



**DENVER**  
OFFICE OF THE  
INDEPENDENT MONITOR

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# 2015 Semiannual Report

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Independent Monitor



# The Office of the Independent Monitor

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The Office of the Independent Monitor (“OIM”) is charged with working to ensure accountability, effectiveness, and transparency in the Denver Police and Sheriff disciplinary processes. The OIM is responsible for:

- ◆ Ensuring that the complaint and commendation processes are accessible to all community members;
- ◆ Monitoring investigations into community complaints, internal complaints, and critical incidents involving sworn personnel;
- ◆ Making recommendations on findings and discipline;
- ◆ Publicly reporting information regarding patterns of complaints, findings, and discipline;
- ◆ Making recommendations for improving Police and Sheriff policies, practices, and training;
- ◆ Conducting outreach to the Denver community and stakeholders in the disciplinary process; and
- ◆ Promoting alternative and innovative means for resolving complaints, such as mediation.

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# 1

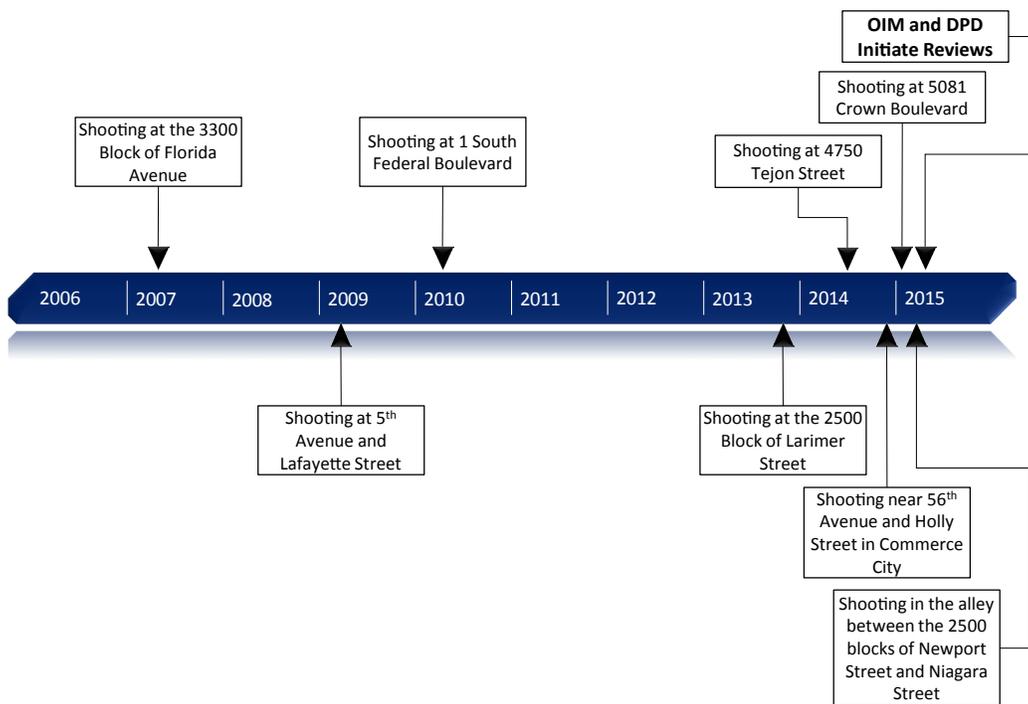
## Review of DPD Policies, Practices & Training: Shooting into Moving Vehicles

In four officer-involved shootings (“OISs”) since July 2014, one or more Denver Police Department (“DPD”) officers fired into moving vehicles based on the belief that the vehicles were an imminent threat to officer safety. In three of those shootings, the vehicles’ occupants were not in possession of guns or any other weapons. Two of the shootings were fatal. Going back further, since 2007, there have been eight officer-involved shootings in which DPD officers fired into moving vehicles based upon the belief that the vehicles were an imminent threat to officer safety.<sup>1,2</sup>

In recent years, shooting into moving vehicles has come under increasing national scrutiny as a police practice that can create significant public safety risks. For example, it is often difficult to precisely judge speed and distance in order to shoot accurately into moving cars, and missed shots can hit bystanders, non-targets in a vehicle, and other police officers.<sup>3</sup> Further, shooting into a moving vehicle does not generally cause it to stop, and drivers struck by bullets are often not immediately incapacitated. Instead, a moving vehicle with a driver who has been shot may continue to travel towards bystanders or the involved officer, who may have failed to seize a small opportunity to take cover and move to a position of safety.<sup>4</sup>

Troubled by the recent shootings, and in response to community concerns, the OIM announced on January 27, 2015 that it would be launching an evaluation of the DPD's policies, practices and training in regard to shooting into moving vehicles.<sup>5</sup> The DPD subsequently announced that it would be conducting a separate internal review of the same subject matter. While the OIM and the DPD agreed on the scope and methodology of the reviews, and there was some sharing of information, the reviews were conducted separately.

Figure 1.1. Timeline of DPD Shootings into Moving Vehicles, 2007-Present



The DPD's review took approximately five months and, on June 8, 2015, the DPD published a revised firearm discharge policy that significantly amended the section that addresses shooting into moving vehicles ("Revised Policy").<sup>6</sup> The Revised Policy is included as Appendix A, and the pre-revision policy as Appendix B.<sup>7</sup>

In accordance with its oversight responsibilities, the OIM has completed its own evaluation of the DPD's policies, practices, and training on shooting into moving vehicles, both before and after the recent policy revision. As part of that evaluation, the OIM obtained relevant policies from 43 of the DPD's peer law enforcement agencies, and the positions of national experts on appropriate policies on shooting into moving vehicles. The OIM also analyzed the eight shootings into moving vehicles since 2007 to determine whether those shootings presented particular tactical themes that should shape the DPD's policy and training on this subject. Finally, the OIM assessed the new training ("Moving Vehicles Training") that the DPD developed on the Revised Policy to determine whether it was consistent with best practices related to training, and effective at conveying the requirements of the Revised Policy to current officers and new recruits.

As a result of that evaluation, and as detailed throughout this Chapter, we are pleased to report that both the Revised Policy and the Moving Vehicles Training are consistent with national best practices, and effectively address many of the tactical themes in the recent shootings into moving vehicles by DPD officers. More specifically, the Revised Policy's new prohibition on shooting into moving vehicles was a necessary change that is likely to help improve both officer and citizen safety. The guidance on tactical decision-making that has been incorporated into the Revised Policy may also help to improve safety during police contacts with suspects in moving vehicles. Further, the Moving Vehicles Training effectively incorporates new thinking about police use of force training, and presents it in a compelling fashion that is likely to encourage officer adherence to the restrictions in the Revised Policy.

It can be difficult for any department to evaluate its own policies and practices and make adjustments, when necessary. Yet, the DPD has done so successfully, and is to be commended for adopting its Revised Policy and developing the Moving Vehicles Training. We believe that these changes will contribute to greater community and officer safety in the future.

## The OIM Review

By ordinance, the OIM is charged with making “recommendations regarding policy issues” in the DPD, and addressing “other issues of concern to the community.”<sup>8</sup> By launching its review of the DPD’s policies, practices, and training on shooting into moving vehicles, the OIM sought to answer three primary questions:<sup>9,10</sup>

1. Was the DPD’s policy on shooting into moving vehicles (as it existed at the time of the recent shootings) in line with national best practices and, if not, does the Revised Policy remedy any deficiencies?
2. Were there common tactical decisions made during the recent shootings that may have increased the likelihood of unsafe outcomes for officers or civilians, including firing into moving vehicles?
3. Does the DPD’s new training regarding the Revised Policy:  
1) provide sufficient guidance on tactical decision-making during potentially risky contacts with suspects in vehicles; and  
2) clearly communicate the DPD’s new restrictions on shooting into moving vehicles?

### OIM Review Method:

The OIM review team conducted a three-part policy and practice review that included:

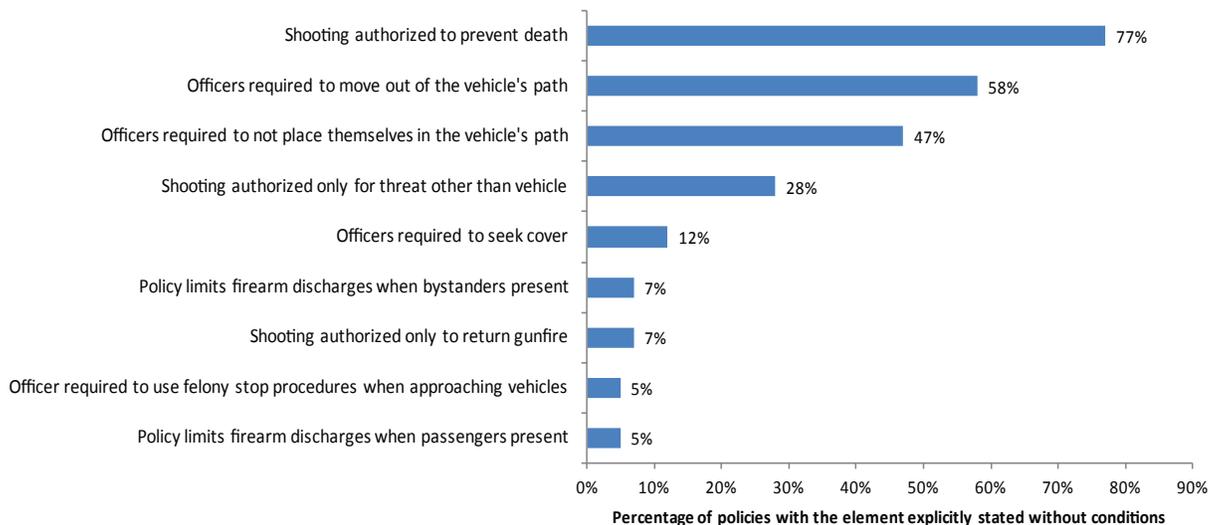
- ◆ An analysis of the DPD’s policies in comparison to the policies of 43 other law enforcement agencies, and best practices identified by the U.S. Department of Justice and recognized law enforcement experts;
- ◆ A case file review of eight OISs involving threats posed by moving vehicles since 2007; and
- ◆ An examination of recruit and current officer training materials and delivery in comparison to national best practices.

## Policies on Shooting into Moving Vehicles: The National Landscape

To assess the current state of national best practices on shooting into moving vehicles, the OIM sought information from the DPD’s peer law enforcement agencies, and the recommendations of national experts on police policy. The OIM identified 43 law enforcement agencies that either serve populations of a similar size to Denver (at least 500,000 residents), are adjacent to Denver, or were identified by the DPD as peer agencies.<sup>11</sup> The OIM obtained their policies on shooting into moving vehicles and compared them to the DPD’s policy, both before and after the June 2015 revision.

Every policy on shooting at moving vehicles contains distinct guidelines that work together to shape officer decision-making. In reviewing these 43 policies, the OIM identified nine guidelines that appeared in multiple policies. By itself, this does not necessarily mean that these guidelines are a necessity or a best practice, but it is indicative of some possible consensus within law enforcement that they may be important. The DPD’s pre-revision policy contained several guidelines found in the policies of its peer departments, placing it in-line with common police practice in many regards. Figure 1.2 presents these common guidelines, and the percentage of comparison agencies that incorporated them into their policies.

*Figure 1.2. Common Elements of Comparison Policies on Shooting into Moving Vehicles*



While many of the comparison policies included specific guidance on tactical decision making during encounters with suspects in vehicles, the DPD's old policy on shooting into moving vehicles did not. Forty-seven percent of the comparison departments' policies emphasize the importance of the tactical decisions leading up to vehicle contacts by, among other things, prohibiting officers from placing themselves into the potential paths of vehicles. For example, the Los Angeles County Sheriff Department's policy states:

[officers] . . . shall not position themselves or remain in the path of a moving motor vehicle. Additionally, they shall not stop in a position directly in front of or behind a driver-occupied, stationary motor vehicle. Such positions are inherently unsafe . . . . In the extraordinary instance that a Department member feels compelled to fire at a motor vehicle or its occupant(s), the conduct of the involved personnel shall be evaluated in accordance with sound tactical principles including . . . cover and/or tactical relocation; safe distance; incident command and tactical leadership; coordinated personnel placement; tactical approach; regard for viable target acquisition; due regard for background, including the location, other traffic, and innocent persons; due regard for crossfire; and controlled fire and management of ammunition.<sup>12</sup>

In contrast, the DPD's pre-revision policy only advised officers to move out of the way of a moving vehicle, "if feasible," without explicit instruction to avoid entering a vehicle's possible path in the first place.<sup>13</sup> As discussed below, due to the number of recent shootings in which DPD officers may have placed themselves into the path of moving vehicles, we believe that this policy gap was significant. In addition, the DPD's pre-revision policy did not contain several other common tactical elements, such as the requirement and importance of utilizing cover, if possible, when contacting suspects in vehicles.

