

Report to the City of Bellevue
**BELLEVUE POLICE DEPARTMENT
USE OF FORCE POLICY REVIEW**

Draft Report for Community Input

February 2021

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Introduction

As the national conversation around policing erupted into protests and demands for reform following the murder of George Floyd in Minneapolis in May of this year, Bellevue's Mayor and City Council made a pledge to their constituents to review police use of force and identify any needed changes. The City engaged OIR Group to conduct that review, a critical part of which was to listen to input from Bellevue's various communities so that our review and recommendations were informed by community input.

What we received through those engagement efforts was a significant amount of support for the Bellevue Police Department (BPD) and the work it does to serve the City and protect its residents. We also heard concern from many about the impact of police activity, particularly on Bellevue's communities of color. Some of this concern related to use of force issues, and came with specific ideas about how force policies should be revised – ideas which we considered as we conducted our review and formulated our recommendations. Much of the concern, though, was much broader, and was expressed in the context of the impact of race-based discrimination. Indeed, in announcing the listening sessions, the City expressly recognized that following the tragic death of George Floyd, people have been moved to address the continued reality of systemic racism.

In Bellevue, as in many parts of the country, law enforcement's role in Mr. Floyd's death, along with the response to subsequent protest activity, brought increased scrutiny of police operations and accountability measures, and has prompted challenges as to whether the work that police traditionally have been asked to do should be reimaged. This broader narrative was beyond the scope of our more narrowly-focused assignment: receiving public input from the Bellevue community about its police department's use of force policies and then reviewing those force policies. But it is not unrelated. A police officer's authority to use force carries with it significant responsibility, and the degree to which the public trusts officers to use force only when necessary impacts its overall level of confidence in the integrity of its law enforcement agency.

This report is the outcome of a detailed review of the BPD's current use of force policies after engaging the Bellevue community and listening to various perspectives on those policies and use of force practices. It was prepared by OIR Group, a team of private consultants that specializes in police practices and the civilian oversight of law enforcement. Since 2001, OIR Group has worked exclusively with government entities in a variety of contexts related to independent outside review of law enforcement, from investigation to monitoring to policy and systems evaluation. Our members have conducted independent reviews in numerous jurisdictions, including the State of Washington. Joining OIR Group for this project are Samara Marion and Perry Tarrant. Ms. Marion is the long-time former Policy Director of the San Francisco Department of Police Accountability. Perry Tarrant is the former President of the National Organization of Black Law Enforcement Executives.

In all, we make 47 recommendations regarding BPD's use of force policies and protocols that we believe are both responsive to community concerns and designed to make BPD policies consistent with national best practices. Some of these are technical in nature – the mechanics of how force incidents are reviewed or the maximum number of times a Taser should be deployed, for example. But others address broader concerns. They include, for example, focusing on the concepts of proportionality and de-escalation, consideration of body-worn cameras, the effectiveness of BPD's response to those in mental health crisis, and the desire for greater transparency around use of force data.

We are grateful to the City and its staff for their invaluable help that made this report possible. Coordinating listening sessions and online engagement efforts were tasks we could not have as easily accomplished without their consistent, professional help. And BPD members were cooperative in providing us materials we needed and generous with their time in responding to our questions and sharing their perspectives. More than that assistance, though, we credit City leadership for its willingness to acknowledge that there is room for improvement in its policies and its proactive engagement around these challenging but important issues.

We are also grateful to members of the Bellevue community who were willing to speak up and share their perspectives. Hearing those views – on all sides of the issues – improved the quality of our review and ensured that our recommendations were responsive to the needs and priorities of those who live and work in the City. The events of the summer clearly made an impact on people in Bellevue, and we were attentive to the prevailing sentiment, specifically expressed by one but shared by many – “I want all residents and visitors to feel welcome and safe in our community.” We hope this report and its recommendations help the City work toward that objective.

And we appreciate that this document is being issued as a “draft report” so that all who wish to respond or provide input to the initial findings and tentative recommendations in this report have the opportunity to do so. We look forward to this further engagement and will consider any additional input from the Bellevue community as we finalize the report and present to City leadership.

PART ONE: Community Input

A key aspect of the Mayor’s Pledge (signed onto by Council) – and our assignment – was to engage the Bellevue community and listen to various perspectives on the Bellevue Police Department’s (“BPD”)’s use of force policies and practices. This input was essential to helping us understand the issues that are important to Bellevue residents (and others connected to the City) and their priorities when it comes to considering areas of potential reform for the Police Department. This report covers the results of the outreach process and our review of BPD policies, as informed by the community response and our familiarity with best practices. Circulation of this report in draft form is intended to begin another phase of community input, where City residents and stakeholders are invited to provide input that will be incorporated into the final report.

With the important and helpful assistance of City staff, we conducted three virtual listening sessions open to all who were interested.¹ We planned these with the goal of accommodating as many different schedules as possible – a weekday evening, a weekday around lunchtime, and a Saturday late morning. A total of 206 people registered for these three events, and nearly as many logged in and attended the listening sessions. We heard their experiences with BPD, and their viewpoints on various issues, and are grateful for the level of engagement and participation in these events.

In addition, we conducted nine targeted listening sessions, with various stakeholder groups specifically invited to attend discussions in smaller group settings to express and share viewpoints particular to their interests and areas of concern. Finally, the City

¹ Because of the ongoing coronavirus pandemic, we were unable to hold these sessions in person. While we acknowledge the Zoom format is not an ideal way to connect with people, we believe, under the circumstances, this was the best and only way to move forward in this project in a timely way and hear directly from concerned and engaged Bellevue residents.

conducted a survey and solicited feedback through its website, and shared with us the results of this engagement effort.

We heard from a number of people – during listening sessions and in email responses – about specific issues relating to the BPD’s use of force policies. While these comments were the most directly relevant to this project and the City’s mission, large numbers of people also wanted to discuss issues of broader concern – training, law enforcement culture, the presence of police officers in Bellevue schools, civilian oversight of the police, and allocation of resources to mental health, homelessness and other social services. The responses to the online survey, by contrast, were overwhelmingly statements of full-throated support for the City’s Police Department and repudiation of any movement to “defund” the police.

It is important to recognize that neither the listening sessions nor the survey responses or emails were designed as scientifically valid polls of the sentiment of City of Bellevue residents on police use of force, and should not be interpreted as such. Though all of the participants were self-selected, the various inputs (in particular the listening sessions) did provide forums for participants to engage in an important dialogue on police issues centering on BPD’s use of force policies. As detailed below, the multiple opportunities for us to engage with the Bellevue community and to listen to various points of view regarding use of force significantly informed our subsequent reviews of BPD’s force policies as well as the recommendations we make in this report.

We summarize below the feedback we received via listening sessions, survey responses, and email correspondence, while maintaining the central focus of our assignment; issues relating to police use of force.

Community Input: Specific Feedback on Use of Force Policies

We were impressed by the number of people who had taken the time to review the BPD use of force policies prior to participating in the listening sessions or making written comments, and who had views and opinions on particular policies. The feedback we heard was reflective of specific concerns about the Bellevue policies while also demonstrating a cognizance of the national narrative on use of force issues. The comments represent a range of topics:

- Standard for justifying police use of force;
- Emphasis on de-escalation;

- Banning neck restraints;
- Use of chemical agents for crowd control;
- Data and transparency;
- Investigating and reviewing uses of force;
- Use of body worn cameras to document uses of force;
- Officers' duty to intervene to prevent unnecessary force;
- Community involvement in force policy development.

Use of Force Standard

Some participants expressed a concern that the instruction to use only that force which is “reasonably necessary” is too loose, in that it is dependent on the officer’s interpretation of what is reasonable. These respondents believe the justification for force should not be focused on what the officers were thinking but are looking for more stringent standards than the Supreme Court requirement.

Following on this discussion, a number of participants focused on the notion of “proportionality” and expressed the view that an effective use of force policy should require that an officers’ use of force be in proportion to the threat they face.

