

# OAKLAND POLICE DEPARTMENT

## Office of Inspector General



### AUDIT OF PROBABLE CAUSE ARREST AUTHORIZATION AND REPORT REVIEW

July 1, 2015

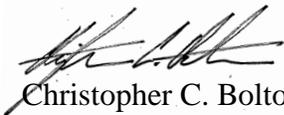
**CITY OF OAKLAND**

Memorandum

**To:** Chief Sean Whent  
**From:** Office of Inspector General  
**Date:** July 10, 2015  
**Subject:** **Audit of Probable Cause Arrest Authorization and Report Review**

On November 24, 2014, the Audit and Inspections Unit of the Office of Inspector General initiated an audit to determine whether the Oakland Police Department's (OPD) practice of handling specified arrests is in accordance with its established policy, Departmental General Order (DGO) M-18, *Probable Cause Arrest Authorization and Report Review*.

The underlying intent of the policy is to ensure strengthened supervisory direction, oversight and accountability in specified arrest scenarios – circumstances identified through past assessments as potentially leading to increased risk, complaint, or misconduct. Constitutional safeguards are in place through strong policy, procedure and organizational leadership and must be routinely reviewed for assurance. Where applicable, the Office of Inspector General proposed solutions to enhance the Department's ability to meet or exceed organizational goals and community expectations.



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## EXECUTIVE SUMMARY

There were five primary objectives for this audit. *First*, determine whether supervisors are advising the Communications Division of their arrival on scene of adult and juvenile arrests made as a result of felony, drug, and Penal Code §§ 69, 148, and 243 (b) or (c) offenses. In addition, determine whether supervisors are advising the Communications Division of their arrival on scene of arrests involving an investigated uses of force. *Second*, determine whether supervisors review arrest documentation to verify that probable cause for an arrest or reasonable suspicion for a stop/detention is articulated. *Third*, determine whether supervisors review arrest documentation to verify that available witnesses are identified. *Fourth*, determine whether supervisors approve or disapprove arrests in the field. Lastly, determine whether the time of supervisory contact with the arresting officer(s) is recorded.

There were positive findings for three of the audit objectives. The Department's supervisors are reviewing arrest documentation to verify that probable cause for an arrest and reasonable suspicion for a detention is articulated. The Department's supervisors are reviewing arrest documentation to verify that available witnesses are identified. Moreover, the Department's supervisors are approving arrests in the field.

However, the audit indicated that the Department needs improvement in documenting within its computer-aided dispatch system (CAD) that the supervisor advised the Communications Division of his/her arrival on scene. This notation is important because it also provides a documented time of supervisory contact with the arresting officer when approving or disapproving the arrest. The documentation for 90 arrests was reviewed, and there were only 70 (78%) instances in which it was documented that the supervisor advised the Communications Division of his/her arrival on scene. This lack of CAD documentation negatively affected the fourth and fifth audit objectives.

Although the Department is not complying with its policy of documenting that the supervisor advised the Communications Division of his/her arrival on scene, it is noted that there are two additional procedures designed to document a supervisor's on scene arrival: the electronic *Consolidated Arrest Report* (ECAR) form and the arresting officers' offense report. A review of the respective ECARs and corresponding offense reports indicated that the supervisor's on scene arrival was documented 98 percent and 94 percent of the time, respectively.

Without CAD documentation it is difficult to determine the time of supervisory contact with the arresting officer. Therefore, it is recommended that the Department ensures that its supervisors advise Communications of their on-scene arrival and that said arrivals are documented in CAD.

## PURPOSE

On November 24, 2014, the Audit and Inspections Unit of the Office of Inspector General initiated an audit to determine whether the Oakland Police Department's (OPD) personnel practice of handling arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) or (c) offenses and arrests involving an investigated use of force is in accordance with the established guidelines in OPD's Departmental General Order (DGO) M-18, *Probable Cause Arrest Authorization and Report Review*. The underlying intent of the policy is to ensure ethical and lawful delivery of police services and to strengthen supervisory control and accountability in specified arrest scenarios. Therefore, the audit identified, when applicable, potential policy or procedural deficiencies and proposed solutions to enhance the Department's ability to meet or exceed organizational goals and community expectations.