The OIM also researched the opinions of experts and organizations that establish best practices in police policy, and which strongly support a prohibition on shooting into moving vehicles when the vehicle is the sole threat to officer safety. For example, the International Association of Chiefs of Police ("IACP") provides the following language in its model policy:

Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with

deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants.<sup>14</sup>

Likewise, the Police Executive Research Forum ("PERF") recommends that use of force policies should prohibit officers from shooting into vehicles unless occupants are attempting to use deadly force other than with a vehicle. In a recent report on the Miami Beach Police Department ("MBPD"), for example, PERF recommended that the MBPD:

should make it a high priority to update its Use of Force policy to simply and specifically state that officers are prohibited from shooting at vehicles unless the occupants are attempting to use deadly force—other than the vehicle—against them. Such a policy is a nationally accepted best practice.<sup>15</sup>

The OIM reached several conclusions through its evaluation of the policies of peer law enforcement agencies and review of recommendations of national experts. First, the OIM concluded that while the DPD's pre-revision policy mirrored the policies of its peer departments in several ways, it was not fully consistent with national best practice. Further, the DPD's pre-revision policy lacked two key components: 1) sufficient tactical guidance on how best to safely approach encounters with suspects in vehicles, and 2) a straightforward prohibition against shooting into moving vehicles when a threat is posed solely by vehicles.

## Common Tactical Themes in the Recent Shootings into Moving Vehicles

The OIM's conclusions that the pre-revision policy lacked two important elements were bolstered by its review of the recent officer-involved shootings involving moving vehicles. The OIM reviewed all incidents since 2007 in which DPD officers shot into moving vehicles based on a threat posed solely by those vehicles (a total of eight incidents involving nine subject citizens).<sup>16</sup>

Under DPD policy and Colorado law, an officer may fire his/her weapon if the officer reasonably believes that his/her life, or the life of another person, is in danger.<sup>17</sup> All eight of these shootings were determined by the DPD (and in fatal shootings, the Executive Director of Safety, or formerly, the Manager of Safety) to be within policy ("in policy"). The OIM concurred with the majority of these determinations.<sup>18</sup> Yet by evaluating these shootings in the aggregate, several tactical themes emerged:<sup>19</sup>

- 1. The Need to Anticipate a Vehicle's Possible Movement, and Stay out of its Potential Paths:** There were several incidents in which officers may have unintentionally placed themselves into the path of stationary vehicles that later began to move, increasing the level of risk to the officers. By emphasizing in policy and training the importance of avoiding such positions, when possible, officers may be able to avoid similar situations in the future.
- 2. The Ineffectiveness of Shooting into a Moving Vehicle to Stop the Vehicle's Progress:** The shootings reviewed for this project demonstrate the wisdom of the national guidance against shooting into moving vehicles, as it is often ineffective at stopping the vehicles. For example, in three of the eight incidents reviewed for this project, the drivers escaped (to be apprehended later), despite two of those drivers sustaining gunshot wounds. Further, in one of the incidents, an officer shot into a vehicle and struck a passenger (who survived and was not charged with a crime for his involvement in the incident). While every situation presents unique tactical considerations, shooting into moving vehicles was not generally effective at stopping the vehicles in the incidents reviewed for this project. This suggests that officers should focus on using the small window of time when a vehicle may be driving at them to get out of the way, rather than trying to defeat the threat by shooting at the driver.

- 3. The Importance of Adhering to Training on High-Risk Car Stops:** Many of the incidents involved stops of suspects who were being sought by police in connection with possible felony offenses. These stops are inherently risky and there is a greater likelihood of danger for the involved officer(s) and citizens. Strict adherence to training and generally accepted principles on high-risk stops might have made these situations less dangerous.<sup>20</sup>

## The DPD's Revised Policy

On June 8, 2015, the DPD published its Revised Policy and circulated that policy department-wide. While the DPD drafted the Revised Policy as a result of its own separate review, the Revised Policy addresses many of the OIM's concerns with the previous policy, and is consistent with national best practices and model policies in other jurisdictions. The DPD's Revised Policy contains significant enhancements, including the addition of a straightforward prohibition against shooting into moving vehicles.<sup>21</sup> It also provides greater tactical guidance that focuses on preventing rather than merely reacting to dangerous situations involving vehicles by advising officers to "exercise good judgment and not move into or remain in the path of a moving vehicle."<sup>22</sup> The Revised Policy also clarifies generally prohibited behaviors and creates enhanced mechanisms to hold officers accountable for future violations of the policy, if any. The changes include:

1. A new prohibition against discharging firearms at moving vehicles;
2. Clearer language explaining that officers shall not discharge their firearms unless deadly force is presented by something other than a vehicle;
3. Tactical guidance that officers shall not place themselves into or remain in the path of vehicles;
4. An explicit statement that poor tactics or judgment (e.g., "moving into or remaining in the path of a vehicle") shall not be justification for shooting at moving vehicles;
5. Removal of qualifying language that previously instructed officers to move to a position of safety only "if feasible;" and
6. A new requirement within the policy that officers use felony stop procedures whenever reasonably possible.

The Revised Policy represents a significant improvement from the previous version in terms of clarity, tactical guidance, and officer accountability. The OIM recognizes, however, that the strength of a policy may be limited by a department's willingness to enforce it with consistency. Section (d) of the Revised Policy states that "[i]t is understood that the policy in regards to discharging a firearm at moving vehicles, like all written policies, may not cover every situation. Any deviations shall be examined rigorously and on a case-by-case basis."<sup>23</sup> While this clause is an important recognition that certain unforeseen circumstances may make shooting into a vehicle difficult to avoid, it must be carefully applied, and only in very limited circumstances, to avoid allowing the exception to swallow the rule. It will be incumbent upon the Internal Affairs Bureau, the Conduct Review Office, the Chief of Police, the Executive Director of Safety ("EDOS"), and the OIM to ensure that such a caveat does not work against the spirit and letter of the new rules in the Revised Policy.

## Training Regarding the Revised Policy

### Best Practices Relating to Training

The OIM evaluated the DPD's new training on the Revised Policy by researching current best practices related to training, and then assessing the DPD's new training in light of those national standards. Through the intervention of the U.S. Department of Justice ("DOJ") in various cities, and the analysis of outside experts like PERF, law enforcement agencies are being encouraged to rethink old approaches to training on using force. Some of the key themes of the new approach are:

1. Emphasizing scenario-based and role-play training to improve officer decision-making, de-escalation, and verbal and defensive tactics.<sup>24</sup> While classroom training is undoubtedly valuable, scenario-based training and role-play are excellent tools for teaching officers to more effectively defuse tensions and to end encounters safely and without the use of force;<sup>25</sup>
2. Conducting reviews of major incidents, such as shootings and other uses of force, and using them as learning opportunities to be incorporated into training for the benefit of other members of the department.<sup>26</sup> Further, the DOJ recommends routinely analyzing use of force reports to identify trends that may indicate deficiencies, or areas of opportunity, in training;<sup>27</sup>
3. Conducting regular refresher in-service trainings on critical department policies, such as the use of force policy. For example, in a recent settlement agreement with the Albuquerque Police Department, the District Court stipulated that officers receive 24 hours of use of force training on an annual basis, including training on developments in applicable law and department policy, if necessary;<sup>28</sup> and

4. Delivering comprehensive and timely training when new policies are enacted. This training should go beyond simply giving officers a copy of the policy or reading it aloud to them. Training on policy changes should not be delayed until the next in-service training, but should be delivered quickly when a new policy is enacted.<sup>29</sup>

## Changes to the DPD's Training

In connection with the Revised Policy, the DPD made a number of enhancements to its training that are consistent with the above approaches and are, by-and-large, excellent. The DPD's new training curriculum and training materials are principally based on training developed by the Tempe, Arizona Police Department. The new training consists of two chief components:

1. Enhancements to the existing training on conducting high-risk vehicle stops; and
2. A new training that focuses exclusively on responses to moving vehicles, including simulations of shoot/don't shoot scenarios ("Moving Vehicles Training").

OIM staff observed two trainings delivered to recruits going through the Denver Police Academy ("the Academy") in April 2015: the previous training on high-risk stops and the training on legal issues related to use of force. In addition, OIM staff members received the new Moving Vehicles Training in a one-on-one classroom setting with a training lieutenant. Several important themes were emphasized during the Moving Vehicles Training, including:

1. **Officer Safety as a Reason not to Shoot into Moving Vehicles:** Officers may be understandably hesitant to embrace policy changes if they believe that the changes will make an already dangerous job even riskier. The Moving Vehicles Training effectively addresses this concern by repeatedly illustrating how moving out of the way of a moving vehicle is usually far safer than shooting at its driver. The training includes several videos that generally illustrate the likely outcomes of various tactical decisions through both real and simulated scenarios.

- 2. A Focus on Using Field Experience to Promote Organizational Learning:** The new training consistently focuses on officers using their own and others' experiences from the field to continually learn and develop new habits. For example, officers are now expected to debrief every high-risk stop with supervisors and peers at roll-call the following day, even if those stops were completed safely and successfully. We are told that this model has been successfully used by the Metro/SWAT unit. This approach encourages officers to continue learning beyond the Academy setting, and creates opportunities to collectively troubleshoot the best possible tactics for challenging situations involving contacts with moving vehicles.
- 3. The Importance of Good Decision-Making and Risk Management:** The training acknowledges that in high-risk situations, circumstances can deteriorate quickly. This deterioration often results in police officers making split-second decisions on how to respond to suspects who may be mentally ill, under the influence of drugs and/or alcohol, or fiercely seeking to avoid capture. The training encourages officers to think through the best approach to handling the possible risks presented by these scenarios before initiating contact, when possible.
- 4. Extensive Tactical Training on Conducting Vehicle Stops:** A large component of the training focuses on providing guidance to officers on what to do and what not to do when approaching suspects in vehicles. The content is interactive and provided through a variety of media, including videos and simulation training. The videos demonstrate important concepts like reaction time and effective alternatives to shooting by illustrating how various scenarios played out. In addition, the Academy received approval to purchase four MILO Range Pro scenario training systems that can be signed out of the Academy and used by officers within each unit to conduct shoot/don't shoot scenario trainings.

The OIM believes that this new training is promising. The focus on tactics to avoid the use of deadly force, and the creation of an expectation that officers will debrief their peers after every high-risk stop are particularly encouraging. The OIM commends the DPD for moving quickly but thoughtfully to educate a group of trainers on these changes, who were to disseminate that training department-wide relatively soon after the adoption of the Revised Policy.

It is unclear at this time if and how often trainings on high-risk stops and responses to moving vehicles will be revisited. It is the OIM's understanding that, to date, the DPD has planned one wide-scale in-service training in 2015. The Academy indicated that training may be required of active officers every year, but this has yet to be confirmed. The OIM recommends that the DPD follow the recommendations of both the DOJ and PERF and provide refresher training on high-risk stops and responses to moving vehicles regularly. The OIM also recommends that the Academy update its classroom lectures and scenario training often to incorporate lessons from actual incidents involving DPD officers.

In addition, while “train the trainer” models are an ideal method for efficiently delivering training to a large number of officers, fidelity to the training model may sometimes be difficult to achieve. Trainers may also face resistance when training on the Revised Policy in their district or unit, as some officers might feel as though the changes compromise their safety.<sup>30</sup> To ensure that the new training is faithfully delivered and well-received, the OIM encourages the Academy to explore ways to ensure fidelity to the training models. This could include having Academy trainers observing trainings delivered at the districts and specialized units, or reviewing videotapes of those trainings to ensure that they are being delivered in consistence with the DPD's goals.

## **Conclusion**

National experts and the DPD have recognized the opportunity to examine and adjust policies and training to better prepare officers for potentially dangerous situations involving moving vehicles. The OIM commends the DPD for its recent policy and training changes regarding moving vehicles, which address the OIM's principal concerns. The DPD's Revised Policy and Moving Vehicles Training are consistent with national best practices, and, if rigorously enforced and delivered, will likely enhance safety for both DPD officers and other Denver citizens in the future.

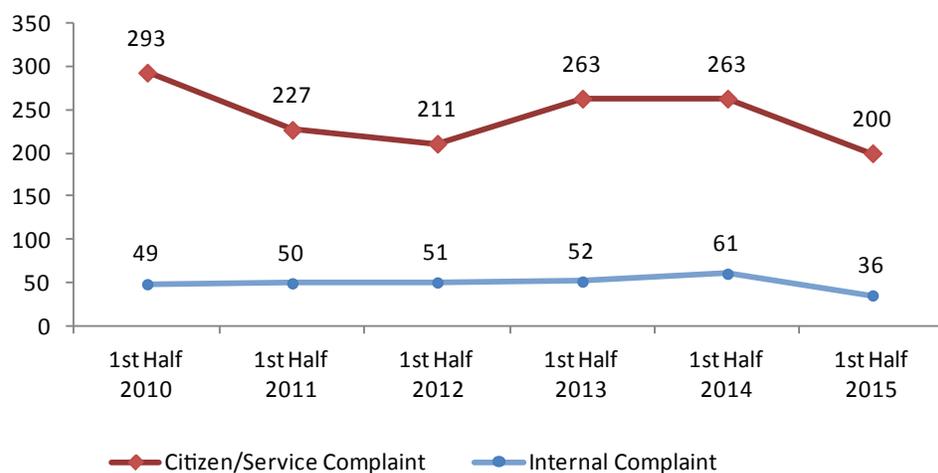
# 2

## Denver Police Department (DPD) Monitoring

### New Complaints and Allegations

Figure 2.1 presents the number of DPD Internal Affairs Bureau (“IAB”) complaints recorded during the first half of 2015, and for the same time period in each of the previous five years.<sup>31,32</sup> These numbers do not include scheduled discipline cases, such as when a DPD officer violates a traffic law, gets into a preventable traffic accident, or misses a court date, shooting qualification, or continuing education class. The DPD recorded 200 community/service complaints and 36 internal complaints against Denver police officers during the first half of 2015 (January 1 - June 30).<sup>33</sup> Both numbers represent a reduction in complaints when compared to the same time period in 2014. Community and service complaints decreased by approximately 24 percent and internal complaints dropped by approximately 41 percent.