De-Escalation

Many people discussed policy measures emphasizing de-escalation efforts, expressing the opinion that de-escalation should be a priority. In the context of these conversations across different listening sessions, a number of people expressed the belief that a policy requiring de-escalation efforts is important but not sufficient – that the policy needs to be reinforced with frequent and focused training on tactics and approach. Others expressed support for policies which would incentivize officers who resolve issues by using de-escalation practices instead of resorting to force.

Some participants agreed with the notion that school resource officers should take advantage of the additional available resources in a school environment such as mental health professionals, counselors, and administrators in devising de-escalation strategies designed to avoid any use of force.

Neck Restraints

A handful of participants expressed a familiarity with the various types of and terminology for neck restraints – chokeholds, vascular restraints, and carotid restraints – and the potential for different approaches to these various options. The consensus

among those who opined about neck restraints was that they should be prohibited without exception.

Chemical Agents and Crowd Control

There was very little consensus among participants regarding the policy surrounding chemical agents deployed in the context of crowd control efforts. Given the persistent images and media coverage of protests in cities throughout the country this past summer, including Bellevue, this issue touched many chords. Much of the commentary felt like a referendum specifically on BPD's response to protests in downtown Bellevue on May 31, where tear gas was deployed for the first time in the City's history.

Those who spoke up at various listening sessions generally felt that the use of tear gas to break up protests is unacceptable and should be banned, citing the recent ban of such use in Seattle. Others suggested there should be tighter rules regarding its deployment, reserving it to address acts of violent aggression rather than just property damage and noting that BPD's policy requiring that the use must be "necessary" was not sufficiently defined.

The opinions of those who provided written comments, however, were far different. Some praised the police for their strong response to the looting that accompanied the May 31 protest, and others said the looting was evidence that police should have authority to use an even greater degree of force than what was deployed. Others provided a more nuanced view, summed up well by one participant who said tear gas might be the "least horrible alternative" in some situations.

Data and Transparency

A consistent message we received during our listening sessions was the desire for more information about how frequently BPD uses force, what types of force, and on whom. Many people said they wanted access to data on BPD uses of force, particularly regarding the demographics of those involved and any resulting disciplinary actions and were frustrated by the lack of access to this data. Some pointed to the Evanston Illinois Police's use of force "dashboard" and recommended a similar level of transparency for Bellevue Police. Others allowed that the BPD may not be fully tracking and collecting this data, a different but no less frustrating concern. For those commentators who raised this issue, they asserted that the lack of available data resulted in diminished trust that BPD's policies on use of force are equitable in practice.

Investigating and Reviewing Force Incidents

A number of people were interested in questions surrounding how force incidents are reported, investigated and reviewed. Some wondered whether the force reporting policies were sufficient and if there was enough accountability baked into the policies for officers who failed to report force. Others voiced the opinion that reviewers should look not just at the use of force, but at precipitating events, including reasons behind the initial police interaction, whether there were any attempts at de-escalation, and issues surrounding any pursuits that preceded the force. Others were concerned about *who* was responsible for investigating incidents and making decisions about accountability, contending that the police cannot be trusted to impartially and fairly complete these tasks.

Body Worn Cameras as a Tool to Review Uses of Force

The only source of unanimity across all listening sessions was the view that BPD officers should be equipped with body-worn cameras. Tying that to the subject of use of force, many participants expressed the belief that cameras would have a positive impact on police force events through greater accountability and transparency and would provide a neutral “record” of what had transpired. Some community members emphasized the need for transparency surrounding the release of videos, and cautioned that cameras would not have the desired impact if the public does not have access to video.

Duty to Intervene

Several participants expressed an interest in including in policy a “duty to intervene” for officers who observe other officers use excessive force and to timely report their observations to supervisory staff. Others specifically referenced BPD’s current “duty of loyalty” policy that instructs members of their duty of loyalty to the Department and expressed concern that such a duty might confound any duty to intercede when a fellow officer was intent on using unnecessary force.

Community Involvement in Force Policy Development

We received a number of comments about the interest in having the community be more involved in developing or improving any use of force policies. In particular, some Advisory Group members indicated that while they have received policies from BPD upon completion, they believed that their input would be more meaningful if it was solicited as policies were being developed and not yet finalized.

Community Input: Wider-Ranging Feedback on Police Practices Beyond Use of Force

Many people who participated in the listening sessions wanted to speak more broadly about the impact of police and the effects of systemic racism and were frustrated by efforts to channel the discussion to use of force policies. Notably, very few people shared accounts of particular incidents in which they or someone they know had been the subject of a force encounter involving BPD. But a few spoke or wrote specifically about witnessing rude or disrespectful behavior, particularly with respect to those with mental health concerns, and some commented on what they viewed as undesirable police exercise of power or authority, particularly in their interactions with homeless individuals.

Commentary on these issues may not have direct bearing on Bellevue's use of force *policies* per se, but people who spoke to them see them as related systemically to law enforcement's role in their community, a central piece of which is the *authority* to use force. Beyond a number of calls to "defund" the police that were woven throughout all categories (though we note receipt of a great many emails specifically requested the City to *not* defund BPD), these comments fall into five areas:

- Examining ways to limit police response to calls involving mental health concerns;
- Addressing structural racism and implicit bias;
- Other operational concerns: hiring, training, and accountability systems
- Acquisition and use of military type equipment; and
- Civilian oversight.

Mental Health Response

Comments regarding police interaction with people in mental health crisis generally stressed a desire for a greater degree of partnering with social service agencies to move away from the default of having police respond to every call. Participants articulated a preference for qualified mental health professionals rather than armed police officers to be dispatched to situations involving people in crisis. Others emphasized the importance of having officers well-trained and equipped to handle mental health crisis calls, and the desire to feel like they can call the police when needed with confidence

that officers will deal with mentally ill individuals with professionalism and compassion.

Racial Equity

Some of those who engaged in this process expressed a belief that use of force might be the culmination of events that begin with profiling and differential treatment of people of color. We did not hear specific stories about inequitable treatment at the hands of BPD, but a general acknowledgement of structural racism and its impact on communities of color. Even in statements of support for BPD, where people shared the positive experiences they'd had with officers, there was sometimes an acknowledgment, *but I'm white*, conveying an uncertainty about whether the encounter would have been the same for a person of color.

Specific to Bellevue Police and race equity issues, respondents talked about more training to address implicit biases and concerns about Bellevue's School Resource Officer program. While not a focus of our listening sessions, the question about having police officers in schools came up frequently, with several people pressing the argument that youth of color are disproportionately impacted by the SRO program.

Hiring, Training & Accountability

Comments on these subjects reflected a belief that changing policies, alone, does not change outcomes. Participants talked about the need to make wise hiring decisions, invest in training, and hold officers accountable for violations of policies or department norms.

Acquisition and Use of Military-Like Equipment

Some participants expressed concern about whether BPD had acquired equipment from the military and, if so, whether that equipment was regularly deployed. Others expressed concern about the military-like presence of BPD officers fully outfitted in riot control gear in response to peaceful protests and the imagery that it presented.

Civilian Oversight

The idea of establishing some type of civilian oversight or community-based review board had broad appeal across different listening sessions. A number of participants expressed that having a review of uses of force outside of the police department would increase the public's confidence in BPD.

One survey respondent succinctly addressed a number of subjects in a statement that would have found agreement among a significant portion of listening session participants:

I expect a use of force policy to be considered in the context of all other government policies and social issues. I want to see Bellevue focus on preventing violence, including police violence, at a deeper level by investing in the community through increased funding for human services, conflict resolution, affordable housing, and education. I want this investment in the community to be regional, not just within Bellevue city limits. I want to see Bellevue adopt a humane, racially equitable, and prevention-focused use of force policy that sets an example for other cities in the region to follow.

Community Input: Statements of Support for Bellevue Police

The written responses – 522 survey participants² and nearly 500 email messages – were overwhelmingly statements of supports for the Bellevue Police. The great majority of the survey participants did not focus on BPD’s current use of force policies in their written responses. People instead provided specific examples of BPD responding to crime or service calls and handling them professionally. Many survey respondents conveyed a general regard for “law and order,” belief that an effective police force is essential to a safe, stable society, and a concern about perceived lawlessness in Seattle along with the sentiment that they do not want Bellevue to follow that same path. The vast majority of email responses were succinct and carried a simple message in one form or other – *do not defund BPD*.

