

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

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About PARC

The **Police Assessment Resource Center (PARC)** is a non-profit organization that supports and assists those responsible for the oversight of police departments -- monitors, law enforcement executives, civic officials, and government agencies -- to help them advance effective, respectful, and publicly accountable policing. Based in Los Angeles but working nationally, the Center serves as an honest broker of information accessible to anyone interested in police oversight and reform. The center publishes the *Best Practices Review*, a monthly e-mail newsletter, as well as short position papers and more detailed reports about individual law enforcement agencies. PARC sponsors fora on police accountability issues and emerging trends in the field, maintains and makes public a library of resources, and provides information to the media regarding policing issues in the news. Under the direction of Merrick J. Bobb, the nation's first police monitor, and guided by a diverse and experienced board of trustees, PARC also assists city officials, police departments, and monitors to implement reforms that are appropriate to the particular challenges facing police in a given jurisdiction.

A copy of this report, including its Appendix, is available online at www.parc.info.

~~PREAMBLE TO THE POLICY ON THE USE OF FIREARMS. The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. It has the most far-reaching consequences for all of the parties involved. It is, therefore, imperative not only that the officer act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices, but also that the officer be prepared by training, leadership, and direction to act wisely whenever using a firearm in the course of duty.~~

~~A reverence for the value of human life shall guide officers in considering the use of deadly force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly force is not justified merely to protect property interests. . . .³⁴~~

~~Although the PPB, as an organization, already holds true to each of the values quoted above, the Bureau would benefit from memorializing these ideas in its policies.~~

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

B. Definition of Deadly Force

The PPB's current policy defines deadly force as "that physical force that under the circumstances in which it is used is readily capable of causing death or serious

³⁴ Los Angeles Police Department Manual of Policy and Procedure, Vol. 1, § 556 (2002). A copy of this policy is set forth in the Appendix at page 87.

physical injury”³⁵ Elsewhere in the policy, the PPB appropriately notes that deadly force is not necessarily limited to firearms. The preamble states:

The use of statutorily defined deadly weapons, barricades and vehicle ramming, constitutes deadly physical force. Also, depending upon how they are used, flashlights, batons, body parts, and other statutorily defined dangerous weapons may constitute deadly physical force.³⁶

These definitions are well within the ambit of state and federal law. Still, there is room for improvement. First, the PPB should combine both discussions into a single, formal definition so that no aspects of the definition are overlooked — a distinct possibility given that the current policy spans more than 12 single-spaced pages in the PPB’s Manual.

Second, the policy should provide officers with more specific guidance on when strikes with impact weapons amount to deadly force. Over the past decade, a growing number of police agencies have clarified their policies on this point. The first such change we are aware of came from the Los Angeles County Sheriff’s Department, which modified its use of force policy in 1992 to address head strikes with impact weapons. The policy reads:

Unreasonable force. Department members shall use only that force which is objectively reasonable. Unreasonable force is that force that is unnecessary or excessive given the circumstances presented to Department members at the time the force is applied. Unreasonable force is prohibited. The use of unreasonable force will subject Department members to discipline and/or prosecution.

³⁵ PPB Manual, § 1010.10 at 405 (2002).

³⁶ *Id.* at 403-04.

*Head strikes with an impact weapon are prohibited unless circumstances justify the use of deadly force. (Emphasis added.)*³⁷

The Metropolitan Police Department in Washington, D.C. takes a slightly broader view in its definition of deadly force, which was revised as part of a 2001 settlement agreement with the Justice Department:

Deadly Force — any use of force likely to cause death or serious physical injury, including but not limited to the use of a firearm or a strike to the head with a hard object.³⁸

Other agencies have come to recognize that impact weapons can have lethal consequences if aimed at other vital areas as well. For example, the Denver Police Department states in its policy:

The head or neck shall not be intentionally struck with [an] impact tool/device, unless the officer is justified in using deadly force.³⁹

³⁷ Los Angeles Sheriff's Department Manual of Policy and Procedure, § 3-01/025.10 (2003). A copy of this policy is set forth in the Appendix at page 90.

³⁸ Metropolitan Police Department General Order 901.07 at 2 (2002). A copy of this policy is set forth in the Appendix at page 121.

³⁹ Denver Police Department Operations Manual, § 105.00 at 100-103 (November 2002). A copy of this policy is set forth in the Appendix at page 56.