*Figure 2.1: Complaints Recorded in First Half 2010 - First Half 2015*



## Most Common Complaint Specifications

Table 2.1 presents the ten most common specifications contained in both internal and community complaints recorded during the first six months of 2015.<sup>34</sup> Because single complaints may contain more than one specification, the total presented represents more than 100 percent of complaints (there were 461 specifications contained in 236 complaints). The most common specification recorded by IAB in the first half of 2015 was “discourtesy,” which is used when officers allegedly violate a departmental rule and regulation that requires them to be “orderly, attentive, respectful, and exercise patience and discretion in the performance of their duties.”<sup>35</sup> The second most common specification was “responsibilities to serve public,” a specification that covers a wide range of alleged misconduct regarding an officer’s responsibility to “...serve the public by direction, counsel, and in other ways that do not interfere with the discharge of their police responsibilities . . . . [and] . . . respect the rights of individuals and perform their services with honesty, zeal, courage, discretion, fidelity, and sound judgment.”<sup>36</sup>

### New Commander in the Internal Affairs Bureau

In July 2015, Denver Police Chief Robert White announced 55 personnel changes within the DPD.<sup>37</sup> These changes included several transfers into and out of the Internal Affairs Bureau, including a change to the IAB command staff.<sup>38</sup>

Effective July 31, 2015, former District 3 Commander Joseph Montoya took over command of IAB, and former IAB Commander Ron Thomas became Commander of District 5. The OIM looks forward to working with Commander Montoya and his staff on IAB investigations involving DPD officers in the future.

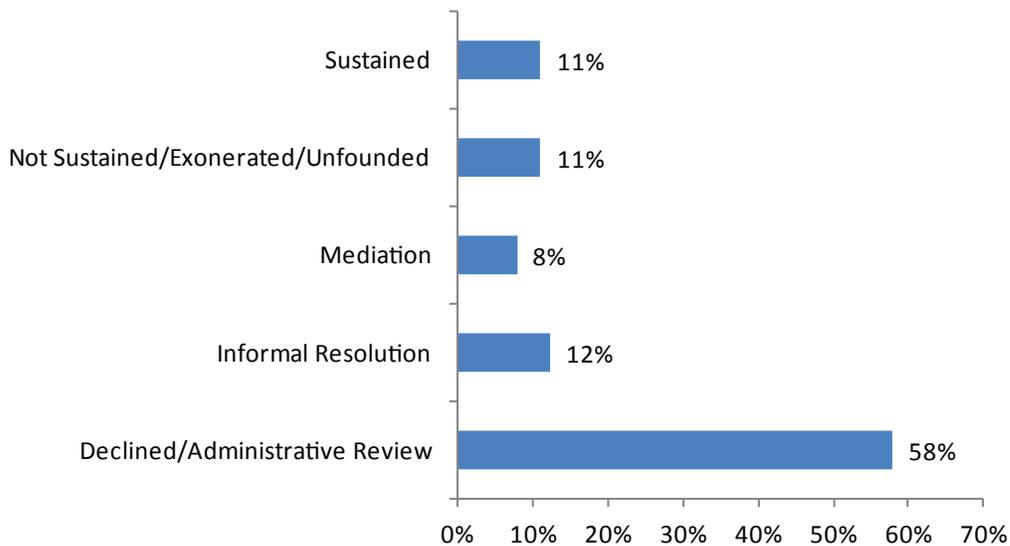
*Table 2.1: Most Common Specifications Recorded in First Half 2015*

Specification	Percentage
Discourtesy	31%
Responsibilities to Serve Public	30%
Duty to Obey Department Rules	25%
Inappropriate Force	14%
Conduct Prohibited by Law	6%
Conduct Prejudicial	3%
Impartial Attitude	3%
Failure to Make or File Reports	2%
Failure to Give Name and Badge Number	2%
Duty to Protect Prisoner	2%
Total Number of Complaints	236

## Complaint Screening and Outcomes

Figure 2.2 shows the final disposition of 254 internal and community complaints closed during the first six months of 2015.<sup>39</sup> A smaller percentage of cases was declined than in 2014 (58 percent vs. 66 percent) and a larger percentage was resolved informally (12 percent vs. 8 percent) or determined to be not sustained, exonerated, or unfounded (11 percent vs. 6 percent). As in 2014, 11 percent of complaints closed by DPD IAB in the first six months of 2015 were sustained, which means they were found to be supported by a preponderance of the evidence.

*Figure 2.2: Outcomes on Complaints Closed in the First Half of 2015*



### The DPD Moves Forward with the Purchase of Body Worn Cameras

In March 2015, the OIM issued its 2014 Annual Report in which it evaluated six months of data from the DPD's Body Worn Camera ("BWC") pilot project.<sup>40</sup> In that report, the OIM made nine actionable recommendations regarding the DPD's BWC policy and decisions regarding any future deployment of BWCs. To view this report, please visit <http://denvergov.org/content/denvergov/en/office-of-the-independent-monitor/reports.html>.

In early July 2015, the City of Denver and the DPD announced their intent to contract with Taser International, Inc. to purchase 800 BWCs and five years of associated data storage at a cost of \$6.1 million.<sup>41</sup> BWCs can be effective tools for law enforcement, as they may provide objective accounts that are useful when investigating complaints of misconduct against officers. The OIM will continue to monitor the DPD's BWC policy and practices as the program is rolled out department-wide.

### The OIM Recommends that the DPD Update its Policy on Mental Health Holds

On July 20, 2012, now convicted shooter James Holmes murdered 12 movie goers and injured 70 others in a crowded movie theater. Soon after the incident, it was learned that Holmes had threatened and intimidated his psychiatrist prior to the shooting, but he had not been placed on an emergency mental health hold. The following year, Governor John Hickenlooper created a task force to examine statutory definitions relating to civil commitment, and to consider consolidating that statute with similar statutes dealing with alcohol and substance abuse holds. Though legislation related to the work of the task force failed to pass, the legislature did make two important definitional changes to the statute regarding mental health holds. First, it added a definition of what constitutes a “danger to self or others,” which had not existed previously. Second, it shortened and clarified the definition of “gravely disabled.”

Under Colorado state law, a peace officer may take a citizen into custody and place them in a facility for a treatment and evaluation period of seventy-two hours if that citizen appears to have a mental illness and appears to be an imminent danger to self or to others, or appears to be gravely disabled.<sup>42</sup> DPD policy provides guidance to officers on contacts with possibly mentally ill individuals in Operations Manual Section (“O.M.S.”) 104.30, but lacks up-to-date definitions and statutory criteria that describe when and under what circumstances officers can and should take someone into custody on a mental health hold. The OIM recommends that the DPD add a section to O.M.S. 104.30 pertaining specifically to emergency mental health holds, which should contain three components:

- An articulation that citizens must meet one of three criteria (i.e., danger to self, danger to others, and/or gravely disabled) in order to be placed on an emergency hold. While these criteria are articulated in a recent training bulletin issued by the DPD in September 2015, the DPD has not yet incorporated them into the relevant section of the O.M.S;<sup>43</sup>
- A definition of danger to self or others that tracks the current statute; and
- An up-to-date statutory definition of gravely disabled. While this definition was significantly changed by the legislature in 2013, the current DPD policy tracks the old version of the statute which may cause confusion for officers about who may be taken into custody on mental health holds.

## Significant Discipline on Sustained Cases (January 1 - June 30, 2015)

### Terminations

■ On July 10, 2014, a female struggled with police officers while they attempted to handcuff her, spitting in one officer's face and kicking a second officer in the face while he placed her in the back of a patrol car. She was arrested and transported to a district station. While in the holding cell, the female refused to relinquish her belt and shoes, which quickly led to a struggle with the male officer who had been previously kicked. The officer placed his right knee in the area of her neck and pinned her down on a bench. Following the struggle, the female is seen on video apparently losing consciousness and sliding off the bench, possibly due to the pressure that the male officer had placed on her neck. The officer failed to get medical attention for the female, failed to report the use of force to command staff, and also failed to document the use of force, all of which are required by DPD policy. The officer was terminated. He appealed that decision, and a Hearing Officer modified the discipline to two 30-day suspensions and a termination held in abeyance (i.e., a suspended termination, or probation) for two years pending no further similarly serious acts of misconduct. The Office of the Executive Director of Safety has appealed this decision to the Civil Service Commission.

### Resignations

■ On June 8, 2014, a detective was arrested by the Thornton Police Department after police were called to his home for an alleged domestic violence incident. During this incident, he was allegedly intoxicated and fired six rounds from a handgun through the floor of a second story bedroom into a first story living room. Police found his wife and two children huddled together in a bathroom. He pled guilty to Prohibited Use of a Weapon, Reckless Endangerment, and Harassment by Telephone, and was sentenced to probation. As a condition of his probation, he was prohibited from carrying a weapon, thus disqualifying him from serving as a DPD officer. The detective resigned prior to a discipline finding.

- On July 26, 2014, an officer took an unattended backpack from a station house without authorization or telling anyone, and placed it into the trunk of his service vehicle, instead of taking the property to the Property Bureau. He was seen on camera placing the backpack in a paper bag, taking it into the back of the parking lot, crouching down out of camera view, placing it in the trunk of his patrol car, and then bringing another bag back into the station. The backpack and its contents went missing. The officer also allegedly lied during the IAB investigation. The officer resigned prior to a discipline finding.
  
- On August 16, 2014, an off-duty officer was arrested at the pool of his apartment complex by law enforcement officers from another jurisdiction after 911 was called due to his extreme level of intoxication. The results of a portable breath test indicated that his blood alcohol level was 0.257. The officer was criminally charged and pled guilty to disorderly conduct. The officer resigned prior to a discipline finding.
  
- On September 29, 2014, several officers responded to a 911 call in which a woman's ex-boyfriend, who she knew to carry a gun, allegedly broke into her home. Officers were warned previously that the suspect would not be taken alive and would engage in a shoot out with police. While transporting the victim and her children to a safe house, the officer drove the victim to three different locations where the victim believed the suspect might be. The suspect was seen kneeling beside his truck at the third location. The officer drove away to avoid being detected, but stopped after a short distance, while other officers arrived on the scene to make the arrest. The officer then left his police car to assist in the arrest, leaving the victim and two children unattended and potentially vulnerable. There were also concerns that he lied to IAB during the investigation of the incident. The officer resigned prior to a discipline finding.
  
- Sometime between the night of November 27 and the early morning hours of November 28, 2014, an off-duty officer threw his intimate partner's belongings from a balcony, possibly including his partner's car keys. The car went missing the next day. The officer also allegedly lied to police during their investigation and during an IAB investigation. He was also alleged to have carried his service weapon while intoxicated, displaying it in a bar, and committing offensive acts. The officer resigned prior to a discipline finding.

## Other Significant Cases, Including Suspensions for Ten or More Days

■ On July 26, 2014, an officer working off-duty in a bar downtown escorted an intoxicated male patron out of the establishment. The officer placed the male in handcuffs and called for a vehicle to take him to detox. The male's brother confronted the officer and asked the officer to reconsider. When the officer refused, the brother allegedly began verbally abusing the officer. Although the brother did not make any threatening gestures to the officer, the officer advanced on him and aggressively shoved him to the ground, causing him to fall backwards onto concrete steps. The use of force was captured by a nearby HALO camera. The sergeant investigating the use of force was briefed by the officer, reviewed the HALO footage, and determined that the use of force did not require further investigation. Several weeks later, the male and his brother filed a complaint alleging inappropriate force, resulting in an IAB investigation of the incident. The officer was ultimately suspended for 30 days for the inappropriate use of force, and the sergeant received a written reprimand for failing to recommend further investigation into the incident. The officer appealed this decision, and in August 2015, a Hearing Officer reversed the discipline order. The Office of the Executive Director of Safety is appealing this decision to the Denver Civil Service Commission.

■ On September 2, 2014, several officers responded to a disturbance call between two families. A victim mistakenly identified an individual as being involved in the disturbance. When officers attempted to contact him, he fled into a home where officers were able to restrain and place him into custody. During the encounter, an officer confronted a female at the scene who was upset with the police presence. The officer yelled and inappropriately continued to escalate the argument. The officer also failed to provide his name and badge number in writing after individuals at the scene requested it. The officer has prior sustained complaints, and was thus suspended for ten days and fined two days' pay.

■ In June 2009, a detective was assigned to conduct a follow-up investigation of a cold case. The District Attorney's Office requested that the detective obtain an arrest warrant for the suspect, but the detective did not obtain the warrant in a timely manner. The detective was suspended for ten days.

■ On October 2, 2014, several officers and an ambulance responded to an office to assist with a male who was thought to be a suicide risk. One officer entered the office carrying a pepper ball gun without the safety engaged. The officers handcuffed the man without incident. While waiting for the elevator to transport the man from the building, the officer accidentally discharged the weapon and a single pepperball projectile was fired in the hallway. Several parties that were in the area, including the handcuffed individual and his case manager, were exposed to the oleoresin capsicum (“OC”, or pepper powder) from the pepper ball.