There was a particularly high level of support from the Asian community, where BPD was recognized for its excellent response to concerns about threats related to the ongoing pandemic, as the coronavirus was dubbed by some the “China virus,” seemingly encouraging discrimination and violence.

² Of the survey respondents, 55% identified themselves as Asian; 11% White, 1.9% Black, 1.1% Hispanic, Latino/a or Spanish origin, and 26% preferred not to answer. Women made up 55% of respondents, men 35%, 0.8 percent identified as non-binary, and 8% preferred not to answer. Respondents represented a range of ages – 35% were born in the 1970s; 29% in the 1980s; 17% in the 1960s; 6% in the 1990s; 4% in the 2000s, and 6.5% earlier than the 1960s. 74.4% of respondents are Bellevue residents and 8.6% work in Bellevue; 83% own their own homes.

With respect to BPD use of force, this group of respondents expressed the belief that force is used appropriately, with appreciation for the job officers do – risking their lives to protect the community. If anything, many respondents said that BPD should be strengthened and given more authority and greater resources to fight crime. Some expressed concern that increasing restrictions on police will have unintended consequences of fueling disorder, unrest, riots and looting.

Impact of Community Feedback on Policy Recommendations

All of the input we received from Bellevue’s community served as a guide to our extensive review of BPD policies governing the use of force. As set out below, we evaluated the language of each policy in detail and made recommendations for revisions to bring them in line with best practices. In many cases, concerns we heard from the community aligned with our own identification of issues – for example, the need to prioritize de-escalation and proportionality. The importance of other recommendations was impacted by the input we received from community members – for example, the desire for greater transparency around use of force data, the significance of body-worn cameras, and the need for greater clarity in the Department’s response to mental health crises. As detailed below, nearly twenty of the recommendations had support from community participants during the outreach phase of our assignment.

PART TWO: Use of Force Policies

Scope of Review

As detailed above, OIR Group's use of force policy review began with a number of general and targeted listening sessions designed to engage with Bellevue's community on current use of force policy and to solicit any recommendations for improvement. That input served as a helpful backdrop to our detailed review of the Bellevue Police Department's online policy manual, annual Use of Force reports (2010-2019), K-9 annual Use of Force report (2019), and the K-9, Special Weapons and Tactics (SWAT), and Crisis Response Team Operations manuals. Discussions with BPD's command staff and identified personnel provided helpful information about how BPD's policies operate and any policy standards currently under consideration. BPD representatives were keen to assist, openly discussed their policies' strengths, and readily identified areas for improvement. OIR's assessment did not include reviewing specific use of force cases, use of force investigative files or training materials.

Overall, BPD use of force policies provide important standards and guidance for officers' use of force. BPD's main Use of Force policy instructs officers to use only that force reasonably necessary to effect a lawful arrest, defend themselves or others from violence, or otherwise accomplish police duties according to law. (1.00.010 Use of Force). Necessary is defined as "no reasonably effective alternative to the use of physical force, firearm, weapon or device appeared to exist." Although de-escalation tactics are reportedly addressed in the Department's use of force training, its current use of force policy does not include de-escalation and other core principles such as a

sanctity of life, duty to intervene, proportionality, and warning before using deadly force.³

Sanctity and Preservation of Life

Numerous police agencies have at the very beginning of their use of force policies a statement of their commitment to the sanctity and preservation of life and the dignity of all individuals. Moreover, the United States Conference of Mayors August 2020 report similarly emphasized that sanctity of life is at the core of a police officer's responsibilities. "To ingrain this fundamental principle, use of force policies must clearly state this requirement, with specificity, and require officers to intervene when a fellow officer is using disproportionate or unnecessary force."⁴

Current BPD policy has no equivalent statement recognizing this important commitment.

RECOMMENDATION 1: BPD should expressly incorporate a provision into its policy manual stating its commitment to the sanctity and preservation of life and the dignity of every individual.

Proportionality & De-escalation

In March 2016, the Police Executive Research Forum (PERF) released its Guiding Principles on the Use of Force. Two of its guiding principles urged police agencies to adopt de-escalation as formal agency policy and ensure that officers' use of force meet the test of proportionality.

As laid out in the PERF document, proportionality and de-escalation are both critical pieces of the larger concepts of use of force and police legitimacy. The PERF report notes that in assessing whether a response is proportional to the threat being faced, officers should consider the following:

³ We have also been advised that BPD has an interest in developing policy in these areas as part of its recertification by the Commission on Accreditation for Law Enforcement Agencies ("CALEA").

⁴ The United States Conference of Mayors *Report on Police Reform and Racial Justice* August 2020, page 17, <https://www.usmayors.org/issues/police-reform/sanctity-of-life/>

- Am I using only the level of force necessary to mitigate the threat and safely achieve a lawful objective?
- Is there another, less injurious option available that will allow me to achieve the same objective as effectively and safely?
- Will my actions be viewed as appropriate—by my agency and by the general public—given the severity of the threat and totality of the circumstances?

How members of the public will react to an officer's use of force is one part of the equation on proportionality. However, this perspective should be considered in the broader context of an officers' approach to their responsibilities. The concept of proportionality does not mean that officers, at the very moment they have determined that a particular use of force is necessary and appropriate to mitigate a threat, should stop and consider how their actions will be viewed by others. Rather, officers should begin considering what might be appropriate and proportional as they approach an incident, and they should keep this consideration in their minds as they are assessing the situation and deciding how to respond.

BPD's current policy does not integrate the concepts of proportionality in its guidance on use of force. Consistent with progressive police practices and community concerns, it should develop policy that recognizes the proportionality analytical framework.

RECOMMENDATION 2: BPD should incorporate the concept of proportionality into its Use of Force policy.

The concept of proportionality works hand-in-hand with principles of de-escalation. De-escalation refers to actions used by officers that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of a person's voluntary compliance. Officers trained in de-escalation principles are taught to slow down incident in a manner that allows officers more time, distance, space and tactical flexibility during dynamic situations.

Applying the concept of proportionality, officers would recognize that even though they might be legally justified in using force in a given situation, the nature of the underlying event might dictate that they step back and attempt to de-escalate as a more appropriate and proportional response.

Currently, BPD is finalizing policy relating to de-escalation and a draft version was provided for our review which captured the basic precepts of de-escalation and provided helpful written guidance to its officers.

In addition to finalizing a policy on de-escalation, BPD should also create policy that instructs officers who use force that the report documenting their force should indicate whether de-escalation techniques were attempted, the results of any de-escalation efforts and if no efforts were made to de-escalate, why not. Moreover, BPD should create policy requiring that any supervisory review of force consider whether de-escalation efforts were properly considered or deployed prior to the application of force.

BPD also should develop ways to incentivize officers who effectively use de-escalation efforts to avoid uses of force. In the same way that supervisors should be on alert to detect when officers employ poor tactics or move to force options too readily, those same supervisors should be at the ready to recognize and commend those officers who understand and effectively deploy de-escalation techniques to avoid force incidents.

Finally, BPD should develop particular policy guiding those officers it assigns as school resource officers in the City's public schools. That guidance should recognize that officers working within a school environment have a special duty to de-escalate situations, in part because they are working with minors, but also because they have resources and tools that are not generally available in a regular patrol environment. Student identities, whereabouts, and addresses are generally known, and the school has counselors, mental health clinicians, and administrators accessible to address problems. Employing these resources should be part of any de-escalation strategy.

All of these recommendations are consistent with concerns we heard from members of the Bellevue community.

RECOMMENDATION 3: BPD should finalize its de-escalation policy.

RECOMMENDATION 4: BPD should create policy requiring officers to include in their force documentation any efforts at de-escalation prior to using force and if no efforts were made, to explain the circumstances about why they were not feasible.

RECOMMENDATION 5: BPD should create policy requiring supervisory review of force incidents to evaluate any efforts officers made to de-escalate the encounter and if they used no de-escalation tactics or techniques, to consider whether such efforts would have been feasible.

