in the actions leading up to the use of force;
    - (g) The name of the supervisor the involved officer notified, and the time of the notification;
    - (h) The name of the supervisor who responded to the scene;
    - (i) Names, if know, of any civilian witnesses;
    - (j) A description of any injuries suffered by the officer, subject, or witnesses;
    - (k) Whether a body-worn camera was activated and its identifiable file location;
    - (l) Whether a vehicle camera was activated and its identifiable file location; and
    - (m) Whether a CEW activation occurred, even if the CEW was not discharged."[166]

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[166] New Orleans Police Department Use of Force Policy, at 4–5, *available at* https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/ (last rev. Apr. 1, 2018). The policy also contains useful provisions addressing the use of conclusory statements and "boilerplate" language.

3.   *Use of Force Investigation & Review*

Recommendation 24.   TPD should review and/or investigate all uses of force, regardless of type or severity. Specific procedures and guidelines should be articulated for the conduct of post-force investigation and review.

TPD's current post-force review process is insufficiently rigorous and does not align with best practices. Currently, "the Supervisory review of force applications shall be the determining factor in evaluating appropriateness and necessity. The investigating Supervisor shall make a preliminary determination as to whether force was applied within Department guidelines."[167] It is not sufficiently clear, based on policy or on our review of use of force case files, whether anyone other than an officer's immediate supervisor in fact reviews force after that supervisor has done so. Instead, it appears that, at least in some if not many instances, the first-level supervisor's review encompasses the whole of the Department's scrutiny on a given force incident with respect to whether it aligned with policy and legal requirements.

In subsequent discussions with TPD, it appears that 21CP may not have been provided the complete file or the full Blue Team database record and therefore there may be more information to consider. However, as noted in the introduction to this report, 21CP could only review the materials we were provided and as such, stands by these conclusions until provided information that establishes different practices or realities.

Separately, TPD policy appears to contemplate a separate "training reporting" that "addresses the tools, tactics and timing of force application and provides a statistical basis for policy review."[168] The policy contemplates that, unless officers use deadly force, use of force reports are forwarded to the Administrative Services Bureau. That Bureau only considers whether a "training issue is identified."[169] Consequently, at least in policy, is not clear that the performance of officers is reviewed or analyzed by anyone other than a direct line supervisor. Deadly force deployments receive automatic investigation and review pursuant to the procedures outlined in TPD Policy Sub-Sections 3.4 and 3.5.

Separately, and confusingly, the policy provides that "[t]he quantitative reporting of force applications entered into Blue Team for training purposes shall not be used in the investigative process where disciplinary sanctions may result."[170] This suggests to 21CP that TPD is using the BlueTeam/IAPro environment not to inform or assist in the chain-of-command review of force but, instead, as a kind of statistical afterthought that only training uses. It is unclear how information provided by officers in operationalized ways – via check boxes, making selections from drop-down menus, and the like – to describe various features of the incident in which they were involved is only suitable to a training inquiry.

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[167] TPD Policy Manual Sub-Section 3.1, P3.1.7.
[168] *Id.*
[169] *Id.* Sub-Section 3.1, P3.1.8(B).
[170] *Id.* Sub-Section 3.1, P3.1.7.

Discussions with TPD personnel underscored a lack of rigor with respect to the review and adjudication of force incidents. One stakeholder described to 21CP that supervisors report the incident in IAPro, the Department's computer database that tracks force (and other types of officer performance), and that a Captain makes a determination as to whether the force should be forwarded to Internal Affairs or addressed through a Bureau investigation or review. Others articulated a process in which sergeants log force and no further action occurs. This latter process – in which sergeants log force and the case is functionally closed – was more consistent with what 21CP reviewers saw in its review of force cases.

21CP recommends that the Department develop policies and procedures for investigating all use of force incidents. It is important to note that investigating all reportable force does not reflect that all uses of force involve potential misconduct. Internal Affairs or misconduct investigations are different from force investigations. A department properly mounts an inquiry into what transpired leading up to and during a force incident in acknowledgement of the import and relative rarity, vis-à-vis the scope of a department's overall number of contents, of force applications. It is possible that this type of after-action analysis may identify that an officer did not meet performance expectations. At the same time, it might identify issues with training, supervision, dispatch, policy, or other departmental functions that may need to be addressed. Ultimately, establishing a clear factual foundation of what transpired during a force encounter helps police agencies identify what went right, what went wrong, and what can be learned – even where all departmental personnel performed according to policy.

Likewise, it must be emphasized that the investigations for less severe or significant force may be easily investigated by front-line supervisors, with oversight from chain of command. More significant force may warrant investigation by specialized investigators with experience, background, and training on conducting post-force inquiries. Departments such as the **Seattle Police Department**[171] and **Baltimore Police Department**[172] operate under policies in which varying levels or types of force receive various types of investigative responses based on the nature and severity of the force used. TPD should look to these and other agencies to identify an effective approach to investigating and reviewing all force incidents.

Importantly, TPD policy also needs to require that all force incidents receive a formalized review in which supervisors evaluate the force investigation; determine; if all departmental procedures and protocols were followed; and flag any training, equipment, policy or other issues that the incident implicates. These determinations should be scrutinized by chain of command. Ultimately, the Department has a long distance to travel to ensure that force

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[171] Seattle Police Department Manual, Section 8.400: Use of Force Reporting and Investigation, *available at* http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation

[172] Baltimore Police Department, *Understanding Use of Force*, http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation (last visited Jan. 16, 2021).

incidents receive a comprehensive, multi-stage, 360-degree review in the manner that many other departments do.[173]

21CP is mindful of state requirements involving the investigation of use of force incidents by outside agencies. This report's recommendations are not inconsistent with these obligations. Where outside investigations are conducted, the Department must still ensure that the results of the investigation are fully reviewed, forming the basis of discipline as appropriate and after-incident analysis in all instances.

4. *Training*

Recommendation 25.   TPD should ensure that its annual use of force training is sufficient in quantity and scope to allow a focus on use of force decision-making and de-escalation strategies.

Traditional approaches to law enforcement training too often "fail[] to effectively teach [officers] how to interact with . . . communities in a way that protects and preserves life."[174] A 2015 Police Executive Research Forum study found that officers typically receive far more training on the use of firearms (58 hours of training) and defensive tactics (49 hours) than on use of force decision-making and de-escalation (8 hours).[175] The training that officers do receive "focuses on range shooting, classroom-based learning, and minimal exposure to realistic scenarios."[176] Indeed, this classroom-based learning often suffers from so-called "death by PowerPoint," with officers confronted with "an unending stream of slides with bullet lists, animations, that obscure rather than clarify the point and cartoons that distract from rather than convey the message."[177]

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[173] *See, e.g.*, District of Columbia Metropolitan Police, General Orders, Use of Force Review Board (Mar. 30, 2016), *available at* https://go.mpdconline.com/GO/GO_901_09.pdf; New Orleans Police Department Operations Manual, Chapter 1.3.7, Use of Force Review Board (Dec. 6, 2015), *available at* http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-7-Use-of-Force-Review-Board.pdf/; Philadelphia Police Department, Directive 10.4, Use of Force Review Board (UFRB) (Sep. 18, 2015), *available at* https://www.phillypolice.com/assets/directives/PPD-Directive-10.4.pdf.

[174] Campaign Zero, *Training*, https://www.joincampaignzero.org/train (last visited Jan. 17, 2020).

[175] Police Executive Research Forum, *Re-Engineering Training on Police Use of Force* 11 (2015), https://www.policeforum.org/assets/reengineeringtraining1.pdf.

[176] Judith P. Andersen, et al, "Highly Realistic Scenario Based Training Simulates the Psychophysiology of Real World Use of Force Encounters: Implications for Improve Police Officer Performance," 5 *Journal of Law Enforcement* 1, 1 (2016), https://tspace.library.utoronto.ca/bitstream/1807/73822/3/highly_realistic_scenario_based.pdf.

[177] See R.M. Harden, "Death by PowerPoint—The Need for a 'Fidget Index,'" 30 *Medical Teacher* 833, 833 (2008), https://medicine.fiu.edu/resources/faculty-tools/clinical-and-classroom-teaching/classroom-teaching/learning-teaching-series-services/_assets/death-by-powerpoint-by-rm-harden.pdf; Dale Cyphert, "The Problem of PowerPoint: Visual Aid or Visual Rhetoric?," *Business Communication Quarterly* (March 2004), https://www.policeforum.org/assets/reengineeringtraining1.pdf.

President Obama's Task Force on 21st Century Policing emphasized the "need for realistic, scenario-based training to better manage interactions and minimize force . . . . "[178] As the Leadership Conference for Civil Rights has recommended, "[o]fficers should practice, in interactive environments . . . de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making."[179] Rather than passively consume information about law or policy, officers need the opportunity to learn, apply, and practice decision-making skills with realistic contexts. In the same way that continuing training for pilots puts them in flight simulators to practice the response to real-world flight scenarios,[180] effective law enforcement training presents real-world scenarios and asks officers to respond. Many practical strategies grounded in adult learning techniques are effective police instruction, including verbal scenarios, group discussions analyzing officer performance from an incident captured on video, role playing, demonstration, group analysis of scenario performance, "teach-backs" in which students provide instruction to fellow students on designated topics, and many others.[181]

TPD's current policy appropriately requires that all personnel receive annual training relating to use of force.[182] However, TPD policy describes this training as focusing on "the Department's Use of Force policy" and state certification requirements to "demonstrate proficiency with all approved lethal weapons issued and electronic controlled weapons that Department personnel are authorized to use."[183] Training on "less than lethal weapons and weaponless control techniques" is conducted once every two years.[184]

TPD provided 21CP with curricula and related information for training provided between 2015 and 2020. Much of this training was (1) passive, non-dynamic instruction on Use of Force case law; (2) specific instruction on physical/defensive techniques; or (3) firearms and weapons re-qualifications focusing on the ability to use the instrument. Very little of the training offered was dynamic, scenario-based training; grounded in adult learning techniques; or focused on providing officers with opportunities to practice making decisions about when to use force, what type of force to use, and how to effectively manage situations involving potential threats.

For example, a 2017 course entitled "Use of Force: Active Resistant and Assaultive: 2017 Review of the Tacoma Police Department's Use of Force Policy P3.1.4 and P3.1.5" consisted

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[178] *Final Report of the President's Task Force on 21st Century Policing* 52 (2015).

[179] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 143 (2019).

[180] *See, e.g.*, Marcel Bernard, "Real Learning Through Flight Simulation: The ABCs of ATDs," FAA Safety Briefing (Sept./Oct. 2012), https://www.faa.gov/news/safety_briefing/2012/media/SepOct2012ATD.pdf.

[181] NHI Instructor Development Course 1, 2, https://www.nhi.fhwa.dot.gov/downloads/freebies/172/pr%20pre-course%20reading%20assignment.pdf (last accessed Jan. 17, 2021).

[182] TPD Policy Manual Sub-Section 3.1, P5.1.11.

[183] *Id.*

[184] *Id.*

of 41 dense PowerPoint slides, including 7 slides that simply reprinted, nearly verbatim, the "definitions" section of that policy.[185] No additional, related instructors' materials or formalized curricula was provided, leaving 21CP to suspect that the training was of the sort that a number of TPD officers flagged to 21CP in focus groups as lackluster, rote, and minimally useful to their day-to-day duties.

Figure 1. TPD Use of Force Training Example – 2017 Use of Force Training
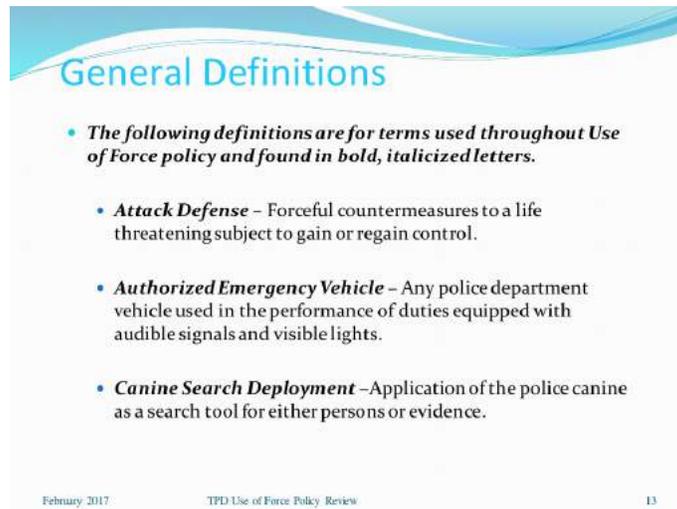
Source: TPD

21CP's interviews and focus groups with TPD personnel suggest that many recognize the need, and opportunity, to enhance the Department's approach to training – both with respect to use of force and overall.

One command staff member indicated, in response to a question about what they would change if they could, that they "would improve training by including more reality-based training to test officer's judgment in critical situations." Several patrol officers were especially critical about the level of training provided. One officer noted, "*So* much of the training is . . . online and overly focused on CALEA accreditation." As a result of officers finding minimal value in TPD training, an officer summarized that "I've learned everything I know from my squad. There's so much blind leading the blind around here, it's hard to know as a new officer what's expected of me. I get eight different answers from 20 different people." One officer summarized, "Most of our training is reading about shit." Another concurred, describing the Department's training as "haphazard." A focus group of TPD supervisors agreed that most training is delivered on-line, through TPD's PowerDMS system.

Many officers noted that officers do not receive sufficient training on policy changes or new policy expectations. "Policies are issued and often there is no follow-up training" whatsoever,

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[185] Tacoma Police Department, "Use of Force: Active Resistant and Assaultive: 2017 Review of the Tacoma Police Department's Use of Force Policy P3.1.4 and P3.1.5" at 13–19.

according to one officer. For instance, TPD's current policy revisions addressing an officer's duty to intervene "prompted questions from officers, but no answers from leadership" and insufficient training from the Department.

Officers further noted that, to their knowledge, the Department does not maintain a formal working group on training or any other mechanism within the agency to set training priorities based on officer needs and community realities. It appears that this leads to the Department providing ongoing firearms requalification opportunities but little other practical training in the area of force.

Individuals associated with TPD's officer union echoed concerns about TPD's training. One individual summarized that "[t]he majority of training is done online, and there is not a really good method of making sure the training is effective," noting that online training – because "there are a lot of distractions" is a poor substitute for in-person, skills-building training.

It should be noted that many TPD officer concerns about training were very similar to community concerns about officer training. One community stakeholder captured the sentiment of many community members:

> How we train police officers has to change. The training they go through now
> is outdated. It produces a warrior mindset. They are not taught to de-escalate.
> They are taught to take command when they approach a citizen and they can
> be very aggressive when they do that.

Another resident concurred that TPD training needed to provide officers with real-world skills on using "de-escalation first and then appropriate non-lethal containment/control" techniques.

Consequently, in the area of force, the Department can and should go further in providing for officers an annual opportunity to practice skills and decision-making in realistic training settings. These scenarios should focus not just on instances where force has to be used but on incidents, more generally, where it is possible but not known at the outset whether any force decisions may need to be made. In this way, force decision-making can be woven or folded into more generalized policing scenarios – making the use of force less a "standalone" tactic than one of many options or possibilities that an officer may need to use in order to resolve a situation.

Recommendation 26.   To the extent that regular, dynamic use of force skills and decision-making training requires additional resources or training personnel, the City and TPD should consider prioritizing this type of professional development.

Based on curricula and information about instruction offered to personnel between 2015 and 2020, it is clear that TPD invests resources on use of force training. Focused, upgraded training may not require additional personnel, time, or resources. TPD is already committed,

via policy, to annual training that addresses force. The task for the Department is to ensure that such training is robust, dynamic, and geared toward allowing officers to practice applying real-world skills.

Even if the type of dynamic, scenario-based training grounded in best practices in adult education does require additional resources, it is very likely that an investment in this area can yield significant benefits to officers and community alike. Although standalone trainings may not, in and of themselves, change officer performance, an ongoing educational program that prioritizes the development of decision-making skills may yield a long-term, beneficial change in departmental culture and performance.

5. *Officer Application of Force & Performance During Force Incidents*

a. *Use of Force Aggregate Data*

1. How Often Force Is Used: Incident Characteristics

TPD provided 21CP with use of force data covering the period of January 2015 through mid-September 2020. For purposes of the following discussion, we speak in terms of use of force "incidents" – or specific encounters involving a subject in which at least one officer applied at least one type of force to the subject. It is possible that, in a particular incident, more than one officer may have been involved and more than one type of force was applied. However, in most police departments, incident-level is a standard frame of analysis.

Overall, there were roughly 5.5 use of force incidents for every 1,000 Tacoma residents between 2015 and 2020. TPD officers were involved, on average, in about 11 use of force incidents per month, or nearly 131 incidents per year, from 2015 to 2019. Use of force fell slightly in 2020, with an average of 8 incidents per month, including just 1 in June 2020.

Figure 2. Average Uses of Force per Month, Rolling Over 12 months, 2015– 2020
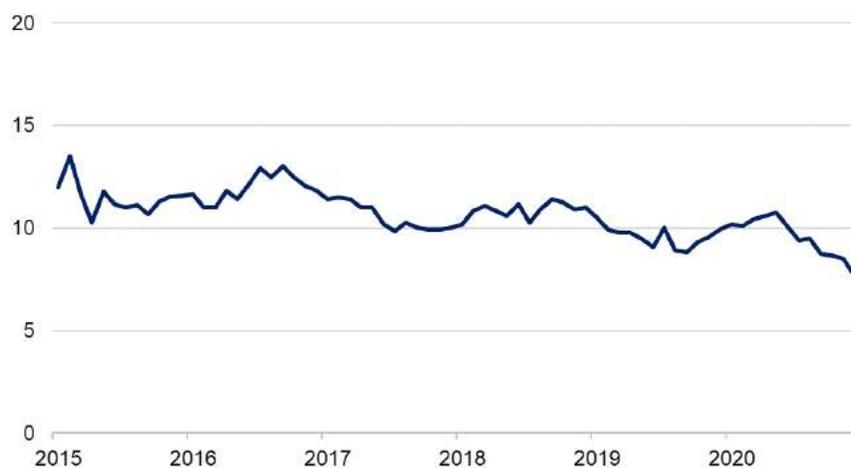
Source: 21CP Analysis of TPD Data

Uses of force occurred at the highest rate during person crime incidents – such as shootings and assaults with a weapon – according to a review of Calls for Service from 2018 to 2020. About one-third of all uses of force over that span came during responsive incidents, such as welfare checks and suspicious person incidents. Another 20 percent of uses of force occurred during criminal incidents that were non-UCR Part 1 offenses – such as domestic violence and obstruction incidents.

Table 3. Uses of Force by Call for Service Category, 2018 – November 2020

Category	Incidents	Uses of Force	Incidents Per UOF
Responsive	97,570	105	929.2
Traffic	50,536	22	2297.1
Non-UCR Part I Offense	31,318	65	481.8
Miscellaneous Policing	27,877	46	606.0
Property Crime	20,064	25	802.6
Person Crime	6,199	35	177.1
Medical	4,523	7	646.1

Source: 21CP Analysis of TPD Data

Resisting/obstruction incidents had the highest ratio of incidents to uses of force of any specific incident type. Table 4 shows the incident types with more than one use of force that had the highest ratios of uses of force between 2018 and 2020. Ratios are instructive in this context in order to situate the occurrence of force in light of the overall frequency with which officers are engaged in a particular type of force encounter. Consequently, even though a much higher number of overall uses of force occurred in the context of officers serving warrants than in call types coded as "resisting/obstructing," a use of force occurred in only 1 out of every 126 warrant service calls compared to approximately 1 out of every 6 resisting/obstruction incidents.

Table 4. Uses of Force by Call for Service Incident Type, 2018 – November 2020

Call for Service Type	Incidents	Uses of Force	Ratio
Resisting/Obstructing	44	7	6.3
Unlawful Possession/Use	64	3	21.3
Assault w/Weapon	585	7	83.6
Shooting – Victim	216	2	108.0
Possession of Stolen Property	565	5	113.0
DV - With Weapon	614	5	122.8
Warrant Service/Subject w/Warrant	3019	24	125.8
Armed Robbery	676	4	169.0
Assault No Weapon	3667	20	183.4
Attempt Suicide	895	3	298.3

Source: 21CP Analysis of TPD Data

The specific types or modalities of force that officers used is described in detail elsewhere in this report.

2. Who Is the Subject of Force: Subject Characteristics & Disparate Impact

This report discusses the broader context for the analysis of TPD data with respect to racial disparities (see "Bias-Free Policing," below). Here, we simply analyze the characteristics of individuals who are the subjects of force in Tacoma.

The Tacoma Police Department uses force on Black males at substantially higher rates than all other demographic groups in the community. Although they make up around 6 percent of the Tacoma population, Black males were the subjects of 33 percent of uses of force over the overall analyzed timeframe of January 2015 through mid-September 2020.

Comparing uses of force to population size through a calculated rate per 1,000 people further helps to identify discrepancies in how force is used on a demographic group relative to the overall size of that demographic group. Table 5 breaks down uses of force per 1,000 people in Tacoma according to Census estimates. In the period of January 2015 through mid-September 2020, there were about 5.5 uses of force for every 1,000 Tacoma residents. However, force was used against Black males at roughly 6 times this citywide average – with 33.6 uses of force for every 1,000 Black males.

Table 5. Uses of Force by Subject Race and Gender, 2015 – 2020

Race & Gender	Uses of Force	Approximate Rate Per 1,000	Population Estimate	Estimated % of Population
Black Male	405	33.6	12,044	5.5%
Pacific Island Male	24	19.7	1,220	0.6%
Native American Male	20	11.4	1,760	0.8%
White Male	526	8.6	61,132	28.1%
Black Female	74	7.3	10,202	4.7%
Hispanic Male	51	3.8	13,285	6.1%
Asian Male	27	3.2	8,500	3.9%
Native American Female	5	2.9	1,738	0.8%
White Female	95	1.5	63,480	29.1%

Note: Not all demographic groups are included here. Race and gender information was not available for subjects in 21 additional use of force incidents. Those incidents are therefore not included here.
Source: 21CP Analysis of TPD Data

Meanwhile, white males were the subjects of over 40 percent of use of force that occurred, a rate that is slightly above the citywide average when accounting for population size. Hispanic

and Asian males, along with Native American and White females, were comparatively less likely to be the subjects of use of force.