The officer was suspended for ten days and fined four days’ time, to run concurrently. The officer appealed this decision, and a Hearing Officer affirmed the four days of fined time but reversed the suspension. The Office of the Executive Director of Safety appealed the Hearing Officer’s decision and that appeal is pending.

■ On January 14, 2015, an officer responded to a hit-and-run accident involving property damage to a residential fence. The officer failed to conduct a thorough investigation and failed to accurately complete a required report. The report omitted the presence of a broken mirror at the scene and potential video evidence from a nearby surveillance camera. Information contained on the mirror could have been used to identify the make and model of the suspect’s vehicle and the surveillance video was found to show the suspect taking a turn too sharply and crashing into the fence. The officer, who had an extensive disciplinary history, received two ten-day suspensions to run concurrently. The officer has appealed one aspect of this decision.

### **The OIM Recommends Specification for Careless Handling of Less-Lethal Projectile Weapons**

Colorado state law defines a firearm as any handgun, automatic, revolver, pistol, rifle, shotgun, or any other instrument or device capable or intended to be capable of discharging bullets, cartridges, or other explosive charges.<sup>44</sup> Pepperball systems, by contrast, are air-powered launch devices that release spheres filled with pepper powder, which irritates the nose, lungs, and breathing.<sup>45</sup> While the DPD’s discipline handbook includes a specification for careless handling of firearms, it does not include a specification for careless handling of less-lethal projectile weapons that are not firearms, such as pepperball guns. Related to the case above, and to emphasize the importance of careful handling of less-lethal projectile weapons, the OIM recommended that the DPD and the Executive Director of Safety consider adding a specification for careless handling of less-lethal projectile weapons to the discipline handbook.

■ On February 11, 2015, several officers were involved in a sting operation targeting prostitution customers. During a break, a male officer made an inappropriate comment to a female officer about her involvement in the operation. Although a supervisor ordered the male officer to have no further contact with the female officer, the male officer contacted her through text messages and a phone call. The officer received a ten-day suspension for disobeying an order and was fined two days' pay for failing to demonstrate respect for a fellow officer.

## Appeals on Significant Discipline Cases Closed Prior to January 1, 2015 and Decided or Pending With the Civil Service Commission in 2015

■ In March 2013, a detective failed to properly investigate a theft case resulting in an innocent citizen being unnecessarily arrested. The detective overlooked important exculpatory information that another detective had previously added to the case file, and failed to provide the victim with a photographic array from which the victim could attempt to identify the guilty party. In October 2014, the Executive Director of Safety ordered a suspension of ten days, and the detective appealed the decision. In April 2015, a Civil Service Commission Hearing Officer determined that the level of seriousness of the misconduct was misclassified by the Executive Director of Safety's office, and "remanded" the case back to the Deputy Director of Safety to determine an appropriate penalty under a lesser misconduct category. The Office of the Executive Director of Safety appealed this decision, and the Civil Service Commission reversed the Hearing Officer's decision and reinstated the original suspension.

■ In March 2014, an officer was confronting a suspect who had fled from a traffic stop and entered another vehicle. The officer was drawing his handgun and turning on the attached flashlight as he stepped out of the car. The police vehicle's door swung back and threw him off-balance, causing him to unintentionally discharge a round. The bullet entered the suspect vehicle's windshield, and the suspect sustained minor injuries from the flying glass. In November 2014, the officer was suspended without pay for 18 days. He appealed the decision, and a Hearing Officer upheld the suspension in June 2015. He appealed the Hearing Officer's decision, and an appeal is currently pending with the Civil Service Commission.

■ In May 2014, an officer requested time off to attend an out-of-town family event. After being denied part of the time requested, she engaged in dishonest and manipulative conduct by talking to different supervisors, and misleading them regarding what others knew and had already approved in regard to her request. She then made deceptive statements to IAB investigators. In October 2014, the officer was terminated for this misconduct, and appealed that decision. In May 2015, a Hearing Officer modified the discipline from

termination to 90 suspended days on one of the rule violations, but affirmed the termination order on another rule violation. The officer has appealed that decision as well, and the appeal is pending with the Civil Service Commission.

■ An officer was accused by a citizen of sexual misconduct after he was called to a homeless shelter on a disturbance call in July 2014. The officer made contact with the woman allegedly causing the disturbance, then drove her to find temporary lodging for the night. Then he drove her to several hotels and motels in and out of Denver looking for a vacancy, finally finding an available room at approximately 3 a.m. He helped her check-in to her room and left the hotel 40 minutes later. The officer failed to call out his mileage as required when transporting a female, failed to get permission to travel outside of city limits, and failed to notify dispatch of his arrival at the destination. While the evidence was inconclusive about the allegation of sexual misconduct, the officer was suspended 20 days for his violations of DPD policy. He appealed the decision, and it was upheld by a Hearing Officer in April 2015. He has appealed that decision as well, which is currently pending with the Civil Service Commission.

## Commendations and Awards

Every year, there are noteworthy examples of officers engaging in actions that reflect Departmental values of honor, courage, and commitment to community service. Below is a list of commendations awarded to DPD officers in 2015, followed by a list of definitions for select commendations.

*Table 2.2 Commendations Awarded to DPD Officers in First Half 2015*

Commendation	Number	Percentage
Commendatory Action Report	132	45.2%
Citizen Letter	53	18.2%
Official Commendation	45	15.4%
Letter of Appreciation	14	4.8%
Unspecified	13	4.5%
Commendatory Letter	11	3.8%
Life Saving Award	6	2.1%
Other than DPD Commendation	4	1.4%
Top Cop	3	1.0%
Citizens Appreciate Police	2	0.7%
Merit Award	2	0.7%
Chief's Unit Citation	1	0.3%
Community Service Award	1	0.3%
Distinguished Service Cross	1	0.3%
Medal of Valor	1	0.3%
Outstanding Volunteer Award	1	0.3%
Service Award	1	0.3%
Unit Commendation	1	0.3%
<b>Total</b>	<b>292</b>	<b>100.0%</b>

Note: Percentages may not sum up to 100 due to rounding

*Table 2.3: Commendation Types and Descriptions*

Commendation Type	Description
Commendatory Action Report	A Commendatory Action Report is generated when the Department receives complimentary information about an officer from a member of the public; the commendable action generally does not rise to the level of an official Departmental award.
Community Service Award	Awarded to an employee who, by virtue of sacrifice and expense of time, fosters or contributes to a valuable and successful program in the area of community affairs, or who acts to substantially improve police/community relations through contribution of time and effort when not involved in an official police capacity.
Department Service Award	Awarded to an individual who, through personal initiative and ingenuity, develops a program or plan (for non-leadership type of actions) which contributes significantly to the Department's objectives and goals.
Distinguished Service Cross	Awarded to employees who are cited for gallantry not warranting a Medal of Honor or a Medal of Valor.
Leadership Award	Awarded to an individual in a position of command or supervisory authority for a single or a series of incident(s)/event(s)/initiative(s) where the leadership and management actions of the individual were such that the successful outcome of the incident/event/initiative was greatly influenced by the timely, accurate, and decisive nature of the individual's actions, and which contributed significantly to the Department's mission, vision and values.
Life Saving Award	Awarded to employees who, through exceptional knowledge and behavior, perform a physical act which saves the life of another person and there is no danger to the officer's life.
Medal of Honor	Awarded to employees who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty.
Medal of Valor	Awarded to employees who distinguish themselves by extraordinary heroism not justifying the award of the Medal of Honor.
Merit Award	Awarded to employees who distinguish themselves by exceptional meritorious service who, through personal initiative, tenacity and great effort act to solve a major crime or series of crimes, or through personal initiative and ingenuity, develop a program or plan which contributes significantly to the Department's objectives and goals.

## Chapter 2 :: DPD Monitoring

Officer of the Month	Awarded to employees who represent the Department in all facets of law enforcement with a commitment to excellence, in support of the values of the organization, and a desire to represent the department in the manner in which they were sworn.
Official Commendation	Awarded to employees, who by exemplary conduct and demeanor perform their assigned functions in an unusually effective manner.
Purple Heart	Awarded to employees who are killed, seriously wounded or seriously injured in the performance of an official action.
STAR Award	Awarded to employees who, through exceptional tactics, act to successfully resolve a critical incident, thereby setting a standard for safety and professionalism to which all officers should aspire.

## Highlighted Commendations

### OFFICIAL COMMENDATION

An officer responded to a family disturbance in which the complainants indicated that their adult son, who suffered from mental health issues and was currently off his medication because of financial difficulties, was threatening their lives. The officer quickly de-escalated the situation and recognized that the son's hunger was aggravating the situation. In addition to providing resources and information to assist the family, the officer accompanied the son to a nearby restaurant and shared a meal with him. The officer was commended for de-escalating a volatile situation.

### COMMENDATORY LETTERS/CITIZEN LETTERS OF APPRECIATION

Officers received multiple commendatory letters and citizen letters of appreciation for their participation in the FBI Denver Rocky Mountain Innocence Lost Task Force. The task force recovered six minors from commercial sexual exploitation and arrested two traffickers in the week preceding and during the 2015 National Western Stock Show. In recent years, the task force has recovered more than 100 minors and helped train thousands of community members.

### COMMUNITY SERVICE AWARD

A tree was uprooted and stolen from a privately funded park in Denver. Upon learning of the theft, an officer and police dispatcher donated a larger, more expensive replacement tree along with several additional trees and bushes. In addition, the officer and dispatcher volunteered their Saturday to help plant the trees and bushes in an effort to enhance the park. For his selflessness and community spirit, the officer was awarded the Community Service Award.

## OFFICIAL COMMENDATION

Officers responded to a report of a suicidal female who had barricaded herself inside the women's rest room of a restaurant. The officers quickly established communication with the individual and confirmed that she was emotionally distraught and threatening suicide. While maintaining verbal dialogue, the officers bypassed the locked door and positioned the camera from a body worn camera over the top of the door. The officers could see the female laying on the bathroom floor actively cutting her wrists with a razor blade. They implemented a sound tactical plan, entered the bathroom, and took the woman into custody where she received the necessary medical and mental health care. The officers were commended for bringing a dangerous situation to a peaceful resolution using their CIT training and a creative tactical response that included the use of new technology.

## CITIZEN LETTER OF APPRECIATION

A resident wrote to commend two DPD officers who assisted her and her mother when their vehicle lost power on Peña Boulevard on the way to the airport. A tow truck was unavailable for two hours and the two were running late for a flight to visit a critically ill family member. The resident's mother had undergone a recent hip surgery in addition to requiring full time oxygen. Officers arranged for their car to be towed, drove the two to the airport, and helped push the mother's wheelchair and portable oxygen tank, arriving at the gate with five minutes to spare. The resident relayed that the kindness shown to her and her mother was extremely comforting in a difficult situation.

## LIFE SAVING AWARD

Officers were dispatched to an intersection where a victim was found on the ground. The individual was bleeding profusely from his chest and had stopped breathing. The officers responded quickly by ensuring the victim's airway was clear, performing CPR, and applying clotting powder and bandages to the wound. They continued to work for several minutes until paramedics arrived and took over. Several medical professionals contacted the DPD to commend the actions of the officers, who were given a Life Saving Award for their quick response and selfless actions.

# 3

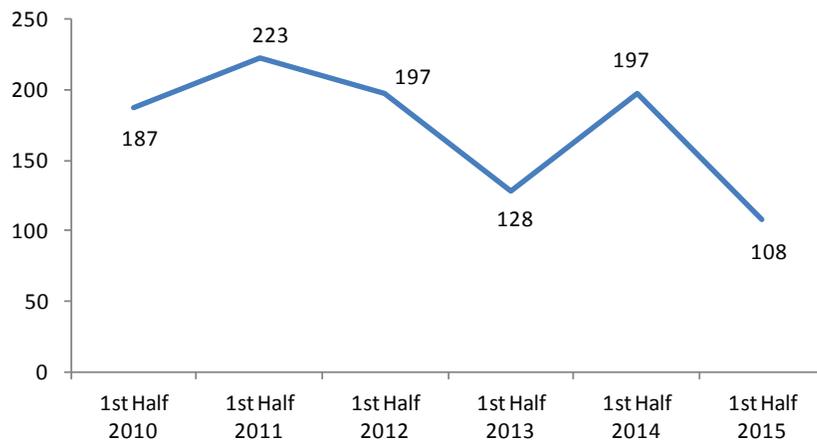
## Denver Sheriff Department (DSD) Monitoring

### New Complaints and Allegations

In the first half of 2015, the DSD recorded 108 complaints against sworn staff (deputies and supervisors, collectively referred to as “deputies” unless otherwise noted).<sup>46,47</sup> This figure represents a 45 percent decrease in recorded complaints compared to the same time period in 2014. The complaint counts do not include “reprimand” cases, those cases filed against civilian DSD employees, or complaints received by DSD IAB that do not allege misconduct and, as such, are sent to the jails to be handled by jail supervisors.<sup>48</sup>

In 2015, the OIM grew concerned over this decrease in recorded complaints after noticing that many complaints against deputies received by the OIM and forwarded to the DSD’s IAB had not been entered into the IAB database and were not being fully investigated.