RECOMMENDATION 6: BPD should devise protocols that encourage supervisors to identify and commend officers who use successful de-escalation strategies to avoid uses of force.

RECOMMENDATION 7: BPD policy should provide special guidance to its school resource officers that recognizes the particular importance of de-escalation in the school environment and acknowledges the additional resources available to officers working in the schools.

Duty to Intervene

BPD's current policy does not expressly require officers to intervene if they observe a fellow officer engage in any unreasonable use of force. Similarly, BPD's current policy has no express requirement to timely report if they have intervened to prevent unreasonable force or are not in a position to intervene but observed an officer engage in unreasonable use of force.⁵ BPD policy should expressly include such guidance to officers in its policy manual.

In adopting a duty to intervene policy, BPD should consider the continued viability of its current "duty of loyalty" policy. That policy current instructs employees to maintain a loyalty to the Department and its employees as is consistent with the law and Department policies, procedures, and regulations. The policy as currently written could be interpreted as requiring members to place the duty of loyalty on equal footing with a duty to the rule of law or policy, an ambiguity we heard expressed during our listening sessions with the Bellevue community.

⁵ Although BPD's Use of Force policy does not include an express duty to report when they intervene to prevent unnecessary force or observe unnecessary force the Department does currently require employees to report in writing violations of law or Department procedure to the Chief. "Employees knowing of other employees violating any law or Department rule, regulation, policy or procedure will report same, in writing, to the Chief of Police through the appropriate chain of command. (See 11.00.420, Reporting Violations of Law). We believe, however, that policy should expressly carve out a reporting requirement when officers either intervene to prevent excessive force or timely report an excessive force incident.

RECOMMENDATION 8: BPD should expressly include in its policy language advising its officers of a duty to intervene when they observe an officer use unreasonable force.

RECOMMENDATION 9: BPD should expressly include in its policy language advising its officers of a duty to promptly report when they observe another officer use unreasonable force or have intervened in order to prevent an officer from using unreasonable force.

RECOMMENDATION 10: BPD should consider revising or eliminating its duty of loyalty policy.

Use of Deadly Force

There is no more consequential and potentially controversial police action than the use of deadly force. To BPD's credit, there have been relatively few deadly force incidents involving its officers over the past decade. However, because of the implications of any use of deadly force, it is critical that officers receive detailed guidance on Departmental expectations.

Duty to Consider Other Reasonably Effective Alternatives

Under the nationally universally accepted concept of "reasonableness," police agencies and state legislatures have imposed a duty on officers to consider other reasonably effective alternatives to the use of deadly force. BPD's force policy incorporates this duty by requiring officers to use only reasonably necessary force and defining necessary as "no reasonable effective alternatives to the use of physical force, firearm, weapon or device appeared to exist." (Use of Force 1.00.010). To ensure that the duty to consider other reasonably effective alternatives is integrated into both BPD's training and policy, officers who use force should be instructed to document whether reasonably effective alternatives were considered or attempted before using deadly force. Additionally, BPD should create policy requiring that supervisory review of force consider whether reasonably effective alternatives were properly considered or deployed prior to the application of force.

RECOMMENDATION 11: BPD should modify its force policy to require express documentation and supervisory review of whether reasonably effective alternatives to force were considered or attempted.

Responding to Those Who Only Pose a Danger to Self

In too many highly-publicized and controversial cases, police officers have used deadly force on individuals who were threatening to harm themselves but posed no real danger to others. As a measure intended to prevent such tragedies, agencies and states have prohibited officers from using deadly force in cases in which the individual only poses a danger to him or herself. Moreover, among the Police Executive Research Foundation's ("PERF")⁶ 30 Guiding Principles on the Use of Force is a prohibition against using deadly force against individuals who pose a danger only to themselves. PERF recommends that agencies "carefully consider the use of many less-lethal options" and "exercise considerable discretion to wait as long as necessary so that the situation can be resolved peacefully."⁷

BPD should modify its policy to align with this standard.

RECOMMENDATION 12: BPD should modify its deadly force policy to prohibit the use of deadly force against an individual who only poses a danger to self.

Warning Before Use of Deadly Force

Many agencies require that officers provide a warning before using deadly force, when feasible. BPD requires such a warning before a Taser is deployed, but has no such warning requirement before deadly force is deployed.

RECOMMENDATION 13: BPD should modify its deadly force policy to include a requirement that officers provide a warning before using deadly force, when feasible.

⁶ Founded in 1976 as a nonprofit organization, the Police Executive Research Forum (PERF) is a police research and policy organization and a provider of management services, technical assistance, and executive-level education to support law enforcement agencies. PERF has long been considered a leader in the development and promotion of progressive police policy and practices.

⁷ PERF Guiding Principles on Use of Force 2016, page 48;
<https://www.policeforum.org/assets/30%20guiding%20principles.pdf>

Timely Provision of Medical Aid

A growing number of police agencies impose a responsibility on its officers to provide timely medical aid for those who are injured during a use of force incident. To its credit, BPD is among those progressive agencies. (We note that a significant number of law enforcement agencies still decline to accept and impose this responsibility.)

BPD's current provision on medical aid states, "When safe to do so, officers shall ensure that all persons involved in the use of force receive first aid or medical treatment if needed or requested. If the officer is in doubt as to the necessity of medical attention, officers will seek guidance from a supervisor." (1.00.010 Use of Force.)

BPD's Policy Manual: Providing Adoption or Revision Date of Policies

To its credit, BPD posts its policy manual online. However, the manual does not include any dates of adoption or revision of its individual policies. While policy adoption and revision dates are available internally, it would be helpful to the public to include such dates in the online version so individuals can track when a policy was adopted or revised.

RECOMMENDATION 14: BPD should include the dates policies are revised or adopted with its online policy manual.

Chokeholds and Vascular Neck Restraints

The Department's policy on Neck Restraint Holds (01.00.050) appears to have been revised in response to the May 2020 murder of George Floyd. The policy's introduction states that the Department recognizes that neck restraint holds have become a "controversial and divisive topic."

Currently, BPD permits both a bar arm choke⁸ and vascular neck restraint⁹ in situations justified by deadly force. Yet the close distance that must be achieved in order to perform either maneuver is in conflict with training provided officers to maintain distance when confronting a deadly threat. Many police agencies have decided to stop authorizing all neck holds intended to gain compliance, whether the holds block airways or blood flow, recognizing the high risk of death that such holds entail. BPD should consider this trend and the views its community repeatedly expressed during the listening sessions and cease authorizing the application of neck holds under any circumstances.

RECOMMENDATION 15: BPD should prohibit the neck hold as an authorized force option from its policy manual.

Shooting at and from a Moving Vehicle

BPD has had only three officer-involved shootings during the last decade. While all of the shootings were found to be justified, one of those three shootings involved firing at a moving vehicle.

Numerous police agencies have recognized a need to specifically instruct officers regarding the dangers and relative ineffectiveness of shooting at or from moving vehicles, and have created restrictions on when officers may shoot at or from cars. To its credit, BPD policy prohibits officers from firing at or from, a moving vehicle except as a last resort to protect officers or others from an immediate threat, death or serious bodily injury. (1.00.030 Use of Firearms—Prohibited).

However, the policy does not go far enough in providing guidance to BPD officers. It does not explain the ineffectiveness of shooting at a moving vehicle. More significantly, the policy does not require officers to stay out of the path of a moving

⁸ BPD’s policy states that a “Bar Arm Choke” or respiratory-type neck restraint is defined as a restraint hold that compresses the airway and other structures in the front part of the neck. (01.00.050).

⁹ BPD’s policy states that a “Vascular Neck Restraint” technique applies pressure to the lateral portions of the neck and restrict blood flow through the carotid arteries to and from the brain. (01.00.050).

vehicle and move out of the path of a moving vehicle and retreat to a place of safety when feasible.

RECOMMENDATION 16: BPD should modify its policy to advise officers of the dangers and ineffectiveness of shooting at or from moving vehicles.