3. Who Uses Force: Officer Characteristics

Table 6. Uses of Force by Officer Gender, 2015 – 2020

Gender	Uses of Force	Percent of UOF	Officers	Percent of Officers
Female	71	5.6%	51	14.2%
Male	1,193	94.4%	308	85.8%
Total	1,264	100.0%	359	100.0%

Source: 21CP Analysis of TPD Data

21CP also explored who within TPD uses force. It appears that male officers used force more often than female officers relative to the number of officers within TPD. It is possible that this may reflect the types of positions these officers are more often assigned to, or self-select, within the agency.

Table 7. Uses of Force by Officer Race and Gender, 2015 – 2020

Race and Gender	Officers	UOF	Percent of Officers	Percent of UOF	Difference
Asian Female	2	6	0.6%	0.5%	-0.1%
Black Female	3	9	0.9%	0.7%	-0.2%
Hispanic Female	4	7	1.2%	0.6%	-0.6%
Pacific Island Female	1	1	0.3%	0.1%	-0.2%
Two or more Female	1	1	0.3%	0.1%	-0.2%
White Female	40	47	11.7%	3.8%	-7.9%
Asian Male	21	68	6.1%	5.4%	-0.7%
Black Male	14	46	4.1%	3.7%	-0.4%
Hispanic Male	18	73	5.3%	5.8%	0.6%
Pacific Island Male	3	2	0.9%	0.2%	-0.7%
Two or more Male	3	0	0.9%	0.0%	-0.9%
White Male	232	989	67.8%	79.2%	11.3%

Source: 21CP Analysis of TPD Data

More specifically, white male officers use force disproportionately *more* often relative to their representation within TPD. White female officers use force disproportionately *less* often than their share of the Department. All other demographic groups use force in rough alignment with their departmental makeup. 21CP cautions here that further analysis would be necessary to determine the degree to which this discrepancy is due to differences in officer assignments rather than differences in officer behavior, and the scope of this task – which

requires alignment of data and when incidents occur with the officer's then-current assignment across five years – is not something that 21CP could perform as part of the present evaluation.

21CP could, however, analyze the types of shifts that officers were working during use of force incidents. Very few uses of force came from TPD's Violence Reduction Team or Special Assaults Unit, while over 70% of force incidents occurred among officers working Grave or Swing Shifts. For a variety of reasons, this aligns with the experience of many other jurisdictions.

Table 8. Uses of Force by Officer Shift Assignment, 2015 – 2020

Shift	UOF	Shift	UOF
Grave Shift B	294	School Resource Officer	11
Swing Shift A	224	Narcotics Unit	6
Swing Shift B	217	Violence Reduction Team	4
Grave Shift A	178	Special Assaults Unit	4
Day Shift A	142	Swing Shift	3
Day Shift B	109	SVU-DV	3
Gang Unit	20	Homeless Outreach Team	2
Day Shift	20	Canine-Gang Unit	1
Community Liaison Officer	14	School Resource Sergeant	1
Canine Unit	12	Career Crimes - Vehicle Crimes	1

Finally, and notably, a relatively small number of TPD officers are responsible for a disproportionate number of use of force incidents in Tacoma. Specifically, six officers were involved in 11% of use of force between 2015 and 2020. Thirty-six (36) officers were involved in nearly 40% of all uses of force over that span.

b. *Use of Force Incident Evaluation*

21CP reviewed the case files for a sample of use of force incidents that occurred in 2019 and 2020. The analysis is compromised to some relevant extent because of the inadequacy of TPD's use of force case files and in the Department's overall approach to post-force review and investigation. Taking the facts asserted in sometimes-incomplete reports of involved officers and supervisors as true, 21CP reviewers found that, in many instances, force used by TPD officers was necessary, reasonable, and proportional under the circumstances – though several of these determinations were described by reviewers as "close calls" for which a more robust evidentiary record would have been useful. At the same time, officers used de-escalation strategies and tactics – mainly verbal techniques – in a number of instances to try to resolve situations without, or with less significant, force.

The evaluation of force cases leads 21CP to conclude that, first and foremost, TPD must substantially enhance the quality and rigor of its post-force investigation and review process; and that, second, the Department can and must continue to provide high-quality training

and supervision with respect to force to ensure that force is only used when the nature of the circumstances require it.

1. Methodology

To understand more about how TPD officers use force, and about the Department's reporting and review of use of force incidents, 21CP also conducted an in-depth, structured qualitative review of use of force incidents. Specifically, 21CP reviewed the case files of a random, statistically-significant sample of use of force cases that occurred in 2019 and 2020. This involved reviewing 61 uses of force out of the 211 that occurred in total during 2019 and 2020. With this sample size, we can be 95 percent confident that, even if we looked at all cases rather than a sample of cases, that our results would be within a range of plus or minus 10 percent.[186]

21CP requested that the Department provide any and all documentation relating to the 61 independently- and randomly-selected force cases. TPD provided case files represented to be the whole of the file maintained on the use of force, and 21CP's experts evaluated what the Department provided. In a majority of cases, this included police reports, supervisor summaries, and other documentation. No files included video, audio, or other material. This includes, first and foremost, no body-worn camera video, which TPD did not employ during 2019 and 2020. The recent deployment of body-worn cameras should greatly enhance subsequent reviews. However, it also does not include things like audio transcripts of officer or witness interviews – which generally do not appear to be conducted in any TPD force reviews.

The lack of video, audio, or other evidence means that 21CP's reviewers could only evaluate the case based on the representations of TPD officers in reports and official materials. We could not look "behind the curtain" or compare independent evidence against the officer statements. Consequently, our resulting analysis is, in some regards, only as deep as the reporting was accurate. In the future, consistent use of body worn camera systems and enhanced reporting and review as recommended in this report will provide for better, evidence-based review.

2. Use of Force Reporting

The Use of Force files provided by TPD included incident reports, witness officer statements, and supervisor reviews. There was rarely any supporting evidence beyond downloads of information from Taser units that were deployed (which provide the information on the device's use). No supporting video was provided.

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[186] Specifically, from the universe of 211 use of force cases in 2019 and 2020, we constructed the sample using a 10% margin of error, a 95% confidence level, and a 70% response distribution. As to the response distribution, because 21CP's review focused on identifying significant qualitative patterns, the 70% response distribution allows confidence in overall trends, even if it might not allow for detecting patterns in cases that were more evenly distributed.

Overall, it appears that TPD officers reported force immediately to a supervisor in all cases that we reviewed. Given that TPD does not deploy body-worn camera footage, there are few, if any ways, to identify if TPD officers are using force, especially lower-level force, and not reporting it. Our review did not offer any indicia of under- or non-reporting, but the Department's use of body-worn camera technology going forward will facilitate the auditing of officer performance to ensure that officers are not failing to report the types of incidents and activity that they must under policy.

The vast majority of officer reports on force (more than 90 percent) included necessary information, including:

- The reason for the initial police presence;
- A specific description of the acts that preceded the use of force (including attempts to de-escalate);
- The subject's level of resistance;
- A complete and accurate description of every type of force used or observed;
- Justification for every use of force;
- A detailed description of the subject's injury, complaint of injury, or lack thereof;
- A detailed description of any officer's injury, complaint of injury, or lack thereof; and
- A description of the officer's request for medical aid and/or whether the subject received medical evaluation.

Even as most force reports adequately covered the necessary details, reviewers in a number of instances found areas where the quality of the reporting on what transpired could have been better:

- "There were no incident reports in this file so I am unable to completely answer a lot of these questions. The only report supplied was the supervisor's written narrative of the Use of Force report. [The] [s]upervisor said a general statement that officers took the suspect to the ground by force. No details provided of techniques used or force applied."

- "The reporting could have done a better job explaining the rationale for the various force employed. The threshold question of why force was necessary at the moment it was initiated – *i.e.* after a subject had refused to comply twice – is not addressed by officer reports or by the supervisor's subsequent investigation."

- "Officer reporting doesn't adequately detail/justify each type of force used. Witness/partner officer reporting [was] inadequate – does not even detail [an] inadvertent application of [the] Taser to the partner officer."

- "The narratives were . . . unnecessarily sarcastic and condescending."

As TPD implements updated Use of Force policies, it should provide officers with enhanced training on how to write a report that emphasizes the need to accurately, comprehensively, and objectively account for every use of force.

3. General/Demographic Statistics

The vast majority of use of force incidents reviewed (79 percent) occurred during an encounter that originated with a call for service of some type. Fewer than 15 percent of cases were self-initiated officer activity.

The demographics of subjects within our random sample aligned those in the aggregate data set from 2015 through 2020 outlined above. For the cases included in the qualitative evaluation, 55 percent of subjects were White, 36 percent were Black, nearly 4 percent were Hispanic/Latino, nearly 2 percent were Asian-American, and nearly 2 percent were Native American. Subjects in reviewed cases were 84 percent male; 14.2 percent female; and in one case, the subject was identified in documentation as transgender or gender fluid.

Based on the face of the force files themselves, officer race was not readily ascertainable, as it is not included in use of force reports. Only two female officers were involved in the use of force incidents reviewed as part of the sample.

4. Use of Force on Persons in Crisis

In approximately one-third of cases, subjects appeared to be experiencing signs of behavioral crisis, including mental illness, developmental disabilities, substance use, or other indicia of overwhelming psychological stress. As this report discusses elsewhere, the significant representation of individuals experiencing behavioral or mental health challenges among use of force subjects emphasizes the importance of TPD and the City of Tacoma evaluating the best types of responses and social service support systems for such individuals.

5. Injuries During Use of Force

One of the goals of use of force training, and especially de-escalation, is to prevent injuries to those involved – both subject and officer.

Officers were injured in 20 percent of uses of force that we reviewed. One-third (33 percent) of those injuries required medical treatment. Unfortunately, the officer injury rate appears to be slightly increasing over time, as 40 percent of the 2020 cases involved officer injuries, compared to 29 percent of the 2019 cases. While the overall sample is not large enough to draw meaningful conclusions from this apparent increase – and it may be that this is simply random – TPD should always monitor officer injury to ensure that policy or training changes do not have unintended consequences.

The nature of case files made determinations about subject injuries more challenging than it should be. As with many other important elements of use of force cases, the Department will need to make its use of force reporting and investigation process substantially more rigorous – which includes uniformly logging whether subjects were injured in force encounters or not and, if so, the nature of the injuries and nature of medical aid, if provided.

6. De-escalation

21CP reviewers concluded that TPD officers made "reasonable efforts to de-escalate prior to using force" in about 64 percent of cases. In an additional 20 percent of cases, reviewers indicated that de-escalation was not safe or feasible under the circumstances. Officers used de-escalation tactics such as verbal persuasion (86 percent of cases in which some type of de-escalation strategy was used), warnings (78 percent), slowing down the pace of the incident (14 percent), waiting out the subject (8.3 percent), using physical barriers (11.1 percent); and requesting additional resources (19.5 percent)[187]. We observe here that, as TPD further its de-escalation policy and training, the Department must emphasize that de-escalation involves many techniques – like the use of time, distance, and cover – that have nothing to do with verbal engagement, as it appears that this type of de-escalation technique is most favored and used by TPD personnel.

For instance:

- In one case, an officer drew and pointed his CEW, but did not fire the CEW, partly because of poor sighting conditions but also because he documented that the subject started to comply with officers' commands to stop and kneel.

- In another instance, an officer was at the hospital preparing to transport a prisoner who was detoxing at the hospital before he could be booked on an outstanding warrant. Knowing the subject had past incidents of assaultive behavior, the officer called for assistance prior to approaching the subject.

- Another case that highlighted creativity in the face of inadequate resources when dealing with a person in crisis who repeatedly slammed their head into hard surfaces around them. There, officers attempted to arrange transport by ambulance, which was not available, and summoned a prisoner van, but ultimately determined that transport in the back of the car, physically restrained

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[187] We recognize that some community members might not necessarily perceive the presence of *more police* as de-escalation. Indeed, too many officers can escalate a situation by appearing to be an overwhelming, intimidating, and threatening show of force. However, at the same time, a lone officer may feel the need to resort to more significant uses of force if threatened than an officer who has on-scene backup. Likewise, there can be no officer intervention as to problematic officer behavior if there is only one officer at the scene. Ultimately, correctly tailoring available resources for the given situation can provide options and better outcomes.

by the sergeant, was the safest. While unorthodox, physical restraint to prevent injury on the way to the hospital shows thoughtful engagement.

- Another case involved a good example of TPD employing time, distance, shielding, communication, deployment of resources, and thoughtful policing. Responding to a "mental health" call involving a suicidal subject, officers found the subject in house with a kitchen knife and cuts to their wrist. After instructing the subject's caretaker to leave the house, officers attempted to build rapport. The subject got off of a sofa and approached the officers. The officers retreated to the house's porch and then to the lawn to maintain distance. The officers asked dispatch to stage the Tacoma Fire Department so that medical assistance was immediately available. They also called for a 40mm less-lethal launcher to be available at the scene. When the subject began making throwing motions with the knife, a Taser was deployed. The subject stabbed railing and dropped knife. When reaching for the knife, officers warned subject he would be Tased again. The subject kicked the knife off of the porch and submitted to handcuffing.

Table 9: Officer De-escalation Efforts

Type of De-Escalation	Percent of Cases Where De-Escalation Type Was Used
Verbal persuasion	87%
Warnings	76%
Slowing the pace	16%
Waiting the subject out	8%
Using physical barriers	11%
Creating distance	14%
Requesting resources	19%

Source: Summary of 21CP Analysis

In contrast, reviewers concluded that in 12 percent of cases, TPD officers did not make reasonable efforts to de-escalate. Additionally, in another 18 percent of cases where reasonable efforts were made, reviewers identified additional steps that TPD officers could have used to better resolve the incident. Thus, in nearly one out of three (30 percent of) cases that 21CP reviewed, TPD officers should or could have employed de-escalation tactics but did not. These issues should be improved through greater policy clarity (*see* Recommendation 6, above) and additional scenario-based trainings in de-escalation (*see* Recommendation 25, above).

Some of these missed opportunities were described as follows:

- In one case, a reviewer observed that the officer should have requested additional units before approaching the subject, particularly since the subject was known to have gang affiliations and a criminal history.

- In another case, a reviewer indicated that, although an officer provided general instructions to comply and some general references to the Taser, the officer could have, but did not, explicitly tell the subject that they would be Tased unless they complied. In this instance, the reviewer believed it was safe and feasible to take the time to be more clear.

- The presence of officers during another encounter was agitating to a subject, and the subject did not want to comply with officer instructions. Instead of instructing the subject to come outside the house, and using time and distance to the officer's benefit, the officers applied a Taser – even as the subject did not at any time do anything more than verbally refuse to comply with officer instructions. Consequently, the application of a Taser, under the circumstances, was not necessary, not reflective of de-escalation principles, and not proportional.

  It should be noted that this case stands in contrast to the other successful de-escalation case described above. Both involved domestic violence and uncooperative suspects. In the first case, the victim was removed from the scene, and officers redeployed outside the house and waited while staging additional resources. No force was used until the subject threatened the officers with a knife. In Case no. 6, the officers did not move the victim, remained directly engaged with the agitated subject, and used force when the subject was only verbally non-compliant.

Table 10: De-escalation Strategies Available But Not Used

Type of De-Escalation	Percent in Cases Where Other/Additional De-Escalation Was Feasible
Verbal persuasion	75%
Warnings	50%
Slowing the pace	50%
Waiting the subject out	36%
Using physical barriers	11%
Creating distance	36%
Requesting resources	75%

Note: This table reflects the types of de-escalation that reviewers determined were available to officers and feasible to use under the circumstances but were not in the 30 percent of total cases where available de-escalation was determined to not have been utilized.
Source: Summary of 21CP Analysis

The modulation of force – or reducing or discontinuing the use of force as the nature of the threat diminishes – is an important form of de-escalation even in those cases in which force must be used. Reviewers determined that TPD officers modulated their force in nearly nine

out of ten (89 percent of) cases. There were no cases in which reviewers determined that an officer failed to reduce the force as the threat diminished.[188]

7. Types of Force

By far, going hands-on was the most common use of force, occurring in nearly three out of four (71 percent of) cases. Taser applications (39%) and takedowns (34%) were the next most common force types.

Table 11: Types of Force Used in Reviewed Cases

Type	Percent In Reviewed Cases
Baton/impact weapon	3%
Firearm pointing	7%
Hands on	71%
OC Spray	13%
Strikes/kicks/punches	13%
Takedown	34%
Taser	39%
K-9	3%

Source: Summary of 21CP Analysis

Encouragingly, reviewers found no instances in which TPD officers used a firearm as an impact weapon, used retaliatory force, used force against people exercising First Amendment rights, fired warning shots, used deadly force to protect property or solely to effectuate an arrest, used a neck hold, used strikes to the head with a hard object, or discharged a weapon at an unverified threat.

Similarly, in examining cases involving intermediate, less-lethal force instruments (including the baton, Taser, and OC spray (commonly referred to as "pepper spray")), reviewers found no instances in which TPD officers used such force instruments on subjects who were only passively resisting, to prevent the destruction of evidence, against small children, the elderly or visibly frail, or women visibly or known to be pregnant, handcuffed individuals, or otherwise compliant individuals.

Reviewers did note two cases in which officers appeared to use force to overcome passive resistance (solely verbal confrontation) and two cases in which force was used against subjects who were handcuffed. Because force must always be necessary and proportional under the circumstances, TPD should ensure precise policy guidance and training for officers on the application of force to individuals who are not actively resisting or who are handcuffed or otherwise restrained.

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[188] Reviewers were unable to make a determination based on the materials provided in the case file in the remaining 11 percent of cases.

a. *Taser (ECWs)*

Because Tasers were the second most common force technique used in the reviewed use of force cases, some additional detail is useful. Electronic Control Weapons, more typically known as Tasers, work in two modes. In the first, often called probe, cartridge, or dart mode, the taser fires two "darts" or "probes" attached to electricity-conducting wires at a subject.[189] "If both darts make contact, a circuit is completed and a[n] . . . electrical charge cycle is initiated."[190] That electrical charge "overwhelm[s] the normal nerve traffic, causing involuntary muscle contractions and impairment of motor skills."[191] This incapacitation is "generally temporary," but it typically assists officers by allowing them to get subjects into handcuffs.[192] A single Taser firing cycle lasts for five seconds. In the second mode, called drive stun mode, an officers presses the Taser directly into the subject's body, which delivers a painful electrical shock but does not cause neuro-muscular incapacitation.[193]

Tasers were deployed in probe mode for 20 cases – most typically for one or two five-second cycles. Tasers were used in drive stun mode in two additional cases.

Notably, Tasers either failed or were not effective in 40 percent (8 of 20 deployments) of the cases where they were deployed. In some cases, the failure appeared to be due to operator error – including not being able to deploy the Taser in drive stun mode or firing the probes into the ground when going hands-on with a subject with the Taser in the officer's hands – or a matter of the Taser's probes missing the subject or getting caught on a subject's clothing, thereby preventing an electrical circuit from being completed. However, several officer reports indicated the Taser simply did not work, which is concerning.

During the time period reviewed, TPD officers were either carrying the X2 Taser or the X26 model, which is no longer supported by the manufacturer (Axon). TPD reports that they are purchasing Taser 7s, which may help with the accuracy of the tool, modulation of current based on contact, and other issues with successful deployment. Regardless, for the analysis period Taser deployment was ineffective on initial deployment 55 percent of the time and, when it was used multiple times in the same incident, completely ineffective 40 percent of the time. (In 60 percent of instances where the Taser was fired multiple times, it was effective on the subsequent deployment(s)).

One example that demonstrated thoughtful use of a Taser under very difficult circumstances is as follows:

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[189] *Beaver v. City of Federal Way*, 507 F. Supp. 2d 1137, 1142–43 (W.D. Wash. 2007).
[190] *Id.*
[191] "How the Taser Works," *Boston.com* (Feb. 23, 2013), https://www.boston.com/uncategorized/noprimarytagmatch/2013/02/23/how-the-taser-works.
[192] Beaver v. City of Federal Way, 507 F. Supp.2d 1137, 1142–43 (W.D. Wash. 2007).
[193] "How the Taser Works," *Boston.com* (Feb. 23, 2013), https://www.boston.com/uncategorized/noprimarytagmatch/2013/02/23/how-the-taser-works.

Officers arrived at an attempted arson in progress - subject had a lighter and gas nozzle from pump at gas station. Subject was attempting to light gas and debris on fire. Subject was incomprehensible and non-responsive to communication. Subject armed himself with a stick and officers gave commands to drop the stick. *When subject moved away from gas, one officer attempted a Taser*, which was not effective (one probe contact).

In this case, the officer modulated from a firearm when the suspect had the lighter and the gas nozzle to a Taser once the subject was not standing near an accelerant. This shows very good situational awareness. Ultimately, other force was used to apprehend the suspect.

Reviewers considered whether officers applied a Taser in any contexts that are particularly problematic and are generally contra-indicated by Taser's manufacturer and most Taser policies. These include instances where a subject is exhausted or exhibiting symptoms of physical or mental distress, is of low body mass, is experiencing a medical crisis, is in danger of falling from an elevated position or on to something that would reasonably risk harm, is in control of a moving vehicle, is near or exposed to flammable material, or is fleeing from officers. These also include the exposure of one subject to multiple, simultaneous Taser deployments.

Among the reviewed cases, reviewers identified two instances in which Tasers were applied to a subject while fleeing from officers. However, in both instances, the subject was actively posing a threat of physical harm to the officer, bystanders, or themselves as they fled. In another two cases, the CEW was used against people in physical or mental distress. These included the gas station case above, in which the use of the CEW was reasonable, necessary, and proportional, and another case in which, "[w]hen officers attempted to serve a restraining order and take possession of subject's knives, he fled and then threatened to kill himself while holding a knife to his neck." The use of the CEW under those circumstances was similarly justified.

Reviewers did, however, identify potentially problematic CEW applications. For instance:

- In one case, the justification for the Taser was left insufficiently clear. Two officers were unable to handcuff a subject, but the subject was not assaultive. Under the circumstance, the officers needed to at least articulate why they believed that the Taser was necessary and proportional to the threat that the subject posed.

b. <u>Other Intermediate Force Tools</u>

The two instances we reviewed in which batons were used were found to be reasonable, necessary, and proportional, and in both cases the officers separately justified each strike. There were none of the commonly problematic issues found, such as use of a baton on someone who is restrained or intentionally targeting the head, neck, spine, or genitalia.