*Figure 3.1: Complaints Recorded in First Half 2010 - First Half 2015*



### Chapter 3 :: DSD Monitoring

In addition, in early 2015, the OIM identified a backlog of complaints that had been received and classified by IAB as requiring either a formal or informal investigation, but that had not been entered into the IAB database and thus had not yet begun to be investigated.<sup>49</sup> Following conversations with the Executive Director of Safety and DSD personnel, who took the issue very seriously, the new leaders in IAB are now working to identify which of these complaints should actually be investigated by IAB and which should be handled by the jails themselves.

#### New Leadership in DSD IAB

The past year has been a time of transition in the leadership of DSD IAB. As the OIM has previously reported, former Arapahoe County Sheriff Grayson Robinson took the reins of IAB in September 2014, and made notable progress on implementing reforms within the unit, including adding civilian investigators to its staff. Yet, Sheriff Robinson's appointment was a temporary one, and in early 2015, he was replaced by DSD Captain Paul Ortega. Later that year, in August, Captain Ortega was himself replaced. Major Jodi Blair was appointed as the head of both IAB and the Conduct Review Office. Senior Investigator Armando Saldate now runs day-to-day operations in IAB under Major Blair's overall command.

The job before Major Blair and Mr. Saldate is considerable. While the OIM has seen some progress in IAB, many investigations are still not being completed in a timely fashion. The OIM looks forward to working with Major Blair and Mr. Saldate as they seek to enhance IAB's performance in the months ahead.

## Most Common Complaint Allegations

Table 3.1 shows the frequency of all DSD IAB allegations recorded in the first six months of 2015.<sup>50</sup> Because single complaints may contain more than one allegation, the total presented represents more than 100 percent of complaints (there were 163 allegations contained in 108 complaints). The most common allegation recorded by IAB in the first half of 2015 was improper procedure, which was seen in 53 percent of all complaints.<sup>51</sup>

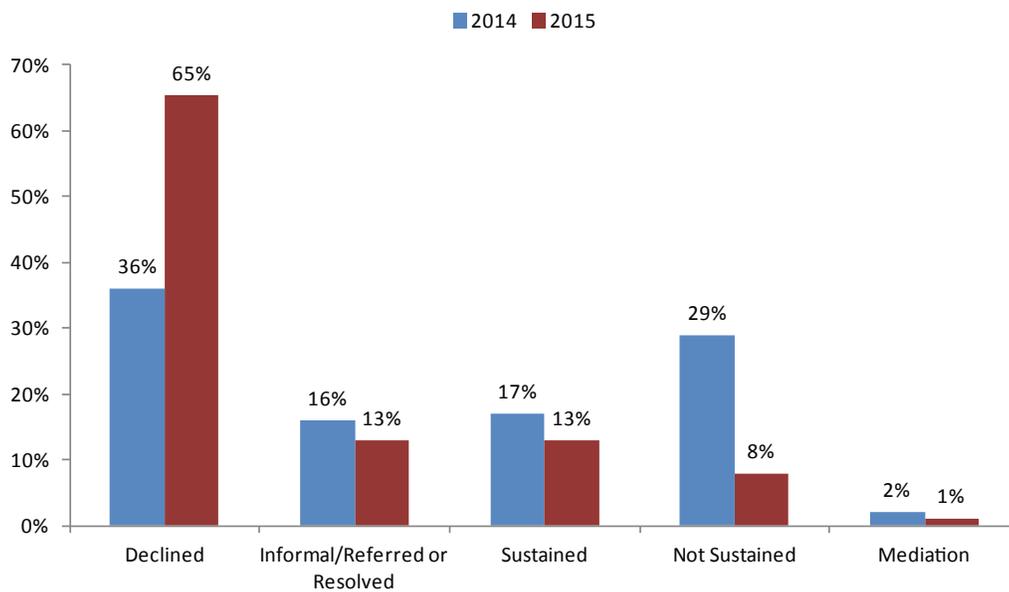
*Table 3.1: Complaint Allegations Recorded in First Half 2015*

Allegations	Percentage
Improper Procedure	53%
Improper Conduct	35%
Excessive Force	9%
Law Violation	8%
Lost Property	5%
Service Complaint	2%
Total Number of Complaints	108

## Complaint Screening and Outcomes

Figure 3.2 reports the outcomes of complaints closed in the first half of 2015, as well as outcomes for the same time period in 2014, for comparison. 173 complaints were closed in the first six months of 2015. Thirteen percent of those cases resulted in sustained findings. The rate of cases declined nearly doubled, increasing from 36 percent to 65 percent. In the same time period, the rate of complaints investigated but not sustained (including complaints in which allegations were unfounded or exonerated) decreased from 29 percent to 8 percent.

*Figure 3.2: Complaints Recorded in First Half 2014 and First Half 2015*



### An Update on Reform of the Denver Sheriff Department

In May 2015, two independent consultant groups issued a report detailing the findings of their review of the Denver Sheriff Department. The report included 277 recommendations that address nearly every area of the department's operations, including leadership, supervision, strategic planning, organization and administration, jail management and operations, staffing and performance optimization, training, human resources, technology, emergency preparedness, use of force, and internal affairs.

Following the release of that report, Mayor Michael B. Hancock created the DSD Reform Implementation Team, led by the Department of Public Safety's Executive Director, Stephanie O'Malley, to develop a plan that prioritizes its recommendations. In addition to meeting regularly as a group, members of this implementation team have organized area-specific action teams comprised of DSD personnel, city employees from various departments, and community members. With guidance from Executive Director O'Malley, these teams are in the process of working through the individual recommendations and developing action plans, and will report back over the next several months. To fund the reforms, Mayor Hancock's Proposed 2016 Budget includes 24 million dollars dedicated to implementing high-priority recommendations, such as hiring more deputies and providing additional use of force training to deputies and supervisors.<sup>52</sup> With former Manager of Safety Al LaCabe, Independent Monitor Nick Mitchell is co-chairing the Use of Force and Internal Affairs Action Team, which is tasked with developing implementation plans for the consultants' recommendations relating to use of force and IAB. The Monitor is also representing the Use of Force and Internal Affairs Action Teams on the DSD Reform Implementation Team.

More information on the reform process and recent updates can be found among the Mayor's official programs and initiatives at <http://www.denvergov.org/mayor/MayorsOffice/ProgramsInitiatives/SheriffDepartmentReform/tabid/445448/Default.aspx>.

## Significant Discipline on Sustained Cases (January 1 - June 30, 2015 )

### Terminations

■ On May 7, 2014, a jail camera feed captured a deputy allowing two inmate workers to conduct pat searches of numerous inmates. The inmate workers also restrained inmates in physical holds to prevent their free movement. One inmate worker is seen on video kicking an inmate's foot, causing the inmate's knee to buckle. This behavior took place in front of a deputy's desk while he remained seated and failed to intervene, despite the protests of multiple inmates. Two deputies also made deceptive statements to IAB during its investigation of the incident. The deputies were terminated for their misconduct, and each deputy has appealed his termination. A third deputy, who was also alleged to have been involved in the incident, resigned prior to the completion of the investigation.

■ On June 15, 2014, an off-duty DSD captain was arrested for an alleged domestic violence incident. Following an arraignment on June 16, 2014, the captain was issued a personal recognizance bond with pre-trial services as a condition of the bond. Although a DSD acting division chief had been given direct orders by the Sheriff not to give the captain any preferential treatment, certain evidence indicated that he allowed the captain to leave the courtroom without following the proper procedure for releasing inmates, which would have required the individual to return to the jail to complete paperwork and to check in with pre-trial services. The acting division chief also allegedly made deceptive statements during IAB's investigation of the incident. He was terminated, and has appealed this decision. The municipal charges against the captain were eventually dismissed for a lack of a reasonable likelihood of conviction.

## Resignations, Retirements, and Other Separations

■ A deputy had two separate cases alleging misconduct. In the first case, on May 10, 2013, a female inmate was found unresponsive in her cell. She was transported to the hospital and pronounced dead the following day. The deputy allegedly failed to conduct and document his required rounds during his shift. In the second case, on September 10, 2014, the deputy was arrested and charged with Driving Under the Influence of Alcohol, Possession of an Open Alcoholic Container in a Vehicle, and two other traffic infractions. The deputy's driver's license was subsequently revoked. Prior to the determination of discipline in either case, the deputy entered into a settlement agreement with the Executive Director of Safety and resigned.

■ A deputy had two separate cases alleging misconduct. In the first case, the deputy loaned a rented vehicle to his girlfriend and her friend to use. They were involved in a car accident in another jurisdiction; the deputy was not present. During a search of the vehicle, drugs and "drug items" were found. In addition, the deputy's girlfriend told an officer who responded to the accident that she allegedly met the deputy while she was an inmate at the Downtown Detention Center. In the second case, on May 4, 2015, the deputy pled guilty to domestic violence related harassment charges. As a result of the guilty plea, a mandatory protection order was issued prohibiting the deputy from possessing a firearm, a violation of a condition of his employment with the DSD. He was disqualified from his position before a final decision was made regarding his alleged misconduct, ending his employment with the DSD.

■ A deputy had two separate cases alleging misconduct. In the first case, the deputy was alleged to have taken unauthorized leave in May of 2014. In the second case, on July 7, 2014, the deputy allegedly failed to follow proper procedures when counting out his intake cash drawer. The deputy allegedly failed to cooperate with the IAB investigations related to both cases, despite being given a direct order. The deputy resigned prior to the completion of either investigation.

■ On December 4, 2014, a sergeant allegedly placed an inmate in a choke hold. The sergeant also allegedly slammed the inmate's head against the concrete floor. The sergeant resigned prior to the completion of the investigation.

■ On December 17, 2014, a deputy was arrested in another jurisdiction on domestic violence related harassment and assault charges. A municipal protection order was issued listing the deputy as the defendant. A provision of the protection order prohibited the deputy from possessing or controlling a firearm or other weapon. Because the deputy was unable to possess a firearm, which was a condition of her employment, she was disqualified from her position, ending her employment with the DSD.

### **Other Significant Cases, Including Suspensions for Ten or More Days**

■ An inmate submitted two written requests, also known as “kites,” one to his attorney and another requesting a move due to unsanitary conditions in the housing unit. On October 6, 2013, video surveillance revealed a deputy opening and removing two kites from the kite box, reading them and then walking directly to the cell that housed the inmate who had written them. The deputy is seen knocking on and standing at the cell window with the kites. The video shows him speaking to the inmate and then tearing up the kites at the window and walking away. The deputy was suspended for thirty days. The deputy filed an appeal and a Career Service Hearing Officer modified the suspension to ten days.

■ On March 14, 2014, a deputy from a neighboring jurisdiction was at the Denver County Jail to transport an inmate to the other jurisdiction. While the deputy was attempting to take physical custody of the inmate, the inmate refused to cooperate and became involved in a physical struggle with the deputy. A DSD deputy who was standing in close proximity failed to offer any assistance for the duration of the struggle, which lasted for at least three minutes. The DSD deputy was suspended for ten days, and has appealed that decision.

### The OIM Expresses Concerns about Improper Segregation

A medium security inmate at the DDC was placed into punitive segregation (correctional solitary confinement) for 30 days as a result of a disciplinary infraction while in jail. When he completed the 30 days, he was not allowed to return to the jail's general population, prompting him to file a grievance. According to the DSD, he had been kept in segregation because he was required to be separated from another inmate who was already housed in the DDC's male medium-security housing unit. Neither inmate qualified for a lower security level, and no other medium-security housing was available. In order to keep them apart, each inmate was to be rotated into and out of segregation at alternating 30-day intervals.

Segregated housing, in which inmates are typically released from their cells for just one hour per day, is associated with a variety of negative outcomes, which may include worsening mental and physical health.<sup>53</sup> The OIM was concerned about these potential harmful outcomes, as well as the potential legal issues associated with segregating an inmate due to a lack of appropriate housing, rather than for legitimate correctional purposes. The OIM voiced concerns about this to former Interim Sheriff Elias Diggins, who worked with DSD command staff to develop and implement a plan to address the matter. If this issue arises again in the future, the two inmates will take turns rotating through a lower-security pod on a temporary basis, if safe and possible, until a permanent reclassification is appropriate. While the new plan may not be perfect, the OIM commends Interim Sheriff Diggins for working under the constraints of the existing jail design and quickly developing a plan to address the issue.

## Appeals on Significant Discipline Cases Closed Prior to January 1, 2015 and Decided or Pending with the Career Service Board in 2015

■ On July 21, 2013, a deputy in a housing pod made racist remarks towards an African-American female inmate. The comments upset a number of inmates and another deputy, resulting in racial tension in the pod, which the deputy failed to note in her log books. The acting captain did not ask the deputy to write a report before the end of the shift, and allegedly told the deputy that no report was needed. When the deputy was questioned by IAB about the incident, she made deceptive statements. The deputy was terminated in September 2014 and appealed. In February 2015, a Hearing Officer modified the discipline to a six-day suspension. The Office of the Executive Director of Safety is appealing that decision. The acting captain retired from the department before a disciplinary finding was made.

■ In 2012, a deputy managing a housing pod in the jail violated a number of departmental rules, including failing to do required rounds, failing to do roll calls, bringing cigarettes into an unauthorized area, allowing inmates to watch music videos on the deputy's computer, letting inmates disobey the dress code, and leaving the housing lights off. The deputy also had an extensive history of violating other departmental rules. The deputy was terminated in February 2014, appealed, and a Hearing Officer upheld that termination. The former-deputy appealed the Hearing Officer's decision to the Career Service Board, which also upheld her termination in April 2015. The deputy has appealed the Board's decision to the Denver District Court and filed a lawsuit in federal court alleging discrimination.

