



VERSION 2
12/20/13

THE US DEPARTMENT OF JUSTICE AGREEMENT ABOUT PORTLAND'S POLICE BUREAU: WHAT DOES IT MEAN?

On December 19, 2013 the City of Portland, the Portland Police Association (PPA), the US Department of Justice (DOJ) and the Albina Ministerial Alliance (AMA) Coalition for Justice and Police Reform agreed to move forward with the process of settling the lawsuit filed by the DOJ. A Settlement Agreement regarding changes to the Portland Police Bureau (PPB), adopted by Council in November 2012, includes many positive changes that will address some of the issues discovered in the DOJ's pattern and practice investigation, which found the PPB uses excessive force especially when dealing with people who have or appear to have mental illness.

Even though the Agreement hasn't been entered into court, the City and the Bureau have been making many changes with very limited public input or involvement.

The AMA Coalition was granted "enhanced amicus" (friend of the court) status to the DOJ's lawsuit against the City that led to the settlement Agreement. While this has given the AMA Coalition historic access to the process of federal oversight of local law enforcement, **the community needs to speak out at a "Fairness Hearing" on Tuesday, February 18, 2014 at 9 AM, 1000 SW 3rd, to strengthen the DOJ Agreement.**

GOOD CHANGES PROPOSED IN THE AGREEMENT

- Changes are being made to the Bureau's Use of Force policies, including that police must de-escalate their use of violence as the resistance from the subject decreases (§ 67-c).
- Officers who are found in civil court to have violated someone's rights must be subjected to an Internal Affairs (IA) investigation, presuming they are guilty of misconduct unless the evidence shows they are not (§ 133).
- Supervisors will be trained to conduct annual performance reviews on officers (§ 84-b-ii).
- Officers will be banned from using offensive epithets (including "mentals"), a prohibition that extends to internal communication (§ 84-a-vi).

PLACES THE AGREEMENT DOESN'T GO FAR ENOUGH

- The City was not required to change provisions of existing collective bargaining contracts which are inhibiting effective investigations, such as the so-called "48-hour rule" (allowing 48 hours after deadly force incidents before officers are interviewed) and provisions limiting independent civilian investigation of misconduct, including shootings.
- The new position of Compliance Officer/Community Liaison (§ 160) is created to oversee implementation of the Agreement, but has no power before the federal court when recommending changes (§ 164).
- While some new restrictions are made about Taser use, the Agreement retains and expands loopholes for excessive Taser use (§ 68).
- The Agreement is not explicit enough in calling for officers to use the least force necessary, doesn't allow for a "matrix" tying maximum force levels to certain levels of resistance, doesn't prohibit the use of weapons, animals or vehicles as intimidation when no threat exists, and doesn't prohibit the use of force on downed/injured subjects.
- The Agreement prohibits officers with sustained complaints (about use of force or mistreatment of people with mental illnesses) from serving on the Crisis Intervention Teams (§ 101) or Training Division (§ 83), even though very few such complaints are ever sustained. Therefore, more stringent prohibitions are needed such as if the officer has been documented with a pattern of inappropriate behavior in a 90-day calendar period.
- The recently instituted PPB policy sending Supervisors to the scene of uses of force is re-enforced (§ 70), even though those supervisors are mostly Sergeants in the same collective bargaining unit as the line officers.
- The Agreement mentions the Training Advisory Council, which advises the police on training policies, but should also require community member involvement in all aspects of training, including developing, facilitating, and participating in training.



PLACES THE AGREEMENT DOESN'T GO FAR ENOUGH (continued)

- The Agreement calls for “enhancements to data collection” (§ 148) but does not require tracking of all community contacts including “mere conversations.”
- Officers subject to scrutiny under the Employee Information System call for manager review if there are three uses of force in one month (§ 119), but that trigger should be three uses of force in any 90 day calendar period.

WAYS THE AGREEMENT ACTIVELY INHIBITS ACCOUNTABILITY

- One sentence prohibits appeals to the Citizen Review Committee (CRC) by people who survive police shootings or the survivors of a death in custody victim (§ 43). The City should implement a “Fred Bryant Clause” in City Code allowing such an appeal to happen (Bryant, the late father of Keaton Otis, was denied such an appeal).
- The internal Police Review Board, which considers use of force cases and potential discipline for officers, remains closed to the public and the person involved in the incident being reviewed for possible misconduct. The DOJ’s letter of findings found this “curious,” so the Agreement should provide for some community access to these hearings.
- The Agreement creates the optimistic but unrealistic timeline of 180 days to finish misconduct investigations including appeals to CRC, which could allow officers to go free if it is not met (§ 121). An “escape valve” must be added so that if the timeline is not met, the investigation does not come to a halt. Similarly, the Agreement calls for the CRC to complete its appeal hearings in 21 days (§ 121), whereas they currently take 60 to 90 days.
- The Agreement enshrines the deferential standard of review that makes the CRC decide whether a police supervisor made a “reasonable” decision rather than whether the officer violated policy (§ 61). The community expects a review body to examine the case and determine the appropriate finding based on their own analysis.

WHERE THE AGREEMENT IS INAPPROPRIATELY SILENT

- The Agreement does not direct the City how to expend resources toward lowering the amount of force needed and improving accountability. As a result, the City has budgeted roughly \$5 million per year over 5 years (totalling over \$25 million) but never engaged in a public dialogue about where that money would best be spent.
- The Agreement calls upon the Independent Police Review Division to conduct “meaningful independent investigations” into misconduct (§ 128) but does not outline which kinds of cases IPR should handle. Examples should include shootings, deaths in custody, serious injury, and incidents of high concern to the community.
- The Agreement does not call for mandatory drug testing of officers after deadly force incidents or incidents in which force leads to hospitalization.

WHAT’S NEXT? YOUR VOICE IS NEEDED!

Once the Agreement has been filed with the court, the City will hire a Compliance Officer/Community Liaison (COCL) to oversee implementation and appoint a 15-member Community Oversight Advisory Board (COAB).

It is clear that the DOJ Agreement has the potential to lower the amounts of police violence in Portland and increase accountability, but ensuring these changes requires more strength be put into the Agreement in some places, and modifications to those parts of the Agreement that will hold back police improvements until 2017 if not fixed.

Federal Judge Michael Simon set the February 18 “Fairness Hearing” to allow the community to weigh in on whether the Agreement is “**fair, adequate and reasonable.**” The judge made it clear he will allow testimony in writing or by video (which can be submitted in advance) in addition to in-person presentations in the courthouse (for which members of the public are requested, but not required, to pre-register). Organizations will have 10 minutes, individuals will have 5 minutes. If you want help formulating your testimony or want to have your testimony taped and sent to the court, please contact the AMA Coalition.

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