Finally, few instances were identified of unjustified or potentially problematic use of OC spray. One instance revealed the limitations of TPD's current force investigation and review processes – specifically, the lack of body-worn camera footage of the incident:

- In one instance, 21CP's reviewer observed that BWC footage would help in making a determination regarding the use of force. There, an arrestee refused to exit her car after being lawfully ordered to do so. There was nothing in the report that indicated she was a danger to herself or the others if not removed immediately. Because using OC spray in the confines of a vehicle is generally not consistent with best practices, the reviewer wanted to understand much more about the circumstances of the deployment – but the applying officer's use of force report was not dispositive.

It should also be noted that deficient reporting made it difficult to determine clearly whether medical treatment was appropriately called for all who were exposed, whether the subjects were monitored after exposure, or what aid, if any, was rendered after OC application. Nevertheless, most applications of OC spray appeared reasonable, necessary, and proportional.

8. Officer Intervention

Reviewers identified one case in which a reasonable officer would have intervened to prevent unlawful or inappropriate force but the involved officer did not appear to do so. In a few other instances, where the force was potentially inconsistent with policy or law, it did not appear to reviewers that any other officer had the opportunity to intervene – either because of the suddenness of the force or because other officers were simultaneously engaged in addressing other subjects. For example, in one case, a second officer could not have intervened with respect to a first officer's punch to a subject because the second officer on scene was struggling with a second subject. In another, the reviewer noted that although the escalating force used was inappropriate and contrary to de-escalation principles, there was not an opportunity for the other responding officer to intervene as it does not appear that any intention to apply the initial force was articulated.

9. Overall: Reasonableness, Necessity, and Proportionality of Force

As set forth above, best practices call for an inquiry on the appropriateness of force to consider whether force was reasonable, necessary, and proportional under the circumstances. As such, this is the lens that 21CP's reviewers used to determine the propriety of force in the reviewed cases.

As also noted previously, in the absence of video, audio, or significant documentary evidence beyond officer reports in most instances, the review of individual cases necessarily relied on the reports of officers and reviewing sergeants. Even as the quality of officer reports are adequate, 21CP's experts expect to see, and typically in fact encounter in reviews of force for

other agencies, a more comprehensive and structured use of force file generated pursuant to a far more rigorous investigation. This report discusses in greater detail the various deficiencies with force investigations and case files below.

Because reviewer determinations must take facts stated by officers as true, the views presented cannot be definitive or dispositive. Just because reviewers identified problems with a given application of force does not mean that the case is definitively unjustifiable or unlawful; similarly, just because a case presented well in the materials reviewed does not mean that 21CP is blessing any particular case. Indeed, ***the inadequacies in the depth, rigor, and comprehensiveness of use of force case files give 21CP less confidence in the results of its evaluation of force cases than a more comprehensive force investigation would provide.***

Under this review, most force (slightly less than 90 percent) was found to be reasonable, necessary, and proportional. For instance:

- Officers appeared to use minimal force necessary to effect a lawful arrest. Force was escalated consistent with the suspect's conduct and was de-escalated immediately when the suspect was in custody.

- Officers were attacked while conducting a victim interview. The level of force used was in a defensive effort to subdue the attack and effect an arrest of the two assaulting individuals.

- It appears that officers used good tactics in deploying less lethal force while others provided lethal cover when encountering a shooting suspect.

However, it must be emphasized that, in several cases where reviewers ultimately said that force was necessary, reasonable, and proportional, those determinations were expressly identified as close calls. For example:

- "This is a close call. The officer could and should have de-escalated further under the circumstances, which would make the specific use of force at the moment that it was deployed unnecessary. However, the level/type of force that was employed here was aligned with the nature of the non-compliance."

- "The use of force was borderline. Until the suspect pushed the officer, he had not committed any crime. He was trying to get back into his own house to check on his mother. The narrative was unclear because of conclusory statements."

- "Force was reasonable, necessary, and proportional. However, it was another instance (consistent with a few other cases) of TPD officers affirmatively initiating physical contact against a non-compliant subject that officers intuited, somehow, is 'tensing their body.' The case file presents issues as to training or what cultural

norms have developed surrounding subjects tensing their body or assuming fighting positions. A reasonable officer may well have concluded that de-escalation was possible under the circumstances, which would call into question whether the force was necessary."

Finally, reviewers found that some cases simply did not meet standards.

- "Because the initial force was not necessary – all the subject had done was verbally refuse to leave the lobby of a police building – I conclude that the force cannot be considered objectively reasonable. A homeless individual with potential mental health issues might be someone who police would want to contain in a public lobby. However, given the presence of superior resources and the fact that the subject appeared to be entirely passively resistant before officers applied force, I cannot say that the force used, as a whole, as necessary, proportional, or reasonable. The presence of body-worn camera footage would aid in the analysis of this incident."

- "The use of a Taser here was not necessary, not proportional, and not objectively reasonable under the circumstances. This is highlighted by the errant application of Taser to the partner officer."

- "Force [a canine deployment] was probably objectively reasonable. However, it was unnecessary under the circumstances from a general perspective given that find/bark/no-bite would have located subject and made resolution without force/injury more possible." Here, 21CP's reviewer is observing that TPD's canine program appears to train dogs to "find and bite" such that, when a canine is deployed, a use of force will automatically occur when the canine locates a target subject regardless of the subject's level of resistance. Accordingly, many departments have transitioned into a "bark and hold" program in which canines identify a target subject, bark, and keep a subject in place until responding officers can arrive and take the subject into custody – potentially without any force to the extent that the subject complies and does not threaten officers or others.[194]

21CP cautions here that its findings that 90 percent of force cases were necessary, reasonable, and proportional needs to be interpreted with a number of important caveats. First, and again, the review was necessarily based only on officer accounts of what transpired – which may or may not, for any of a variety of reasons, objectively inventory every detail that is relevant to understanding force. The limitations to TPD's accounts of force make us unwilling to certify that these cases were definitively appropriate even as the available materials suggested, on their face, that the circumstances were appropriate. Second, even as 90 percent seems like a high number – a kind of strong passing score – the prospect that

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[194] *See, e.g.*, Karen Grigsby Bates, "In Los Angeles County, It's 'Bark and Hold' Vs. 'Find and Bite," *NPR.org* (Oct. 9, 2013), https://www.npr.org/sections/codeswitch/2013/10/08/230550397/in-los-angeles-county-its-bark-and-hold-vs-find-and-bite.

one out of every ten force applications by a TPD officers was *not* necessary, proportional, or reasonable should, in fact, be reason for concern and reason for continued action and focus within the Department in the area of force.

10. Investigation & Review of Use of Force Incidents

Reviewers found significant issues with the overall quality of use of force investigations. Overall, the force investigations suffered from a lack of rigor that compromised the fairness, thoroughness, and comprehensiveness of post-force inquiry. TPD needs to adopt specific, clear policies to ensure that force incidents are more meaningfully and exhaustively examined.

21CP emphasizes here that conducting an in-depth and exhaustive post-force inquiry does not assume, automatically, that officers have committed misconduct. To the contrary, a force investigation is an entirely different matter than a misconduct or Internal Affairs investigation. Instead, a system in which force is rigorously analyzed and scrutinized whenever it occurs recognizes the extraordinary interests, rights, and risks implicated by any application of force – and of the relatively infrequence of force in the context of the overall number of interactions in which a police department engages. Because force is a significant, non-routine event, instances in which officers deploy it must be rigorously evaluated to ensure fidelity to policy and law and to allow involved officers and the department to incorporate real-world lessons learned into their service to the community in the future.

To some extent, TPD's current lack of rigor with respect to post-force investigation is unsurprising, as the Department's policies and procedures do not provide much guidance to supervisors on how to investigate, review, and evaluate a use of force incident. Under TPD policy, supervisors receive some instruction as to their responsibilities after a use of force:

- If injuries result, respond to the scene and/or hospital
- Investigate and review the use of force incident
- Report findings in Blue Team and forward through chain of command for review.[195]

Second, policy explains that "[t]he Supervisory review of force applications shall be the determining factor in evaluating appropriateness and necessity. The investigating Supervisor shall make a preliminary determination as to whether force was applied within Department guidelines."[196]

However, there are no clear expectations about what the supervisor should do to investigate what occurred and why. This means that the case files for force were often minimalistic, at

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[195] P3.1-Use of Force

[196] P3.1.7 – Use of Force Reporting Policy (original emphasis omitted).

best, consisting only of basic officer reports and a supervisor summary that was typically a re-statement of facts.

In over a quarter of cases (27 percent), reviewers found that there was additional relevant evidence that would have resolved inconsistencies or improved the reliability or credibility of the investigation that was not collected. Similarly, in close to one out of five cases (18 percent), the case files and supervisor review failed to consider "all relevant and material lines of investigative inquiry," leaving substantial issues unexplored or unresolved.

Significant, recurring investigative issues fell into a few discrete categories:

a. *Failure of all involved, on-scene, and/or witness officers to complete reports*

In several cases, officers who were involved in incidents where force was used, witnessed force, or who otherwise responded or were on the scene did not provide reports on what occurred. This is a foundational deficiency:

- "Two officers submitted thorough reports that covered most relevant information, but it was clear from their reports, as well as the report of the investigative sergeant, that additional officers were called to the scene to help remove the subject from the car and struggled with him to place him into custody. However, no additional officers beyond the two who submitted reports seemed to be named, and no additional officers who responded completed any report detailing their observations and actions."

- "Reports from the two additionally responding officers were not in the file."

- "A second officer, who helped with a takedown and cuffing, did not have a report in the file."

- "One of two officers provides a report, with no explanation for the missing account of other officer."

b. *Failure to interview non-law enforcement witnesses or other evidence*

Likewise, in many instances, civilian witnesses were not contacted or reviewed. Evidence available from non-law enforcement sources was sometimes not gathered or considered. This means, again, that determinations about what occurred and if it was consistent with TPD policy could only be based, inside the Department or by an external accountability mechanism or review, on involved officers' own accounts.

- "The sergeant named in the report did not indicate if he interviewed witnesses from the bank. An attempt to interview the arrestee was unsuccessful. The investigation is based solely on the information provided by the officers."

- "The investigating sergeant did not talk to any witnesses in the facility. No pictures and not clear if subject was interviewed."

- "The supervisor could have interviewed the male citizen who was present and witnessed to use of force."

- "The original complaint was that the subject was blocking the loading dock. It is not clear if there were witnesses to the UOF that could have been interviewed."

- "The sergeant did not arrive on scene and could not talk with subjects or canvas for witnesses."

- "No video and no apparent attempt to get gas station video" that might have depicted involved events.

c. <u>Supervisor involved in the use of force conducted review</u>

Problematically, supervisors handled the post-incident review of force cases in which they were in fact involved. Available documentation did not establish who, if anyone, within TPD evaluated the actions of supervisors who were themselves involved in force cases. As a general matter, supervisors should not investigate, review, or make findings about the appropriateness of force in cases in which they were directly involved.

- "The sergeant who was on scene and directed tactics, and also restrained the subject in the back of the patrol car, also completed the force investigation. Ultimately, he approved his own force."

- One "issue is [the] participating sergeant's involvement in reviewing other related force against woman even as the force that he used against man in the same incident/scenario was seemingly not investigated/reviewed.

- "The investigating supervisor was a party to the incident, as one of the three responding officers."

- "Supervisor who investigated was at the scene, which is problematic."

d. <u>Material issues not reviewed</u>

In other cases, reviewers identified relevant and material issues that were not explored by the post-incident investigation and review process:

- "There were two Taser cycles – only one was addressed. The [reviewing] sergeant did not investigate [an] application of 40mm to chest."

- The supervisor's review "report is perfunctory. It does not explore why/whether Taser was necessary."

    e. *Investigation was not objective*

Even as investigations were not as thorough and complete as they should be, 21CP reviewers did not identify many instances, based on the face of available materials, of undue bias – although a lack of objectivity did surface expressly a few instances:

- The "investigating sergeant explained why he did not seek to interview subject and did interview subject's mother. [A f]law of [the] investigation/analysis is in reflexively seeing all force as necessary/proportional/reasonable."

- The "[i]nvestigation never considered the appropriateness of initial force," seeming to take that determination for granted based on the supervisor's reports.

II.   PURSUITS

Pursuits are high-risk, low-frequency police actions. As such, guidance to officers concerning pursuits must be clear and comprehensive. There is little question among police practitioners and members of communities as to whether a police department should have explicit pursuit policies. The challenge is to balance the potential need to apprehend fleeing offenders with the safety of innocent bystanders, offenders and police officers.

Police literature has generally recognized three policy models for pursuits, with a fourth policy model more recently entering the lexicon:

- <u>Discretionary:</u> Allowing officer to make all major decisions relating to initiation, tactics, and termination.
- <u>Restrictive:</u> Placing certain restrictions of officers' judgments and decisions.
- <u>Discouraging:</u> Severely cautioning against or discouraging any pursuit, except in the most extreme circumstances.
- <u>Prohibited:</u> Pursuits are not allowed.[197]

Restrictive vehicle pursuit policies began to appear in the 1980s. By 2019, the Bureau of Justice Statistics (BJS) found that an estimated 85 percent of local police departments restrict vehicle pursuits.[198] BJS further highlighted the severity of the issue: every year

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[197] Hugh Nugent, et al, *Restrictive Policies for High-Speed Police Pursuits,* U.S. Department of Justice, National Institute of Justice (1990).
[198] Brian Reaves, *Police Vehicle Pursuits, 2012-2013,* U.S. Department of Justice, Bureau of Justice Statistics (May 2017).

between 1996 to 2015, a person was killed almost every day as a result of a police pursuit, resulting in over 7,000 deaths.[199]

The nature of a department's pursuit policies matters in terms of outcomes. The experience of the Milwaukee Police Department ("MPD") starkly illustrates the point.[200] In 2010, MPD limited its pursuit policy to only incidents involving a violent felony. Vehicle pursuits dropped precipitously by 2012. A subsequent reversal in policy by MPD in 2017 allowed pursuits in incidents involving reckless driving or drug dealing. MPD's pursuits increased by 155 percent after the 2017 policy change. The number of people injured as a result of a police pursuit more than tripled between 2017 and 2018 – which included 38 injuries to third-party victims and 13 injuries to police officers.

The New Orleans Police Department ("NOPD") is an example of a Department operating with a restrictive pursuit policy.[201] NOPD requires its officers to have knowledge that the fleeing suspect committed or attempted to commit a crime of violence and that the escape of the subject poses an imminent danger to others. NOPD also requires supervisor approval prior to initiating a pursuit. Elsewhere, Seattle's vehicle pursuit guidelines allow pursuits for DUIs and felonies.[202]

Most policies require supervisors to monitor and take control of a pursuit. The New Orleans and Seattle policies, like the International Association of Chiefs of Police Model Policy,[203] list the conditions under which a pursuit is to be terminated, and officers in the pursuing car or the supervisor may choose to terminate the pursuit at any time. All of these policies require Communications to notify a jurisdiction when a pursuit enters a neighboring jurisdiction. Required reports and training, including refresher training, on pursuits are also specified in the policies.

TPD's policy is a restrictive policy: "Department members will only engage in pursuits when the necessity to apprehend the violator outweighs the danger posed to the public."[204] The policy only permits initiation of a pursuit when "an actively resistant subject" "presents, or has presented, an imminent threat of death or serious bodily harm and/or the severity of the crime or circumstances, other than the eluding itself, necessitates immediate apprehension."

Tacoma's current policy on pursuits allows both the primary officer or supervisor to terminate a pursuit at any time, and mandates that the pursuit be terminated under certain circumstances, including when changing risks to the public or the officer outweigh the necessity for immediate apprehension, the pursuit becomes futile, there are changing road

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[199] *Id.*

[200] Edgar Mendez, "Police Chases Nearly Triple Since Change in Milwaukee Pursuit Policy," *Milwaukee Neighborhood News Service* (Jan. 7, 2020).

[201] New Orleans Police Department, Chapter 41.5, Vehicle Pursuits (Aug. 11, 2019).

[202] Seattle Police Department Manual, 13.031, Vehicle Eluding/Pursuits (May 7, 2019).

[203] International Association of Police Model Policy, *Vehicular Pursuit* (Dec. 2015).

[204] TPD Policy Manual Sub-Section P3.2.2.

conditions, and there are vehicle malfunctions to the pursuing car. The policy properly assigns primary responsibility to the second unit (of only three allowed units in total) to take over communications so that the primary unit can focus on driving.

Overall, TPD's pursuit policy is aligned with many best practices and appears to align with potential legislation in the current legislative session, with the exception of the requirement that an officer may only initiate a pursuit when "the officer has received authorization to engage in the pursuit from a supervising officer."[205]. As such, the four sustained pursuit policy violations in 2019-2020 suggest that the policy is properly calibrated. However, the lax discipline imposed in those circumstances suggests that TPD is not properly enforcing its policy. It should do so, and unequivocally send a message throughout the department that pursuits are disfavored.

Recommendation 27. TPD should require that officers obtain supervisor *approval* immediately after initiating a pursuit.

Current policy allows officers to initiate a pursuit, which can then later be terminated by a supervisor. However, there is no requirement that the supervisor affirmatively approve continuation of the pursuit. Instead, the supervisor may remain passive and not weigh in unless they decide to terminate. Shifting the approval responsibility to a supervisor who can make the requisite analysis outside the passions and heat of the moment can lead to better decision-making. If Washington H.B. 1054 passes this legislative session, the policy will need to actually require supervisor pre-authorization before the pursuit may even be initiated in the first place, which we worry is not practical in the real world. TPD should adopt the highly restrictive middle ground found in the Seattle Police Department's recently updated pursuit policy:

> Officers Will Not Engage in a Vehicle Pursuit Without Probable Cause to Believe a Person in the Vehicle Has Committed a Violent Offense or a Sex Offense and Both of the Following:
>
> - Probable cause to believe that the person poses a significant imminent threat of death or serious physical injury to others such that, under the circumstances, the public safety risks of failing to apprehend or identify the person are considered to be greater than inherent risk of pursuit driving; *and*
>
> - The Officer has received authorization to continue the pursuit from a supervisor.[206]

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[205]   H.B.   1054,   Section   7(d),   http://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1054-S.pdf?q=20210311185947.
[206]   Seattle   Police   Department   Manual,   Section   13.031,   Vehicle   Eluding/Pursuits, https://www.seattle.gov/police-manual/title-13---vehicle-operations/13031---vehicle-eluding/pursuits;

Recommendation 28. **TPD policy should expressly provide that no officer or supervisor will be disciplined for failing to initiate a pursuit or for terminating a pursuit.**

Officers may well be reticent not to pursue or to terminate a pursuit because they feel a duty to apprehend. TPD policy should explicitly state that no discipline will be imposed for declining to pursue or terminating a pursuit.[207]

III. BIAS-FREE POLICING

This report elsewhere describes racial disparities with respect to the use of force and traffic citations in Tacoma. With respect to other core activity – namely, stops, searches, and detentions – this report elsewhere describes 21CP's inability to conduct a racial disparity analysis because the Department does not systematically collect information in a way that in aggregate data related to all non-voluntary contacts, including both pedestrian and vehicle stops, can be analyzed.

Although disparate impact and treatment may stem from explicit bias and racism, not all disparities necessarily arise from intentional or conscious bias. Indeed, we may have an "implicit bias" to judge all actions as "intentional by default."[208] At the same time, research has increasingly confirmed that, even among individuals with an express commitment to treating people equally,[209] "attitudes or stereotypes . . . [may] affect our understanding, actions, and decisions . . . involuntarily and without an individual's awareness or intentional control."[210] Indeed, everyone – from lawyers and judges to physicians and teachers[211] –

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see also New Orleans Police Department Operations Manual, Chapter 41.5, Vehicle Pursuits, https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-5-Vehicle-Pursuits-EFFECTIVE-8-11-19-(1).pdf/?lang=en-US ("Officers must receive supervisory approval prior to initiating the pursuit").

[207] *See, e.g.,* Seattle Police Department Manual, Section 13.031, Vehicle Eluding/Pursuits, https://www.seattle.gov/police-manual/title-13---vehicle-operations/13031---vehicle-eluding/pursuits.

[208] Evelyn Rosset, "It's No Accident: Our Bias for Intentional Explanations," 108 *Cognition* 771 (2008).

[209] Justin D. Levinson, "Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering," 57 *Duke Law Journal* 345, 360 (2007) ("[I]mplicit racial attitudes . . . frequently diverge from explicit racial attitudes."); accord Anthony G. Greenwald & Linda H. Krieger, "Implicit Bias: Scientific Foundations," 94 *California Law Review* 945 (2006) (defining implicit biases as "biases based on implicit attitudes or implicit stereotypes" that "can produce behavior that diverges from a person's avowed or endorsed beliefs or principles").

[210] Kirwan Institute for the Study of Race and Ethnicity, "State of the Science: Implicit Bias Review 2014" at 16, http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf.

[211] Christine Jolls & Cass R. Sunstein, "The Law of Implicit Bias," 94 *California Law Review* 969, 975 n.31 ("The legal literature on implicit bias is by now enormous"); Theodore Eisenberg & Sheri Lynn Johnson, "Implicit Racial Attitudes of Death Penalty Lawyers," 53 *DePaul Law Review* 1539, 1553 (2004) (implicit bias among defense attorneys); Alexander R. Green, et al, "Implicit Bias Among Physicians and its Prediction of Thrombolysis for Black and White Patients," 22 *Journal of General Internal Medicine* 1231, 1237 (2007) ("[P]hysicians, like others, may harbor unconscious preferences and stereotypes that influence clinical decisions.").

appears to have implicit, or subconscious, biases to some extent because, in the same way that the brain is hard-wired to identify patterns and associate certain characteristics with certain phenomena:

> Over time, the brain learns to sort people into certain groups (e.g. male or female, young or old) based on combinations of characteristics as well. The problem is when the brain automatically associates certain characteristics with specific groups that are not accurate for all individuals in the group . . . . [212]

Thus, disparity may stem from implicit or subconscious bias – modes of thinking that may not be readily apparent or obvious to individuals as they operate within the world.

It may also be the case that some explanation for disparity with respect to law enforcement activity is related to disparities across the criminal justice system and broader social life. Systemic racism and enduring bias in education, housing, employment, the courts, public health, and other foundational areas of American life may be reflected in data on those with whom police departments interact, arrest, and the like.