## BACKGROUND

The most recent audit was conducted by the OIG in December 2012. Using documentation related to 77 randomly selected cases in which an arrest was made, the audit indicated that 73 (95%) arrests documented that a supervisor was on scene for the required category of arrests by checking the appropriate box on the CAR, noting in the CAD and/or noting in the narrative of the CAR, Crime Reports or supplemental reports. The audit also indicated that 95 percent of the time a supervisor reviews arrest documentation to verify that probable cause for arrest or reasonable suspicion for stop/detention is articulated. In addition, the audit indicated that 90 percent of the time a supervisor verifies that available witnesses are identified. Moreover, the audit indicated that 95 percent of the time a supervisor approves or disapproves an arrest in the field and logs the time of his/her supervisory contact. Although the Department was in compliance with the task, the auditor made one recommendation:

*“Although there are multiple ways to document that a supervisor is on scene to approve the arrest, Department policy requires the approving supervisor to mark the ‘supervisor on scene’ checkbox unless the arrest was approved at an alternate location, which is to be documented. Commanders should conduct more thorough reviews of CARs to ensure that their subordinate supervisors are properly completing the supervisory approval portion of the form.”*

### Status

As of June 26, 2013, the Department's CARs are completed electronically, and the field for the location of the arrest has to be entered, eliminating the need to mark a checkbox.

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## OIG COMPLIANCE OVERVIEW

The following pages detail the compliance findings, scope, methodology and recommendations for this audit.

**Policy:** The Department has a comprehensive policy, which is outlined in DGO M-18, effective November 13, 2014 (initially published August 10, 2000 and revised August 27, 2004 and May 26, 2006).

**Training:** The Department has trained the relevant personnel on the policy.

**Practice:** Supervisors advise the Communications Division of their arrival on scene of adult and juvenile arrests made as a result of felony, drug, and Penal Code §§ 69, 148, 243 (b) or (c) offenses and where there is an investigated use of force.

**Objective 1**  
**Audit finding: 78%**

Supervisors review arrest documentation to verify that probable cause for arrest of reasonable suspicion for stop/detention articulated

**Objective 2**  
**Audit finding: 97%**

Supervisors review arrest documentation to verify that available witnesses identified

**Objective 3**  
**Audit finding: 96%**

Supervisors approve or disapprove arrest in the field

**Objective 4**  
**Audit finding: 98%**

Supervisors log time of supervisory contact with arresting officer

**Objective 5**  
**Audit finding: 78%**

## SCOPE AND POPULATION

### Audit Scope

The audit focused on OPD's policies, procedures, and practices regarding probable cause arrest authorization and report review.

### Audit Population and Stratification

There were two populations: adult and juvenile.

The *audit population* consisted of 385 adult arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) (c) offenses, from October 15, 2014 to November 15, 2014. Included in the 385 adult arrests are two investigated uses of force. The table below provides a breakdown of the various categories of arrests:

| CATEGORY                        | No.         |
|---------------------------------|-------------|
| Felony                          | 264         |
| Drug                            | 98          |
| PC § 69, 148 and 243 (b) or (c) | 22          |
| Investigated UOF                | 2*          |
| <b>TOTAL</b>                    | <b>384*</b> |

\*Note: One of the felony arrests and one of the PC arrests are investigated uses of force.

The *juvenile population* consisted of 10 juvenile arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) (c) offenses, from October 15, 2014 to November 15, 2014. No investigated uses of force were included in the 10 juvenile arrests. Since there were only 10 juvenile arrests, all were reviewed for the audit. The table below provides a breakdown of the various categories of arrests:

| CATEGORY                     | No.       |
|------------------------------|-----------|
| Felony                       | 9         |
| Drug                         | 0         |
| PC §§ 69, 148 and 243 (b)(c) | 1         |
| Investigated UOF             | 0         |
| <b>TOTAL</b>                 | <b>10</b> |