■ On July 13, 2014, a deputy (Deputy A) was having an animated discussion with an intoxicated and seated inmate for several minutes while performing other duties. He walked across the room towards the inmate, and as he got closer, dropped a container from his right hand. The inmate stood up, and without hesitating or breaking stride, the deputy raised his right arm up, struck the inmate in the face, and knocked him to the floor.

In a written report, Deputy A stated that he defended himself because the inmate got up and approached him in an aggressive manner. However, video evidence showed that the inmate did not advance or present himself in a

threatening manner. Although another deputy (Deputy B) witnessed the use of force, he did not immediately report it to his supervisor as required by DSD policy. When Deputy B prepared a written report at a later time, he did not report that he saw Deputy A strike the inmate, and he made similarly inaccurate and deceptive statements to IAB. In September 2014, both deputies were terminated and appealed the decisions. In March 2015, a Hearing Officer upheld Deputy A's termination, and modified Deputy B's termination to a six-day suspension. Deputy A has appealed the Hearing Officer's decision, and the Office of the Executive Director of Safety has appealed the modification of Deputy B's discipline; both appeals are pending with the Career Service Board.

■ On September 14, 2013, a deputy used inappropriate force when he applied pressure to an inmate's neck or upper chest, causing the inmate to collide with a wall prior to coming to a seat on the sally port bench. The force was used to punish the inmate for comments the inmate made in the housing unit and for not complying with the deputy's order to sit down. The deputy was suspended for 10 days, appealed, and the disciplinary decision was upheld by a Hearing Officer. The deputy appealed the Hearing Officer's decision to the Career Service Board, which also upheld his suspension in January 2015. The deputy has appealed the Board's decision to the Denver District Court.

■ On December 26, 2012, a deputy used inappropriate force when he struck an inmate in the face after the inmate pushed a phone towards him on the desk. The deputy then wrote a misleading and inaccurate report about why he used force and the amount of force used on the inmate. In a criminal investigation, the deputy also made a deceptive statement by stating that the inmate picked up a phone and threw it at him, striking him in the shoulder. The deputy also failed to state that he struck the inmate in the face. Video footage showed that the statements that the deputy made in both the administrative and criminal investigations were deceptive and/or misleading. The deputy was terminated in April 2014, appealed, and the disciplinary decision was upheld by a Hearing Officer. He then appealed to the Career Service Board, which upheld the termination. He has filed an appeal in the Denver District Court.

### The OIM Recommends Examination of the Role of the Discipline Matrix in the Appeals Process

The DSD discipline matrix establishes the rules by which disciplinary decisions are to be made by the Executive Director of Safety. It also includes guidelines for the level and type of discipline that should be imposed for particular rule violations. The matrix was created in 2011 after a sustained and collaborative effort by then-Manager of Safety Al LaCabe, the DSD, and community members.<sup>54</sup>

DSD deputies who are dismissed, suspended, demoted, or disqualified have a right to, and often do, appeal to Denver's Career Service Board Hearing Office.<sup>55</sup> A Hearing Officer is assigned to each appeal and is required to conduct an evidentiary hearing, determine the facts, and apply the relevant law and departmental policy in order to determine whether the dismissal, suspension, demotion, or disqualification should be affirmed, modified or reversed.<sup>56</sup>

Hearing Officers are not obligated to follow the DSD's discipline matrix in making that determination. This was confirmed in a recent Hearing Officer's decision, in which a deputy's two-day suspension for failing to pay full attention to duties was modified to a written reprimand.<sup>57</sup> It was also confirmed by the Career Service Board in July 2015.<sup>58</sup> In contrast, Civil Service Hearing Officers consider the DPD's discipline matrix when reviewing appeals filed by DPD officers.<sup>59</sup>

The matrix was implemented to provide "fair and equitable consequences," to create consistency in the administration of discipline, and to ensure notice to DSD deputies and the public of the consequences of failing to adhere to DSD's standards of conduct.<sup>60</sup> The matrix is also an important tool in the ongoing reform of the DSD. The OIM is concerned that these important goals may be undermined by the fact that Hearing Officers are not required to apply the matrix. As part of the ongoing reform of the DSD, the Sheriff's Discipline Task Force recommended that the matrix be made binding in the appeals process.<sup>61</sup> The OIM echoes that recommendation and suggests that CSA Rule 19 may need to be amended to require hearing officers to abide by or at least give significant deference to DSD's disciplinary matrix when adjudicating appeals by DSD deputies in the future.

## Commendations and Awards

*Table 3.2: Commendations Awarded to DSD Officers in First Half 2014*

Commendations	Number	Percent
Letters of Appreciation (from Supervisors/Sheriff)	59	50%
P.R.I.D.E. Award (Personal Responsibility in Delivering Excellence)	33	28%
Employee of the Month	10	8%
Other	9	8%
Commendations (from Supervisors/Sheriff)	3	3%
Deputy of the Year	1	1%
Employee of the Quarter (DSD)	1	1%
GOALS AWARD	1	1%
Letter of Recognition	1	1%
<b>Total</b>	<b>118</b>	<b>100%</b>

Note: Percentages may not sum up to 100 due to rounding.

*Table 3.3: Selected DSD Commendation Types and Descriptions*

Commendation Type	Description
Community Service Award	Awarded to an employee who sacrifices his/her time and expense, contributes a successful program to the community, or who performs an act to improve Sheriff-Community relations.
Merit Award	Awarded to an employee who, through personal initiative develops a program or plan which contributes significantly to the Department's objectives, goals, and morale.
Purple Heart	Awarded to an employee who is killed or seriously injured in the performance of his/her official duties.
Commendation	Awarded to an employee for specific actions or the performance of duties/services.
Supervisory Commendation	Awarded to an employee by a supervisor for specific actions or the performance of duties/services.
Life Saving Award	Awarded to employees who, through exceptional knowledge and behavior, perform a physical act which saves the life of another person (without danger to the officer's life).

## Highlighted Commendations

### LETTER OF APPRECIATION

Three deputies, a sergeant, and a major received a letter of appreciation for volunteering their time to represent the DSD at Mayor Michael B. Hancock’s “Cabinet in the Community” meeting. The event gave community members an opportunity to interact with DSD staff as well as the Mayor, the Executive Director of Safety, and members of the City Council.

### LETTER OF APPRECIATION

Two sergeants, three deputies, and a civilian employee received a letter of appreciation for volunteering their time to participate in the “Read Across America” event held at an elementary school. The event gave students an opportunity to positively interact with DSD representatives and to strengthen the department’s relationship with the community.

### LETTER OF COMMENDATION

A sergeant received a commendation from his supervisor for brainstorming a creative fix after an inmate destroyed the nurse call button in his cell, leaving an exposed electrical box that created a safety concern. The sergeant collaborated with other staff to determine a solution, ensuring the safety of the inmate.

## Chapter 3 :: DSD Monitoring

# 4

## Critical Incidents

### Introduction and Overview

Officer-involved shootings and deaths in custody (collectively “critical incidents”) can have a profound impact on the lives of both officers and community members, and on the overall relationship between law enforcement and the community. All investigations into critical incidents should be completed thoroughly and efficiently, with a goal of determining whether the incidents were handled lawfully and according to Department policy. To promote transparency in the investigation and review of critical incidents, the OIM publishes regular reports regarding the status of investigations into critical incidents.<sup>62</sup>

In all critical incidents, DPD’s Major Crimes Unit and the Denver District Attorney’s Office immediately respond to the scene to begin an investigation to determine whether any person should be held criminally liable. The OIM also generally responds to the scene for a walk-through and debriefing from command staff. Major Crimes detectives interview civilian witnesses and involved officers, and obtain documentary evidence. The OIM monitors all video interviews and may suggest additional questions at the conclusion of each interview. After the criminal investigation is complete, the administrative review process begins.

## Critical Incidents: Denver Police Department

### Administrative Review of Critical Incidents Involving DPD Officers

Once the District Attorney's Office has made a decision regarding the filing of criminal charges against anyone involved in the incident, the Major Crimes Unit reports are submitted to DPD IAB to commence the administrative review. The OIM confers with IAB to determine whether further investigation is necessary to assess whether there have been violations of Department policy. Once all relevant evidence is gathered, the case is submitted to a DPD Use of Force Review Board to determine whether any violations of the DPD's use of force policies have occurred. The OIM is present and can make recommendations at all Use of Force Review Board proceedings and deliberations.

If the Use of Force Review Board finds that the officer's actions were in compliance with DPD policy ("in-policy"), the case is forwarded to the Chief of Police. If the Chief and the OIM agree that there were no policy violations in non-fatal shootings, the case is closed and no further administrative action is taken. In fatal shootings, the Executive Director of Safety makes the final determination. The OIM reviews the Executive Director's findings and either concurs or disagrees.

If the Use of Force Review Board finds that the officer's actions were in violation of any Department policy ("out-of-policy"), the officer is given the opportunity to respond to the allegations and provide mitigating evidence to the Chief of Police at a "Chief's Hearing." Both the Chief's disciplinary recommendation and that of the OIM are forwarded to the Executive Director of Safety for his or her consideration.

If the OIM disagrees with a recommendation made by the Use of Force Review Board or the Chief of Police, the OIM recommendation will be forwarded to the Executive Director of Safety, who makes the ultimate disciplinary decision regarding critical incidents.

## DPD Officer - Involved Shootings (OIS) (January 1, 2015 - Present)

### Incident #1

On January 9, 2015, an officer from the Gang Unit began to follow a Jeep after the driver was seen running a stop sign. The Jeep pulled into a driveway of a house and then left shortly after the police car passed. The officer got behind the Jeep again and once again it pulled into a driveway. Based on the stop sign violation and the unusual activity of pulling into driveways, the officer decided to conduct a traffic stop, and pulled behind the Jeep at an angle about 10 feet away.

Three officers approached the Jeep from different sides, and requested the driver exit the vehicle after he failed to provide identification. The driver asked why and turned the engine on. Officer A opened the driver's door to attempt to remove the suspect. With the door open, and Officers A and B stuck inside the wedge area between the door and the body of the car, the suspect began driving in reverse. Officer A fired four rounds at the driver, and was then forced into the push bumper of his police vehicle. The Jeep continued in reverse, and Officer A found himself in front of the suspect's vehicle. Officer A believed the driver attempted to shift gears and drive forward to strike him, and he fired one more round at the driver. The driver exited the vehicle and fled on foot. Officers B and C chased him on foot and captured him shortly thereafter.

The driver survived the shooting. The Denver District Attorney reviewed the incident and declined to file charges against the involved officer. The DA prepared a detailed letter reviewing the shooting, which can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterDiManna.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterDiManna.pdf). The Use of Force Review Board met on July 27, 2015, and evaluated the shooting under the policy on shooting at moving vehicles that was in place at the time of the shooting, which has since been significantly modified (see Chapter 1). The Use of Force Review Board determined the shooting was in-policy. While noting significant tactical concerns about the shooting, the OIM concurred with that assessment. The Board did not send the case to the Tactics Review Board since the tactics involved were addressed by the recent change in policy.

## **Incident #2**

On January 26, 2015, two DPD officers responded to a 911 call regarding a suspicious vehicle in an alley in the Park Hill neighborhood. When the officers approached the vehicle, it began to move. Both officers fired multiple shots into the vehicle. The 17-year old driver of the vehicle died as a result of her gunshot wounds. None of the other four teenagers in the vehicle were struck. The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterJordanandGreene.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterJordanandGreene.pdf). The case is currently under administrative review.

## **Incident #3**

On March 20, 2015, two DPD officers responded to a report of the location of a man with an outstanding warrant who possibly wanted the police to kill him. When the officers approached the suspect, he resisted and began making a pulling motion from his waistband as if he was going to draw a weapon. The officers reportedly saw a slender silver object come out from the front of his jacket. An officer fired one shot, striking the suspect in the right shoulder. The suspect survived. The Denver District Attorney reviewed the incident and declined to file charges against the officer. The DA prepared a detailed letter reviewing the shooting, which can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterCruz.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterCruz.pdf). The case is currently under administrative review.

## **Incident #4**

On May 25, 2015, shortly before midnight, two District 6 police officers in separate vehicles responded to a 911 call related to a man brandishing a semi-automatic pistol at bystanders in downtown Denver. The officers spotted the suspect and Officer A exited his vehicle and moved around to the rear passenger's side to use it as cover. The officer drew his service weapon and yelled, "Police, drop the gun!" He saw the suspect raise his gun hand up and then heard a gunshot. Both he and Officer B (the cover officer) returned fire, and the suspect ran away. Minutes later, other officers apprehended the suspect. The individual sustained a gunshot wound in the lower right arm. The suspect survived, and was released from Denver Health into the custody of the Denver Sheriff Department.

The Denver District Attorney's office declined to press charges against the two officers; the DA decision letter can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%20Nwandilibe%207-31-2015.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%20Nwandilibe%207-31-2015.pdf). The case is currently under administrative review.