The Denver policy also provides officers with two specific examples in which deadly force applications of impact weapons may be reasonable:

- (a) Controlling a suspect who has disarmed an officer and the officer reasonably believes that the suspect is about to use the firearm against the officer or another.
- (b) Controlling a suspect who is armed with a knife or other deadly weapon and due to the suspect's close proximity, the officer reasonably believes that the suspect is threatening the officer with imminent death or serious bodily injury.

Id. at 100-104.

The Louisville Metro Police Department's deadly force policy contains a similar restriction:

Because of the potential for death or serious injury, officers will avoid intentional strikes to the head, neck, throat, or clavicle with an impact weapon of any sort, unless deadly force is justified.⁴⁰

The Phoenix Police Department takes a similarly broad view in its policy:

Officers will not purposely strike or jab suspects with an impact weapon on the head, neck, sternum, spine, lower abdomen, groin, or kidneys unless faced with a deadly force situation.⁴¹

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

By and large, these changes memorialize what the PPB has been training its officers for years. However, by stating the matter in policy, the PPB offers guidance on what practices are actually forbidden, and not merely discouraged. In addition, a policy provides a more solid basis for discipline, should it prove necessary.

~~II. Addressing Specific Uses of Deadly Force or Threatened Deadly Force~~

~~Like most other agencies, the PPB discusses in its policy particular applications of its deadly force rule. The two identified in the PPB's policy — fleeing felons and shots fired at or from moving vehicles — while probably legally sound, do not measure up to~~

⁴⁰ Louisville Metro Police Department, Standard Operating Procedure (April 2003).

⁴¹ Phoenix Police Department Operations Order 1.5 at 7 (2002). A copy of this policy is set forth in the Appendix at page 203.

agreement with the Department of Justice, it also requires officers to “complete a [Use of] Force Incident Report immediately following the drawing of and pointing a firearm at or in the direction of another person.”⁵⁹

The policies of the Los Angeles Police Department and of the Metropolitan Police Department with respect to limiting the drawing and pointing of weapons to situations in which the use of deadly force is justified are consistent with the training given PPB officers. The translation of that training into policy would reinforce the principles taught by the Training Division without compromising officer safety or undermining officers’ legitimate law enforcement objectives.

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

E. Use of Force Reporting

During the course of our study we learned that the PPB does not require officers to report their use of force in a uniform manner or even in a manner that facilitates the collection and analysis of use of force data. Instead, the PPB merely requires officers to describe any force they used in the narrative portion of any arrest or supplemental reports.

Best practice dictates that if a law enforcement agency is to effectively manage its officers’ use of force — then it must be able to track how often force is used, and under what circumstances. The most efficient and fair manner of tracking this information is to require the involved officers (or their immediate supervisors) to note the use of force on a separate form, typically called a Use of Force Report so that the information is logged in

⁵⁹ Metropolitan Police Department Circular, Use of Force Incident Report (2002). A copy of this circular is set forth in the Appendix at 131. *See generally* Memorandum of Agreement between Metropolitan Police

a uniform, consistent manner that allows for easier tracking and analysis of use of force data. Such data should then be incorporated into a computerized early warning system. Sample Use of Force Reports from the LASD and the Philadelphia, and Tampa police departments are set forth in the Appendix pages 100, 201, and 242, respectively.

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

III. Recommendations

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

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

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

III. Recommendations

In summary, we make the following recommendations regarding PPB investigative procedures.

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

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

Recommendation 4.3: The Bureau should revise its policies to make clear that investigators should *always* strive to obtain a contemporaneous, tape-recorded interview of involved officers. Such a policy would not only ease doubts about officer collusion, but place officers and civilians on the same footing. In addition, in those cases where an officer declines to provide a contemporaneous interview, investigators should be required to thoroughly document their efforts to obtain the interview, including (1) when the request was made, (2) to whom it was directed, and (3) the reason(s) for the declination.

Recommendation 4.4: The PPB should meet with the leadership of the police unions to work out procedures for taking voluntary statements from involved officers in the hours immediately following a shooting or in-custody death incident. Interviews would not be conducted until after the officers have been given an opportunity to consult

with a lawyer and/or union representative. The unions should encourage involved officers to provide investigators with contemporaneous statements, and likewise should encourage the lawyers they furnish to their members to facilitate such prompt statements.

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

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

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

investigators to thoroughly cover in each officer interview what information the officer had received from other officers or outside sources.

