

Monthly Progress Report

Of the Office of Inspector General



Office of the Inspector General
Oakland Police Department

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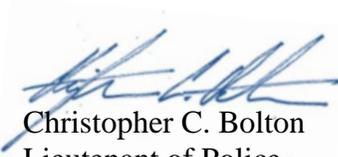
INTRODUCTION

As evidenced within the following pages, the *OIG Monthly Progress Report* will occasionally identify opportunities for improvement. I believe it is not the audit or report that makes a review of practices valuable, but the accompanying assessment and follow-through an audit or report requires. This Report's recommendations regarding the Field Training Program may cause greater efficiency of time; suggestions to update consent search policy and procedure may result in a higher quality of documentation required to maintain or improve public trust; our examination of supervisory arrest approval procedure ensures that those arrests which provide the greatest need for supervisor monitoring are adequately and thoroughly reviewed.

Just as opportunities for improvement are noted, so too are examples of proficiency: our review of the Field Training Program ultimately demonstrated a unit of officers that understands the importance of their role and the influence of their work. Their commitment to providing well managed and risk mitigated training to new officers was evident beyond the facets of the OIG review. On the behalf of our police performance auditing team, I thank them for their dedication.

As we begin 2016, the Office of Inspector General will renew additional commitments to identified audits, reviews, and inspections. This year's scope of work, like the last, will be created after assessing and prioritizing the needs of the Department in managing risk and serving our community through fair, quality policing.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

AUDITS, REVIEWS, and/or INSPECTIONS

Review of Field Training Program

Auditors: Charlotte Hines and Rose Sutton, Office of Inspector General

Objective(s):

1. Determine if the Field Training Program, when reviewing an FTO's continued suitability, considers a broad range of significant performance indicators that may impact the quality of instruction provided to trainee officers.
2. Determine whether the Field Training Program maintains complete screening, candidate selection and certification documentation for active Field Training Officers.

Policy Referenced: Departmental General Order (DGO) B-08, *Field Training Program*.

Significant Finding(s): The FTO Program is effectively maintaining FTO files in accordance with the current policy and continues to provide a diligent review (above and beyond what is required) of FTO performance. Discussions with FTO staff have resulted in policy recommendations that would formalize the sound practice of providing a more comprehensive review of FTO performance and eliminate an identified redundancy in the current policy.

Recommendation(s):

1. The Department should formalize the Field Training Program's existing practice of reviewing a wide range of key performance indicators by amending the Department's current policy.
2. The Department should reevaluate the necessity of convening a FTO screening panel.

OVERVIEW

To further the Oakland Police Department's (OPD) commitment towards providing high quality services in a community-driven and customer friendly manner, OPD has over time developed and enhanced its Field Training Program. Eligible officers seeking to become Field Training Officers (FTOs) are nominated and screened for suitability. Once certified by the Chief of Police, FTOs are assigned trainee officers to instruct during patrol shifts. Naturally, monitoring the quality of FTO instruction is an important administrative component of effectively managing the FTO Program.

Consequently, the Office of Inspector General (OIG) initiated a quality assurance review to assess whether the FTO Program evaluates a wide range of risk factors when reviewing Field Training Officers. The OIG also sought to evaluate the completeness of FTO files managed by the FTO Program.

METHODOLOGY

DGO B-08 requires Internal Affairs to notify the FTO Coordinator of any complaint allegations incurred by FTOs on a monthly and annual basis. However, DGO B-08, *Field Training Program* excludes notifying the FTO Coordinator of:

- Vehicle pursuits and collisions
- Use of force incidents
- Officer involved shootings
- Unintentional firearm discharges
- Resisting arrest
- Battery on officer/causing injury
- Assault with a deadly weapon with a firearm

Therefore, the OIG reviewed these risk factors from among 36 randomly selected Field Training Officers. There are currently 64 certified FTO's in the program. The period reviewed ranged from two months prior to the FTO's certification date to November 6th, 2015.