### **Incident #5**

On July 12, 2015, an officer fired his service weapon at a suspect who was armed with a knife. The suspect died from his gunshot wounds. The Denver District Attorney's office declined to press charges against the officer who fired his weapon; the DA decision letter can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%20re%20shooting%20death%20of%20Paul%20Castaway.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%20re%20shooting%20death%20of%20Paul%20Castaway.pdf). The case is currently under administrative review.

### **Incident #6**

On August 22, 2015, officers from the Vice Squad and the Gang Unit were involved in an officer-involved shooting in the Park Hill neighborhood. One suspect was shot, but survived. The shooting is currently under review.

## **DPD Accidental Shootings (January 1 - June 30, 2015)**

### **Accidental Shooting #1, DPD**

On May 4, 2015, an officer responded to a report of a domestic violence assault. The reporting party stated that the suspect was last seen inside the residence and that he always had a knife on him. While searching the residence, the officer accidentally discharged his service handgun, striking a closet door. The incident is currently under review.

## **2014 DPD Critical Incidents Closed between January 1 - June 30, 2015**

### **2014 Incident #1**

On July 2, 2014, a sergeant from the Metro/SWAT unit was involved in a buy/bust narcotics operation in Overland Park with an alleged high-level narcotics and weapons dealer. The sergeant drove his team into the park's parking lot in order to arrest the suspect. When the team exited their vehicle and approached, the suspect apparently locked eyes on the sergeant, reached for his pocket, and pulled out a handgun. The sergeant fired several shots at the suspect, resulting in his death. The encounter lasted less than ten seconds from the time the sergeant's team pulled into the parking lot.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officer. The DA prepared a detailed letter reviewing the shooting, which can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%2008-29-2014.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%2008-29-2014.pdf). The Use of Force Review Board met on May 18, 2015, and determined that the shooting was in-policy. The OIM did not believe that this conclusion was unreasonable, but voiced three concerns related to the incident. First, the OIM was concerned about the choice of arrest time and location. The potentially high-risk arrest was executed in a well-used park in the middle of a summer afternoon, which could have compromised public safety.<sup>63</sup> Second, the OIM was concerned that the sergeant had been issued a commendation in this case before the Use of Force Board had reviewed the shooting, or made a determination of whether it was in- or out-of policy. Third,

while the suspect withdrew a firearm upon being confronted by officers, evidence suggested that he may have dropped the firearm at the front of a nearby car. Yet, because the sergeant had to make a split-second decision during a rapidly evolving situation, and had already seen the gun, had knowledge of the suspect's alleged criminal behavior and access to firearms, and was approaching the suspect from a vantage point across the hood of a parked vehicle, the OIM could not say that the sergeant's perception of imminent danger to himself or fellow officers at the time of the shooting was objectively unreasonable.

## 2014 Incident #2

In another incident on July 2, 2014, officers from the Safe Streets Task Force, Fugitive Unit and Gang Unit contacted a suspect who had felony warrants and was wanted for a domestic violence incident and for auto theft. The suspect parked a stolen vehicle outside a funeral home and officers boxed the vehicle into the parking space. The officers approached the suspect and tried to get him out of the car. In an attempt to escape, the suspect backed his car up at a high rate of speed, hitting an unmarked police vehicle. A detective on the scene sustained an injury to her hamstring. Shots were fired at the suspect by multiple officers, resulting in his death.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: [http://www.denverda.org/News\\_Release/Decision\\_Letters/2014-4750TejonLet.pdf](http://www.denverda.org/News_Release/Decision_Letters/2014-4750TejonLet.pdf). On April 10, 2015, the Use of Force Board met and evaluated the shooting under the policy on shooting at moving vehicles that was in place at the time of the shooting, which has since been significantly modified (see chapter 1). An administrative review of the incident is ongoing.

### **2014 Incident #3**

On November 20, 2014, DPD officers joined Aurora police in a vehicle pursuit during which the driver made several attempts to elude. DPD officers finally stopped the vehicle in Commerce City and the driver did not comply with commands to stop the vehicle and show his hands. Several officers were positioned between the truck and a patrol car when the driver of the suspect vehicle shifted into reverse and accelerated towards the officers. A fourth officer was in a cover position and fired three rounds through the passenger's side of the truck, fearing for the safety of the other officers. The driver was shot once, struck in both his right arm and right chest area, and the passenger was shot twice. Both survived. The driver was charged with Attempted Assault in the First Degree and Driving After Revocation Prohibited.

The District Attorney for the 17th Judicial District declined to press charges against the officer who fired his weapon; the DA's decision letter can be found here: <http://adamsbroomfieldda.org/wp-content/uploads/2015/02/November-20-2014-officer-involved-shooting-decision-letter.pdf>. The Use of Force Board met on July 27, 2015, and evaluated the shooting under the policy on shooting at moving vehicles that was in place at the time of the shooting, which has since been significantly modified (see chapter 1). The Use of Force Review Board determined the shooting was in-policy; the OIM concurred with that assessment. The Board did not send the case to the Tactics Review Board since the tactics involved were addressed by the recent change in policy.

## **Critical Incidents: Denver Sheriff Department (DSD)**

### **In-Custody Death Investigation and Review Protocol**

In all critical incidents, DPD's Major Crimes Unit responds to the scene to begin an investigation to determine whether any person should be held criminally liable. If the incident warrants it, the OIM also responds to the scene of the incident for a walk-through and debriefing from command staff. Homicide detectives interview all witnesses and every involved officer, and obtain documentary evidence. After the criminal investigation is complete, the administrative review process begins.

### **Administrative Review of Critical Incidents Involving DSD Deputies**

Once the District Attorney's Office has made a decision in regard to the filing of criminal charges against anyone involved in the incident, the Major Crime Unit's reports are submitted to DSD IAB to commence the administrative review. The OIM confers with IAB to determine whether further investigation is necessary to assess whether there have been violations of Departmental policy. If, after reviewing the investigation, the Conduct Review Office finds that the involved deputy's actions were in compliance with DSD policy ("in-policy"), the case is forwarded to the Sheriff. If the Sheriff agrees there were no policy violations, the case is closed. The OIM reviews the Conduct Review Office's findings and makes recommendations to the Sheriff and the Executive Director of Safety.

If the Conduct Review Office finds that the involved deputy's actions were in violation of any Department policy ("out-of-policy"), the case is referred to the Sheriff for a "Pre-Disciplinary Hearing." The OIM observes the hearing and the deliberations of the Command Staff. At that hearing, the involved deputy is given the opportunity to present his or her side of the story, including mitigating evidence, if any. After hearing from the involved deputy, the OIM makes disciplinary recommendations to the Sheriff. Both the Sheriff's recommendations and that of the OIM are forwarded to the Executive Director of Safety for consideration. The Executive Director of Safety determines whether the deputy's actions were "in-policy" or "out-of-policy" and the appropriate level of discipline, if any.

## **DSD Accidental Shootings (January 1 - June 30, 2015)**

### **2015 Incident #1**

On March 29, 2015, a deputy accidentally discharged her weapon while completing a firearms qualification course. There were no injuries. The incident is currently under review.

## **DSD 2013 Critical Incidents Pending or Closed between January 1 - June 30, 2015**

### **2013 Incident #1**

On May 10, 2013, around 9:00 PM, a nurse discovered an unresponsive inmate while passing or administering medications at the DDC. The inmate was transported to the Denver Health Medical Center, where she died the following day. A deputy sheriff working in the medical unit that evening was responsible for conducting and documenting a minimum of two rounds each hour. That deputy failed to conduct and document three of the four required rounds between the hours of 6:00 and 8:00 PM. The deputy resigned in a settlement agreement with the Executive Director of Safety based on this incident, and another Internal Affairs case.

### **2013 Incident #2**

On November 28, 2013, an inmate became unresponsive in the back of a DSD scout van while being transported from a DPD district station to the DDC. The DSD deputies transported the inmate to the Denver Health Medical Center, where he later died. The case was reviewed and the department found that neither deputy involved had violated DSD policy.

## Endnotes

1. This total excludes incidents in which the use of deadly force was prompted by a threat other than a moving vehicle (e.g., an incident in which one or more passengers fired shots from a moving vehicle was excluded).
2. The following eight incidents were included in the OIM's review (with links to the District Attorney Decision letters):
  - A non-fatal shooting on April 4, 2007 in the 3300 block of West Florida Avenue ([http://www.denverda.org/News\\_Release/Decision\\_Letters/PS-07-04-04-Clinton%20Heck%20Carlos%20Sanchez\\_.pdf](http://www.denverda.org/News_Release/Decision_Letters/PS-07-04-04-Clinton%20Heck%20Carlos%20Sanchez_.pdf))
  - A fatal shooting on February 26, 2009 at the intersection of 5th Avenue and Lafayette Street ([http://www.denverda.org/News\\_Release/Decision\\_Letters/PS-09-2-26-Officer%20Edward%20Ash%20\(Davlon%20Reagor\).pdf](http://www.denverda.org/News_Release/Decision_Letters/PS-09-2-26-Officer%20Edward%20Ash%20(Davlon%20Reagor).pdf))
  - A non-fatal shooting on March 7, 2010 at 1 South Federal Boulevard ([http://www.denverda.org/News\\_Release/Decision\\_Letters/PS-10-03-07-Off.%20Steve%20Sloan-Raul%20Velasquez.pdf](http://www.denverda.org/News_Release/Decision_Letters/PS-10-03-07-Off.%20Steve%20Sloan-Raul%20Velasquez.pdf))
  - A non-fatal shooting on November 27, 2013 at the 2500 block of Larimer Street (the District Attorney did not review the shooting because the suspect was not shot),
  - A fatal shooting on July 2, 2014 at 4750 Tejon Street ([http://www.denverda.org/News\\_Release/Decision\\_Letters/2014-4750TejonLet.pdf](http://www.denverda.org/News_Release/Decision_Letters/2014-4750TejonLet.pdf))
  - A non-fatal shooting on November 20, 2014 on East 56th Avenue in Commerce City (<http://adamsbroomfieldda.org/wp-content/uploads/2015/02/November-20-2014-officer-involved-shooting-decision-letter.pdf>)
  - A non-fatal shooting on January 9, 2015 at 5081 Crown Boulevard ([http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterDiManna.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterDiManna.pdf))
  - A fatal shooting on January 26, 2015 in the alley between the 2500 blocks of Niagara Street and Newport Street ([http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterJordanandGreene.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterJordanandGreene.pdf)).
3. United States Department of Justice, Investigation of the Cleveland Police Department (2014) at 16-17; Denver Police Department Moving Vehicle Response Training.
4. See, e.g., United States Department of Justice, Findings Letter re: Albuquerque Police Department (2014) at 32-33.
5. Letter from Nicholas E. Mitchell to Denver Police Chief Robert White, re: OIM Review of DPD Policy on Discharging Firearms at Moving Vehicles, dated January 27, 2015.
6. The DPD assembled a strong review team that included the then-commander of the Internal Affairs Bureau, staff from the Data Analysis Unit and the Planning, Research, and Support Division, and various supervisors with experience facilitating DPD investigations into officer-involved shootings.
7. DPD Operations Manual § 105.05(5).
8. See D.R.M.C. Art. XVIII § 2-371(b).
9. The purpose of this review was not to reinvestigate the shootings or revisit whether they were lawful or within DPD policy.

## Endnotes

10. The OIM reviewed national best practices and tactical guidelines, including recommendations by the International Association of Chiefs of Police, the Police Executive Research Forum, and the U.S. Department of Justice, in making the tactical recommendations addressed in this report.
11. The 43 comparison policies come from the law enforcement agencies in the following jurisdictions: Albuquerque, Arlington, Atlanta, Aurora Colorado, Austin, Baltimore, Boston, Charlotte-Mecklenburg, Chicago, Cleveland, Columbus, Dallas, Detroit, Fairfax County, Fort Worth, Houston, Lakewood Colorado, Las Vegas, Los Angeles, Los Angeles County, Louisville Kentucky, St. Louis, Washington D.C., Miami Beach, Miami, Miami-Dade, New York City, Pittsburgh, Portland, San Francisco, Seattle, Virginia Beach, Fresno, Honolulu, Indianapolis, Memphis, Milwaukee, Oklahoma City, Philadelphia, Phoenix, San Diego, San Jose, and Tucson.
12. Los Angeles County Sheriff Department Policy § 3-10/220.00.
13. See DPD Operations Manual § 105.04(5)a (revised March 2010) which states “An officer threatened by an oncoming vehicle shall, if feasible, move out of the way rather than discharging a firearm.”
14. International Association of Chiefs of Police, Model Policy - Use of Force (2006) at 1 (11)(B) (3).
15. Police Executive Research Forum, Miami Beach Police Department: Review and Assessment (2014) at 17.
16. The nine “subject citizens” include drivers of the vehicles and one passenger who sustained a gunshot wound. A total of five additional occupants were in the vehicles at the time of the shootings and were not injured.
17. DPD Operations Manual § 105.01(2); C.R.S. 18-1-707 (2).
18. Regarding a shooting that occurred in 2007, the OIM was concerned over the Use of Force Board’s finding that the shooting was in policy, and the Monitor requested additional review by the Manager of Safety. The Manager of Safety concluded that discipline was not necessary. See Office of the Independent Monitor, Annual Report (2008) at 61.
19. The OIM thanks Colorado Department of Revenue Supervising Criminal Investigator Mark Brown for his thoughts and assistance with this analysis.
20. Generally accepted principles on high-risk stops include choosing a stop location that is well lit and not near bystanders, when possible, as well as communicating with dispatch and other officers on the scene to ensure that dispatch is fully informed prior to the stop, that there is sufficient backup, and that cover officers understand their role(s) in the stop prior to initiating contact with the suspect(s). See, e.g., Police Magazine, Department Best Practices for How to Approach Traffic Stops (November 2012); Advanced Security Professionals, Felony or High Risk Vehicle Stops, <http://www.adsecpros.com/articles/Felony%20or%20High%20Risk%20Vehicle%20Stops.pdf>.