RECOMMENDATION 17: BPD should modify its policy to require officers to stay out of the path of a moving vehicle and move out of the path of a moving vehicle and retreat to a place of safety when feasible.

Standards, Conditions and Limitations of Specific Force Options

Guidelines for using specific force options – firearms, extended range impact devices, Tasers, chemical agents, batons/impact tools, OC/pepper spray, neck restraint holds, hog-tying of prisoners, and ramming/forcing vehicles off the roadway – are addressed in the Department’s policies.¹⁰ The degree to which these policies address the use and deployment of each force option, including the standards, limitations and use of force reporting requirements varies considerably. For example, the Department provides important guidelines for extended range impact devices and Tasers that include providing a warning before deployment, and circumstances where these devices should not be used (i.e., where a subject’s fall would present a substantial risk of death or serious bodily injury).

However, including more specific standards and relevant limitations would strengthen these provisions. For example, extended range impact devices are permitted to “disperse unruly or rioting crowds threatening persons and/or property” without explaining the circumstances or limitations that would justify its use against a crowd. The terms “unruly” or “rioting” are not defined, and First Amendment protections are not considered in the calculus.

Concerning Tasers, officers are instructed to limit their use of repeated, continuous or prolonged activation without defining these terms and without reference to a standard

¹⁰ See e.g. 1.00.020 Use of Firearms—Authorized; 1.00.030 Use of Firearms—Prohibited; 1.00.040 Use of Less Lethal Weapons and Impact/Control Devices; 1.00.050 Neck Restraint Holds; 1.00.060 Hog-Tying of Prisons; 1.00.070 Use of Chemical Agents; 1.00.080 Ramming/Forcing Vehicles Off Roadway; 2.00.060 Special Firearms, Weapons, and Less Lethal Dev.

cycle of activation. Police canines are not identified as a force option within the Department's use of force policies.

Police K-9 Use of Force

Police canines are not identified as a force option within the Department's Use of Force policies. Incidents involving dog bites are not subject to review by the normal chain of command review process for force incidents. K-9 incidents are also exempt from the use of force data collection, review of tactics, annual Use of Force Analysis and equipment that the Personnel Services Unit conducts for each use of force. (1.00.090).

Instead, the K-9 Unit procedures and duties are outlined in the 2018 K-9 Unit Operations Manual, and the documentation and review of canine-related use of force incidents are reviewed by the K-9 Unit Commander.¹¹

The Department's K-9 Manual (which is unfortunately not available on the Department's website) provides a detailed, comprehensive officer guide for its K-9 program and covers a range of key topics. The Manual provides appropriate guidance on factors to be considered before using a K-9, provision of warnings prior to K-9 deployment, and reporting requirements for all K-9 incidents. The Manual also discusses medical treatment for subjects bitten by a dog, but does not specifically require that all injured subjects receive medical attention. Rather, it merely provides for the opportunity to be examined by a physician or by a Fire Department Medical Unit.¹²

Best practice recommends that as agencies update their use of force policies and their organizational philosophy on use of force, canine policies should also be reviewed and updated as well. Use of force incidents involving K-9s should be subjected to the Department's general force review process to ensure consistency and useful comparisons among force options.

¹¹ According to the Department's 2019 K-9 Use of Force Review, K-9 personnel were deployed to 83 calls, conducted 17 building searches, 4 tactical deployments, and located and captured 23 suspects. Three of these captures resulted in a K-9 use of force. The one-page annual K-9 Use of Force review also stated that the use of force incidents involved subjects involved in criminal activity and were determined to be within policy.

¹² The Manual does include specific procedures for juveniles injured by a police dog, including a requirement they be transported to the nearest hospital Emergency room. Juveniles refusing to allow inspection of an injury shall be taken to an approved medical facility as soon as possible for an examination. Handlers are required to notify an on-duty supervisor if a parent intercedes and refuses such an examination. (K9 Manual, page 18).

RECOMMENDATION 18: BPD should modify its Use of Force policy to expressly include K-9 bites as a use of force incident that is subject to all other force principles and policies such as de-escalation and proportionality.

RECOMMENDATION 19: BPD should modify its policy to expressly include K-9 bites in the Department's force review process.

RECOMMENDATION 20: BPD should require a K-9 handler to obtain medical assistance for a subject as soon as possible after a K-9 use of force.

RECOMMENDATION 21: BPD should place its K-9 policy online.

Tasers

Tasers are permitted under current BPD policy to control or subdue a physically resistive, aggressive or violent subject who poses an immediate threat of physical harm to him/her self, to the officer, or to other persons. We noted a number of deficiencies in the Department's Taser provisions and recommend revisions to correct each:

- The policy warns against repeated, continuous and/or prolonged Taser activation without defining these terms. Medical studies, including National Institute of Health research, indicate that extended, repeated, or multiple simultaneous deployments of the Taser significantly increases the risk of serious injury or death. Many agencies place restrictions on Taser deployment to three, five-second activations.
- The Taser provisions state that probe deployment is preferred over the drive stun mode but permits drive stun mode "in certain circumstances" and not as a pain compliance tool "*absent an immediate threat.*"
- The policy does not address an officer's duty to obtain medical care for a subject following Taser deployment.
- The policy does not set out special documentation and review requirements for Taser use, including the downloading and inclusion of information regarding the Taser deployment, such as the length and number of cycles.

RECOMMENDATION 22: BPD should revise policy to prevent simultaneous deployment of multiple Tasers on the same subject.

RECOMMENDATION 23: BPD should revise policy to restrict Taser applications to five second activations.

RECOMMENDATION 24: BPD should revise policy to require officers to reassess the threat level before redeploying the Taser and limit the number of deployments to three or less.

RECOMMENDATION 25: BPD should revise policy to set out the medical assistance required after a Taser deployment including the removal of any prongs from subject.

RECOMMENDATION 26: BPD should eliminate the use of drive stun mode as a pain compliance measure.

RECOMMENDATION 27: BPD should set out the documentation and review requirements for Taser deployment including the downloading of Taser deployment data.

Extended Range Impact Devices

BPD's policies governing Use of Less Lethal Weapons and Impact/Control Devices (1.00.040) and Special Firearms, Weapons, and Less Lethal Devices (2.00.060) also have some gaps we recommend the Department correct through appropriate revisions:

- The policies do not distinguish between different levels of threat posed by a subject, but instead combine physically resistant behavior (such as bracing, tensing, and running away) with aggressive or violent behavior and permit uses of these weapons under both categories of threat. These policies also do not distinguish between a threat of physical harm to the subject, officer, others, or property.
- For use of an Extended Range Impact Device (ERID), officers are instructed that when feasible, a warning *should* be provided prior to deployment. There is no provision instructing officers to provide a subject an opportunity to comply.
- ERIDs are permitted to “disperse unruly or rioting crowds threatening persons and/or property” without explaining the circumstances that would justify their use against a crowd. The policy does not define an “unruly” crowd. Nor does it explain the type of threat to property that justifies crowd dispersal by an ERID.

RECOMMENDATION 28: BPD should modify its policy to clarify the type of threat that justifies ERID deployment and make clear that they should not be used against a passively resistive subject.

RECOMMENDATION 29: BPD should clarify its policy to define an “unruly” crowd or eliminate the term from its policy.

RECOMMENDATION 30: BPD should modify its policy to require a warning and provide an opportunity to comply before ERID deployment.

Chemical Agents

BPD’s policy on chemical agents other than pepper spray (e.g. CS gas) states it can be used when “necessary” by officers trained in its use and only with authorization of a commander. (1.00.070 Use of Chemical Agents). As raised in one of the listening sessions, the policy does not identify the circumstances or standards for its use and does not address standards or limitations for use during demonstrations. The policy also does not require a warning and an opportunity to comply before its use.

During this past year, chemical agents were used on individuals for the first time in the City of Bellevue, to the consternation of many. It is beyond the scope of this report to consider whether their use was appropriate under the circumstances presented. However, current policy indicates more guidance could and should be provided about when such munitions would be authorized.