The OIG also reviewed all eight files from the most recent FTO cohort to receive certification in July, 2015. Files were reviewed for completeness and compliance with written policy. Each FTO file should contain:

- FTO Nomination/recertification Questionnaire (TF-3259);
- FTO Nomination/recertification Matrix Report (TF-3249);
- Bureau of Field Operations Deputy Chief Report (TF-3315);
- Area Command Report (TF-3314) and;
- Documentation of the Chief of Police's certification.

The OIG auditors also checked for documentation that a POST certified training was provided and attended by FTOs, an oral board examination was performed and that an FTO screening panel comprised of a Bureau of a Field Operations Deputy Chief and all Area Commanders (among other attendees) was convened.

FINDING #1

Currently, only open and closed complaint cases are required to be notified to the FTO Coordinator. However, the FTO Coordinator performs a more comprehensive review for each active FTO - beyond the minimally required - in which a totality of risk factors are considered. The FTO Coordinator, on a monthly basis, reviews key performance indicators that are tracked in OPD's electronic monitoring system. Key performance indicators include, but are not limited to, vehicle pursuits and collisions, use of force incidents, officer involved shootings and unintentional firearm discharges. The FTO Coordinator notes any incident or trends on the IAD Review Report and notifies the FTO's corresponding Deputy Chief.

During OIG's quality assurance review no significant incidents, negative trends or patterns created cause for concern regarding an FTO's continued suitability in the FTO Program from among the sample reviewed. Specifically, no repeated occurrences of officer involved shootings, unintentional firearm discharges, vehicle pursuits or collisions were identified. For incidents of use of force, a more in depth examination was performed for the top five FTOs in which their

supervisory note files were reviewed. Again, there were no incidents of concern, negative trends or patterns found.

FINDING #2

All eight FTO files reviewed contain complete documentation and comply with DGO-08, *Field Training Program*.

FINDING #3

The FTO screening panel adds limited value in the nomination process and its relevancy should be reevaluated. The purpose of the FTO screening panel is to identify and rank the most exemplary FTO candidates for certification. However, due to scheduling characteristic conflicts in law enforcement organizations that operate at all hours, on all days and across different geographic locations, convening a FTO screening panel comprised of a Bureau of Field Operations Deputy Chief and all Area Commanders (among other attendees) poses a great challenge to the FTO Program.

Nonetheless, in efforts to meet this policy requirement, the FTO Coordinator e-mails attendees a detailed matrix of all the necessary information needed to assess each nominated officer. Every evaluative component is scored and an overall rank is assigned to each FTO candidate, which is also included in the e-mail, thereby essentially eliminating the need for the FTO panel to be convened.

Furthermore, the screening panel creates an unnecessary redundancy by requiring Deputy Chiefs and Area Commanders to provide their endorsement twice during the FTO nomination process. This occurs when Deputy Chiefs complete the required FTO Nomination/recertification Questionnaire (TF-3259) form in which they document their reasoning for ultimately supporting an officer's candidacy. Similarly, Area Commanders fill out an Area Command Review Report (TF-3249) citing their support. Later, after having provided their endorsement, each is again asked to provide their comments or concerns regarding an officer's candidacy when the FTO screening panel is convened.

CONCLUSION

The Field Training Program is in compliance with the required documentation mentioned in DGO B-08. Yet the OIG has identified areas for continued improvement and has provided recommendations accordingly.

Review of Consent Searches

Auditors: Lt. Chris Bolton, Officer Ann Pierce, and Kristin Burgess-Medeiros, Office of Inspector General

Objective(s):

1. Determine if officers are correctly coding consent searches.
2. Determine if persons who were consensually searched provided their implied or expressed consent, and determine whether the consent was documented.

3. Determine if officers advised persons of their right to refuse the search, and if the right to refuse advisement was documented.
4. Assess the articulation of the contact and search to determine circumstantial intent, cause, or reason for the request to search.

Policy Referenced: Departmental General Order (DGO) M-19, DGO I-15.1, and Training Bulletin (TB) I-Q.