21. While we have referred to the new rule as a “prohibition” on shooting into moving vehicles, the Revised Policy acknowledges that it “may not cover every situation” and “ ... deviations shall be examined rigorously and on a case-by-case basis.” See DPD Operations Manual § 105.05(5) (revised June 2015).
22. DPD Operations Manual § 105.05(5)b (revised June 2015).
23. DPD Operations Manual § 105.05(5)d (revised June 2015).
24. See Police Executive Research Forum, Review of Use of Force in the Albuquerque Police Department (2011) at 74-75 and 80.
25. See Police Executive Research Forum, Review of Use of Force in the Albuquerque Police Department (2011) at 80; United States of America v. City of Albuquerque, 14-CV-1025, (D.N.M. Nov. 14, 2014) at 36-37.
26. See, e.g., Police Executive Research Forum, Review of Use of Force in the Albuquerque Police Department (2011) at 80-81.
27. United States Department of Justice, Investigation of the Cleveland Division of Police (2014) at 43.
28. United States of America v. City of Albuquerque, 14-CV-1025, (D.N.M. Nov. 14, 2014) at 36.
29. United States Department of Justice, Investigation of the Cleveland Division of Police (2014) at 44.
30. For example, in Seattle, a recent videotaped training session revealed that officers training their peers on de-escalation techniques were met with a great deal of skepticism and resistance, compromising the effectiveness of the training. See Timothy Williams, Long Taught to Use Force, Police Warily Learn to De-escalate, New York Times (June 27, 2015), [http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html?\\_r=0](http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html?_r=0).
31. The data reported in this chapter were extracted from IAPro. The OIM is not an IAPro administrator and has no control over data entry into the database. The OIM does not conduct governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the accuracy of the DPD’s Internal Affairs data. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) are what they would be if the OIM were making these decisions. Since the data were drawn from dynamic, live databases, the recorded complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision. The figures reported in this chapter include only complaints against sworn DPD officers. Community and internal complaints numbers do not include “scheduled discipline” cases (e.g., when a DPD officer allegedly violates a traffic law, gets into a preventable traffic accident, or misses a court date, shooting qualification, or continuing education class.). The OIM excluded duplicate cases and all cases that did not involve a direct allegation against a sworn officer from all counts and analyses.

## Endnotes

32. The data included in this chapter were last retrieved from IAPro on July 29, 2015.
33. Community complaints are allegations of misconduct against a sworn member of the DPD filed by community members. Internal complaints are those filed by an officer, command staff, or Internal Affairs. Internal complaints are more likely to be purely procedural than community complaints, and often allege a failure to follow DPD procedures. Not all internal complaints are minor, however, as complaints of criminal behavior by officers are sometimes generated internally.
34. Many reports related to police oversight and IAB processes talk about complainant allegations. In this chapter, “allegations” refer to assertions, in a complainant’s own words, of particular kinds of purported misconduct by an officer. The DPD does not systematically track the detailed allegations made by complainants in its Internal Affairs database. Instead, it tracks “specifications” that are based upon the departmental rules and disciplinary policies implicated by a complaint. Thus, a specification captures the rule under which an officer might be punished, rather than the precise allegations communicated in the complaint.
35. DPD Discipline Handbook, RR-140, Discourtesy.
36. DPD Discipline Handbook, RR-127, Responsibilities to Serve Public.
37. See Brian Maass, DPD Shakeups: Promotions, Demotions and Transfers (July 22, 2015), <http://denver.cbslocal.com/2015/07/22/dpd-shakeup-promotions-demotions-and-transfers/>.
38. DPD Inter-Department Correspondence from Chief Robert White to Deputy Chief David Quinones dated July 22, 2015, published by CBS Denver, <https://cbsdenver.files.wordpress.com/2015/07/dpdshakeup.pdf>.
39. The outcomes of service complaint investigations are not reported in this section because they are handled differently than investigations into community and internal complaints.
40. See OIM 2014 Annual Report, Chapter 2.
41. See Noelle Phillips, Body cameras for Denver Police to cost \$6.1 million over five years (July 7, 2015), [http://www.denverpost.com/news/ci\\_28445800/body-cameras-denver-police-cost-6-1-million?source=pkg](http://www.denverpost.com/news/ci_28445800/body-cameras-denver-police-cost-6-1-million?source=pkg); see also City and County of Denver, CB15-0411 (July 20, 2015), <https://www.denvergov.org/sirepub/agdocs.aspx?doctype=minutes&itemid=70517>.
42. C.R.S. 27-65-105.
43. See “Mental Health Holds and Walk-in Crisis Centers,” DPD Training Bulletin issued September 14, 2015.
44. C.R.S. 18-1-901.
45. DPD Operations Manual § 105.03(3).
46. The data reported in this chapter were extracted from IAPro. The OIM is not an IAPro administrator and has no control over data entry into the database. The OIM does not conduct

- governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the complete accuracy of the DSD's internal affairs data. The OIM does not control which complaints received by DSD's internal affairs are entered into IAPro and which complaints are handled informally and are not recorded. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) are what they would be if the OIM were making these decisions. Since the data were drawn from dynamic, live databases, the recorded complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision. The figures reported in this chapter include only complaints against sworn DSD staff.
47. Data for this chapter were extracted from IAPro on July 9, 2015.
  48. Historically the OIM has included "reprimand" cases in its count of complaints against DSD deputies. Reprimand cases are a type of management complaint filed by an employee's immediate supervisor that allege a minor rule violation, such as the failure to wear an appropriate uniform or losing department property. Reprimand cases are not generally investigated by Internal Affairs, but have historically been included in the IAB database. However, due to changes in DSD's recording practices for reprimand cases (for example, one reprimand case involving sworn DSD staff was recorded in 2014, and only 14 were recorded in 2013, as compared to 149 in 2007) we have chosen to exclude reprimand cases from these counts. The OIM also excluded duplicate cases and all cases that did not involve a direct allegation against a sworn officer from all counts and analyses.
  49. Source: DSD IAB Complaints Received Spreadsheet sent by Executive Director of Safety Stephanie O'Malley to Nicholas E. Mitchell, July 8, 2015.
  50. "Allegations" generally refer to assertions, in a complainant's own words, of particular kinds of purported misconduct by an officer. The DSD does not systematically track purported misconduct in the complainant's own words. DSD "allegations" presented in this chapter are based upon the departmental rules and disciplinary policies implicated by a complaint. Thus, an allegation captures the rule under which an officer might be punished.
  51. The distribution of complaints in the first half of 2014 is notably different from the distribution in the same time period for the previous year. This difference may be due to a number of complaints that were received by IAB in the first six months of 2015 that have not yet been entered into the IAB database. Thus, the allegations reported in table 3.1 may not be representative of allegations contained in the larger number of complaints that were received by IAB.
  52. City and County of Denver, Mayor's Proposed 2016 Budget, p. 466-469.
  53. Alison Shames et al., *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, Vera Institute of Justice (2015) at 6.
  54. See Denver Sheriff Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines, at ii-v.
  55. City and County of Denver, Career Service Rules (2012) at Rule 19 - Appeals.
  56. City and County of Denver, Career Service Hearing Office Procedural Guide (2012).

## Endnotes

57. “Irrespective of the Agency [DSD]’s decision under its matrix, I am not bound by that disciplinary decision tool.” See Appeal No 12-15, Ed Reyes v. Denver Sheriff’s Department at 7.
58. “The Appellant next argues that she had a reasonable expectation that the Hearing Officer would follow the Handbook guidelines. We disagree. We see nothing in the handbook which would lead a reasonable individual (or even an unreasonable one) to believe that our Hearing Officer, in making a decision on a disciplinary appeal would be bound to follow every, or any, guideline or procedure in the Handbook.” See Appeal No 10-14A, Deanna Gordon v. Denver Sheriff’s Department at 2.
59. See Civil Service Commission, Rule 12, Section 9(B) for standards of review, including “A Departmental Order of Disciplinary Action shall be deemed to be ‘clearly erroneous’, in whole or in part . . . if the Manager fails to follow the applicable Departmental guidelines, rules or regulations, an applicable matrix or its associated guidelines, and absent such failure the discipline imposed would not have resulted.”
60. See generally matrix § 1.
61. See Denver Sheriff Discipline Task Force Recommendations, “Language should be submitted to the Office of Human Resources for inclusion in the Career Service Rules, requiring CSA Hearing Officers to consider and apply the DSD Disciplinary Handbook and Matrix at appeal.”
62. This chapter excludes shootings of dogs and other animals, unless those shootings were determined to be out-of-policy.

# **APPENDIX A**

DPD REVISED POLICY ON SHOOTING INTO MOVING  
VEHICLES



**REV. 6-15**

- c. A law enforcement officer may also engage in the lawful use of firearms under the following conditions:
  - 1. To kill a dangerous animal or one that humane treatment requires its removal from further suffering and alternative methods of disposition are impractical.
  - 2. To participate in authorized training at a target range.
  - 3. To participate in any legitimate sporting activity.
- (4) Officers will not discharge firearms under the following conditions:
  - a. At another person unless the circumstances are such that the officer would be justified under the law if the shot killed the person
  - b. Where there is likelihood of serious injury to persons other than the person to be apprehended
  - c. As a warning or attention shots
  - d. Solely to protect property
  - e. At a moving vehicle, see below
- (5) Moving vehicles
  - a. Firearms shall not be discharged at a moving or fleeing vehicle unless deadly force is being used against the police officer or another person present by means other than the moving vehicle.
  - b. Officers shall exercise good judgment and not move into or remain in the path of a moving vehicle. Moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, shall not be justification for discharging a firearm at the vehicle or any occupant. An officer in the path of a vehicle shall attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.
  - c. Firing at moving vehicles is prohibited for the following reasons:
    - 1. Firing at a moving vehicle may have very little impact on stopping the vehicle.
    - 2. Disabling the driver may result in an uncontrolled vehicle, and the likelihood of injury to occupants of the vehicle (who may not be involved in the crime) may be increased when the vehicle is either out of control or shots are fired into the passenger compartment.
  - d. It is understood that the policy in regards to discharging a firearm at a moving vehicle, like all written policies, may not cover every situation. Any deviations shall be examined rigorously on a case-by-case basis.
  - e. Officers are discouraged from immediately approaching a stopped vehicle at the conclusion of a pursuit or other high-risk stop. Where reasonably possible, officers shall use the felony stop tactic.
  - f. Firing from a moving vehicle: Accuracy may be severely impacted when firing from a moving vehicle, and firing from a moving vehicle may increase the risk of harm to officers or other citizens. Officers should not fire from a moving vehicle except in self defense or defense of another from what the officer reasonably believes to be the use or imminent use of deadly physical force.
- (6) Above all, the safety of the public and the officer must be the overriding concern when the use of force is considered.

**105.06 Use of Force Review Board**

- (1) The Chief of Police has established a Use of Force Review Board which will examine all incidents where serious injury or death results from any officer-involved use of force, all firearm discharges by active members of the department, except those incidents described in OMS 105.04(3) d. & e, any in-custody death and any incident as directed by the Chief of Police. The board is investigative in nature and is responsible for making recommendations on administrative justification, Internal Affairs investigations, department policy modifications, training, and commendations. The board is empowered to classify a case as in or out of policy.



# **APPENDIX B**

DPD PRE-REVISION POLICY ON SHOOTING INTO  
MOVING VEHICLES



**105.05 Discharge of Firearms (sections 4-6)**

- (4) Officers will not discharge firearms under the following conditions:
- a. At another person unless the circumstances are such that the officer would be justified under the law if the shot killed the person.
  - b. Where there is likelihood of serious injury to persons other than the person to be apprehended.
  - c. As a warning or attention shots.
  - d. Solely to protect property.
- (5) Moving vehicles
- a. Firing at moving vehicles: Firing at a moving vehicle may have very little impact on stopping the vehicle. Disabling the driver may result in an uncontrolled vehicle, and the likelihood of injury to occupants of the vehicle (who may not be involved in the crime) may be increased when the vehicle is either out of control or shots are fired into the passenger compartment. An officer threatened by an oncoming vehicle shall, if feasible, move out of the way rather than discharging a firearm. Officer(s) shall not discharge a firearm at a moving vehicle or its occupant(s) in response to a threat posed solely by the vehicle unless the officer has an objectively reasonable belief that:
    1. The vehicle or suspect poses an immediate threat of death or serious physical injury to the officer or another person and
    2. The officer has no reasonable alternative course of action to prevent death or serious physical injury.
  - b. Firing from a moving vehicle: Accuracy may be severely impacted when firing from a moving vehicle, and firing from a moving vehicle may increase the risk of harm to officers or other citizens. Officers should not fire from a moving vehicle except in self defense or defense of another from what the officer reasonably believes to be the use or imminent use of deadly physical force.
- (6) Above all, the safety of the public and the officer must be the overriding concern when the use of force is considered.







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