### Identification of the Random Sample

The audit population for adult arrests was stratified by category. Using a one-tailed test, a random sample of 80 arrests was chosen to achieve a 95 percent confidence level (with a +/-4 percent error rate) that OPD's personnel policies, procedures, and practices regarding probable cause arrest authorization and report review are in accordance with the NSA requirements and DGO M-18. The sample was comprised of the following arrests:

| CATEGORY                     | No.       |
|------------------------------|-----------|
| Felony                       | 53        |
| Drug                         | 21        |
| PC §§ 69, 148 and 243 (b)(c) | 6         |
| <b>TOTAL</b>                 | <b>80</b> |

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## METHODOLOGY/ANALYSIS

The Department's General Order M-18 was used to determine OPD's policies and procedures for probable cause arrest authorization and report review. The auditor reviewed these policies to determine the Department's documented procedures. Subsequently, the auditor reviewed arrest documentation to determine the Department's actual practice. The auditor evaluated whether the Department's practice, as expressed in the arrest documentation, complied with its documented policies and procedures. Each objective below in the *Practices, Findings, and Recommendations* section includes a comprehensive methodology for determining compliance.

### **Reference Material**

The documents and systems below were used to evaluate the correct procedures for OPD's personnel practices regarding arrest review and approval:

1. Departmental General Order M-18, *Probable Cause Arrest Authorization and Report Review*, effective November 13, 2014
2. CRIMS
3. OPD Frontline (Field Based Reporting) System
4. Negotiated Settlement Agreement
5. Oakland Police Department Office of Inspector General. (2011, May). Audit of Task 18, Personnel Practices.
6. Research Randomizer ([www.researchrandomizer.org](http://www.researchrandomizer.org))

## PRACTICES, FINDINGS, AND RECOMMENDATIONS

### **Objective 1**

*Determine whether supervisors are advising the Communications Division of their arrival on scene of adult and juvenile arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) or (c) offenses. In addition, determine whether supervisors are advising the Communications Division of their arrival on scene of arrests involving an investigated uses of force.*

### **Standard**

Supervisors shall respond to the scene of any arrest or use of force described in Part III, A, 1-2. If the scene is not stable or safe, or it is impractical to respond, supervisors shall arrange to meet the arresting officer at another location without unnecessary delay. The supervisor shall ensure that the reason for the change of location is documented in the offense report narrative.

Supervisors shall advise the Communications Division of their arrival on-scene:

- Via radio using the radio code 997, or
- If the supervisor's vehicle is equipped with an MDC, the supervisory may manually change their status to OS (on-scene).

#### Exemption:

Supervisors of field units are exempted from the 997 radio advisement requirement when the following conditions exist:

- The supervisor's unit is not operating on the main radio channel and the supervisor is in direct observation and control of the unit; and
- The unit is involved in activities to include but not limited to the following: (1) surveillance; (2) buy/bust operations; (3) arrest/search warrant service; and (4) enforcement operations involving undercover operatives (DGO M-18, III.B1.a-B1.b).

DGO M-18, III.A.1-2 reads as follows:

Officers who make a probable cause arrest for any of the following offenses shall request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee:

- Felonies;
- Arrests for possession of narcotics, drugs or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs, or marijuana;
- Resisting executive officers [Penal Code (PC) Section 69];
- Resisting peace officers [PC Section 148(a)(1)]; and
- Battery against a Peace officer [PC Section 243(b) or (c)].

Officers who make any arrest involving an *investigated use of force* shall request their immediate supervisor to the scene and obtain arrest approval prior to transporting the

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arrestee unless a medical necessity requires the arrestee be transported prior to the supervisor's arrival.

The arresting officer shall ...document in the offense report whether the supervisor responded to the scene to approve the arrest. (DGO M-18, III.A.4)

### Measures

Auditor reviewed the documented crime reports created as a result of following types of arrests:

- Felonies;
- Arrests for possession of narcotics, drugs or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs, or marijuana;
- Resisting executive officers [Penal Code (PC) Section 69];
- Resisting peace officers [PC Section 148(a)(1)]; and
- Battery against a Peace officer [PC Section 243(b) or (c)].