Regardless of the web of reasons for why there are disparities, police departments occupy a singular place in helping to consider and implement solutions that might address and affect disparate outcomes. A critical part of addressing disparities in law enforcement is ensuring that a department has the policies, procedures, training, and processes for critical self-analysis in place that can identify disparities and work with the community to determine if it might adopt different approaches that would reduce disparity. The specific recommendations in this section are therefore necessary but by no means sufficient, by themselves, to address issues relating to bias and disparate impact.

Recommendation 29.   TPD should clarify that its policies relating to bias and discrimination, including prohibited conduct, apply with equal force while working on-duty during a City shift, during secondary employment, and while off-duty.

TPD's existing policy on bias-free policing is generally sound.[213] As a general matter, under the policy, "[a]ny action taken by a member, when acting in an official capacity, based on the person's race, age, gender, ethnicity, immigration status, national origin, religion, sexual orientation, gender identity/expression, housing status, occupation, language fluency or disability is considered biased policing" and is prohibited.[214]

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[212] National Center for State Courts, "Helping Courts Address Implicit Bias: Resources for Education" (2012), http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx.

[213] TPD Policy Manual Sub-Section 3.1, P1.6.

[214] *Id.* Sub-Section 3.1, P1.6.1.

The Bias-Free Policing Policy indicates that it "shall be applicable to all Tacoma Police members in the performance of their official duties."[215]   Departments increasingly are encountering challenges originating from officer conduct while not in uniform or on duty – such as postings made on social media. In fact, TPD indicates that it is reviewing and screening new applicants' social media and online presence before they are hired, which is a commendable protocol consistent with the recognition that the particular roles and responsibilities of a police officer make off-duty behavior potentially relevant to their ability to do the job well and with the community's confidence. Consistent with this idea, TPD should clarify that its generally sound policy on Bias-Free Policing applies to all personnel whether on- or off-duty.[216]

Recommendation 30.   TPD should revise and expand its policies on Bias-Free Policing by committing to make every effort to identify and address institutional and systemic disparities.

TPD's current policy does a generally good job of addressing issues of individual officer behavior or performance – in particular, where an officer may have impermissibly taken an action *because of* or *due to* an individual's race, age, gender, ethnicity, or other listed characteristic.[217]

TPD's policy should go further, however, to address how the *aggregate activities of the Department* might result in disparate outcomes.   For instance, the Seattle Police Department's policy on bias-free policing commits the Department "to eliminating policies and practices that have an unwarranted disparate impact on certain protected classes."[218] To do so, the policy requires that the Department "periodically analyze data which will assist in identification of SPD practices . . . that may have a disparate impact on particular protected classes relative to the general population . . . . Where unwarranted disparate impacts are identified and verified," the Department must work with community stakeholders to identify if "equally effective alternative practices . . . would result in less disproportionate impact."[219] This process of a law enforcement agency gathering data about its enforcement activities, analyzing such information to determine if the burden of law enforcement is falling disproportionately on particular populations or communities, and exploring whether alternative approaches could address or alleviate disparity is critical to implementing a comprehensive approach to policing that is committed to equity and fairness. For example, TPD should clarify its deployment priorities relating to stops and detentions – *Terry* stops should not be a deployment strategy and stops should not be tied to any performance expectations.

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[215] *Id.*

[216] *Id.* Sub-Section 3.1, P1.6.

[217] *Id.*

[218] Seattle Police Department, SPD Manual Section 5.140-POL § 9.

[219] *Id.*

Recommendation 31.   TPD should work with the community to design training on cross-cultural competency, the history of and effects of policing for communities in Tacoma, and community efficacy.

Many community members expressed to 21CP the sense that Tacoma police officers do not have a genuine understanding and comfort with the specific histories, experiences, and needs of the city's diverse communities. Especially in reviewing training programs provided to current TPD officers in recent years, it appears that the Department has a significant opportunity to partner with the Tacoma community to design and implement programs that expand officer awareness of the rich histories, painful experiences, and particular aspirations of various racial, ethnic, cultural, religious, and identity groups. Even as officers may be from Tacoma, live in Tacoma, or have spent substantial time working with TPD, this training can expose all members to realities, experiences, and challenges that simply fall outside of their particular experience sets.

Relevant training might focus on cross-cultural communication and competency; the history and effects of policing for Tacoma's communities; and community efficacy, or the mechanisms through which communities themselves work together to promote their well-being and safety. Again, for this type of training to be effective, the Department must be at the table in designing and implementing the training – but it must occupy one chair around a very large table of community stakeholders.

IV.   STOPS, SEARCHES, AND ARRESTS

TPD does not currently collect sufficient information about non-voluntary interactions with community members. This is a significant deficiency that the Department must correct – and must correct quickly.

Ultimately, information about disparities with respect to whom TPD's enforcement activities impact can only be identified when interactions result in arrests or when traffic stops result in a citation. If an officer engages in a non-voluntary investigative stop (or a probable-cause vehicle stop) – temporarily detaining an individual – but does not arrest or cite the individual, that encounter is not logged in a sufficient systematic manner to permit meaningful review or analysis. Because TPD does not appear to record demographic information on all traffic stops, the only information available on the characteristics of traffic stop subjects is that provided on those who receive citations – and this information is maintained by the courts, not the Department. The universe of individuals detained by police but permitted to leave without the officer taking any other enforcement action is unknowable and unlogged – leaving a vast universe of regular police interactions not subjectable to analysis and scrutiny.

Analyzing the available data from the courts on traffic citations provides reason to believe that TPD's lack of comprehensive information about who is stopped, searched, and detained by the Department may be obscuring significant information about enforcement disparities.

Specifically, 21CP considered available information about traffic citations issued in Tacoma between 2016 and 2019. During this period, there were over 20,000 traffic citations issued, which is roughly 24 citations for every 1,000 Tacomans. Black men were issued traffic citations at a rate of roughly 58.3 citations per 1,000 – meaning that Black men were issued traffic citations at over twice the rate of all Tacomans. Similarly, Black women were about 60 percent more likely to receive a citation relative to their share of the population. Meanwhile, even as a plurality of citations (34 percent) were given to white men, this was only slightly above their share of the population.

Table 12: Tacoma Traffic Citations, 2016 – 2019

Race & Gender	Population Estimate	Average Citations Per Year	Average Rate (Per 1,000)
Black Male	12,044	701.8	58.3
White Male	61,132	1,749.0	28.6
Black Female	10,202	399.3	39.1
White Female	63,480	1,411.5	22.2
All Tacomans	212,869	5,153.5	24.2

Source: 21CP Analysis of TPD Data

These disparities are significant and noteworthy – but they can only tell part of a larger, even more significant story. TPD's failure to collect systematic information on all non-voluntary contacts renders it impossible to determine readily or comprehensively the extent to which the Department's activities do or do not disproportionately impact some of Tacoma's communities.

A few points must be emphasized at the outset. First, when this section, and this report, discusses the collection of data or information, it does not do so to facilitate academic analysis. "Data" in this sense is simply systematic, overall information about everything that TPD is doing across a volume of interactions. In this sense, "data" is an aggregation of a vast array of experiences, of community members and TPD officers, across time and encounters. TPD cannot manage itself appropriately if it does not know, track, review, and analyze what its officers are doing and how its officers are performing across all interactions. The absence of data on something like non-voluntary encounters with community members does not simply prevent numerical analysis or the determination of aggregate racial disparities – it prevents TPD from knowing what its officers are doing and from ensuring performance that is consistent with the Department's policies and the law.

Second, TPD currently maintains only scattered, somewhat minimized procedures on stops, searches, and arrests. Because these subjects implicate the deprivation of liberty, and substantial legal requirements, the Department should have specific policies and provide regular training to officers on how to conduct such enforcement activities legally, fairly,

justly, and effectively. The marginalization of such important performance expectations to procedures, combined with the lack of systematic documentation and review of non-voluntary interactions with community members, suggests a lack of recognition within the Department, to date, of the foundational importance of these encounters. TPD's commitment to progress in this area has the potential for improving performance, enhancing public trust, and reducing racial disparities.

Recommendation 32.   TPD should substantially revise and expand its current policy manual to address, in detail, the conduct of stops, searches, and arrests.

Laws and obligations surrounding stops, searches, seizures, and arrests are notoriously complicated.[220] The distinctions among various types of encounters with individuals, the boundaries and restrictions on various types of searches, and the requisite levels of legal justifications that officers must have before conducting various types of stops, searches, and arrests are complex and nuanced. Many police agencies find that officers understandably require substantial, ongoing, and high-quality training in the area to faithfully apply relevant law and provide effective public safety services.

TPD's Policy Manual is essentially silent on the significant subject of activities other than force that constitute a seizure under the Fourth Amendment – including stops, searches, and arrests of civilians. This is a significant omission that the Department needs to correct going forward. For instance:

- No policies articulate the necessary legal standard for conducting an investigative stop (reasonable articulable suspicion), requirements for the conduct of such a stop (conducting a pat-down search), and limitations to the length, duration, and scope of such a stop.
- No policies define or explain the concept of "probable cause."
- *Miranda* rights are referenced twice – and both within the context of rights to departmental members during internal investigations.[221]

Instead of capturing how officers must perform in order to adhere to core Fourth Amendment protections, the Department's core policy manual, guidance on stops, searches, seizures, and arrests are addressed in TPD's "Procedures Manual."[222] TPD's policy book explains the difference between policy and procedures:

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[220] *See generally* Stephen Budiansky, "Rescuing Search and Seizure," *The Atlantic* (Oct. 2020), https://www.theatlantic.com/magazine/archive/2000/10/rescuing-search-and-seizure/378402/ (observing that Fourth Amendment-related legal "rules are hard for a layperson to make much sense of" with the application of various exceptions to the warrant requirement especially "bewildering").
[221] TPD Policy Manual Sub-Sections P1.8.1(C)(1), P3.4.
[222] *See, e.g.*, TPD Procedures Manual, "Field Contacts," "Traffic Stops/Contacting the Violator," "Arrest – General Authority Peace Officer Act/Fresh Pursuit Arrests," "Search and Seizure."

> Policy is designed to be both a historical reference and an institutionalization of foundational stature . . . .
>
> Procedures are formal written instructions that originate from Bureau Chiefs, or their designee, which are a set of established methods for conducting various tasks, functions, and/or operations.[223]

Policy is "authorized only by the Chief of Police," while Procedures are "authorized only by [an] appropriate Bureau Commander."[224]

In 21CP's collected experience, there are few more vital areas of concern to a law enforcement officer than the parameters under which they may involuntarily detain, search, and arrest an individual. These may be required to ensure public safety, but they implicate significant constitutional protections. The law related to the Fourth Amendment establishes far more than "a set of methods for conducting various tasks."[225] Given the "foundational stature" of legal protections surrounding stops, searches, seizures, and arrests, TPD should include material in the areas currently covered in Procedures to be at the level of Policy. In doing so, TPD would join the many departments that have specific, detailed guidance within their policies on when and how various types of stops, searches, and arrests may and may not be permissible. For instance:

- **Baltimore Police Department** – Among other policies, the agency maintains a comprehensive, standalone policy on "Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches." It provides guidance on the legal requirements and parameters governing interactions ranging from voluntary contacts to arrests, including traffic stops.[226]

- **New Orleans Police Department** – The agency maintains policies on Search and Seizure generally, Stops/*Terry* Stops, Search Warrants, and Vehicle Stops.[227]

- **Cleveland Division of Police** – The agency maintains separate but inter-related policies on Search and Seizure, Investigatory Stops, Strip Searches & Body Cavity Searches, Probable Cause/Warrantless Arrests, and Miranda Warnings & Waivers.[228]

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[223] TPD Policy Manual Sub-Sections 1.5.1, 1.5.2.

[224] *Id.* Sub-Section P.1.5.8.

[225] *Id.* Sub-Section P.1.5.2.

[226] Baltimore Police Department, Policy 1112: Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches (Oct. 12, 2020), https://www.baltimorepolice.org/1112-draft-field-interviews-investigative-stops-weapons-pat-downs-and-searches.

[227] New Orleans Police Department, Chapters 1.2.4, 1.2.4.3, available at https://www.nola.gov/nopd/policies/ (last visited Jan. 17, 2021).

[228] City of Cleveland, Search and Seizure Policies, http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PoliceSettlementAgreement/SearchandSeizures (last visited Jan. 17, 2021).

Officers need sound guidance, and in-depth, practical training, on search and seizure to ensure that the Department is systematically upholding the constitutional rights and protections of all Tacoma residents.

21CP understands that the City of Tacoma has pledged to begin to collect information on traffic stops.[229] This is a strong start that can be easily expanded to ensure that all officers report to the Department whenever they engage in any non-voluntary encounter or interaction.

Recommendation 33.   TPD should provide detailed training on non-voluntary encounters between police and members of the public – including stops, searches, and arrests.

Focus groups with TPD officers clarified that few have received much training on when and how to make non-voluntary stops of individuals. Although the topic is addressed as part of new recruit training, the topic of stops, searches, and arrests received relatively little coverage in training between 2015 and 2020.[230]

Consistent with a renewed and reinvigorated approach to training overall, TPD should provide (1) detailed guidance on the law and departmental requirements relating to stops, searches, and arrests, and (2) dynamic, scenario-based opportunities for officers to develop decision-making skills. In this substantive area, verbal scenarios, group deliberations, discussions of video of officer interactions, role-playing exercises, and other adult learning techniques can be particularly fruitful. Training programs in jurisdictions like Baltimore may be instructive.[231]

Recommendation 34.   TPD officers should be required to document and provide information about all non-voluntary interactions. To enhance officer safety, expand the quality of supervision, and to provide meaningful opportunities for the department to understand its overall performance, TPD policy should articulate clear requirements for supervisory review and aggregate analysis of overall trends regarding stops, searches, and arrests.

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[229] Alison Needles, "City of Tacoma Will Start Tracking, Analyzing Race Data for Traffic Stops by Police," *KIRO7.com* (Nov. 14, 2020), https://www.kiro7.com/news/local/city-tacoma-will-start-tracking-analyzing-race-data-traffic-stops-by-police/M5MC3G326NA4PJHG3CJ7SS7ETA/.

[230] In response to 21CP's request for training curricula relating to stops, searches, and arrests, TPD provided a number of materials. Some were "legal directives" updating officers on the latest decisions from courts but not addressing fundamental decision-making skills on whether to stop and individual and what to do during the stop. Several other training curricula that were purported to have some connection to stops, searches, and arrests were more properly classified as use of force or defensive tactics training.

[231] Baltimore Police Department, Memorandum to the Public and BPD Members re: Draft Stops, Search, and Arrests Training and Fair and Impartial II Training Curriculum (Jan. 10, 2020), https://www.powerdms.com/public/BALTIMOREMD/documents/645652.

Based on a review of TPD's Policies and Procedures, and discussion with Department personnel, it appears that information about the reasons for or foundation of a stop would be documented, if at all, in an incident report. However, as a matter of course, something more than the initiation of a stop would need to occur for an officer to be obligated under current TPD Procedures to file an incident report, with incident reports needing to be filed "when any of the following circumstances exist":

- Citizen reports of crimes.
- Any time an employee believes that a report will properly document an incident and that is in the best interest of the City of Tacoma and/or the Police Department to report the incident, an Incident Report will be completed.
- Required due to an arrest or citation.
- Traffic collisions and vehicle impounds, as required by "Traffic-Towing Enforcement and Practice" and "Traffic-Collision Investigation Process" procedures.
- An incident involving unusual or suspicious activity that is likely to be associated with criminal activity at a later date.
- At the direction of a Supervisor.
- Missing persons and juvenile runaway reports as required by "Missing Adults Reporting" and "Juvenile-Runaways" procedures.
- An employee takes an action that results in, or is alleged to have resulted in, injury or death of another person . . . . [232]

Thus, a stop in which an individual was stopped, detained, and potentially searched but ultimately sent on their way without citation or arrest – a common event – currently is not captured within incident reports, or any other type of report. With the act of involuntarily detaining an individual not routinely captured in an incident reports, important encounters between TPD officers and residents – including *Terry* stops, traffic stops, and searches pursuant to initiated stops – risk going under-scrutinized by the Department.

The documentation of all non-voluntary contacts – that is, all those that implicate significant Fourth Amendment considerations and guidelines because they are interactions in which a reasonable subject, under the circumstances, would not feel free to leave – allows for both real-time review of officer performance and the overall, aggregate analysis of departmental performance and trends. Without all non-voluntary encounters with individuals being documented, supervisors are unable to review all Fourth Amendment seizures to ensure that officers are complying with core legal obligations. Likewise, department-wide trends across individual stops include the efficacy and efficiency of the department, staffing and workload demands, the effectiveness of various departmental approaches aimed at addressing crime and public safety issues, and the identification of potential disparities in enforcement

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[232] TPD Procedures Manual, "Reports – Incident Reporting."

activities. Simply, "[s]top data collection is an essential practice for every law enforcement agency, no matter how small or specialized."[233] In developing more detailed policies regarding stops, searches, and arrests, TPD should commit to analyzing data on this and other enforcement activities on an ongoing basis to determine if some populations are the subject of enforcement activity at a disproportionately higher rate than others.

By not collecting information on all non-voluntary encounters between TPD officers and community members, the Department, and the Tacoma community, simply cannot have an accurate idea of what TPD is doing, who is affected, and the impact of TPD's aggregate performance on Tacoma's communities. The collection of information about individual stops is not simply the collection of "data" for the sake of it. Instead, it is the capturing of important encounters that go to the heart of issues of police legitimacy, equity, public confidence, and overall community well-being.

Thus, TPD should develop an efficient mechanism for officers to report the conduct of all stops; provide information about the circumstances of and basis for the stop; report on what transpired during the stop encounter; and provide details on the outcome or resolution of the stop. In many departments, this mechanism is an electronic version of a "stop form" that an officer completes about the encounter. Officers then are required to provide this electronic report for all stops. Departments such as the **New Orleans Police Department**[234] currently operate within such a framework, and there is an ever-growing body of national guidance on the topic of systematically capturing information about non-voluntary police-civilian interactions.[235]

V. CRISIS INTERVENTION

Recommendation 35.   The City of Tacoma should explore, with community stakeholders and members, the best, formalized mechanisms for the City to respond to individuals experiencing behavioral health crisis, including mental health, addiction conditions, and other behavioral health challenges. TPD's role in responding to individuals experiencing a behavioral crisis should be

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[233] Marie Pryor, et al, Center for Policing Equity & Policing Project at NYU School of Law, Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities 13 (2020), https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5f7335d7294be10059d32d1c/1601385959666/COPS-Guidebook+Final+Release+Version.pdf.

[234] New Orleans Police Department Operations Manual, Chapter 41.12, "Field Interview Cards," https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-12-Field-Interview-Card-EFFECTIVE-12-20-20.pdf/?lang=en-US (last rev. Dec. 20, 2020).

[235] Marie Pryor, et al, Center for Policing Equity & the Policing Project at NYU School of Law, Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities (2020), https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf; The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 104–05 (2019).

meaningfully and specifically defined – and memorialized in departmental policy, systems, processes, staffing, and training.

A lack of mental health services – coupled with the often co-occurring conditions of substance use disorder, homelessness, and other conditions of despair – has led to jurisdictions nationwide increasingly relying on police officers to serve as first responders to incidents of behavioral crisis. In nearby Seattle, a December 2018 report found that nearly 3 percent of all calls to police – some approximately 15,000 over an 18-month period – involved an individual in behavioral or emotional crisis.[236] Some studies suggest that as many as 10 percent of officer-public contacts overall involve a person in a serious mental health crisis.[237]

TPD appears to have some programs, protocols, and procedures relating to interactions with individuals experiencing crisis:

- Focus groups with TPD personnel revealed some confusion and misunderstanding about the concept of "crisis intervention." Specifically, officers tended to discuss various resources available to officers from a mental health and wellness perspective rather than programs and response tools for interacting with individuals experiencing crisis in the community. Patrol officers and command staff alike tended to talk about "mental health crisis" in the context of officers having access to "designated mental health" people and resources. Indeed, in providing materials to 21CP about the Department's policies, programs, and procedures for dealing with individuals in behavioral health crisis, many of the materials focus on officer wellness issues.

  Issues related to officer mental health and well-being are too often overlooked in police departments. This report provides specific recommendations for the Department for enhancing the quality of its resources to officers. Nevertheless, the seemingly regular mistaking of internal wellness resources for generalized community crisis resources suggests that the Department has a distance to travel to establish a rigorous response program and protocol, that is well-understood and properly used, for interactions involving individuals who may be experiencing a behavioral health crisis.

- Consistent with the inclination of the Department to view mental health issues in terms of officer rather than community challenges, "[c]risis intervention" surfaces in TPD's policy manual in three instances – but all in reference to resources or considerations afforded to officers from an officer wellness perspective.[238] The

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[236] Seattle Police Department, Use of Force in Crisis-Involved Incidents (Dec. 2018), https://www.seattle.gov/Documents/Departments/Police/Publications/Crisis_UoF%20Report%20SPD%20Final.pdf.

[237] Martha W. Deane, "Emerging Partnerships Between Mental Health and Law Enforcement," 50 *Psychiatric Services* 99 (1999).

[238] TPD Policy Manual Sub-Sections P4.4.2, 4.8.1.

term "mental health" is likewise referenced three times – again, all in reference to resources available to TPD personnel.[239]

- A section of TPD's Procedures Manual addresses "Handling Individuals Suspected of . . . Mental Disorders."[240] Although they provide some useful information to addressing individuals experiencing mental health issues, the Procedures do not outline systematic approaches for responding to individuals experiencing crises – and do not address behavioral health issues not related to mental illness. Further, as discussed previously, the Procedures reference the concept of "excited delirium" without further, specific guidance.

- TPD materials include information about a "Co-Responder Program." These outline a Program in which "[t]here mental health professionals are located at Tacoma Police Headquarters." "When needed, officers request mental health professional assistance through dispatch as needed for crisis situations."[241] However, these mental health professionals are "typically asked to respond to a location at the request of law enforcement officers *once the scene is stable*."[242] The role of the co-responders is to help assess the situation and to assist in making referrals to mental health and social service programs.

  It did not appear to 21CP that this program was well-understood or systematically utilized by TPD officers. Rigorous information about co-responder deployment likewise did not seem available, although some sporadic information about various months of performance provided to 21CP suggested that co-responders are responding and making some relevant number of "diversions" or referrals to mental health services.