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

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

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

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

Recommendation 4.12: The PPB should revise its deadly force policy to ensure that all persons who witnessed an officer-involved shooting or an in-custody death are interviewed on tape by investigators. The PPB should specifically eliminate its policy

granting Homicide the discretion to forego interviews of witness officers and rely instead on written reports. Transcripts of all interviews should be included in the case file.

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

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

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

Recommendation 4.16: The PPB should improve the already useful existing Deadly Force Interview Checklist by adding policy and tactical questions, including: (1) whether the officers can think of (a) alternative approaches that might have minimized risk to themselves and others, and (b) potential improvements in PPB training; (2) a description of when and why the officers decided to (a) draw their guns; (b) point their guns; or (c) lower or re-holster their guns; (3) describing the grip and shooting stance used by the officers, including gun/flashlight technique; (4) indicating whether the shots were sighted; (5) describing the availability and use of cover and concealment; and (6) identifying distances from suspects with weapons other than guns, and opportunities for tactical retreat.

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

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

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

V. Recommendations

Recommendation 6.1: The PPB's policies relating to reviews of deadly physical force — both after action reports and Review Level Committee — should be explicitly extended to in-custody death incidents.

Recommendation 6.2: The PPB should ensure that after action reports are completed in all officer-involved shooting and in-custody death cases, and that unit commanders are held accountable if the reports are not completed in a timely fashion.

Recommendation 6.3: The PPB should enforce its policy that requires unit commanders, rather than their subordinates, to prepare and sign after action reports in deadly force cases.

Recommendation 6.4: The PPB should create a model after action report — from an actual or a hypothetical case — to demonstrate to unit commanders both the form and type of analysis that such reports should employ.

Recommendation 6.5: The PPB should ensure that after action reports rely on the facts developed by the investigation of the incident (unless the unit shows that those facts are erroneous or incomplete), and that copies are distributed to the detectives who investigated the incidents and their commanding officer.

Recommendation 6.6: The PPB should devise an accountability process to ensure that after action reports comply with the content requirements of Section 1010.10 and engage in meaningful analysis.

Recommendation 6.7: The PPB should revise Section 1010.10 to make the unit commander a non-voting member of the Review Level Committee when it reviews officer-involved shootings, other deadly force cases, and in-custody death incidents.

Recommendation 6.8: A civilian from outside the Bureau should be made a voting member of the Review Level Committee. The outside committee member should be chosen in a manner decided by the City's elected officials.

Recommendation 6.9: The PPB should amend its policy and its practice to make the commanding officer of the unit conducting administrative investigations of officer-involved shootings and in-custody deaths, and the commanding officer of the Training Division, non-voting members of the Review Level Committee.

Recommendation 6.10: All officer-involved shooting and in-custody death incidents should be presented to the Review Level Committee. The PPB should develop a tracking system to ensure that all such incidents are presented.

Recommendation 6.11: PPB policy should be amended to require that full written findings be provided to the Chief to explain and document each Review Level Committee determination on officer-involved shooting and in-custody death cases.

Recommendation 6.12: The PPB should develop procedures for the Review Level Committee that require members to vote based on their best judgment of the relevant facts and circumstances and that encourage dissent when appropriate.

Recommendation 6.13: The investigators who conduct the administrative investigations should take the lead in presenting officer-involved shooting and in-custody death cases to the Review Level Committee.

Recommendation 6.14: The administrative investigators should present a complete file — regardless of the form of the evidence, and specifically including video and audiotapes and photographs — to committee members in advance of the committee meeting, and should likewise present all evidence they deem pertinent to the Review Level meeting, regardless of the form that evidence takes.

Recommendation 6.15: Before a meeting of the Review Level Committee on an officer-involved shooting case or an in-custody death incident, the Training Division should prepare a written analysis of the tactical and training issues involved and circulate that analysis to committee members in advance of the meeting.

Recommendation 6.16: The PPB should amend its policy to increase the options the Review Level Committee has for outcome determinations so that those options cover the different levels of review: legal, policy and tactical.

Recommendation 6.17: The Review Level Committee should seek to obtain additional information whenever the committee determines that such information would assist it in fulfilling its responsibilities.

Recommendation 6.18: The PPB should create systems that ensure that all lessons learned — both successes and failures — are systematically identified and followed up on.

Recommendation 6.19: The PPB should revise its awards policy and procedures in officer-involved shooting and in-custody death cases to ensure that the Award Review Committee and the Chief are aware of all facts and circumstances relevant to the appropriateness of an award that were revealed in the investigation of the incident, in the after action report, and in the Review Level Committee proceedings.