BPD does not currently have a publicly available policy regarding demonstrations and crowd control.¹³ Nor does BPD provide information in policy about what special munitions are available to its Civil Disturbance Unit. Given the frequency of demonstrations and protest activity in Bellevue and the nation this past year and the

¹³ BPD’s Appendix A to its Policy Manual, entitled “All Hazard Plan for Unusual Occurrences and Special Operations” provides protocols for “emergency situations” that result from natural and manmade disasters. This appendix addresses topics such as hostage/barricaded persons, active threat situations, hazardous material incidents and civil disturbances. The civil disturbance provisions provide important guidance concerning supervisor responsibilities, dispersal warnings, and mass arrests. However, it does not include guidelines regarding the types of less lethal force that will be authorized as well as criteria and circumstances for their use. It does not include approved tactics and weapons and those prohibited for crowd control. As detailed above, we recommend that these topics be addressed in a comprehensive demonstration and crowd control policy that is made available to the public.

likelihood that these activities will continue into the foreseeable future, all officers – including BPD officers – could benefit from regular guidance and ongoing instruction on balancing the exercise of First Amendment activity with interests in public safety. This would align with the public’s interest in better understanding the Department’s policies on crowd management.

RECOMMENDATION 31: BPD should develop policy that clarifies the type of resistance and threat that justifies CS gas use that goes beyond “necessary.”

RECOMMENDATION 32: BPD policy should require officers to provide a warning and opportunity to comply before the deployment of CS gas.

RECOMMENDATION 33: BPD should develop a demonstration and crowd control policy, balancing the exercise of First Amendment activity with interests in public safety.

RECOMMENDATION 34: BPD should publish on its website any munitions authorized for use by its Civil Disturbance Unit or SWAT team.

Use of Force Documentation and Review

The Department’s Use of Force Reporting/Notification policy (1.00.090) includes important provisions for supervisor notification and documentation of force incidents. Officers who use force are required to notify their immediate supervisor at once. Officers are required to document their use of force in a Department Case Report before going off duty. Documentation requirements include the names of involved officers, names and descriptions of persons and witnesses involved, description of any weapon and physical force used by the subject, description of the force used by the officer, injuries and medical treatment. Use of Force reports are forwarded up the chain of command, to the Chief of Police. The Personnel Services Unit is responsible for use of force data collection and compilation of an annual Use of Force analysis.¹⁴

¹⁴The Use of Force Reporting/Notification policy includes an annual Use of Force analysis, copies of which the Department provided to us. Currently BPD’s website does not include any annual Use of Force analysis or reporting. BPD’s annual reports do not include use of force data or analysis.

The policy lacks the following explicit direction for review of force incidents as currently written:

- For most force incidents, the policy does not require a supervisor to respond to the scene.¹⁵
- The policy does not require civilian witness, suspect and officer interviews, or the collection or preservation of other evidence such as video footage.
- Notification to a Commander is made only when there are concerns that a complaint may be filed about the officer's use of force.
- The policy does not provide sufficient criteria for determining when a use of force Internal Investigation is required as opposed to only a written report.
- The policy does not provide any guidance concerning the standards or supervisors' duties in reviewing and approving their subordinate's use of force reports. Nor does the policy address the commander's use of force review duties.¹⁶

BPD personnel described to us a regular practice for documenting, investigating, and reviewing force incidents¹⁷ that is more robust than what is reflected in Department policy. This is mainly due to the utilization of BlueTeam – a software platform that enables supervisors to document force incidents and record each evaluator's assessments as the incident is reviewed up the chain of command and a checklist setting out supervisory responsibilities that all sergeants are provided – neither of which has been incorporated into written policy. Department representatives described a process that begins with officer notification of use of force to a supervisor and in certain cases (e.g. complaint of injury, intermediate force, loss of consciousness, use of deadly force),¹⁸ a supervisor's response to the scene followed by a supervisor's use of force

¹⁵Supervisors are required to respond to the scene when an officer uses a vascular neck restraint that results in the subject's unconsciousness and in incidents involving a firearm discharge. (See Neck Restraint Holds 1.00.050; Use of Deadly Force/Critical Incident Response 1.00.100).

¹⁶ The policy explains that no further action is required if there are no supervisor concerns. Supervisor concerns are to be discussed with their commander who will decide the appropriate action. (1.00.090 Use of Force Reporting/Notification).

¹⁷ Again, we did not review any actual use of force incidents or documentation of the review process but rely here on the Department's description of their practices.

¹⁸The Department designates three types of force: Type 1 involves complaint of transitory pain, transitory pain, use of a counter joint/control hold, aiming or pointing of a firearm. Type 2 causes injury, reasonably expected to cause injury, complaint of injury, and use of intermediate force (hard takedowns, body impact tools, baton, VNR, OC, Taser, K-9, Extended Range

investigation. Officers document their use of force, including a summary of the incident in a Case Report that is reviewed and approved by the officer's supervisor.

The officer's supervisor enters the force incident in BlueTeam, reviews relevant evidence and documents, makes recommendations about whether the force was in policy, and then routes the incident through BlueTeam up the chain of command for review, approval and appropriate action. We recommend that this more robust review mechanism be fully laid out in Department policy.

Additionally, the Department should consider enhancing its review of force incidents by subjecting certain types of force to a more formal evaluation by a force review board. Currently, BPD has a Firearm Review Board comprised of the Assistant Chief, Personnel Service Unit Commander and Commander of the involved officer that determines whether the discharge of a firearm was consistent with Department policy. (2.00.120 Firearms Review Board). Many agencies use a force or serious/critical incident review board to provide a thorough examination and discussion of more serious incidents that includes the performance of all involved personnel (supervisors and non-force users) as well as issues of policy, training, tactics, supervision, planning and coordination, choice of force options and post-incident conduct and performance.

RECOMMENDATION 35: BPD should update its supervisory force review policy to correspond to its current practice and incorporate the supervisor "checklist" into policy.

RECOMMENDATION 36: BPD should develop policy to create a critical incident review board that would formally examine serious incidents through the prisms of tactics and decision-making, policy compliance, accountability, equipment, supervision, training, and post-incident management such as timely provision of medical aid.

Body Worn Cameras

Over the past few years, police agencies throughout the country have increasingly equipped their officers with body-worn cameras, to the point where the public has come to expect police encounters to be captured on video. This issue was one on which we

Impact Weapons). Type 3 causes great or substantial bodily harm, use of deadly force, causes loss of consciousness, or potential criminal conduct/serious policy violation.

heard unanimous agreement from those who participated in our various listening sessions. There are many potential benefits of body-worn cameras, including the ability to use video footage to improve police training and impact officer behavior in a way that enhances police-community relations. In the same vein, cameras can help alleviate the mistrust and frustration that arise when events are misperceived, misremembered, or misrepresented. Even recordings that are sometimes incomplete and imperfect nonetheless provide a valuable account of an incident.

Essential to the deployment body-worn cameras is development of a policy that comports with best practices and sets out expectations for activation, use, and public release of video footage. It is our understanding that recently, the City committed to providing Bellevue officers with in-car video systems. While this is a significant step, Bellevue should also equip its officers with body worn cameras with an attendant progressive policy governing their use.

RECOMMENDATION 37: The City should consider outfitting its officers with body-worn cameras while also developing a policy governing their use that provides personnel clear direction and guidance on camera activation, supervisory responsibilities, and the use of footage for investigative, audit and training purposes, as well as clear standards for the public release of video footage.

Report Retention

Current BPD policy states that use of force report copies will not be retained any longer than reasonably necessary to complete the Personnel Services and chain-of-command review. (1.00.090 Use of Force Reporting/Notification.) Although BPD's policy manual includes state law retention requirements (see 27.00.060), its use of force reporting policy suggests that documentation of use of force will be destroyed in short order once the review process is completed. This policy is not consistent with appropriate retention for such information and appears to be inconsistent with state law retention requirements.

RECOMMENDATION 38: BPD should delete its policy that indicates use of force report copies shall not be retained after the review process is completed.

Early Identification System

Many police agencies have recognized the benefit of developing an early identification system regarding uses of force and complaints and investigations surrounding uses of force. Such a system can allow for early, positive intervention with those officers who may be using more force than strictly necessary, and can allow for implementation of remedial measures such as training, debriefing, and mentoring.