Significant Finding(s): 37% of reviewed consent search records lacked documentation that the person agreeing to a consensual search was made aware of their opportunity to refuse the request. 20% of reviewed consent search records did not articulate an officer's underlying intent, cause, or motivation to conduct a consent search.

Recommendation(s): The OIG recommends that TB I-Q, the Department's training document regarding the legalities of consensual searches, be updated to require officers to document their motivations for conducting consent searches; such motivation should serve legitimate public safety needs and be objectively reasoned concurrent with Department values. Commensurate policy revision and updated training is recommended regarding the need to offer and document that the consenter was made aware of their ability to refuse the search.

OVERVIEW

Consent searches are the most discretionary of law enforcement searches as no necessitation or articulation of reasonable suspicion, probable cause, or exigency is required. Officers can legally ask anyone to consent to a search and, provided the person asked agrees, the officer may search him/her within the bounds of knowing and willing consent, scope, and authority. This wide degree of legal discretion is countered by Departmental policy that adds review and accountability through policy and procedure. By policy, Oakland police officers are required to communicate a person's ability to refuse consent and to adequately document each consent search along with its relevant findings. The OIG conducted a review of consent searches by request of the Chief of Police, Chief Whent, to assess whether officers are complying with policy and to identify any potential issues or concerns regarding the use of consent searches.

METHODOLOGY

All consent searches conducted between January 1, 2015 and November 15, 2015 were identified.¹ According to records, a total of 243 persons were consensually searched within the identified period.² The population was stratified by race of person searched, and a proportional sample was selected based on a total sample of 69 (one-tail test with 95% confidence level and +/- 4% error rate).

¹ Data was queried, accessed, and saved on 30 Nov 15. Unapproved reports or reports not yet completed were not included in the review.

² Officers are only able to document/code one type of search per report when, in reality, multiple justifications or circumstantial reasons may support two or more search types; additional incidents may therefore exist in which the person searched was asked to consent although an alternative or primary search type was coded.

Race	# Searched	% of Population	Sample
Asian	11	5%	3
White	20	8%	6
Black	153	63%	43
Hispanic	46	19%	13
Pacific Islander/Other	13	5%	4
TOTAL	243		69

The written reports for all 69 consent searches were reviewed for proper documentation and adherence to policy. Ten incidents were selected for a review of body worn camera footage (Personal Digital Recording Device or PDRD) to evaluate whether incident footage corresponded with the written report.

In addition, the searches and recovery rates were calculated based on race for the entire population, and consent search trends over time were reviewed.

FINDING #1

There were 69 consent searches in the sample. Four of these searches were found to be coded improperly; the searches fell within alternative search categories and consent was neither requested nor necessary.

In the first incident, the search was a probable cause search based on a narcotics surveillance operation. The subject searched admitted to having marijuana and marijuana was recovered based on probable cause. In the second incident, an uncooperative driver told officers where his ID was in the car and the officers retrieved the ID, but conducted no other search. In the third incident, the subject voluntarily opened up his bag for the officers to observe the items inside, without being asked. The video in this case was reviewed in addition to the Field Investigative report. No search occurred. In the fourth incident, the officers stopped a car and discovered the passenger to be on probation with a search clause. While removing the passenger from the vehicle, the officers observed marijuana. The officers relied on probable cause and the probation clause to search.

There were three consent searches in the sample that could have been coded as either consent searches or another type of lawful and legitimate search. In the first case, the driver of the car consented to the removal of marijuana paperwork from his pocket during an incident in which officers could have searched based on probable cause. In the second case, officers smelled marijuana in the car and got consent to search, but had probable cause to search without consent. In the third case, the search was justified incident to a custodial arrest prior to transporting the subject to a psychiatric detention, but consent was also granted by the subject.

Finally, in one case, OIG was unable to determine if the search was coded properly. The report does not mention anything about consent, but the paperwork completed by the officer is coded as a consent search. The narrative indicates that a pat search for weapons was conducted due to the officer’s belief the driver was potentially preparing to flee the stop.

The OIG review of this sample determined that officers definitively and properly coded consensual searches in 64 of the 69 incidents (93%).