Recommendation 6.20: The PPB should revise its awards and Review Level policy and procedures in officer-involved shooting and in-custody death cases to require

that the Awards Review Committee facilitator advise the Review Level Committee in writing of any information revealed in the awards review process that was not in the investigative file, the after action report, or the Review Level Committee's records. Upon receipt of notice of such new information, the Review Level Committee should consider whether to reopen its review of the incident, with or without further administrative investigation.

C. Sudden Death Syndrome²²⁵

Since at least 1988, the PPB has trained its officers not to leave a restrained prisoner in a face-down position because it increases the risk of in-custody death, and that this risk is particularly pronounced when the prisoner is under the influence of drugs or alcohol, or is obese.²²⁶ In 1998, the Bureau produced a detailed training bulletin on “Sudden Death Syndrome”²²⁷ that alerted officers to a series of factors that can indicate that an individual is at risk for in-custody death and providing guidelines for minimizing that risk.²²⁸ Featured in the 1998 bulletin were instructions that a prisoner exhibiting sudden death syndrome risk factors — which include violent behavior, removal of clothing, and extraordinary strength — should not be placed in a position that could significantly restrict breathing, and that such a prisoner’s apparent medical condition should be closely monitored. The guidance provided by the 1998 training bulletin is comprehensive and consistent with best practice. Bureau policy since at least 1995 has also required that prisoners should not be allowed to remain in a face-down position; should, upon restraint, be immediately moved into a position that facilitates uninhibited breathing; and should be subject to special attention if certain high-risk behaviors have been exhibited.²²⁹

We were concerned that in both in-custody death cases we reviewed, the involved officers’ actions did not reflect the high standard of care and best practices embodied in PPB training and policy documents. Specifically, involved officers appeared not to take

²²⁵ While the issue of sudden death syndrome does not apply only to those with mental illness, we raise it in this section of the report as it emerged as an issue in our review sample in relation to such individuals.

²²⁶ PPB Training Bulletin, vol. XXIV, No. 6, “Handcuff Precautions,” March 10, 1988.

²²⁷ PPB Training Bulletin, vol. XXXIV, No. 1, “What Is the ‘Sudden Death Syndrome’ (SDS),” January 12, 1998.

²²⁸ Both of the in-custody deaths we reviewed occurred after this training bulletin was produced.

²²⁹ General Order 870.20, at 5 (April 10, 1995). The substance of the current version of this policy is identical. PPB Manual § 870.20 at 375, ¶ (a)(1-3) (2002).

into account obvious sudden death syndrome risk factors when deciding upon how to restrain the two individuals in question.

~~**Recommendation 7.24:** The PPB should ensure that officers consistently perform according to both policy and training in order to minimize the future occurrence of in-custody deaths.~~

VI. RECOMMENDATIONS

As the above discussions illustrate, our review of PPB officer-involved shooting and in-custody death incidents revealed that the Bureau could improve its management of risk in relation to several areas of operational police work. Our recommendations, designed to improve the safety of both officers and civilians, are summarized below:

~~**Recommendation 7.1:** The PPB should ensure that operational personnel devise a sound plan before action is taken in response to critical incidents whenever it is feasible to do so.~~

~~**Recommendation 7.2:** The PPB should ensure that the incidence of communications failures during police operations is minimized.~~

~~**Recommendation 7.3:** The PPB should ensure that supervisors become involved in the management of critical incidents at the earliest opportunity whenever such incidents arise.~~

~~**Recommendation 7.4:** The PPB should ensure that, whenever feasible, supervisors are responsible for the determination and coordination of strategic and tactical responses to critical incidents.~~

~~**Recommendation 7.5:** The PPB should hold supervisors accountable for the performance of officers under their command during critical incidents.~~

Recommendation 7.20: The PPB should provide all operational personnel with a radio earpiece.

Recommendation 7.21: The PPB should establish a helicopter unit.

Recommendation 7.22: The PPB should ensure that CIT officers consistently exercise their specialist skills when dealing with CIT-related incidents.

Recommendation 7.23: The PPB should examine its current CIT deployment practices in order to identify means of maximizing the rate at which appropriately skilled officers attend CIT-related incidents.

Recommendation 7.24: The PPB should ensure that officers consistently follow the Bureau's training and policy in relation to sudden death syndrome and associated prisoner restraint issues.