  Regardless of the scope and size of the program, it is unlikely that TPD's program can be properly classified as an integrated co-*response* program because, as discussed below, mental health professionals are deployed as auxiliary resources after an officer initiates the primary response and stabilized the scene.[243] Even as the presence of clinicians may be useful in helping TPD personnel make decisions about how to address an individuals, the co-responders do not help to take, guide, or take the lead on the initial interaction with, assessment of, and response to individuals in crisis. In this way, TPD's "co-response" resources might be more appropriately classified as a "mobile crisis team" that help to "reduc[e]

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[239] *Id.* Sub-Section P4.4.2.
[240] TPD Procedures Manual, "Mental Disorders, Handling Individuals Suspected Of" (last rev. Mar. 2016).
[241] Tacoma Police Department, *TPD Co-Responder Program*.
[242] *Id.* (emphasis added).
[243] *Id.*

unnecessary hospital transports and connect[] people to community-based mental health services and supports."[244]

- TPD personnel were not able to describe how additional County and regional resources are utilized in crisis response. A 2018 training on "De-Escalation and Calming of Aggressive and Emotionally Disturbed Individuals" listed a number of Pierce County "crisis services," but it is not clear how TPD uses them.[245]

- TPD has provided some training to officers in crisis intervention. One training, appearing to originate from the Washington Criminal Justice Training Commission in 2017, the state's officer training academy, was useful and practical. [246] A 2018 training entitled "De-Escalation and Calming of Aggressive and Emotionally Disturbed Individuals" also provided pragmatic information and skills. However, it is not clear that this training was part of a larger approach or framework for responding to individuals in crisis. Likewise, the training did not appear to provide the type of dynamic learning opportunities consistent with best practices in adult education. Finally, it was not clear to 21CP how many TPD officers completed the training.

Consequently, TPD's approach to individuals experiencing behavioral crisis is, at best, incomplete, scattered, and non-systematic. The Department and Tacoma community will benefit from efforts at crisis response becoming more ingrained within TPD's day-to-day dispatch and response protocols, policies and training, and culture.

Communities across the country are exploring the best systems for responding to individuals in crisis and the best ways that police can help support successful outcomes. Dominant models include:

- The Crisis Intervention/"Memphis Model." Officers receive training on responding to individuals in crisis, with some specially-trained "CIT officers" being specially dispatched to calls implicating behavioral health issues.[247] Steering committees of community stakeholders, including social service providers, clinicians, individuals of affected populations, and other community representatives, come

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[244] Amy C. Watson, et al, Vera Institute of Justice, *Crisis Response Services for People with Mental Illness or Intellectual and Developmental Disabilities: A Review of the Literature on Police-Based and Other First Response Models* 10 (Oct. 2019), https://www.vera.org/downloads/publications/crisis-response-services-for-people-with-mental-illnesses-or-intellectual-and-developmental-disabilities.pdf.
[245] "De-Escalation and Calming of Aggressive and Emotionally Disturbed Individuals" at 24–26 (2018), TPD Training Provided to 21CP Solutions.
[246] Ahura Shah, Washington Criminal Justice Training Commission, "Communication When Working With an Individual in Crisis" at 5 (2017).
[247] *See, e.g.*, Amy C. Watson & Anjali J. Fulambarker, "The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners," 8 *Best Practices in Mental Health* 71 (2012); University of Memphis, *CIT Center*, http://www.cit.memphis.edu/overview.php?page=2 (last visited Jan. 27, 2021).

together to discuss system-wide responses to mental health, substance abuse, and other behavioral issues.

- Community Co-Response. Officers and specially-trained clinicians or social workers respond to calls involving behavioral health issues. These non-sworn specialists and officers are specially dispatched as primary responders in situations that may involve individuals in crisis. "Thus, co-response teams go beyond training police officers by integrating officers with trained professionals who specialize in behavioral health problems."[248] Programs launched in Colorado[249] and Dallas[250] are examples.

- Primary Community Response/"CAHOOTS" Model. Social service providers or clinicians are dispatched in teams, without police, as the primary response to individuals in crisis where the call indicates that the individual is not posing a threat. Police are dispatched as and when these primary, community-based responders require such assistance. The City of Eugene, Oregon has for three decades dispatched "two-person teams consisting of a medic and a crisis worker who has substantial training and experience in the mental health field," rather than immediately sending police, to "deal with a wide range of mental health-related crisis, including conflict resolution, welfare checks, suicide threats, and more . . . ," which has been associated with positive outcomes and significant cost savings to the City.[251]

Tacoma should engage in a community-based, community-driven process of determining the best model of response to individuals in crisis. TPD should be one of many important institutional stakeholders that participate in the process. Based on the selected approach that community stakeholders determine, TPD policy, systems, processes, staffing, and training should all reflect and memorialize precisely how the Department will ensure that the community-identified response approach will be systematically implemented.

21CP notes here that, in conversations with TPD personnel, City stakeholders, and Tacoma residents alike, homelessness was a frequent topic. Although homelessness need not be co-occurring with other behavioral health challenges, many see substantial overlap. One TPD officer noted that an increase in resources for "drug and mental health treatment," along with "more services provided to the homeless population, . . . would lessen the burden on police,"

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[248] Katie Bailey, et al, "Barriers and Facilitators to Implementing an Urban Co-Responding Police-Mental Health Team," 6 *Health and Justice* 21, 22 (2018).

[249] Colorado Department of Human Services, *Co-Responder Programs*, https://cdhs.colorado.gov/behavioral-health/co-responder (last visited Mar. 6, 2021).

[250] Press Release, "Dallas Launches Coordinate Response Program for Behavioral Health Calls" (Jan. 22, 2018), https://mmhpi.org/wp-content/uploads/2018/04/01.22-RIGHTCareTeam_PressRelease_FMT_FINAL2.pdf.

[251] White Bird Clinic, *What is Cahoots?* (Sept. 29, 2020), https://whitebirdclinic.org/what-is-cahoots/.

freeing the Department up for different types of community relationship-building and problem-solving.

Recommendation 36.   TPD should provide specific policies, procedures, and training to TPD personnel regarding response to individuals experiencing crisis.

Regardless of the crisis response model that Tacoma embraces, TPD officers will still continue to interact with some significant number of individuals experiencing mental health, addiction conditions, and other behavioral health challenges. Accordingly, TPD needs clearly-defined policies relating to interactions with individuals in behavioral health crisis, and officers need regular and on-going instruction on crisis intervention and response. TPD should provide annual, on-going, and practical training – developed in collaboration with community partners – on behavioral health issues, individuals in crisis, and strategies and techniques for de-escalation, diversion, and the resolution of issues and conflicts involving individuals in crisis.

TPD indicates that it believes it meets or exceeds state requirements relating to crisis intervention. 21CP 's frame of reference for this report is not the minimum requirements for all departments across the state, regardless of size or community needs. Instead, the frame of reference is Tacoma and TPD's current state as compared to the practices of peer law enforcement agencies, best practices, and promising, emerging practices from other jurisdictions. Given that response to individuals experiencing mental and behavioral health challenges is far more comprehensively formalized within other agencies, TPD has some distance to travel to become a leader in responding to individuals in crisis.

AREA 3: ORGANIZATION AND COMMAND STRUCTURES

VI.   ORGANIZATIONAL STRUCTURE

Recommendation 37.   TPD should consider adding a Chief of Staff or Deputy Chief to support the Chief and coordinate the Department's bureaus.

A modern Chief of Police has responsibilities to the community, to City leadership, to the members of their department, as well as direct management responsibilities for law enforcement, budget, hiring, accountability systems, and many more core functions. As such, Interim Chief Ake will need to focus a good deal of effort on rebuilding relationships within the City and working to reunite the TPD with the City of Tacoma's leadership, as well as building stronger relationships with organizations, community leaders, and residents from across Tacoma.

Three Assistant Chiefs leading three TPD Bureaus (Operations, Investigations, and Administration) report directly to the Chief of Police, with the Chief serving as the primary point of visibility across the Bureaus. High-ranking members of the department observed that any coordination among bureaus seems to be based on relationships – and often occurs at levels below that of Assistant Chief. Officers complained about what they believe is a lack of coherence across Bureaus – such that it almost seems that "the left hand doesn't know what the right hand is doing." Several TPD personnel described the Bureaus as siloed and continually competing for limited resources. When asked what they would ask for most for the Department going forward, one commander asked for "a Deputy Chief to run [the] internal workings of the department" and agreed that this role could be filled by a civilian.

TPD would be well-served to build out an effective leadership team that truly coordinates the varying functions of the Department. In particular, the Department would benefit from a Chief of Staff to directly coordinate the efforts of the Assistant Chiefs and ensure that the three Bureaus are well-coordinated, working in alignment, and consistently implementing the priorities of the Chief.

We recommend that this Chief of Staff be a civilian. This leadership position would not require direct law enforcement command, and, as set forth below, civilians can bring important and dynamic perspectives to day-to-day organizational coordination. Most simply:

> Not all civilian employees serve in ancillary or support roles. Some civilians
> are upper-division commanders or hold strategic leadership positions within
> police agencies.[252]

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[252] William R. King & Jeremy M. Wilson, Community Oriented Policing Services Office, U.S. Department of Justice *Integrating Civilian Staff into Police Agencies* 7 (2014), https://cops.usdoj.gov/RIC/Publications/cops-p290-pub.pdf.

In 21CP's experience in jurisdictions across the country – from **Seattle** to **Boston**, and from **Philadelphia** and **New Orleans** to **Baltimore** – high-ranking and empowered civilian leaders can drive change effectively, and differently than sworn personnel, in police organizations. This can be especially important during times of significant change.

Any departmental leader requires the support of other professionals within the organization. Although we leave it to TPD and the individual who inhabits the role to determine the extent and scope of such support, we note only that a civilian leaders should receive, and have available, the same breadth of supporting resources as sworn leaders.

Recommendation 38.   TPD should expand and grow civilian leadership.

Consistent with the recommendation above, TPD should work to expand its civilian leadership.   Modern   police   departments   are   complex   organizations.   They   often face challenges related to budgets, human resources, technology, and general management. Many activities of a police organization, although supporting the overall mission of the agency, are not directly related to law enforcement but, instead, are focused on managing and administering a large organization that performs a variety of disparate functions. Consequently, many positions in a police department do not require a police commission, and many benefit strongly from traditionally civilian skill sets with expertise in organizational management.   Individuals   with   management   backgrounds   in   other   settings   can   bring additional skills, fresh perspectives, and new ideas in a way that can energize and enrich police organizations.

Civilianizing positions can also allow sworn personnel to focus more directly on core law enforcement   itself.   Rather   than   officers   filling   administrative   support   positions,   or performing functions necessary to administer the organization but not related to law enforcement, sworn personnel can focus on those duties that only a commissioned officer can perform.

Going forward, we recommend that, for each new position, the Department should closely consider whether a commission is required for that role.

Recommendation 39.   TPD should invest in structured succession planning across leadership ranks to ensure that the loss or re-assignment of particular individuals does not unduly hamper the Department's performance.

TPD personnel across ranks seem to believe that Commanders are rotated too frequently – or about once every two to three years.   By the time they have developed necessary relationships and systems to manage their units effectively, they are inevitably asked to change roles. Commanders complained that, when they do take on these new roles, they are not provided with sufficient on-boarding, mentoring, training, or resources. As one observed, "just tell us what you want us to do!" Another summarized that, when it comes to promotions

and leadership development, "there is no succession planning, no job shadowing, and no opportunities to learn."

The Department has indicated to 21CP that a formal succession process exists. 21CP did not receive materials related to such a process. Even if such a process is technically functional, it does not appear that TPD personnel believe that they have benefitted from it.

Ultimately, with each leadership change, there is a risk that an organization like TPD will lose significant institutional knowledge.[253] It is critical to consider how new leaders are being developed in the organization to continue the values and priorities of the department and not let developing systems become person dependent. Although police departments "tend to think of succession plans in terms of the chief executive position, they are actually useful in helping us develop personnel for all positions with the organization."[254]

Accordingly, TPD should require overlap for command positions during transitions to help protect the loss of institutional knowledge and ensure continuity of operations – with the terms of outgoing and incoming leaders intersecting and allowing for the exchange of knowledge and the ability to transfer important external and internal relationships to new leadership. At the same time, TPD needs to ensure that recently promoted personnel, and personnel with new assignments, receive initial and continuing training specifically applicable to new positions at every department rank, which this report discusses in greater detail elsewhere.

VII. RESOURCE ALLOCATION

Recommendation 40. In conjunction with the recommendations regarding the creation of a Community Safety Plan, TPD should revisit its organizational structures to ensure strategic consistency and focus.

This report elsewhere recommends the development of a Community Safety Plan that helps guide how public safety and community well-being are provided in Tacoma. A critical component of implementing this Plan will be ensuring that the Department is structured in a way that is consistent with and helps promote that Plan.

Because that Plan, and Tacoma's overall vision for public safety, should be the overriding guide for decisions about what TPD does and how it does it, we recommend here simply that TPD meaningfully re-examine its organizational structures and allocation of resources across those structures to ensure appropriate consistency with, and reflect appropriate focus on, Tacoma's overall public safety approach.

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[253] *See generally* Rick Michelson, "Preparing Future Leaders for Tomorrow: Succession Planning for Police Leadership," *Police Chief* at 16–22 (June 2006).

[254] Barry Reynolds, "Succession Planning: 5 Keys to Developing Future Police Leaders," *Police1.com* (Mar. 3, 2016), https://www.police1.com/chiefs-sheriffs/articles/succession-planning-5-keys-to-developing-future-police-leaders-9HGfOXNnzJu6sXiA/.

Nevertheless, we do note one particular aspect of TPD's current structure that will likely be implicated by whatever a Community Safety Plan promotes. Specifically, the Captain of Community Engagement reports to the Assistant Chief of Operations, as does the Captain of Operations. It is unclear to 21CP whether this bifurcation within operations is successfully ensuring focus on community engagement throughout Operation or, instead, if community engagement and problem-solving are effectively restricted to, or siloed in, within the Community Engagement wing of the Department's operations.

As this report articulates, community engagement, collaboration, and partnership should be at the heart of anything a police department does. The formalized bifurcation of "operations" from "community engagement" may run counter to this view by positioning some officers as focusing on engagement while other officers do the "real" work of policing and enforcement activity.

Finally, as part of its review, 21CP reviewed the Report on the Police Department Staffing Study authored by the Matrix Consulting Group. This study was completed early in 2020. Although 21CP has no reason to doubt the accuracy of findings in that report, which were premised on traditional workload analyses based on calls for service, the report could not account for the increasing community demand for a reallocation of services. As such, while it appears to be technically sound, focusing unduly on the findings of that report can neither address nor support the overall effort to rethink what police in Tacoma do and how they do it.[255] This sentiment – that the staffing report does not reflect Tacoma's current reconsideration of priorities and overall system of providing public safety services – was also communicated to 21CP directly by the TPD's Chief.

21CP has also been informed that the work of Matrix is ongoing, and that the group, in particular, will be examining alternatives to police response in the areas of mental health and other crises; homelessness; and non-emergent, low-risk calls for service. This continuing effort should be conducted hand-in-hand with the type of sustained community engagement identified elsewhere in this report, which we understand is the City's plan moving forward.

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[255] While we do not comment on the recommendations to increase patrol staffing in the Matrix report, we also note that the department has 25 currently unfilled positions in patrol and that given the lag times for hiring we certainly do not recommend that TPD wait for the re-imagining before moving forward on those hires.

AREA 4: OFFICER SUPPORT, WELLNESS, & SUPERVISION

Overall, best practices in human resource management emphasize six principles: (1) build and implement a human resources strategy; (2) hire the right people; (3) keep them; (4) invest in them; (5) empower them; and (6) promote diversity.[256]

Employee training and professional development is a foundational component of empowering, keeping, and investing in employees. For purposes of this report, we consider professional development as anything that an organization does or provides to its members that allow individuals to develop skills, gain knowledge, improve performance, enhance effectiveness, or to develop competencies or experiences that are applicable to their jobs and careers.

True professional development is multi-dimensional. Some efforts should be directed at the technical needs of different employees serving in different roles, while other training initiatives should be more broadly implemented to support a culture of high performance in a diverse and dynamic environment. Still additional efforts need to be trained in skill development through real-world and more informal interactions – such as through mentorship programs, job shadowing, performance evaluation and appraisal processes, and peer support opportunities.

This report finds that TPD can do a lot more to better support officers and promote professional development. Rather than a coherent plan across the organization for professional development, TPD appears to provide irregular and inconsistent training – with many programs appearing to be "one-off" instruction that is helpful on its own merits but is not tied to any type of comprehensive, institutionalized strategy for officer and employee growth.

We observe here that professional development in policing cannot be seen as a benefit or perk extended to employee, or as something that is nice but not strictly required for a department to provide. Officers that do not receive ongoing training on how to do their jobs from a department run the risk of performing more poorly or contrary to the department's expectations – with informal, day-to-day norms or realities trumping the department's vision. A culture of investment in officers can help to prevent or counteract the emergence of damaging subcultures or informal ways of "doing business" that are inconsistent with a department's vision and goals.[257]

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[256] *See, e.g.*, P.G. Aquinas, *Human Resource Management: Principles and Practice* (2009); Michael Armstrong, *A Handbook of Human Resource Management Practice* (2006).

[257] *See* Steve McCartney and Rick Parent, *Ethics in Law Enforcement* 119–126 (2015), http://opentextbc.ca/ethicsinlawenforcement/; Barbara Armacost, "The Organizational Reasons Police Departments Don't Change," *Harvard Business Review* (Aug. 19, 2016), https://hbr.org/2016/08/the-organizational-reasons-police-departments-dont-change.

VIII. TRAINING, EDUCATION, AND PROFESSIONAL DEVELOPMENT

Recommendation 41.   TPD should overhaul its general approach to training and professional development to focus on integrated, scenario-based training that uses adult learning techniques and focuses on providing opportunities for officers to practice and cultivate real-world skills.

Prior recommendations specifically address the need for TPD to provide officers with more and better use of force training that adopts an integrated, scenario-based approach informed by adult education techniques. However, these changes in training on use of force should align with a more general overhaul of TPD's approach to training – whether ongoing, in-service training to current TPD officers or to new recruits after they emerge from the statewide academy.

In 2018, TPD provided 31.75 hours of training to current office. Almost one-third of this training was firearms training. In 2020, TPD trained 33.5 hours; again, a third of the training was firearms training. For 2021, the TPD training plan calls for 39 hours, with nine hours of firearms training. Notably, the 2020 qualification course added verbal warnings, consistent with the policy update. Practicing issuing clear verbal warnings, including the intent to use force and instructions on what the officer wants the subject to do, is important in live fire training. Additionally, TPD added a "challenge" scenario, in which officers are expected to issue a warning and then hold fire as no threat is presented. These are good additions that begin to incorporate "repetitions" in training that are intended to create good habits that will surface under stress, rather than simply requiring rounds on target for firearms training.

However, while firearm trainings are important, TPD needs to invest more time into training addressing high-frequency, high-impact officer activity such as Search and Seizure, Crisis Intervention, and De-escalation.

21CP reviewed an array of representative TPD training materials during our evaluation across a myriad of topics. Overall, TPD's training program is partly delivered "in-house," through TPD personnel and on curricula and instructional programs that the Department designs or leads, and partly delivered in collaboration with the Washington State Criminal Justice Training Commission, the state-wide police training academy. Because a significant portion of new recruit training is conducted by the state-wide CJTC academy, these materials tended to focus on ongoing, in-service training provided to current officers.

As this report previously observed with respect to use of force training, the representative training curricula and materials were minimally engaging. They most frequently were either dry, PowerPoint-heavy presentations on law or policy or, otherwise, relatively *pro forma* qualification exercises required to maintain certifications for firearms, other types of force instruments, or various other basic physical skills or tactical maneuvers.

Especially over the past few decades, standards and best practices in police training have transformed significantly. Modern police training is built on a foundation of adult learning theory, which, among other things, recognizes that training is most effective when adults are motivated to learn, are treated as equal partners in the learning process, and connect the instruction to their experiences.[258]

As part of this shift, there has been an ever-growing focus in policing on using "realistic, scenario-based training," rather than static classroom instruction, "to better manage interactions and minimize force."[259] For instance, rather than having officers passively consume a never-ending progression slides or written material about policy provisions or recent legal cases regarding the use of force, "[o]fficers should practice, in interactive environments" topics like "de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making."[260] In the same way that pilots must continually practice their skills in flight simulators, rather than studying aerodynamics or passively studying checklists of things to do in the event that mechanical issues arise, police officers need to be provided with training programs that allow them to develop skills, practice techniques, and navigate realistic situations so that they can apply lessons learned to their everyday work in the field.

Again, in focus groups with TPD personnel, many officers expressed a significant hunger for this type of in-person, scenario-based training. As one union observed, "in-person training for many subjects is better because if affords officers the opportunity to ask questions and have opportunities to perform hands-on training."

Recommendation 42.   TPD should expand its training program to encompass the newly-recommended policies – and especially those focusing on Search and Seizure, Crisis Intervention, and De-escalation.

The type of integrated, scenario-based, and skills-focused training outlined above is particularly well-suited to real-world, complex topics like search and seizure, crisis intervention, and de-escalation. Consequently, implementing new policies and procedures around these topics will require that officers gain a comprehensive understanding of new expectations through this type of new, dynamic training paradigm. If TPD attempts to adjust its expectations for officers without providing high-quality, forward-looking training that allows personnel to practice implementing new policies and critical-thinking skills in realistic training settings, the Department should not expect any meaningful change in how officers perform on the streets of Tacoma.

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[258] Mark R. McCoy, "Teaching Style and the Application of Adult Learning Principles by Police Instructors," 29 *Policing* 77 (2006); Michael L. Birzer, "The Theory of Andragogy Applied to Police Training," 26 *Policing* 29 (2003).

[259] *Final Report of the President's Task Force on 21st Century Policing* 52 (2015).

[260] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 143 (2019).

Recommendation 43.   TPD's training function should help to create clear pathways for career and professional development for both sworn and civilian personnel.

Training opportunities for both sworn and civilian personnel are scattered and sporadic. The instruction that is provided often covers and array of topics and does not appear, to us or to the TPD personnel who spoke with us, to be a part of an overall strategic plan or a meaningful approach to developing police officers as professionals.