FINDING #2

Of the 69 consent searches in the sample, four were conclusively coded improperly. Of the remaining 65 searches, 62 (95%) properly documented that consent had been granted by the subject being searched. In three incidents, the officers did not document that consent had been granted. In the first incident, the officer did not document that consent was granted, and they could have alternatively articulated the search as a probable cause search rather than code as consent. In the second incident, the officers documented that a consent search occurred but did not document that the consent had been granted by the subject. However, upon reviewing the video for this incident, OIG determined that consent had in fact been granted. In addition, the OIG found the primary officer did an excellent job of explaining the situation and lawfulness of the search to the vehicle occupants and the other officers on scene. In the third incident, the officers did not state which type of search was conducted in the narrative of their report. Although the stop was coded as a consent search, it appears that the officers may have been conducting a pat search for weapons. The OIG was unable to determine if this was a consent search.

FINDING #3

Although not required by law, OPD policy requires officers to advise citizens of their right to refuse a request to search. This advisement must be documented. Of the 69 consent searches in the sample, four were coded improperly. Of the remaining 65 searches, 41 (63%) properly documented that a right of refusal advisement was given. In 24 incidents (37%), this advisement was not documented. Video footage for five of these 24 incidents was reviewed. In one incident, the video shows the officers provided the advisement but failed to document it in their report. In the remaining four incidents, no advisement was heard or observed on video.

FINDING #4

OIG assessed the officer's articulation of the contact and search to determine circumstantial intent, cause, or reason for the officers' requests to search. Although the Department's Training Bulletin on topic neither requires nor directs officers to justify the intent or cause behind a consensual search, the commander of the OIG felt that cause, intent, and documentation of these circumstances are inherently necessary given the core principles of procedural justice and continued efforts to address potentially bias based policing practices.

Our review found 13 reports of 65 (20%) that did not articulate an underlying reason why the officers chose to request and conduct a consent search. One such incident happened to fall within the population of reviewed video footage and the video provided insight and reasonable circumstances which were not documented by the officer. Since there is no policy requirement for officers to articulate their rationality, it is unknown whether the remaining twelve incidents are absent of objective reason or if video footage would likely add supporting detail. The 13 instances were reviewed for any noticeable trend related to officer, squad, assignment type, or geographic assignment and no additional risk factors were observed.

OBSERVATIONS

Search Race

Of all 243 consent searches in the population, Blacks made up the largest percentage of consent searches (63%), followed by Hispanics (19%).

Table 1

Race	# of Searches	% of Searches
Asian	11	5%
White	20	8%
Black	153	63%
Hispanic	46	19%
Pacific Islander	8	3%
Other	5	2%
Total	243	100%

Addressing potential influencers of racial disparity within consent search data was the primary cause for this review's inclusion of our fourth objective and related finding.

Search Recovery Rates

The search recovery rates were calculated for each race in each category represented in the population. Officers can choose multiple categories for recovered items. Not all categories were represented in the population. Overall, 72% of consent searches resulted in no recoveries of any kind. Races and ethnicities noted as African-Americans and Asians³ had the highest percentage of recoveries (31% and 55% respectively).

Table 2

Search Result	All Races		Black		Hispanic		White		Asian		Pacific Islander/ Other	
	#	%	#	%	#	%	#	%	#	%	#	%
None	174	72%	106	69%	35	76%	16	80%	5	45%	11	92%
Other Evidence	21	9%	13	8%	3	7%	2	10%	2	18%	1	8%
Narcotics	35	14%	28	18%	1	2%	2	10%	4	36%	0	0%
Other Weapons Narcotics	2	1%	1	1%	1	2%	0	0%	0	0%	0	0%
Other Weapons Other Evidence Narcotics	1	0%	0	0%	1	2%	0	0%	0	0%	0	0%
Other Weapons Other Evidence	1	0%	0	0%	1	2%	0	0%	0	0%	0	0%
Other Weapons	9	4%	5	3%	4	9%	0	0%	0	0%	0	0%
Total	243		153		46		20		11		12	