Auditor reviewed the offense report of the arresting officer to determine whether he/she documented in the offense report that the supervisor responded to the scene to approve the arrest. In addition, the auditor reviewed the Department's Computer Aided Dispatch (CAD) system data to determine whether the on-scene time for the supervisor was documented. To determine compliance, the auditor sought (1) documented evidence that the arresting officer included in his/her offense report that the supervisor responded to the scene to approve the arrest; and (2) documented evidence that the supervisor advised the Communications Division of his/her arrival on-scene.

The auditor provided the Communications Division with a list of the incidents in which there was no CAD evidence that the supervisor advised Communications of his/her arrival on-scene.

### **Findings**

The Department is not fully complying with this objective. The documentation for 90 arrests was reviewed, and there were only 70 (78%) instances in which it was documented that the supervisor advised the Communications Division via CAD of his/her arrival on scene. This notation is important because it provides a documented time of supervisory contact with the arresting officer to approve or disapprove the arrest. There were 13 (14%) instances in which there was not any documentation in CAD indicating that the supervisor advised the Communications Division of his/her arrival on-scene. There were five (6%) instances in which the respective CAD incident numbers were incorrect and therefore the data entries could not be reviewed. Lastly, there were two (2%) instances in which the supervisor's arrival on-scene was not documented in CAD *and* the Communications Division was unable to locate the audio to review the radio recordings. The results for adult and juvenile arrests are summarized in the table below:

| <b>Type of Documentation</b>                                                                                         | <b>Adult<br/>(80 Arrests)</b> | <b>%</b> | <b>Juvenile<br/>(10 Arrests)</b> | <b>%</b> |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------|----------|----------------------------------|----------|
| Supervisor's arrival OS to approve arrest documented in CAD                                                          | 62                            | 78%      | 8                                | 80%      |
| Supervisor's arrival OS to approve arrest not documented in CAD                                                      | 13                            | 16%      | 0                                | 0%       |
| UTD due to incorrect incident number                                                                                 | 3                             | 4%       | 2                                | 20%      |
| UTD due to supervisor's arrival OS to approve arrest not documented in CAD and Communications unable to locate audio | 2                             | 2%       | 0                                | 0%       |

Although the Department is not complying with its policy of documenting that the supervisor advised the Communications Division of his/her arrival on scene, it is noted that there are two additional procedures designed to document a supervisor's on scene arrival: (1) on the electronic *Consolidated Arrest Report* (ECAR) form, enter a "Y" in the *Supervisor on Scene* box; and (2) the arresting officer documents the supervisor's on scene arrival in his/her offense report. A review of the respective ECARs and the arresting officers' offense reports indicated that the supervisor's on scene arrival was documented 98 percent and 94 percent of the time, respectively.

### **Areas of Concern**

#### **Approving Supervisor Involved in Development of Reasonable Suspicion**

It is noted that in one instance, the approving supervisor was intimately involved in the development of reasonable suspicion and probable cause for arrest. The approving sergeant was the only officer who observed and could have personally articulated reasonable suspicion for the stop. Additional responding officers contemporaneously corroborated and documented all conditions leading to the arrest of a vehicle occupant following a preliminary investigation, but were unable to corroborate or articulate from experience the reasonable suspicion for the vehicle stop. The supervisor reviewed the resulting arrest report and ensured the report made by the arresting officer(s) was complete, clear and properly written. Although neither clearly nor expressly prohibited by DGO M-18, the intent of the DGO is to secure validation for both reasonable suspicion and probable cause from a supervisor. Therefore, this arrest was found out of compliance for this objective in two categories—offense report documenting supervisor on scene and supervisor's arrival OS documented in CAD—since another supervisor or commander should have been summoned on scene to approve the arrest.

#### **Department's Response**

Prior to providing the Communications Division with a list of incidents in which there was no evidence that the supervisor advised Communications of his/her arrival on-scene, there were only 52 instances in which it was documented in CAD that the supervisor was on scene. The Communications Division reviewed the audio for a list of 31 incidents and was able to determine that in 17 instances, the supervisor did advise Communications of his/her arrival on scene. There were two instances in which the audio could not be located, and the remaining 12 incidents remained out of compliance with policy. Subsequently, the Communications Division Manager advised staff to ensure the supervisor's on arrival is entered in CAD.