As it re-thinks its training function, TPD should focus on creating long-term pathways for career and professional development for all personnel. Training imperatives should align with real-world trends and issues, officer career stages, and rank responsibilities. Rather than the Department reacting to available, off-the-shelf training curricula, it should consider the types of training content that will help officers perform in the way that the Department and the community wants.

Recommendation 44.   TPD should institute an application process for attendance at programs such as the FBI and Naval Academies, and the Senior Management Institute for Police.

Access to high-quality leadership training is critical to prepare new police leaders for new roles that entail new or increased responsibilities. As discussed in detail below, TPD needs to develop a comprehensive development program across all ranks, moving beyond relying on broadly-applicable in-service training and sporadic, informal mentorship.

TPD personnel perceive law enforcement programs like the FBI Academy, Naval Academy, and Senior Management Institute for Police as potentially valuable leadership training programs. However, 21CP heard concerns from several stakeholders that seniority, rather than merit, appears to be the governing criteria for being able to participate. This means that some Department personnel may work for years before attending a development program. Some say that they have in fact been close to retirement when they were able to attend – largely defeating the purpose of such professional development initiatives completely. Others observed that the Department's participation in these types of national programs has seemed to wax and wane over the years, leading some cohorts of officers to miss out on such opportunities entirely.

21CP recommends that TPD evaluate each available program to ensure it is offered to the appropriate ranks in a manner that maximizes development and professional growth. The Department should establish a clear, transparent application and selection process for participating in these initiatives. Generally, such programs should be prioritized within the Department's training and professional development budget. In 21CP's experience, these types of programs impart meaningful skills and techniques for emerging Departmental leaders and, critically, allow officers to gain a national perspective on policing and on best and emerging practices in the profession. Graduates of these programs often return to their

agencies with broader perspectives and new ideas that help to reinvigorate their departments' everyday cultures.

We observe here that 21CP did not independently evaluate analyze information about what officers have attended what professional development training – but that the widespread perception among TPD rank-and-file is sufficiently serious that the Department should focus on creating a fair process for officers to take advantage of ongoing professional development opportunities throughout their careers. A typical process would include officers receiving regularized notices about opportunities well in advance of application deadlines, the Department providing informational sessions or materials for interested officers, and TPD meaningfully targeted defined sets of opportunities to officers at varying levels of seniorities and career stages.

Recommendation 45.   TPD should consider developing officer associations for groups historically underrepresented within the Department and law enforcement generally.

21CP made significant efforts to identify Black and officers from historically underrepresented demographic groups at TPD to ensure that their voices were included as part of the stakeholder engagement conducted for this review. Engaging with such officers proved to be a more difficult task than anticipated, in large part because there is no Black Officers Association at TPD, other demographic-based groups, or other coordination of such officer populations. Additionally, as previously observed, some Black officers who did speak with us said that they felt isolated at the department – and believed that more minority officers would leave TPD for other departments.

While these types of officer associations, whether for leadership development[261] or direct officer support[262], are often developed at the grassroots level rather than being organized by management, TPD might promote these types of groups by providing reimbursement for membership[263] to any such organization, as well as permitting officers to use on-duty time to develop and manage a chapter or affiliate of national organizations.

IX.   SUPERVISION & LEADERSHIP DEVELOPMENT

Recommendation 46.   TPD should revise and update training requirements for each rank, and then follow those requirements in practice.

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[261] National Organization of Black Law Enforcement Executives, https://noblenational.org (last visited Mar. 14, 2021).

[262] National Association of Black Law Enforcement Officers, Inc., http://www.nableo.org/chapters.cfm (last visited Mar. 14, 2021).

[263] *See* Tacoma Police Manual Subsection P4.6(B) (allowing reimbursement for membership dues for professional organizations with approval).

"It is an established principle in policing that first-line supervisors – sergeants – play a critical role in directing and controlling the behavior of officers in police-citizen interactions."[264] In any police organization, "[t]he sergeant is the person to whom the rank-and-file officer will look for direction, guidance, and assistance with problem solving," with first-line supervisors "essentially determin[ing] the efficiency and effectiveness of the agency."[265] Lieutenants have an additional host of administrative and leadership skills that must be developed – and the quality of first-line supervision is guided significantly by the skills of such lieutenants.

Being a police supervisor implicates different responsibilities and skills than being a patrol officer. What makes someone a successful line officer does not automatically make them a successful police supervisor. Typically, police departments need to provide specific training for newly-promoted supervisors that specifically outline new expectations and allow individuals to start to develop and practice new, rank-specific skills or competencies.

TPD's Procedures Manual includes some provisions relating to the training of individuals recently promoted to new ranks. It requires that "[u]pon permanent promotion within the civil service classification system, employees shall complete training relative to their new ranks."[266] Specifically, the Washington State Criminal Justice Training Commission First Level Supervision and Middle Management courses "are mandated."[267] New Sergeants are to complete the 40-hour First Level Supervision Course at CJTC as well as 40 Hours of Leadership Electives at CJTC. Additionally, the "following classes are required to be completed within the first year of promotion":

> (a) SMF 100 – EEO and Legal Policies
> (b) SMF 200 – Risk Management, Safety, and Workers' Compensation
> (c) SMF 300 – Personnel Policies and Labor Relations
> (d) SMF 400 – Work Schedule, Leave, and Compensation[268]

There are similarly detailed requirements for those promoted to Lieutenant.[269]

In focus groups and interviews, TPD Sergeants who had been working at the rank for some time generally spoke positively about Sergeant's School – but complained that new Sergeants were not, overall, given all of the training they believe would be necessary to understand how to best and most effectively handle their responsibilities. In contrast, several more newly-

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[264] Samuel Walker, National Institute of Justice, "Police Accountability: Current Issues and Research Needs" at 12 (2007), https://www.ojp.gov/pdffiles1/nij/grants/218583.pdf.

[265] Sean E. Moriarty, "The Leadership of Police Organizations Program in the Delaware State Police: Recommendations for Law Enforcement Leadership Development," *Police Chief* (May 2009), https://www.policechiefmagazine.org/the-leadership-in-police-organizations-program/.

[266] TPD Procedures Manual Subsection P5.1.26(B).

[267] *Id.*

[268] *Id.*

[269] *Id.* Subsection P5.1.26(C).

minted TPD supervisors observed that it has seemed that department has largely abandoned supervisor training. Multiple sergeants said they had *never* received training after being promoted, and one lieutenant said they received training only after two years in that rank.

TPD's commitments in policy to training new supervisors are appropriate. 21CP recommends that the Department recognize the significant value of training upon promotion to any new rank and ensure that meaningful training specific to the needs of newly-promoted personnel is provided promptly.

Recommendation 47. TPD should explore and formalize partnerships with local academic institutions and the business community that can assist in the design and provision of professional development opportunities for officers.

We noted briefly here that the Tacoma area benefits from a number of academic institutions and business organizations that may have significant expertise in leadership and organizational development. Although law enforcement organizations have a unique charge, human enterprises are human enterprises regardless of objective, mission, or type of service – and are accordingly subject to some of the same management and organizational challenges. TPD would be well-suited to establish formalized partnerships with promising community resources that might, in particular, be able to provide or help guide leadership and professional development opportunities for sworn and civilian personnel.

The Department raises some very valid questions and concerns about how to benefit from these partnerships in an era of constrained budgets. However, working with outside entities may transition some of the existing workload and responsibilities of the Department's training personnel to representatives from these outside organizations and training opportunities. That is, these partnerships can, and likely should, be more than simply an extra program – and instead serve as a means of integrating outside expertise into existing structures. For instance, supervisor training might feature a day or two of TPD-specific instruction and another day or two of outside academic institutions or business representatives providing instruction on general personnel management techniques. The training that these outside groups facilitate might free up TPD training representatives for other initiatives.

X. POLICE TRAINING PROGRAM (PTO)

TPD uses a Police Training Officer program. Generally, such programs or mechanisms orient new officers from the Academy to real-world policing and provide a final, structured, and on-the-job training period for officers as they transition to working in the field.

TPD provided 21CP with informational materials explaining the evolution of Field Training Programs (FTO) into Patrol (or Police) Training Programs. These materials reflect an

appropriate recognition that the focus of PTO programs is on officer's learning capacity and problem-solving skills as opposed to rote performance capabilities.[270]

TPD adopted the "Reno Model" for its PTO program in 2017. As noted in the Final Report of President Obama's Task Force on 21st Century Policing, the "Reno Model," developed in collaboration with the United States Department of Justice's Community Oriented Policing Services ("COPS") Office and the Police Executive Research Forum ("PERF"), "use[s] adult learning theory and problem solving tools to encourage new officers to think with a proactive mindset, enabling the identification of and solution to problems within their communities."[271] The Department's adoption of this model led to the development of a comprehensive Handbook and corresponding Logbook. TPD's Handbook articulates that objectives of the PTO program are to:

- Formulate learning opportunities for new officers that meet or exceed the training needs of the community and the police agency.
- Enhance the Student Officer's academy learning by developing the Officer using a series of real-life problem-solving activities within the community environment.
- Foster Student Officer independence from the Police Training Officer over the course of the program.
- Produce graduates of the training program capable of providing responsible, community-focused police services.
- Prepare Student Officers to use a problem-solving approach throughout their careers.
- Promote the practice of community members as partners in the problem-solving process.
- Fair and consistent evaluations that address a Student Officer's skills, knowledge, attitudes, and ability to apply effective problem solving.
- Develop Student Officers and Police Training Officers (PTOs) who are leaders in the community and within the Department.

Overall, TPD's Handbook and Logbook are impressive and comprehensive. The Department should be commended for developing this comprehensive program, as, in 21CP's experiences, relatively few departments have developed these types of clear, systemic requirements for PTO programs. On paper, then, TPD is well ahead of the curve.

Selection criteria for PTOs are somewhat less developed. The Department requires that officers selected to serve as training officers have three years of police experience (with at

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[270] Hoover Group of Reno, *History of Field Training (Reno Model PTO Program)* (2006); *see also* Community Oriented Policing Services, United States Department of Justice, *A Problem-Based Learning Manual for Training and Evaluating Police Trainees*, https://www.policeforum.org/assets/docs/Free_Online_Documents/FTO/trainee%20manual.pdf (last accessed Mar. 2, 2021).

[271] *Final Report of the President's Task Force on 21st Century Policing* 60 (2015).

least two of those years being service with TPD). Training officers may not have received disciplinary suspensions within the prior two years (although there is no clear requirement that a new suspension of a current PTO mandates removal from the program).

Likewise, as the recommendation below discusses in greater detail, although the PTO Program Procedure mandates initial training and annual training updates for PTOs, there seems to be a disconnect between the robust systems set forth in the procedures, the Handbook, and the Logbook, and what is actually occurring in practice.

Consequently, TPD can strengthen its PTO program – and strengthen its development of new officers – by re-committing to implementing comprehensively the sound requirements of its PTO program in practice.

Recommendation 48.   TPD should ensure that all officers assigned to the PTO program have consistent training and supervision.

TPD's current PTO Program Procedure states:

> In order to meet the training requirements of the Tacoma Police Department, Officers selected for this position must successfully complete initial PTO training which has been authorized and approved by the Department's Training Unit prior to being assigned a student officer. Thereafter, PTOs must successfully complete annual PTO focused in-service training which has been authorized and approved by the Department's Training Unit.[272]

The Department provided 21CP with undated training slides that explain the supervisor/student relationship, identify risks of liability, prohibit fraternization, mandate mutual respect, stress that a PTO should never "demean a student officer," and emphasize that PTOs should "treat others like you want to be treated." The training describes what to do "when a student officer exhibits misuse of authority or inappropriate actions" and provides guidance that "the PTO must train/retrain the Student Officer in the Department's Policies."[273]

Beyond this lone set PowerPoint slides, we did not receive any PTO training materials. PTO training does not appear on any of the Department's provided training calendars. As such, we are somewhat unclear as to the current state of PTO training.

Concerningly, the PTOs we interviewed claimed to not have received training – suggesting that they are "freelancing" with respect to how they provide training and mentoring to their student officers. As TPD PTOs describe it, the PTO program in practice appears to be more

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[272] TPD Procedures Manual Subsection P2.1.3(D).
[273] Tacoma Police Department, *TPD Police Training Officer (PTO) – Student Officer Relationship Performance Objectives* (undated).

of a peer mentorship program rather than a formal training initiative – and which runs contrary to a number of the formal elements developed in the Department's impressively detailed PTO Handbook.

Because training officers have the ability to shape new officers and impress the Department's values and expectation on them in ways that can influence student officers throughout their careers, TPD should ensure that the PTO program is structured, rigorous, and administered in alignment with the many details already identified in the PTO Handbook and Logbook. This starts, first and foremost, with ensuring that PTO officers receive initial and ongoing training on how to be effective and impactful training officers.

XI.   EARLY INTERVENTION/PEER INTERVENTION

For decades, major civil rights and law enforcement groups alike have emphasized the importance of police agencies identifying potential performance issues early so that supervisors – through training, mentoring, or other performance interventions – can prevent major problems from emerging.[274] A police Early Intervention System ("EIS"), consistent with "basic principles of personnel management and human resource development that have developed in the private sector," provides a means and process for supervisors to "identify[] officers with potential behavioral problems" that can benefit from proactive intervention.[275]

TPD currently uses a traditional Early Intervention system that is:

> [E]arly in the sense that it helps to identify officer performance problems that do not warrant formal disciplinary action but suggest that an officer is having problems dealing with citizens. The major contribution of an EI system is its capacity to spot patterns of performance and to intervene before problems lead to a serious incident such as a lawsuit, a citizen complaint over excessive force, or some other public crisis involving the department.[276]

The system works by, first, keeping track of officer performance along a variety of dimensions – including engagement in use of force, involvement in pursuits or traffic collisions, and the receiving of civilian complaints. When an officer passes a particular, defined performance threshold, such as by being involved in a particular number of use of force incidents or receiving a particular number of complaints, a relevant supervisor is notified. That supervisor then evaluates the officer's performance trends to determine if the

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[274] *See, e.g.*, U.S. Civil Rights Commission, *Who Is Guarding the Guardians?* 80 (1989); International Association of Chiefs of Police, *Building Integrity and Reducing Drug Corruption in Police Departments* 80 (1989).
[275] Geoffrey P. Alpert & Samuel Walker, "Police Accountability and Early Warning Systems: Developing Policies and Programs," 2 *Justice Research & Policy* 59, 61 (2000).
[276] Samuel Walker et al, Office of Community Oriented Policing Services, U.S. Dept. of Justice, "Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide" at 3 (2003), *available at* http://www.cops.usdoj.gov/files/RIC/Publications/e07032003.pdf.

officer might benefit from some type of intervention, such as training or mentoring, that might improve the officer's performance. Importantly, the EIS is non-punitive and non-disciplinary in nature – aimed at identifying potential opportunities to help improve and enhance officer performance before misconduct or serious performance deficiencies can surface.[277]

The TPD policy describes the EIS program as follows:

> The Personnel Early Intervention System is established to provide indications and patterns of conduct over assigned time periods. This process is coordinated by the Training Lieutenant who monitors the system and reviews the status on a monthly basis. The Early Intervention System is programmed to monitor a set of pre-selected criteria, which alerts the appropriately assigned Supervisors in the event a threshold is surpassed. If a threshold is met or exceeded and the alert occurs, an immediate review of the personnel is triggered.[278]

The criteria that trigger an intervention are set forth in TPD Procedure[279] is as follows:

Indicator Criteria	Threshold Levels
A. Use of Force	7 or more within 6 months
B. City Vehicle Accidents	3 accidents within 24 months
C. Receipt of a Blue Team, Department or EEO Complaint	3 or more within 12 months
D. Pursuits	4 or more within 6 months
E. Receipt of commendations and awards	Reviewed by the Chief's office for consideration of additional recognition
F. Supervisory Recommendation	Each will be reviewed

However, the 2019 Early Intervention System Review Report identified the following triggering events:

Indicator Criteria	Threshold Levels
Complaints	3 or more within 12 months
Use of Force	7 or more within 6 months
Use of Force (K-9 Officers only)	15 or more within 6 months
City Vehicle Accidents	3 or more within 24 months

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[277] *See, e.g.*, Tony Bertoia, NSW Police Integrity Commission, *Developing an Early Intervention System for Police Misconduct in a Law Enforcement Agency*, NSW Police Integrity Commission 4–5 (Aug. 2008), https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.538.2788&rep=rep1&type=pdf (describing non-punitive, non-disciplinary nature of traditional EIS systems).

[278] TPD Policy Manual Subsection P6.1.13.

[279] TPD Procedure Manual Subsection P2.1.12.

| City Vehicle Pursuits | 4 or more within 6 months |

We note here that, in some conversations within departments and with community stakeholders, the concept of an EIS becomes synonymous with the concept of capturing and tracking data on things like use of force or complaints. However, although an EIS requires information about what officers are doing to be logged, EIS is not data. Instead, an EIS is the departmental *process* for reviewing the performance of personnel and of formally addressing possible performance issues.

In recent years, the efficacy of this traditional EIS model has been called into question, with a growing body of empirical research suggesting that the model is ineffective at consistently identifying the right officers for intervention and is significantly inefficient for departments.[280] EIS systems too often are either over-inclusive, requiring supervisors to continually evaluate large number of officers who reach the defined triggering points and overwhelming the process, or under-inclusive, triggering too few officers or triggering officers along the wrong dimensions. Whether a system results in too many, too few, or the wrong officers triggering the system, any of these errors risk a department not identifying officers with genuinely problematic trends that might be addressed through intervention – thereby frustrating the underlying purpose of an EIS.

At the same time, in a number of departments, officers perceive the EIS system as punitive and stigmatizing even if it is not associated with disciplinary measures – with the possibility of close scrutiny being made to one's performance only upon hitting a defined threshold leaving some officers to say that they are wary to engage in activity that might make such performance more likely. Nevertheless, many departments and communities want to identify mechanisms for ensuring that potentially problematic performance trends do not go undetected and are, instead, addressed before significant problems or misconduct arise.

Recommendation 49.   To the extent that TPD maintains the trigger-based EIS system in the future, the Department should revisit the current performance triggers to ensure the system is effectively and efficiently flagging problematic performance.

TPD's current EIS are set at relatively high levels in across all categories: seven uses of force within six months; three accidents within 24 months; three or more complaints within 12 months; and four or more pursuits within six months; and notably, for K-9 officers, 15 or more canine deployments within six months.[281]

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[280] University of Chicago Crime Lab, *The Officer Support System: Developing a Data Driven Early Intervention System in Chicago* (Feb. 26, 2019); Stephen James, Lois James & Liz Dotson, "Evaluating the Effectiveness of a Police Department's Early Intervention System, James, James, and Dotson," *Journal of Experimental Criminology* (Feb. 7, 2020); Joel Rubin, "Report Questions LAPD Program to Flag Misconduct," *L.A. Times* (Aug. 25, 2016).
[281] Tacoma Police Department *2019 Early Intervention System Review.*

At these levels, in the last three years of data that TPD provided to 21CP (covering the years 2016 through 2018), there were only two employees that triggered for use of force. No officers triggered for pursuits or K-9 UOF. Over the three-year period, 103 officers triggered for receiving complaints, and 10 officers triggered for vehicle accidents.

Troublingly, there were no recommendations for a formal review stemming from officers triggering the EIS in 2017 or 2018. Just one employee was recommended for a formal review in 2016 – but the employee was terminated before the process could move forward. This means that, across three years, an officer's performance reaching a triggering threshold *never* resulted in a formalized assessment of the officer's performance that is at the heart of an EIS process. If the triggering process never results in a more structured performance review, and never results in performance intervention, it is likely fair to wonder whether EIS is doing anything that helps TPD identify at-risk officers and provide assistance – or whether TPD is meaningfully attending to the EIS as a supervisory tool. That is, TPD's EIS is either (a) not properly calculated to capture at-risk employees, and is triggering many officers that are not exhibiting problematic performance trends that warrant meaningful review and intervention, or (b) not working because TPD supervisors are ignoring potentially problematic performance trends that surface and not conducting the meaningful reviews and interventions that may be warranted. Regardless, it would appear that TPD's system is not helping the Department provide at-risk employees with assistance before a significant problem, issue, or misconduct arises.

TPD should revisit its existing EIS policies and process and examine ways that it might promote greater efficacy. For instance, TPD might explore mechanisms for comparing officer behavior to similarly-situated officers to ensure that some officers are not receiving EIS attention simply because the nature of their assignments (shift, unit, neighborhood, or time of day) make it more likely that they have certain types of interactions or have higher volumes of particular types of activity. EIS "triggers" may be indexed against these relevant peer groups, with more definitive, fixed triggers serving as a backstop as appropriate to guard against the possibility of peer comparisons suggesting no problem if all of the peer group share a common performance challenge.[282] Likewise, this type of peer analysis should be incorporated into a supervisory dashboard so that any supervisor can meaningfully understand where a particular officer's performance stands.

Recommendation 50.   TPD should assess the effectiveness of its existing EIS and make modifications, as necessary, in conjunction with complementary changes to its officer wellness programs.

As outlined above, there is reason to believe that TPD's current EIS program is not as effective or useful as a performance management tool as it could be. In additions to these

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[282] *See, e.g.*, New Orleans Police Department, Operations Manual, Chapter 35.19, "Insight: Early Intervention System," https://www.nola.gov/getattachment/NOPD/Policies/Chapter-35-1-9-INSIGHT-EFFECTIVE-11-15-19.pdf/?lang=en-US (last rev. Nov. 15, 2019) (outlining system of dynamic, peer-based EIS triggering).

issues, at least some TPD personnel have concerns about the system. Although some officers, of varying ranks, appear to accept the EIS program – noting that it is "working" and appears "non-punitive" in nature – other TPD officers say that TPD's EIS is, in practice, stigmatizing and punitive. Officer reviews were succinct in this area: "not good," "thumbs down," and "very bad."

Thus, there are reasonable concerns that, at least in some instances, TPD's traditional EIS may not be as beneficial as the Department would like. The Department should explore, going forward, not only how to make its current EIS process more effective but how to weave the foundational elements of an EIS into the fabric of TPD's supervision overall.