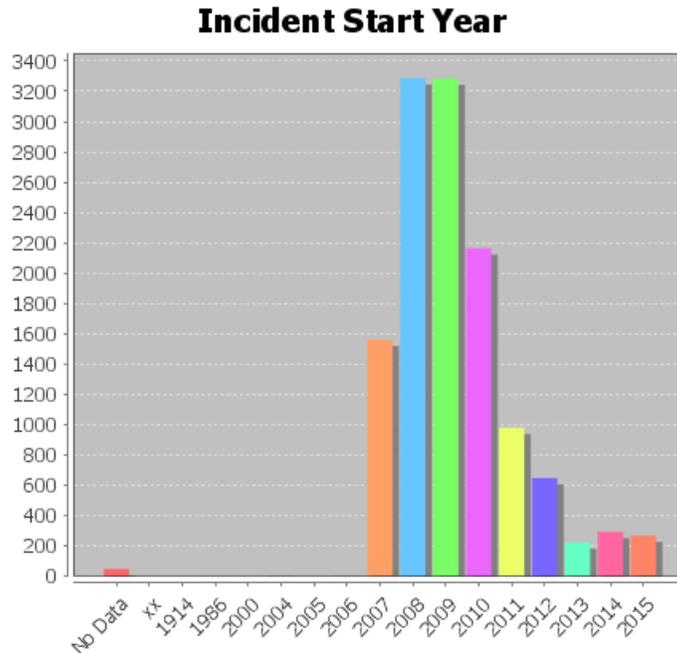
³ Statistical usefulness of data may be questioned when associated with a small number of incidents. Rates based on large numbers provide more valuable estimates of true, underlying rates.

The overall January 1 – November 15, 2015 consent search recovery rate of 28% is a remarkably improved recovery rate compared to the 2014 consent search recovery rate of 11%, and the 2009 consent search recovery rate of 13%. This improvement, combined with the steep decline of overall searches, suggests that officers are using greater discretion in conducting fewer searches with higher probable yield of contraband and evidence.

Consent Search Trend

The number of consent searches has dropped dramatically since 2008. In 2008 and 2009, the Department conducted over 3200 consent searches. In 2014, there were less than 300 consent searches conducted. As of November 15, 2015, the Department had conducted 243 consent searches. This overall downward trend matches similar search trends observed in other categories of OPD data in which searches requiring the least amount of cause (and therefore the lowest probability of a contraband or evidence recovery) have generally fallen while the percentage of searches based on greater amount of suspicion or cause (and therefore the highest probability of a contraband or evidence recovery) have risen.

Table 3



Officer Trends

There were 137 officers who conducted consent searches within reviewed 2015 data. Twenty-three officers conducted three or more consent searches during the time period reviewed. These 23 officers conducted a total of 102 consent searches. Five officers conducted five or more consent searches each, for a total of 44 consent searches. These officers’ consent searches were associated with an overall improved recovery rate (32%) compared to the average. The consent search recovery rate for officers conducting three or more searches within the sample was 26%.

CONCLUSION

Although consensual searches now represent just 2 - 3% of all discretionary searches conducted by Oakland police officers, this review recommends requiring the articulation of sound decision making and justification for such searches in the future. While consensual searches may be legitimately and effectively used within a variety of circumstances, the absence of readily available documentation and justification may exhibit their practice as being arbitrary, capricious, or biased. The OIG recommends that Training Bulletin I-Q be updated to require officers to document their motivations for conducting consent searches; such motivation should serve a legitimate public safety purpose and be objectively established.

Audit of Probable Cause Arrest Authorization and Report Review

Lead Auditor: Rebecca Johnson

Contributor(s): Officer Ann Pierce

Objective(s):

1. Determine whether the arresting officer(s) documents in his/her offense report that a supervisor responded to the scene to approve the adult arrests made as a result of felony, drug, and Penal Code §§ 69, 148, and 243 (b) or (c) offenses.
2. Determine whether supervisors are advising the Communications Division of their arrival on scene of said arrests. In addition, determine whether the time of supervisory contact with the arresting officer(s) is documented.
3. Determine whether supervisors review arrest documentation to verify that probable cause for an arrest or reasonable suspicion for a stop/detention is articulated.
4. Determine whether arrest documentation includes the identification of available witnesses to the criminal offense.
5. Determine whether supervisors document their approval of arrests and the location where the approvals are made on the Electronic Consolidated Arrest Report (ECAR).