BPD policy identifies its disciplinary system database as an “early warning system,” and instructs supervisors to proactively monitor behavior that would warrant intervention (14.00.150 Disciplinary System Database). However, these efforts would be significantly strengthened by BPD’s adoption of a formal early intervention system.

Of particular concern is BPD’s current policy that seemingly prohibits such a system by expressly stating the frequency of uses of force may not be considered for any purpose: “any use of force which is in accordance with this procedure is permissible, regardless of its frequency.” (1.00.090 Use of Force Reporting/Notification).

RECOMMENDATION 39: BPD should revise its policies to allow for the creation of an early intervention system with regard to uses of force and remove any current language prohibiting consideration of an officer’s frequency of force incidents.

Use of Force: Transparency

BPD does not currently post online any use of force data. The Department summarizes and analyzes its use of force data in an annual report that includes statistics, trends and training of the past year. In addition, BPD prepares a Professional Standards Annual Report which includes the number and types of investigations, including investigations relating to uses of force. While this report is publicly available (upon request), it is not affirmatively placed on the City’s website.

The BlueTeam platform has great potential for providing data on the overall use of force broken down by types of force used, locations, dates and times, and the demographics of both officers and subjects (including data on the extent to which alcohol, drugs, or the subject’s mental health status played a role in the incident). There is great internal value in this data, for assessment and evaluation of force trends, but the value of this data goes well beyond the Department’s internal functioning, and could be

used to further promote a culture of transparency, something for which those who spoke at our various listening sessions expressed strong support.

RECOMMENDATION 40: BPD should regularly publish on its website its use of force data, broken down by types of force used, and demographics, and should include data on the extent to which alcohol, drugs, or the subject's mental health status played a role in the incident.

RECOMMENDATION 41: BPD should post its annual use of force report on its website.

RECOMMENDATION 42: BPD should post its Professional Standards Annual Report on its website.

Administrative Investigations of Officer-Involved Deadly Force Incidents

Washington's new state law, the Law Enforcement Training and Community Safety Act (LETCSA), requires independent criminal investigations of police-involved deadly force incidents. This law poses some interesting challenges for the Department's administrative investigation of these incidents. In light of Washington State Criminal Justice Training Commission's guidelines that involved officer interviews should follow the policies of their individual agency, as discussed more fully below, the Department has a critical opportunity to determine its protocol for involved officer interviews.

The law requires an independent investigative team (ITT) comprised of law enforcement investigators, civilian crime scene specialists, and at least two non-law enforcement community representative who operate completely independent of any involved agency to conduct the criminal investigation of the deadly force incident. When a police-involved deadly force incident occurs, the involved agency must immediately call the ITT after rendering the scene safe and providing lifesaving first aid. Upon the ITT's arrival, the involved agency must relinquish control of the scene. No member of the involved agency may participate in the ITT's investigation, except for the necessary sharing of specialized equipment and limited briefings given to the chief or sheriff of the involved agency. (See Washington Administrative Code 139-12-030). The law acknowledges that an involved agency's timely internal administrative investigation is critical to maintaining public trust and emphasizes that the independent

investigation required by LETSCA “must be conducted in a manner that does not inhibit the involved agency from doing so.” (WAC 139-12-030).

The Washington State Criminal Justice Training Commission has issued Independent Investigation of Officer Involved Use of Deadly Force Incident Guidelines to assist in the implementation of LETSCA. These guidelines enumerate the involved agency’s responsibilities at the scene until control of the scene is assumed by the ITT. Among several duties, the involved agency supervisor is tasked with ensuring that “all potential witnesses are identified and separated and asked to remain on hand to provide a statement. If witnesses wish to leave and there is no legal authority to detain them, officers should obtain their contact information for future communication.” The ITT team is tasked with obtaining statements from subjects, witnesses and involved officers. Involved officer interviews “should follow the policies of their individual agency, collective bargaining agreement and case law.”

The Department’s policy manual does not currently include a policy regarding interviewing officers involved in deadly force incidents during either an administrative or criminal investigation. The Department’s Use of Force/Notification policy includes a “Deadly Force Reporting Exception” that requires the Chief’s authorization before an officer involved in a use of deadly force can provide a written or recorded statement. This provision also states that when an officer uses deadly force which results in injury or death of a person, or discharges a firearm at a person in which no injury occurs, the officer will not be immediately required to make a written or recorded statement without first having the opportunity to consult with their Union/Guild attorney. The Department’s Use of Deadly Force/Critical Incident Response policy¹⁹ does not address

¹⁹ The Department’s Use of Deadly Force/Critical Incident Response policy (1.00.100), however, focuses largely on procedures associated with providing emotional, informational, and legal support to involved employees after a critical incident. It addresses topics such as post-incident leave, critical incident stress debriefing, return to duty, and notification to a family in case of a death or serious injury to an employee. This policy includes the on-duty supervisor’s duty to respond, secure the scene, minimize disturbing any evidence, and direct the involved officer to provide a public safety statement. It requires a Patrol Captain to respond, assume on-scene command, and determine what resources are necessary to successfully conclude the on-scene investigation of the incident. The policy also authorizes the Chief of Police to order a Formal Standards investigation and review by the Firearm Review Board. However, this policy does not set forth a detailed investigative protocol expected for an officer-involved shooting or deadly force incident that addresses both the criminal and administrative investigations and includes on-scene responsibilities as well as post-incident investigative tasks, documentation, reporting and findings.

involved officer interviews other than including the same prohibition against interviewing an involved employee in a critical incident unless the employee has conferred with union or legal representation. (1.00.100).

Washington's new state law provides the Department an opportunity to create an administrative investigative protocol for officer-involved deadly force incidents. Of highest priority would be the Department's approach to involved officer interviews. Prompt interviews of involved and witness officers, prior to personnel going off duty, are investigative best practices. They promote the purest recollection of events, maintain the integrity of the investigation and enhance the public's confidence in the process. Memory experts have recognized the advantage of obtaining recollection promptly and have disavowed those who have advocated for delay.²⁰

As noted above, current BPD policy provides the Firearms Review Board the ability to call witnesses to obtain facts of an incident. Better practice would be for any important witnesses to be formally interviewed as part of an administrative investigation rather than appearing before the Review Board.

RECOMMENDATION 43: BPD should draft and implement an administrative investigative protocol for officer-involved deadly force incidents, prioritizing the Department's approach to administrative interviews of involved officers, and ensuring that BPD has a timely account from those officers.

RECOMMENDATION 44: BPD should modify its Firearms Review Board provisions to ensure that witnesses are formally interviewed rather than being called before any Board for fact gathering.

Firearm Review Board

Incidents involving an officer discharging a firearm are reviewed by the Firearm Review Board. (2.00.120). Board members include the Assistant Chief (appointed by Chief) and designated as Chair, Commander of the involved officer, Commander of the Personnel Services Unit, and Department Legal Advisor (non-voting). The Board is authorized to review all reports and call witnesses to obtain facts. The Board decides if

²⁰ See, e.g., "What Should Happen After an Officer-Involved Shooting? Memory Concerns in Police Reporting Procedures?" Grady, Butler, and Loftus, *Journal of Applied Research in Memory and Cognition* 5 (2016) 246–251.

the shooting was consistent with existing Department policy. Board's findings and recommendations are sent to the Chief of Police.

The fortunate infrequency of officer-involved shootings has resulted in few meetings of the Firearm Review Board during the last decade. The new state law specifically provides authority for an agency to develop or maintain its own administrative investigative protocol for deadly force incidents; the Department should take this opportunity to enhance its internal review process of these incidents. The current policy appears to limit the Firearm Review Board to determining whether a shooting incident is in or out of policy. The Department would benefit from having a more holistic and comprehensive review of shooting incidents that includes the performance of all involved personnel (including supervisors and non-force users) as well as issues of policy, training, tactics, supervision, planning and coordination, choice of force options, and post-incident conduct and performance, such as timely provision of medical aid and scene supervision.