First, for any supervisory method to work, TPD needs to ensure consistent and robust gathering of data about what officers do and how they should perform. Robust information should be gathered across all areas of officer activity – from stops and detentions to interactions with individuals experiencing mental and behavioral health crises – so that the Department knows what officers are doing, can ensure that officers adhere to expectations, and can understand how the organization can best provide service to the Tacoma community. This information should be used not just within the context of an EIS, or when an officer reaches a defined threshold, but should instead be regularly analyzed and scrutinized by supervisors as a fundamental management and accountability task. Simply, TPD supervisors must review officer performance not simply when a potential problem has occurred or an event of significance has occurred but, rather, on an ongoing basis.

Second, any supervisory mechanism like TPD depends on supervisors easily accessing information about the performance of personnel working for them. To expedite the regular, aggregate review of personnel performance, TPD should ensure a mechanism for officer performance information to be presented holistically to supervisors on an easily accessible "dashboard" that provides the supervisor with real-time situational awareness as to the activity of their squad. TPD policy should require that supervisors review the dashboards on a regular and ongoing basis.

Third, any EIS needs to be linked more definitively to a comprehensive set of initiatives relating to training, officer wellness, and professional development – aimed not at identifying problematic performance trends but at ensuring superior performance in the first instance.

In a Department that does these things – that systematically captures information on all officer activity, empowers and requires supervisors to manage in part through continually monitoring aggregate performance information, and invests in processes and mechanisms to prevent deficient performance in the first place – the extent to which any particular EIS trigger or process is sometimes over-inclusive or under-inclusive is less impactful because the Department benefits from other, proactive performance management mechanisms.

XII.   OFFICER WELLNESS & EMPLOYEE ASSISTANCE

Policing can be a dangerous and unpredictable job. Officers are expected to respond to address situations that others have not been able to address themselves – and to resolve situations in which people are often at their worst or most vulnerable. They often are called to handle problems and address people that the remainder of the social service fabric has forgotten, ignored, or left behind.

As a result of performing their everyday duties, police officers can experience unique physical and mental stress.[283] For instance, in 2016, more officers died of suicide than any single cause of death in the line of duty – and almost as many died from suicide as all other causes combined.[284] Officers exhibit symptoms of post-traumatic stress disorder (PTSD) at a higher rate than the general population.[285]

Ongoing stress and trauma affect not just officers but their families and, indeed, the communities that they serve. Mental and physical health challenges often result in increased administrative costs from absenteeism, increased use of workers' compensation and sick days, and more frequent use of early retirement. Likewise, "[w]hen exhausted, officers are unable to effectively communicate with community members and may even incite agitation among them."[286] "Officers who are equipped to handle stress at work and at home . . . are more likely to make better decisions on the job and have positive interactions with community members."[287]

Given the importance of officer wellness, President Obama's Task Force on 21st Century Policing recommended:

> Support for wellness and safety should permeate all practices and be expressed through changes in procedures, requirements, attitudes, and behaviors. An agency work environment in which officers do not feel they are respected, supported, or treated fairly is one of the most common sources of stress. And research indicates that officers who feel respected by their supervisors are more likely to accept and voluntarily comply with departmental policies. This

[283] Deborah L. Spence, et al, *Law Enforcement Mental Health and Wellness Act: Report to Congress* (2019).

[284] John M. Volanti, et al, "Law Enforcement Suicide: A National Analysis," 15 *International Journal of Emergency Mental Health & Human Resilience* 289, 289 (2013).

[285] National Alliance on Mental Illness, Advocacy, Crisis Intervention, Law Enforcement Officers, https://www.nami.org/Law-Enforcement-and-Mental-Health/Strengthening-Officer-Resilience (last visited Mar. 3, 2021); Ellen Goldbaum, University of Buffalo, "Police Officer Stress Creates Significant Health Risks Compared to General Population, Study Finds," (July 9, 2012), http://www.buffalo.edu/news/releases/2012/07/13532.html.

[286] Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department* 7 (2018).

[287] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 312 (2019).

transformation should also overturn the tradition of silence on psychological problems, encouraging officers to seek help without concern about negative consequences.[288]

Officer wellness can be supported through a variety of mechanisms within a police organization:

> There is clearly a continuum of mental health and wellness strategies, programs . . . that begins with recruitment and hiring and goes through retirement. It includes proactive prevention and resiliency building; early interventions; critical incident response; treatment, reintegration; and ongoing support for officers, staff members, and their families.[289]

Recommendation 51. **TPD should continue to develop a structured, consistent resiliency and wellness program for the department, including training, support systems, and department-wide communications.**

Recommendation 52. **TPD should centralize the efforts around wellness to ensure a consistent chain of command, unified departmental focus, and adequate resources.**

We discuss these two closely-related recommendations in concert. In terms of current officer wellness resources, TPD currently has a Chaplaincy and a Peer Support network. TPD and its officers also have access to state-wide support such as Code4. In discussions with TPD officers, these programs appear to be generally well-regarded. Officers were less confident in the City's Employee Assistance Program (EAP), saying that "it isn't widely used – we use the ones we [TPD] offer."

TPD's Wellness and Resiliency Committee provides recommendations to develop wellness resources at the Department. In 2017, the Committee issued a Department-wide survey about vicarious trauma and available support systems. Of note, 95 percent of respondents (n=57) said that officer access to support services for vicarious trauma was helpful – with 60 percent reporting that they experienced symptoms of vicarious trauma. Most officers that sought support from the Department did so because it was mandated. However, officers, whether they had sought out wellness services or not, seemed to welcome support services that maintain confidentiality. Following this survey, in 2018, a contract psychiatrist was hired as a Department wellness resource. Officers were very supportive of this addition to the wellness program. As one officer said – "when it first started, I was honestly skeptical, but it's a good thing."

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[288] *Final Report of the President's Task Force on 21st Century Policing* 62 (2015).
[289] 21CP Solutions, U.S. Department of Justice, Office of Community Oriented Policing Services, *Law Enforcement Mental Health and Wellness Programs: Eleven Case Studies* (2019), https://cops.usdoj.gov/RIC/Publications/cops-p371-pub.pdf.

TPD provided 21CP with training curricula around officer wellness, suicide prevention, and officer resilience. However, it is not clear to 21CP how frequently these trainings were provided or how widely these training were attended. According to some documents, there was a Peer Support training in April 2020 and a Stress Management/Vicarious Trauma training in 2018. However, no courses associated with wellness appear on the training calendars for 2018, 2020, or the proposed calendar for 2021.[290]

Additionally, 21CP was provided with a document titled "Tacoma Police Wellness and Resiliency Proposal 2020" which appears to be a set of recommendations from the Wellness Committee. Almost all of the Committee's recommendations are thoughtful and would likely benefit the Department. The Proposal indicates that TPD's goal should be to "have a robust Wellness/Resiliency program that starts when the recruit is hired and continues until an officer retires" and to "provide[] the foundation for a healthy work life for all officers."[291] The Proposal suggests streamlining a fragmented chain of command for Peer Support (which reports to the Investigations Bureau Captain even as the Peer Support Team Sergeant is in Operations) and the Chaplaincy (which reports to the Assistant Chief of Administrative Services).

21CP recommends that TPD meaningfully invest in types of innovations that the Committee's Proposal outlines – including centralizing the wellness function from an administrative and command perspective, clearly identifying wellness as an area of Department focus, and providing adequate resources to ensure a comprehensive, 360-degree wellness environment for TPD officers throughout their careers. Supporting officer wellness systems is a core function of department management. At many departments, like Tacoma, wellness programs developed organically and without sufficient organization, which can lead to inconsistent delivery of services (one officer involved in a shooting said they did not hear from leadership or receive wellness support until peers intervened). Without diluting the peer support aspect of the program, ultimately, there should be clear leadership and a full commitment to develop the wellness and resiliency program.

This report elsewhere discusses the need for the Department to overhaul its training function and its professional development programs. Even as training and professional development help ensure that officers adhere to performance expectations and that TPD supervisors have the tools they need to effectively manage the Department, training and career development programs are also officer wellness programs. Investing in personnel and providing venues for officers to develop expertise and skills demonstrate to officers that the Department wants them to succeed and that they are all part of a larger mission to provide high-quality service and assistance to the Tacoma community.

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[290] The training calendar covering 2019 was not included in TPD materials provided to 21CP.

[291] Tacoma Police Department, *Wellness and Resiliency Proposal 2020* at 2.

AREA 5: ACCOUNTABILITY SYSTEMS

TPD's Policy on Complaints indicates that "[i]t is the policy of this Department to respond to all complaints against members and/or the Department to include anonymous complaints."[292] Although this is a good starting point for policy, the complicated pathways that complaints and allegations of misconduct can follow make the application of this policy in practice less clear.

Between January 2017 and November 2020, there were 829 unique complaints made regarding TPD performance. These complaints involved 517 incidents. About two-thirds of all complaints involved allegations of unsatisfactory performance or discourtesy.

Table 13. Misconduct Complaints by Allegation & Outcome, 2017 – November 2020

Allegation	Complaints	Sustained	Percent Sustained
P1.1.6.A.11 Unsatisfactory Performance	378	41	10.8%
P1.1.6.A.17 Courtesy	182	16	8.8%
P1.1.6.A.03 Unbecoming Conduct	49	18	36.7%
P3.1 Use of Force Policy	44	6	13.6%
P3.2 Vehicle Operation	34	9	26.5%
P1.1.6.A.14 Non-Discrimination Policy	26	2	7.7%
P1.1.6.A.02 Conformance to Laws	14	2	14.3%
P1.1.6.A.07 Truthfulness	11	1	9.1%
P1.6.2 Discrimination / Harassment	9	0	0.0%
P1.1.6.A.05 Insubordination	7	6	85.7%
P3.2.3 Pursuit Policies	5	5	100.0%
P2.3.3 Equipment - Use, Weapon, Inspection, Security, etc.	5	4	80.0%
P1.6.1 Bias-Free Policing	5	0	0.0%
All Other Allegations[293]	**60**	**31**	**51.7%**

Source: 21CP Analysis of TPD Data

Overall, complaints were adjudicated as "sustained" in fewer than one out of five (16 percent of) instances. As Table 13 illustrates, the most-common complaint types (unsatisfactory performance and discourtesy) were rarely sustained. Complaints involving allegations of unbecoming conduct, insubordination, pursuit policies and equipment violations were more likely to be sustained.

For this same period of 2017 through 2020, counseling was the most common action taken in response to complaints adjudicated as "sustained" by TPD, followed by verbal warning and

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[292] TPD Policy Manual Sub-Section P1.1.1.
[293] This category includes those infrequent allegations that occurred fewer than five times in the four year period and two cases that did not have a record of allegations.

oral reprimand. These three actions – counseling, verbal warning, and oral reprimand – encompassed a sizeable majority (70 percent) of actions taken against sustained allegations of misconduct. Seven allegations, related to two unique incidents, led to terminations.

Table 14.   Sustained Misconduct Complaints by Action Taken, 2017 – November 2020

Action Taken	Allegations
Counseling	59
Verbal Warning	29
Oral Reprimand	13
Termination	7
Retired prior to conclusion of investigation	7
Written Reprimand - Bureau	7
Written Reprimand - Departmental	6
Suspension	5
Separated prior to conclusion of investigation	4
Written Counseling	2
Other	1
Re-Training	1

Source: 21CP Analysis of TPD Data

Notably, TPD has issued no sustained discipline higher than a written reprimand since 2018. In 2019 and 2020, there were no suspensions, of any length, or terminations. As discussed in greater detail, the reason for this is not immediately clear. We do not foreclose the possibility that TPD officers were not engaging in misconduct or making mistakes requiring the Department to take remedial action, but, based on 21CP's experience with a number of departments across the country, having *no* sustained complaints resulting in a suspension for a continuous two-year period is extremely unusual. For instance, the Seattle Police Department reports that in 2019, 18 officers were suspended for misconduct, four were terminated, and another four resigned prior to termination.[294] TPD itself issued seven terminations and five suspensions from 2017-2018, so the lack of higher-level discipline in the last two years stands out.

XIII.   OFFICER MISCONDUCT AND ACCOUNTABILITY

As part of this assessment, 21CP requested and reviewed all misconduct cases with sustained allegations from 2019 and 2020. We also reviewed a random sample of other complaint investigations from those two years.

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[294] Seattle Office of Professional Accountability, *2019 Annual Report* at 16, https://www.seattle.gov/Documents/Departments/OPA/Reports/2019-Annual-Report.pdf.

Initially, 21CP intended to conduct a qualitative review of a statistically-significant sample of misconduct investigations. However, after receiving, 21CP discovered that items necessary for a true assessment – such as video evidence and audio recordings or transcripts of interviews – were not generally available. Specifically, only formal Internal Affairs cases have recorded interviews in practice; the far more common Bureau level investigations do not include such efforts. As such, questions about the integrity of the investigation itself and whether the investigations were comprehensive and complete could not be readily answered. Therefore, 21CP determined that a review of a more-limited number of cases would allow it to suitably identify potential issues, even if the number of cases overall may not be significant in the statistical sense. Additionally, 21CP is coordinating with TPD to conduct a direct examination of Internal Affairs and Bureau Level complaint investigations to determine whether additional information may exist in the case files that were not provided to 21CP.

A.   Review of Sustained Complaint Investigations

Of the 29 sustained complaints from 2019 and 2020, none resulted in discipline higher than a written reprimand. Most of the complaints were about courtesy – being rude or using unnecessary profanity – or unsatisfactory performance, such as failing to take a report or properly enter evidence.

As a general matter, the nature of such allegations and the conduct typically associated with them often appropriately lead to lower-level discipline or remedial action. However, some of the complaints under the category of "unbecoming conduct" involved wholly inappropriate behavior – such as officers photographing themselves with a person in crisis wearing only underwear and, separately, officers making vomiting gestures and laughing when a person defecated on themselves. Because such actions undermine the credibility of TPD, are unprofessional, are deeply unkind and dehumanizing of members of the public, and embarrass the policing profession, this type of behavior needs to be considered for higher-level discipline. Stronger discipline both signals to the community that such behavior is not tolerated within the Department and makes clear to members of the Department that such behavior is inconsistent with TPD's culture, mission, and values.

Other types of cases also appeared to necessitate higher level intervention. One case involved an unnecessary use of force, in which an officer punched a person, who had just awakened from being passed out from a diabetic coma, in the face "because they began to struggle." Two other officers reported that the subject presented no threat at all and that their fellow officer's approach was "overkill" and "overly aggressive." The supervisory review of the use of force noted that the officer "unleashed a profanity laced ultimatum and then proceeded to enter a vehicle and physically engaged a subject resulting in him causing the paradigm known as 'officer induced jeopardy'" due to a perceived "imminent threat in the form of the subject about to possibly punch him." The reviewing supervisor somewhat hesitantly recommended that the use of force be found technically in policy, but the IA sergeant found that the officer's actions violated both the courtesy policy – for the abusive language - and the use of force

policy – "due to the lack of necessity and reasonableness in its application." The case is problematic on a number of levels. Most fundamentally, however, the involved officer – found to have violated the use of force policy and TPD expectations regarding courtesy – was provided a piece of paper expressing disapproval, which does not address the severity and significance of the unnecessary and unreasonable use of force.

21CP also observed that TPD sustained several violations of the department's pursuit policy. In two very similar cases, TPD officers were found to have violated the department's pursuit policy by mistakenly pursuing the wrong vehicle. In the first, the officer initiated a vehicular pursuit of an armed robbery suspect, but "failed to recognize some of the specific details of the original armed robbery vehicle, and [the officer] initiated a pursuit on the wrong vehicle." This pursuit ended with the pursued vehicle in a minor collision and a subsequent application of a Taser on the driver, who admitted she fled because she had been drinking. It was unclear in the findings whether the discipline – a verbal warning – was solely for the error in pursuing the wrong car or whether it was for a violation of policy on pursuits more generally. In the second case, a training officer was disciplined when the student officer pursued the wrong vehicle – a drive-by shooting suspect – and the training officer failed to stop the pursuit. Because pursuits can pose an extreme risk of harm to the residents to Tacoma, if these were truly "bad" pursuits, verbal warnings and counseling would be inadequate in light of the severity of the risks that were unduly created because of the misconduct.

A third pursuit case also appeared to be egregious.[295] An officer located a possible stolen vehicle towing an unsecured boat, which fled from the officer and immediately almost hit some pedestrians. The officer pursued the vehicle at speeds of up to 80 mph through traffic. The suspect vehicle ultimately collided with six privately-owned vehicles, resulting in injuries to some of the occupants. TPD's policy requires that "an imminent threat of death or serious bodily harm" be weighed against "the danger posed to the community."[296] Additionally, the policy notes that a pursuit could be warranted when the "severity of the crime or circumstances, *other than the eluding itself*, necessitates immediate apprehension."[297] This clause correctly notes that the danger posed by fleeing the police cannot form the only basis for the need for apprehension. Here, the imminent risk of death or serious bodily harm was *caused* by the fleeing vehicle. The fact that the driver was reckless or even assaultive due the driver's desire to flee the police is exactly the reason that the pursuit should have been immediately terminated. The Department's investigation indeed found that the pursuit should have been terminated once the reckless driver was pursued at speeds over 80 mph. However, the officer was given a verbal warning and ordered to complete "a Review of Policy P3.2.2 Vehicular Operations with his supervisor." Thus, for significantly violating TPD policy, the officer received an oral admonishment and needed to read a few

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[295] The incident was reported in the news. "Suspect in Stolen SUV Hauling a Boat Leads Police on Wild Chase Through Downtown Tacoma," *King5.com* (May 7, 2020), https://www.king5.com/article/news/crime/stolen-suv-hauling-a-boat-leads-to-police-chase-through-downtown-tacoma/281-44b9f421-e84c-4452-8d22-83c074e2cf8d.

[296] TPD Policy Manual Sub-Section P3.2.3(A).

[297] *Id*. (emphasis supplied).

pages of TPD policy with their supervisor. In 21CP's experience, this type of case warrants far more significant discipline, at least at the suspension level, and serious re-training.

A fourth case involved an officer pursuing a suspected DUI at speeds up to 70 mph in a 25 mph zone as the pursued vehicle "erratically veered," "failed to stop for a red light, without slowing," and "dr[ove] with no headlamps in an area frequented by intoxicated pedestrians." Ultimately a Pursuit Intervention Technique (in which the pursuing car attempts to put the pursued vehicle into a "controlled" spin[298]) was used, and the fleeing car stopped. The officer articulated the reckless driving as the basis for the pursuit – once again conflating the increased risk of reckless driving *caused* by the pursuit itself with the initial concern of an impaired driver. The proper officer decision-making process should focus on whether the subject, *independent of their driving*, presents such an extreme risk to the public that an inherently dangerous pursuit is necessary. In this case, the analysis should have pointed to discontinuing the pursuit. Nevertheless, although TPD found a violation of policy and issue a sustained finding, the involved officer only received a verbal warning about the misconduct.

These cases demonstrate that even good policies cannot change police behavior without adequate accountability. Severity of discipline must be proportionate with the risks posed by the offense.

B.   General Review of Complaint Investigations

The lack of associated evidence – such as recorded or transcribed interviews – made case assessments difficult at a more sophisticated level. However, 21CP reviewed 27 random cases from 2019 and 2020 for review to get a better understanding of the nature and quality of complaint investigations.

21CP used a generalized scale for codifying overall evaluations of the quality of investigations:

>   (5) Excellent – Investigators made all reasonable attempts to follow all material leads and answer all material questions. The investigation was fair, thorough, objective, and timely, and the investigation complied with all relevant TPD policies and guidelines.
>
>   (4) Very Good – Most aspects of the investigation were sound. Investigators made reasonable attempts to follow leads and answer material questions. Although the investigation was, on the whole, fair, thorough, objective, and timely, some aspects of the investigation could be strengthened.

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[298]   Tacoma Police Department, *Pursuit Intervention Technique* Training, https://www.facebook.com/watch/?v=459762431379845 (Jan. 6, 2020).

(3) <u>Adequate</u> – Although some aspects of the investigation could be improved, the identified flaws did not appear to materially or unduly impact the quality of the overall investigation. The resulting investigation provided sufficient information to evaluate the incident but could be improved.

(2) <u>Fair</u> – Several aspects of the investigation could be improved. Identified flaws materially impacted the quality of the overall investigation, and the resulting file provided insufficient information to evaluate the incident.

(1) <u>Poor</u> – All or nearly all aspects of the investigation could be improved. The investigation failed to establish sufficient information to support an evidence-based evaluation of the incident due to investigative deficiencies, material omissions, or other issues.

For the most part, reviewers found that 23 of the cases were "excellent" or "very good," two were "adequate," and two were "poor." The "poor" cases were simply missing too much information to allow for much in the way of substantive determinations.

Across the review cases, reviewers did not find any case in which a complainant appeared, based on available documentation, to have been deterred or dissuaded from filing a complaint. None of the cases reviewed involved anonymous complaints.

TPD provided inconsistent communication to involved complainants and officers about the status of the complaint investigation. In most cases that we received, receipt of the initial complaint was acknowledged by TPD (with only three cases failing to include documentation of communication to the complainant with respect to complaint receipt). However, in nearly half (13) of the reviewed cases, TPD provided no updates to the complainant about the status of the complaint process as the investigation and adjudication was occurring. At the end of the investigation, TPD appropriately communicated the outcome to complainants in all but one instance. Communication with officers was less good – officers were not notified of the complaint at all in about one-third of reviewed cases, and only three cases had evidence of the Department providing updates to officers about the progress of the complaint investigation.

Most (21 out of 27) cases were completed in a manner determined to be reasonably timely by 21CP reviewers.

Due to the lack of complete case files, reviewers needed to take many elements of the investigation at "face value" – without the ability to review interviews or other evidentiary materials. Nonetheless, reviewers indicated that, in 17 cases, it appeared that all necessary information was collected or captured by the investigation – even if the underlying evidence could not be independently reviewed.

Recommendation 53.   TPD should update its misconduct categories to ensure that they adequately capture the scope of potential officer performance issues. This includes adding categories that address search and seizure and de-escalation.

As recommended above, TPD needs to add policies addressing of stop, searches, and arrests and de-escalation. As it does so, the Department will need to align its accountability systems to ensure that officers are held accountable to these new policies. As these types of cases are of constitutional magnitude, potential violations should be handled at the Internal Affairs level and *not* relegated to a supervisory investigation.

Recommendation 54.   TPD should eliminate current investigative categories in its Complaints policy and ensure that Internal Affairs coordinates the investigation of all complaints or allegations of potential misconduct.