Policy Referenced: Department General Order (DGO) M-18, *Probable Cause Arrest Authorization and Report Review*

Significant Finding(s): The audit indicated that the Department still lacks required documentation, within its computer-aided dispatch (CAD) system, that supervisors are advising the Communications Division of their arrival on scene to approve or disapprove certain arrests. This notation provides a required, documented, and approximate time of supervisory contact with the arresting officer to approve or disapprove the arrest while still in the field.

Recommendation(s):

1. To ensure there is a documented, approximate time of supervisory contact with an arresting officer(s), the Department should ensure the Communications Division is notified of a supervisor's arrival on scene. If this notification and documentation is found to be redundant and unneeded, policy should be changed to make the arrest approval and offense report paperwork the primary sources for on-scene supervisor documentation.

2. The Department should ensure DGO M-18 includes instruction on whether a supervisor has to go to the jail to approve an arrest when a felony, drug, and/or Penal Code §§ 69, 148, and 243 (b) or (c) offenses is added to an arrestee’s charges at the jail.

OVERVIEW

Within a five month period, the Audit and Inspections Unit of the Office of Inspector General initiated its second audit of the Oakland Police Department’s (OPD) personnel practice of handling adult arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) or (c) offenses. Since the last audit⁴ indicated that there were only 70 (78%) of 90 instances in which it was *documented* that the supervisor advised the Communications Division via CAD of his/her arrival on scene, the main purpose of this audit was to conduct a review to determine whether the Department improved in documenting a supervisor’s arrival on scene to said arrests. This notation remains important because it provides a documented time of supervisory contact with the arresting officer to approve or disapprove the arrest while still in the field. In addition, the intent of this audit 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.

METHODOLOGY

The established guidelines for the OPD’s personnel practice of handling arrests made as a result of felony, drug, and Penal Code § 69, 148, and 243 (b) or (c) offenses are found in DGO M-18, *Probable Cause Arrest Authorization and Report Review*. To conduct the audit, the auditor reviewed the policy 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 policy and procedure. Each objective below in the *Findings* section includes a comprehensive methodology for determining compliance.

To conduct this review, the auditor reviewed a sample of 24 adult arrests. The sample was comprised of the following arrests:

CATEGORY	No.
Felony	19
Drug	3
PC §§ 69, 148 and 243 (b)(c)	2
TOTAL	24

FINDING #1

DGO M-18, Section III.A.1-4 reads, in part:

⁴ Johnson, Rebecca, Police Officer Ann Pierce, Lieutenant Chris Bolton, and Sergeant John Haney. “Audit of Probable Cause Arrest Authorization and Report Review.” Oakland Police Department Office of Inspector General. 1 Jul. 2015.

“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)...

The arresting officer shall ...document in the offense report whether the supervisor responded to the scene to approve the arrest.”

Arrest documentation for 24 arrests was reviewed, and the audit indicated that for 22 (92%) arrests each respective officer complied with the objective of documenting in his/her offense report that a supervisor responded to the scene to approve the adult arrest(s) made as a result of felony, drug, and Penal Code §§ 69, 148, and 243 (b) or (c) offenses.

There were two (8%) arrests in which the correlating officers’ offense reports did not include documentation of the two respective supervisors’ arrival on scene. However, in both of these instances, the audit indicated that the supervisors did notify the Communications Division of their respective arrivals on scene, and the supervisors’ on scene arrivals and arrest approvals were documented in CAD.

FINDING #2

DGO M-18, Section III.B reads, in part:

“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 supervisor 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.”