**Recommendation**

The Department should ensure its supervisors advise Communications of their arrivals on scene and that said arrivals are documented in CAD.

**Objective 2**

*Determine whether supervisors review arrest documentation to verify that probable cause for an arrest or reasonable suspicion for a stop/detention is articulated.*

**Standard**

Supervisors shall review the specific facts articulated by the arresting officer justifying the arrest (and detention if applicable) as documented by the arresting officer on the PCDec or Juvenile Record and determine whether reasonable suspicion for the detention and/or probable cause for the arrest exists.

...Upon review, if a supervisor determines that probable cause exists but has not been properly articulated, [he/she] shall direct the arresting officer(s) to properly document the specific facts justifying the arrest on the Probable Cause Declaration/Juvenile Record (DGO M-18, III.B.2).

**Measures**

For the adult arrests, the auditor reviewed the documented Probable Cause Declaration in the CRIMS system to determine whether the specific facts were articulated, justifying the arrest. For the juvenile arrests, the auditor reviewed the documented Juvenile Record Form (TF 336-606) to determine whether the specific facts were articulated, justifying the arrest.

**Findings**

The Department is complying with this objective, with an overall rating of 97 percent. There were 80 adult arrest Probable Cause Declaration forms reviewed, and the facts were articulated, justifying the arrest, in 78 (98%) declarations. There was one (1%) Probable Cause Declaration in which the member did not articulate the facts to justify the arrest. In addition, there was one (1%) arrest held out of compliance because the approving supervisor was intimately involved in the development of reasonable suspicion and probable cause for arrest and should have authored the Probable Cause Declaration.

There were 10 juvenile arrest Juvenile Record Forms reviewed, and nine (90%) of the forms included language that articulated probable cause for the arrest. There was one (10%) form that the Juvenile Unit was unable to locate and therefore the handling of the arrest for this objective was held out of compliance.

**Objective 3**

*Determine whether supervisors review arrest documentation to verify that available witnesses are identified.*

**Standard**

Supervisors shall review all offense reports submitted to them...and shall ensure that a thorough preliminary investigation was conducted and that all investigative steps were properly conducted and documented.

Supervisors shall review the report packet prior to submission to ensure...available witnesses to the criminal offense have been identified and documented in the appropriate offense report. If there are no known witnesses, supervisors shall ensure that fact is documented in the appropriate offense report (DGO M-18, IV.B1-2b).

### *Measures*

The auditor reviewed offense report(s) associated with each arrest to determine whether all available witnesses to the criminal offense have been identified and documented in the appropriate offense report(s).

If there are no known witnesses, the auditor reviewed the same offense report(s) to ensure that fact is documented in the appropriate offense report.

### **Findings**

The Department is complying with this objective with an overall rating of 96 percent. The auditor reviewed arrest documentation for 90<sup>1</sup> arrests, and available witnesses, whether none or one or more, were appropriately documented in the arrest documentation of 86 (96%) of the arrests. There was one (1%) instance in which the arrest documentation was out of compliance because the incident took place in a medical office with both staff and patients present and both the arresting officers wrote in their respective reports that there were “no known witnesses” and the auditor was unable to determine whether they canvassed for witnesses. There were three (3%) instances in which the auditor was unable to determine whether the witness information was appropriately documented. In one case, a sergeant made an arrest and wrote in the Crime Report “Witnesses identified on scene;” however, no witnesses were identified in the report. In another case, an officer wrote, “All known witnesses were identified at the scene.” Again, there were no witnesses identified in the report. Lastly, there was one instance in which an officer wrote, “No witnesses were located.” However, based upon the auditor’s review of the Crime Report, it appeared there should have been witnesses and the auditor was unable to determine whether the officer actually canvassed for witnesses.