Currently, incoming complaints can be categorized as:

> An "inquiry," "which questions the conduct or performance of any member of the department" and "will be handled at the supervisory level;" or

> A Complaint, defined as "any communication, verbal or written specifically, conveying dissatisfaction with the performance or conduct of the Department or member(s) of the Department, or alleging misconduct or unlawful acts by member(s) of the Department. Complaints may be handled at the supervisory level or referred to Internal Affairs, as appropriate.[299]

Issues classified as an "inquiry" are not necessarily subject to an investigation that is documented that seeks to establish what may have transpired during a particular encounter or incident. Instead, they addressed by a supervisor in a more informal manner.

TPD's policy currently provides no guidance as to how any particular concern, issue, allegation, or incident should be classified or handled. For example, if someone alleges that an officer was rude, is that an "inquiry" or a "complaint?" Especially because the handling of inquiries and complaints is very different – with far more time, energy, and documentation for complaints – the initial classification is important. The guidelines for classification do not provide sufficient clarity for the Department, supervisors, or officers about what types of concerns should be routed to the "inquiry" process versus the "complaint" process.

However, in practice this distinction may be somewhat academic. According to available documentation, "inquiries" apparently occur somewhat infrequently – with only four "inquiries" reported in 2019, compared to 127 complaints. This begs the question as to why the category exists at all. The reason may be the loophole discussed below, where officers can

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[299] TPD Policy Manual Sub-Section P1.1.1(A)

resolve their own inquiry in the field as long as the subject "is satisfied." This process does not require documentation and therefore would not be included in the inquiry totals.

As much of the discussion below suggests, 21CP's counsel to TPD is simply to eliminate the current distinction between "inquiries" and "complaints." As a general practice, Generally, "[a] complete investigation should take place where the allegations, if true, would likely result in formal discipline."[300] Unless a complaint qualifies as one of "[a] small number" that "allege facts that defy science and reason . . . and should be closed with a finding that the complainant's claim was impossible to investigate because the allegations were physically, logically, or technically impossible under any reasonable construal," all complaints alleging misconduct should receive a factual investigation.[301]

Currently, even where potential misconduct is classified as a complaint, Internal Affairs rarely conducts the investigation. Potential misconduct arrives to Internal Affairs through a winding route, and there is imprecise guidance as to what IA should and should not address. Specifically, when a complaint is made, a supervisor is notified and conducts an initial interview to gather basic information and complete a Blue Team entry. The Division Commander of the involved officer then routs the complaint to the appropriate entity – supervisor, Department EEO, City EEO, or Internal Affairs.

Current policy states "[t]he Internal Affairs Section is responsible for conducting investigations whenever an Officer uses deadly force, or allegations other than Discrimination/Harassment which, if sustained, could result in economic sanctions being taken against a member."[302] However, there does not appear to be any list of what types of allegations could result in economic sanctions (presumably referring to a suspension) and therefore should be handled by Internal Affairs.

The types of cases to be handled at the Bureau Level "include, but [are] not limited to, issues surrounding a member's work product and/or sick leave abuse shall remain [sic] with Bureau and unit Supervisors unless there is a potential for suspension, demotion, or termination from employment in the event the allegations are sustained."[303] Therefore, the determinative factor seems to be whether suspension, demotion, or termination is possible. However, there is no policy or procedure to determine what type of offense could warrant such sanctions.

Ultimately, this means that the Internal Affairs section handles deadly force cases, and very few other cases.[304] Excluding deadly force cases, in 2018, out of the 148 total complaint

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[300] Office of Community Oriented Policing Services, U.S. Department of Justice, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 29 (2007).
[301] *Id.*
[302] TPD Policy Manual Sub-Section P1.1.1(B)(5).
[303] *Id.* Sub-Section P1.1.1(B)(4).
[304] After the implementation of I-940, the primary investigation into applications of deadly force is handled by the Pierce County Independent Investigation Team (PCFIT). *See* Pierce County,

investigations by TPD, IA only handled eight cases. In 2019, IA handled six of 127 investigations; in 2020, IA handled five. The vast majority of complaints are resolved at the supervisory level.

TPD needs to revise its policies and procedures to ensure that Internal Affairs – specially-trained officers without many other competing duties and responsibilities – can conduct a fair, thorough, and comprehensive investigation of all instances of potential misconduct. It may be necessary or useful for unit-level supervisors to address some limited number of very low-level misconduct issues, but this universe of issues should be clearly defined and suitably cabined.

Recommendation 55.   TPD should ensure that all performance, complaint, and misconduct-related investigations are documented and reviewed by IA for quality control.

Supervisors who receive inquiries about employees are required to document them in Blue Team. Internal Affairs is required to maintain Blue Team data for 39 months (assuming accordance with the CBA and no pending litigation), however there is no requirement in policy that Internal Affairs actually review the inquiry. Supervisors who receive complaints about employees are likewise required to document the complaint and their initial investigation in Blue Team, which will be reviewed by the Division Commander to determine the routing of the complaint for investigation – to a Supervisor, Department EEO, City EEO (in consultation with the Assistant Chief) or the Internal Affairs Section. Neither the initial complaint nor the routing determined by the Division Commander is reviewed by IA according to policy.

Current TPD policy gives autonomy to officers to resolve an inquiry at the lowest possible level. Although this is efficient and can lead to immediate resolution of low-level concerns, it can also lead to potential failures to properly investigate legitimate claims. For example, per policy, if an officer receives an inquiry "regarding their own performance, from a person who reasonably has a right to know," that officer is "responsible for responding to the inquiry." If the inquirer is satisfied with the response and explanation," "no further action is required." There is no policy requirement to document the inquiry and as explained above, the delineation between complaints and inquiries is unclear in policy. Although this may appear to work in practice, it risks leaving too much room for officers to mishandle low-level complaints, which can undermine public trust. As there is no required documentation for inquiries[305], there is no way to determine whether the inquirer in any given case was satisfied.

Government, Departments H-Z, Sheriff, Get Information, *Independent Investigation Team,* https://www.piercecountywa.gov/7110/Independent-Investigation-Team (last visited Mar. 13, 2021).
[305] Presumably, this is due to the previously mentioned fact that TPD officers do not utilize Blue Team; only supervisors appear to have access.

In contrast, when an inquiry is elevated to the supervisory level, the supervisor does document the inquiry in Blue Team. IA is required to maintain this document for 39 months, but there is no apparent requirement for IA to audit the quality of these resolutions. In fact, this documentation is "primarily for the Department's protection in the event of future questions regarding the proper handling of the inquiry," rather than for quality control or to ensure that adequate customer service is being provided.

TPD should revise its policies and procedures to ensure that all inquiries should be documented, and Internal Affairs should review, or at least audit, the decisions made at the officer or supervisor level to ensure consistency and fair handling of complaints.

Recommendation 56.   TPD should consider extending the retention of records of more informal or lesser discipline – counseling, verbal warnings, and oral reprimands – beyond one year.

Currently, the Department only retains documentation of officers receiving counseling, verbal warnings, and oral reprimands, for a period of one year. Doing so may unduly frustrate TPD's ability to effectively manage employees over time, identify potentially problematic performance trends through a high-functioning Early Intervention System, and hamper the application of progressive discipline (in which an officer's second or third instance of similar misconduct receives more significant remediation than their first instance of such misconduct). To this end, if TPD adopts a formalized disciplinary matrix, as recommended below, maintaining records of all imposed discipline and remedial action will be necessary to determine what aggravating factors might exist to inform the level of discipline.

Recommendation 57.   TPD should consider creating a Disciplinary Matrix.

As discussed at length above, the imposition of discipline appears low in some cases, and is not necessarily consistent. Some officers complained that discipline seemed arbitrary and some alleged that higher ranks received lower consequences for similar behavior.

The use of a "discipline matrix" has emerged as a best practice in police agencies as a means of providing fair notice to officers, and the community, about the expected employment ramifications of specific classes or types of misconduct or deficient performance:[306]

> A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer's previous disciplinary record.
>
> The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been

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[306] Jon Shane, "Police Employee Disciplinary Matrix An Emerging Concept," 15 *Police Quarterly* 62 (2012).

found to have committed similar forms of misconduct will receive similar discipline.[307]

A matrix helps to establish – "in advance – the most appropriate penalty for common forms of misconduct" and to ensure that individuals "committing the same act of delinquency will receive equal punishment."[308] A typical Matrix describes offenses, policy violations, or categories of misconduct and describes the range of potential penalties associated with sustained findings.[309]

A 2015 study U.S. police departments of 100 or more officers found that some 37 percent used discipline matrices overall.[310] However, especially among larger and more-urban police departments, there is reason to believe that adoption is even more widespread, with matrices operable in cities such as Austin; Cleveland; Denver; Los Angeles County; Madison and Milwaukee, Wisconsin; Oakland; Portland; Philadelphia; San Diego; and Tucson, Arizona. We noted that "[t]he codification and implementation of a discipline matrix can be collaboratively designed by management in partnership with line employees"[311] – which helps to ensure transparency both within and outside the organization with respect to accountability measures.

Recommendation 58.   TPD should create more detailed investigative policies, procedures, and processes to ensure that investigations are fair, thorough, objective, timely, and consistent with the principles of procedural justice for both complainant and officer.

TPD's current Complaints and Discipline Procedure is five pages long.[312] and does not comprehensively cover critical areas such as intake and classification, non-discrimination, conflicts of interest, investigative techniques and expectations, treatment of complainants, and processes to ensure that the investigations are completed in a fair, thorough manner. Ultimately, the goal of any investigation should be to follow the truth and come to a determination of what happened, and TPD's various policies, procedures, and written protocols should be sufficiently detailed in order to facilitate such high-quality investigations.

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[307] Sam Walker, *The Discipline Matrix: An Effective Police Accountability Tool?*, Conference Report, University of Nebraska (2004) *quoted in* Darrel W. Stephens, National Institute of Justice, "Police Discipline: A Case for Change" (June 2011) at 10, https://www.ncjrs.gov/pdffiles1/nij/234052.pdf.

[308] Richard R. Johnson & Matt Nolan, Federal Bureau of Investigation, "Making Discipline Stick Beyond Arbitrator Review," *Law Enforcement Bulletin* (Dec. 9, 2019), https://leb.fbi.gov/articles/featured-articles/making-discipline-stick-beyond-arbitrator-review.

[309] *See, e.g.*, Portland Police Bureau, *Discipline Guide* (Feb. 28, 2014), https://www.portlandoregon.gov/police/article/482707.

[310] Christopher J. Harris, et al, "The Prevalence and Content of Police Discipline Matrices," 38 *Policing: An International Journal* 788 (2015).

[311] Vera Voglesang-Coombs, *The Political Ethics of Public Service* 294 (2016).

[312] This is easily contrasted, for instance, with the 155-page Baltimore Police Department's Internal Operations and Training Manual, https://www.baltimorepolice.org/draft-pib-internal-operations-training-manual.

XIV. COMPLAINTS SYSTEM

Recommendation 59. **The City should change the website to allow anonymous complaints.**

Although anonymous complaints are permitted per policy, the Internal Affairs website[313] does not allow a complaint to be filed online except by email. The City's complaint portal allows submission of a web form, but an email is a required field.[314] Technically, complaints may be mailed or delivered to a District, and anonymous complaints may submitted via telephone. However, there does not appear to be any electronic method of filing an anonymous complaint. TPD should ensure across its means of complaint intake that anonymous complaints are permitted.

Recommendation 60. **TPD should require supervisors and officers to carry written materials on how to file complaints.**

Current policy notes that the Department makes available brochures on how to file complaints at "several locations throughout the community including Police Headquarters and substations."[315] Although these locations may be beneficial, supervisors and officers should also carry those brochures in police vehicles and be required to provide them to individuals who inquire about making complaints. Another option is to print information about filing a complaint, or compliment, on the back of officer business cards.

Recommendation 61. **TPD should proactively publish its annual report on complaints.**

Per policy, the Department completes an annual report on complaints and makes it "available to the community upon request."[316] Better practice in support of transparency and building public trust would be to publish the report on City and TPD websites.

TPD's reports in 2018 and 2019 were relatively rudimentary. Specifically, they do not give any substantive analysis of the types of complaints, what issues were sustained, or the disciplinary consequence for different actions. A better practice is to prepare an annual report that gives case summaries and explains the findings, without identifying officers. This

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[313] City of Tacoma, Government, City Departments and Offices, Police, Administrative Services Bureau, *Internal Affairs* https://www.cityoftacoma.org/government/city_departments/police/administrative_services_bureau/internal_affairs (last visited Mar. 13, 2021).

[314] City of Tacoma, TacomaFIRST 311, Online Resources, *Service Request* https://www.cityoftacoma.org/cms/one.aspx?portalId=169&pageId=38900&rqst=110 (last visited Mar. 13, 2021).

[315] TPD Policy Manual Sub-Section P1.8.1.

[316] *Id.* Sub-Section P1.8.1(B)(11).

can be a learning platform for other officers about what conduct is disciplined and why, as well as a comprehensive accounting to the public.[317]

XV.   INDEPENDENT OVERSIGHT

Recommendation 62.   The City of Tacoma should consider developing an external oversight system as a backstop to ensure comprehensive investigations into misconduct and increase public trust in the accountability systems.

Given the inherent skepticism that many have to the notion of the police policing themselves on matters of misconduct, many jurisdictions use some mechanism of independent oversight. The National Association for Civilian Oversight of Law Enforcement identifies three major classes of oversight models: (1) an auditor/monitor model, which either "review[s] . . . the completeness and thoroughness of Internal Affairs investigations" or, alternatively, involves an outside individual or entity "monitoring . . . entire internal investigations from beginning to end" to ensure fairness, thoroughness, and consistency; (2) an investigative model, in which "[a] civilian[-]led agency investigates complaints of misconduct" themselves; and (3) a review-focused model, in which "[a] civilian board or panel examines the quality of internal affairs and investigations."[318] This is not a new idea in policing or even in Tacoma – the Tacoma Human Rights Commission proposed a citizen oversight program back in 2005.[319]

21CP makes no specific recommendations here as to the form or structure of oversight. We note simply that, to enhance community trust and confidence in the police and to alleviate the concerns of some community members about the legitimacy of police investigating police, that the City of Tacoma should consider establishing an oversight mechanism for its internal investigations of officer performance. This is especially true when Washington state law (I-940) requires external law enforcement investigations of deadly force – which is, to at least some relevant extent, police from a different organization investigating other police. At some point, any law enforcement accountability process – which has many layers – should be subject to external civilian scrutiny.

The current CPAC has expressed interest in auditing officer investigations. It is possible that it could fulfill an oversight function going forward or at least provide input into the appropriate mechanism for oversight. However, the design and expectations of civilian oversight lends itself to large-scale community engagement – and any decisions about CPAC's role should be substantially informed by broad, intensive dialogue with community stakeholders.

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[317] Seattle Office of Professional Accountability, News and Reports, *Closed Case Summaries*, https://www.seattle.gov/opa/news-and-reports/closed-case-summaries (last visited Mar. 20, 2021).
[318] Office of the Police Monitor, City of Austin, Texas, *Preliminary Police Oversight Analysis* 4 (2018), http://www.austintexas.gov/edims/document.cfm?id=301093.
[319] Tacoma Human Rights Commission, *Citizen Oversight of the Tacoma Police Department* (Mar. 2005), http://www.ci.tacoma.wa.us/cronews/citizenoversightproposal.pdf.

AREA 6: TECHNOLOGY & DATA SYSTEMS

A comprehensive assessment of technology and data systems is a project in itself and would require a substantial, highly technical inquiry into technology services at the City level. Additionally, at the time of this writing, H.B. 1092[320] is still in committee, but if legislation of this magnitude passes, TPD may need to make substantial technology changes or upgrades in order to be able to provide the type of robust data demanded.

Regardless, however, much ink has been spilled over "accountability" in this report. Any accountability for officer activity must begin with information about what officers are actually doing in across all functions (including stops, detentions, arrest, force, pursuits, secondary employment). This also includes information about how past activities have been received by community through complaints or commendations and how they have been reviewed internally through evaluations, assessments, and a wide variety of review boards. With respect to use of force, systematic review tracked in information systems is required – from the initial contact through the review, with close scrutiny about patterns and demographics of on whom force is used and whether it was reasonable, necessary, and proportional.[321]

One high-ranking official highlighted technology as a major weakness within TPD, inventorying a variety of issues and needs:

> We need body-worn cameras. We have a variety of systems in place, but they aren't coordinated. South Sound 9-1-1 chose the CAD [computer aided dispatch], and we got a new RMS [records management system], but everyone hates it. We still use paper timecards.

Another officer, reflecting the comments of others, noted that "the information systems are really not helpful – we use community-maintained information boards to help us do our work." This is concerning, as it suggests that, at least for some or in some instances, TPD's current systems may not be providing the type of timely and current information that officers believe they need to make significant enforcement decisions.

In 2021, TPD launched a body-worn camera system department-wide. As discussed in both the Use of Force and Accountability sections, video evidence to corroborate officer statements in reports is essential to determining whether officer behavior is consistent with policy and departmental values. 21CP commends TPD for equipping officers with cameras and is optimistic that the Department will see the enhancements in transparency, trust, and officer

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[320] Washington H.B. 1092 (Feb. 9, 2021), *available at* http://lawfilesext.leg.wa.gov/biennium/2021-22/Pdf/Bills/House%20Bills/1092-S2.pdf?q=20210312153828

[321] *See What Police Chiefs and Sheriffs Need to Know About Collecting and Analyzing Use-of-Force Data* Police Executive Research Forum (2021), https://www.policeforum.org/assets/CollectingAnalyzingUOFData.pdf.

performance that a number of jurisdictions have seen after implementing body-worn camera technology.

TPD receives dispatch support from South Sound 9-1-1, the regional public safety answering point (PSAP), which implemented a CAD system from Hexagon Safety & Infrastructure in 2017.[322] We note here that separating the CAD system from the Records Management System (the core report writing and information system for a department) can result in dual entry of information by officers, which can waste valuable patrol time.

Separately, TPD uses IA Pro/Blue Team to enter and track Use of Force and Complaint data and to support the department's Early Intervention System.   However, as previously noted, the department is not maximizing its use of IA Pro to gather data related to use of force. By entering information at the supervisory level, the initial officer data entry needs to be cross referenced with the general reporting software. Our recommendation above, however, that officers directly enter data will likely cause duplication of efforts because IA Pro/Blue Team does not import information from other systems well.

Recommendation 63.   TPD, with the support of the City, should engage in a comprehensive technology needs assessment and develop a technology roadmap for the next decade.

Technology upgrades can be time-consuming, expensive and logistically challenging – and often fail. Police departments, in particular, tend to chase shiny new technologies without considering maintenance requirements or how disparate technology systems might be integrated.   As such, TPD should (1) conduct a comprehensive needs assessment that evaluates TPD's current use of technology and technology system, and (2) develop a technology plan that provides a roadmap for maintenance, enhancements, or upgrades to technology over the next ten years. This process should also consider which technology solutions should be eliminated – too frequently departments add requirements and systems without removing those that no longer serve a purpose. As part of this process, TPD should consider the following:

(1) What data does the department want to gather?
(2) What information do officers need to do their jobs in the field?
(3) What inefficiencies exist in current systems that waste employees' time? – the gold standard is that officers enter information once, in one place.
(4) What data does the City and Department want to proactively make public?

Recommendation 64.   To promote transparency, TPD and the City should work to make information about TPD's performance, policies, and procedures publicly available.

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[322]   South   Sound   911,   Technical   Services,   *Computer-Aided   Dispatch*, https://southsound911.org/technical-services/computer-aided-dispatch/ (last visited Mar. 13, 2021).

TPD's website has made some significant strides at promoting transparency by providing data. Currently, the Department provides crime information by neighborhood[323] and summarizes information relating to deadly Use of Force, including an explanation of the investigative process, the investigative authority, the investigation status, and reports and decisions stemming from the investigation.[324]

21CP recommends that TPD provide close to real-time data on core officer activities, like use of force and stops and searches. Peer agencies provide this level of transparency, [325] and TPD should consider joining them.

The Department also provides its current Policy Manual online – although this is posted in a single PDF document, devoid of a table of contents or internal hyperlinks, which makes navigating the long document potentially difficult for interested parties.[326] Generally, departments that provide a table of contents and separate out their policy manuals into separate chapters provide greater ease of access for the public.[327]

Additionally, as recommended elsewhere in this report, we recommend that TPD proactively publish its end-of-year Internal Affairs Report. Other departments provide much greater information relating to internal investigations.[328]

As observed at the outset of this report, police departments exist to serve the community – to address community needs and help solve community problems. TPD should work to favor transparency and openness with respect to its activities and performance so that it can partner with the community – in the ways that it wants – to advancing public safety and community well-being.

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[323] Results253, *Tacoma Crime Map*, https://data.cityoftacoma.org/Public-Safety/Tacoma-Crime-Map/i8ba-ueen (last visited Mar. 13, 2021).

[324] City of Tacoma, Government, City Departments and Offices, City Manager's Office, *Police and Use of Deadly Force in Tacoma*, https://www.cityoftacoma.org/cms/one.aspx?portalId=169&pageId=191379 (last visited Mar. 13, 2021).

[325] Seattle Police Department, Information & Data, Use of Force Data, *Use of Force Dashboard* https://www.seattle.gov/police/information-and-data/use-of-force-data/use-of-force-dashboard; *see also* Seattle Police Department, Information & Data, Crisis Contacts Data, *Crisis Contact Dashboard*, https://www.seattle.gov/police/information-and-data/crisis-contacts/crisis-contact-dashboard (last visited Mar. 13, 2021); Portland Police Bureau, Open Data, *Stops Data Collection* https://www.portlandoregon.gov/police/65520 (last visited Mar. 13, 2021).

[326] Results 253, *Tacoma Police Department Policies*, https://data.cityoftacoma.org/Public-Safety/Tacoma-Police-Department-Policies/wggi-jjh2 (last visited Mar. 13, 2021).

[327] Baltimore Police Department, Transparency, BPD Policies, *Active Policies* https://www.baltimorepolice.org/transparency/policies (last visited Mar. 13, 2021).

[328] Baltimore Police Department, Transparency, Accountability, *Misconduct & Discipline*, https://www.baltimorepolice.org/transparency/misconduct-discipline (last visited Mar. 13, 2021); Seattle Office of Police Accountability, News & Reports, *Closed Case Summaries*, https://www.seattle.gov/opa/news-and-reports/closed-case-summaries (last visited Mar. 13, 2021).

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