RECOMMENDATION 45: BPD should update the Firearm Review Board policy to provide a comprehensive review of shooting incidents that includes the performance of all involved personnel (including supervisors and non-force users) as well as issues of policy, training, tactics, supervision, planning and coordination, choice of force options, and post-incident conduct and performance.

Mental Health Crisis Calls

Police response to mental health crisis calls is an ongoing national concern. A significant portion of deadly shootings and serious uses of force involve individuals in mental health crisis.²¹ Beyond that, a substantial number of community members who participated in our listening sessions expressed concern about police interactions with people in crisis and a desire to see Bellevue at the forefront of a movement to encourage

²¹ The California Legislature in AB 393 acknowledged the manner in which police fatalities disproportionately impacts individuals with physical, mental health, developmental or intellectual disabilities: *“That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.”*

compassionate treatment of individuals living with mental illness. City representatives spoke positively about the Department's recent efforts to create a partnership with mental health practitioners to address mental health crisis calls. As this partnership solidifies, it would be useful to incorporate a written protocol that addresses the Department's response to mental health crisis calls.

Currently, the only publicly available policy addressing this topic is Mentally Ill Person (7.00.050) which is outdated. For example, the current policy emphasizes the danger an individual presents to officers and does not contain any reference to the existence, role, and duties of BPD's Crisis Response team.

RECOMMENDATION 46: BPD should update its "Mentally Ill Person" policy to correspond to current practices and expectations.

Community Involvement in Use of Force Policy Reform

The Bellevue Police Department has community Advisory Councils that meet to discuss how to improve the Department's delivery of services. The first Citizen Advisory Council formed in early 2016 with the African American Advisory Council. Since then, five additional councils have been formed: Muslim, Latino, LGBTQI, Interfaith, and Asian and Pacific Islander.

These Advisory Councils could provide important insight and feedback on ongoing efforts to improve and revise policies on use of force. We have been advised that the Advisory Councils are provided with policies after they have been completed. As highlighted in President Obama's 21st Century Task Force on Policing, it is important for BPD to solicit community feedback as BPD reforms its policies. Consistent with this philosophy and with the desires expressed by Advisory Council members, BPD should consult with its Advisory Councils on policy initiatives as they are being developed.

RECOMMENDATION 47: BPD should develop policy and protocol to ensure that its Advisory Councils are consulted regarding use of force policy revisions prior to being finalized.

Recommendations

- 1 BPD should incorporate a provision into its policy manual stating its commitment to the sanctity and preservation of life and the dignity of every individual.
- 2 BPD should incorporate the concept of proportionality into its Use of Force policy.
- 3 BPD should finalize its de-escalation policy.
- 4 BPD should create policy requiring officers to include in their force documentation any efforts at de-escalation prior to using force and if no efforts were made, to explain the circumstances about why they were not feasible.
- 5 BPD should create policy requiring supervisory review of force incidents to evaluate any efforts officers made to de-escalate the encounter and if they used no de-escalation tactics or techniques, to consider whether such efforts would have been feasible.
- 6 BPD should devise protocols that encourage supervisors to identify and commend officers who use successful de-escalation strategies to avoid uses of force.
- 7 BPD policy should provide special guidance to its school resource officers that recognizes the particular importance of de-escalation in the school environment and acknowledges the additional resources available to officers working in the schools.
- 8 BPD should expressly include in its policy language advising its officers of a duty to intervene when they observe an officer use unreasonable force.

- 9 BPD should expressly include in its policy language advising its officers of a duty to promptly report when they observe another officer use unreasonable force or have intervened in order to prevent an officer from using unreasonable force.
- 10 BPD should consider revising or eliminating its duty of loyalty policy.
- 11 BPD should modify its force policy to require express documentation and supervisory review of whether reasonably effective alternatives to force were considered or attempted.
- 12 BPD should modify its deadly force policy to prohibit the use of deadly force against an individual who only poses a danger to self.
- 13 BPD should modify its deadly force policy to include a requirement that officers provide a warning before using deadly force, when feasible.
- 14 BPD should include the dates policies are revised or adopted with its online policy manual.
- 15 BPD should remove the neck hold as an authorized force option from its policy manual.
- 16 BPD should modify its policy to advise officers of the dangers and ineffectiveness of shooting at or from moving vehicles.
- 17 BPD should modify its policy to require officers to stay out of the path of a moving vehicle and move out of the path of a moving vehicle and retreat to a place of safety when feasible.
- 18 BPD should modify its Use of Force policy to expressly include K-9 bites as a use of force incident that is subject to all other force principles and policies such as de-escalation and proportionality.
- 19 BPD should modify its policy to expressly include K-9 bites in the Department's force review process.
- 20 BPD should require a K-9 handler to obtain medical assistance for a subject as soon as possible after a K-9 use of force.

- 21 BPD should place its K-9 policy online.
- 22 BPD should revise policy to prevent simultaneous deployment of multiple Tasers on the same subject.
- 23 BPD should revise policy to restrict Taser applications to five second activations.
- 24 BPD should revise policy to require officers to reassess the threat level before redeploying the Taser and limit the number of deployments to three or less.
- 25 BPD should revise policy to set out the medical assistance required after a Taser deployment including the removal of any prongs from subject.
- 26 BPD should eliminate the use of drive stun mode as a pain compliance measure.
- 27 BPD should set out the documentation and review requirements for Taser deployment including the downloading of Taser deployment data.
- 28 BPD should modify its policy to clarify the type of threat that justifies ERID deployment and make clear that they should not be used against a passively resistive subject.
- 29 BPD should clarify its policy to define an “unruly” crowd or eliminate the term from its policy.
- 30 BPD should modify its policy to require a warning and provide an opportunity to comply before ERID deployment.
- 31 BPD should develop policy that clarifies the type of resistance and threat that justifies CS gas use that goes beyond “necessary.”
- 32 BPD policy should require officers to provide a warning and opportunity to comply before the deployment of CS gas.

- 33 BPD should develop a demonstration and crowd control policy, balancing the exercise of First Amendment activity with interests in public safety.
- 34 BPD should publish on its website any munitions authorized for use by its Civil Disturbance Unit or SWAT team.
- 35 BPD should update its supervisory force review policy to correspond to its current practice and incorporate the supervisor “checklist” into policy.
- 36 BPD should develop policy to create a critical incident review board that would formally examine serious incidents through the prisms of tactics and decision-making, policy compliance, accountability, equipment, supervision, training, and post-incident management such as timely provision of medical aid.
- 37 The City should consider outfitting its officers with body-worn cameras while also developing a policy governing their use that provides personnel clear direction and guidance on camera activation, supervisory responsibilities, and the use of footage for investigative, audit and training purposes, as well as clear standards for the public release of video footage.
- 38 BPD should delete its policy that indicates use of force report copies shall not be retained after the review process is completed.
- 39 BPD should revise its policies to allow for the creation of an early intervention system with regard to uses of force and remove any current language prohibiting consideration of an officer’s frequency of force incidents.
- 40 BPD should regularly publish on its website its use of force data, broken down by types of force used, and demographics, and should include data on the extent to which alcohol, drugs, or the subject’s mental health status played a role in the incident.
- 41 BPD should post its annual use of force report on its website.
- 42 BPD should post its Professional Standards Annual Report on its website.

- 43 BPD should draft and implement an administrative investigative protocol for officer-involved deadly force incidents, prioritizing the Department's approach to administrative interviews of involved officers, and ensuring that BPD has a timely account from those officers.
- 44 BPD should modify its Firearms Review Board provisions to ensure that witnesses are formally interviewed rather than being called before any Board for fact gathering.
- 45 BPD should update the Firearm Review Board policy to provide a comprehensive review of shooting incidents that includes the performance of all involved personnel (including supervisors and non-force users) as well as issues of policy, training, tactics, supervision, planning and coordination, choice of force options, and post-incident conduct and performance.
- 46 BPD should update its "Mentally Ill Person" policy to correspond to current practices and expectations.
- 47 BPD should develop policy and protocol to ensure that its Advisory Councils are consulted regarding use of force policy revisions prior to being finalized.