### **Objective 4**

*Determine whether supervisors approve or disapprove arrests in the field.*

### *Standard*

Supervisors shall either approve or disapprove arrests without unnecessary delay...If the supervisor determines that probable cause exists and has been properly documented on the PCDec or Juvenile Record, [he/she] shall document [his/her] approval of the arrest by:

- Approving the ECAR in CRIMS;
- Signing in the appropriate box on line 9 of the CAR, if a paper CAR is used; or
- Signing in the narrative of the Juvenile Record and note the time of the approval.

<sup>1</sup> The auditor reviewed a total of 262 offense reports.

The approving supervisor shall also document on the ECAR, paper CAR or Juvenile Record the location where the approval was made (i.e. on-scene, ACH, Glen Dyer jail, etc.) [DGO M-18, III.B2.b-B3].

### **Findings**

The Department is complying with this objective, with an overall rating of 98 percent. The documentation of 80 adult arrests was reviewed, and there were 79 (99%) instances in which the supervisor approved the ECAR in CRIMS. There was one (1%) instance in which the ECAR was held out of compliance because the approving supervisor was intimately involved in the development of reasonable suspicion and probable cause for arrest and should not have approved the ECAR.

The respective Juvenile Record form for each of the for the 10 juvenile arrests was reviewed, and nine (90%) of the forms included the supervisor's signature in the narrative of the Juvenile Record. There was one (10%) form that the Juvenile Unit was unable to locate and therefore the handling of the arrest for this objective was held out of compliance.

### **Objective 5**

Determine whether the time of supervisory contact with the arresting officer(s) is recorded.

#### *Standard*

Supervisors shall respond to the scene of any arrest or use force described in Part III.A.1-2\*. If the scene is not stable or safe, or it is impractical to respond, supervisors shall arrange to meet the arresting officer at another location without unnecessary delay. The supervisor shall ensure that the reason for the change of location is documented in the offense report narrative.

Supervisors shall advise the Communications Division of their arrival on-scene:

- Via radio using the radio code 997, or
- If the supervisor's vehicle is equipped with an MDC, the supervisory may manually change their status to OS (on-scene).

Exemption:

Supervisors of field units are exempted from the 997 radio advisement requirement when the following conditions exist:

- The supervisor's unit is not operating on the main radio channel and the supervisor is in direct observation and control of the unit; and
- The unit is involved in activities to include but not limited to the following: (1) surveillance; (2) buy/bust operations; (3) arrest/search warrant service; and (4) enforcement operations involving undercover operatives (DGO M-18, III.B1.a-B1.b).

DGO M-18, III.A.1-2 reads as follows:

Officers who make a probable cause arrest for any of the following offenses shall request their immediate supervisor respond to the scene and obtain arrest approval prior to transporting the arrestee:

- Felonies;
- Arrests for possession of narcotics, drugs or marijuana if the arrestee is to be transported to jail for possession of narcotics, drugs, or marijuana;
- Resisting executive officers [Penal Code (PC) Section 69];
- Resisting peace officers [PC Section 148(a)(1)]; and
- Battery against a Peace officer [PC Section 243(b) or (c)].

Officers who make any arrest involving an *investigated use of force* shall request their immediate supervisor to the scene and obtain arrest approval prior to transporting the arrestee unless a medical necessity requires the arrestee be transported prior to the supervisor's arrival.

#### *Measures*

The auditor sought documented evidence that the supervisor advised the Communications Division of his/her arrival on-scene to determine supervisory contact with the arresting officer.

#### **Findings**

The Department is not fully complying with this objective. As stated in the findings of Objective 1, the documentation for 90 arrests was reviewed, and there were only 70 (78%) instances in which it was documented that the supervisor advised the Communications Division via CAD of his/her arrival on scene. This notation is important because it provides a documented time of supervisory contact with the arresting officer to approve or disapprove the arrest. There were 13 (14%) instances in which there was not any documentation in CAD indicating that the supervisor advised the Communications Division of his/her arrival on-scene. There were five (6%) instances in which the respective CAD incident numbers were incorrect and therefore the data entries could not be reviewed. Lastly, there were two (2%) instances in which the supervisor's arrival on-scene was not documented in CAD *and* the Communications Division was unable to locate the audio to review the radio recordings.