The Department continues to struggle with meeting the objective of ensuring there is documentation to support that supervisors are advising the Communications Division of their arrival on scene of said arrests. This notation provides a documented time of supervisory contact with the arresting officer to approve or disapprove the arrest while still in the field. The audit indicated that, upon reviewing the correlating incident numbers in the CAD system for the 24 arrests, there were 16 (67%) instances in which the *OS status* was present to show that the respective supervisors did notify the Communications Division of their arrival on scene. In addition, the presence of the supervisors’ OS status in CAD provides the Department with documented, approximate times of supervisory contact with the arresting officers. In reviewing the correlating incident numbers for seven (29%) of the arrests, there were no *OS status* entries in the CAD system to indicate that the respective supervisors did notify the Communications Division of their arrival on scene. Therefore, there were no documented, approximate times of supervisory contact with the arresting officers. In addition, the Communications Division also reviewed the audio for these seven incidents and did not find evidence of the respective supervisors advising the Communications Division of their arrivals on scene. Lastly, using the CAD system, the auditor was unable to determine whether the supervisor notified the Communications Division of his/her on scene arrival for one (4%) of the arrests due to an incorrect correlating incident number.

Although the Department is not fully 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 100 percent and 92 percent of the time, respectively.

FINDING #3

DGO M-18, Section III.B.2 reads, in part:

“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 ...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...”

There were 24 adult arrest Probable Cause Declaration (PCDec) forms reviewed, and the facts were articulated, justifying the arrests. With the respective supervisors’ electronic signatures present on the forms, the Department met the objective of having its supervisors review arrest documentation to verify that probable cause for an arrest or reasonable suspicion for a stop/detention is articulated in all 24 (100%) declarations.

FINDING #4

DGO M-18 DGO M-18, IV.B1-2b reads, part:

“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.”

The auditor reviewed arrest documentation for 24⁵ arrests, and available witnesses to the criminal offense, whether none or one or more, were appropriately documented in the arrest documentation of 22 (92%) of the arrests. There were two (8%) instances in which available witnesses to the criminal offense were not identified and documented in the offense report. In the first instance, the offense report states that “the subject was in the [hotel] lobby talking to the building manager” when the victim entered the lobby and a verbal confrontation between the subject and the victim began. However, the arrest documentation was out of compliance because the arresting officers did not mention in their offense report whether they spoke to the “building manager” to determine whether he witnessed the assault with a broom. In the second instance, the officer merely failed to document in the offense report whether there were any witnesses to the criminal offense. It is noted that it was not evident to the auditor that there would have been any available witnesses in this incident.

FINDING #5

DGO M-18, Section III.B2 reads, in part:

“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..., [he/she] shall document [his/her] approval of the arrest by:

- Approving the ECAR in CRIMS;

⁵ The auditor reviewed a total of 34 offense/supplemental reports.

- Signing in the appropriate box on line 9 of the CAR, if a paper CAR is used...

The approving supervisor shall also document on the ECAR, paper CAR...the location where the approval was made (i.e. on-scene, ACH, Glen Dyer jail, etc.).”

The correlating ECARs for the 24 adult arrests were reviewed. With the respective supervisors’ electronic signatures present on the forms, the Department met the objective of having its supervisors document their approval of the arrests and the location of the arrest approvals on the ECAR in all 24 (100%) instances.

Additional Observations

Arrestee Receives Additional Charges at Santa Rita/North County Jail

DGO M-18, Section III, Subsection A, directs police officers to request their immediate supervisor to respond to the scene and obtain arrest approval *prior to transporting the arrestee* for (1) felonies, (2) arrests for possession of narcotics, drugs, or marijuana if the arrestee is to be transported to jail for possession of narcotics; drugs or marijuana; and (3) Penal Code § 69, 148, and 243 (b) or (c) offenses. However, there are instances in which the arrestee is found to be in violation of one or more of the aforementioned offenses while at the jail and the Department’s policy is silent on whether a supervisor should be summoned to the jail to approve the additional charges. Though not part of the sample for this audit, the auditor noted three separate instances in which an arrestee was taken to jail for a misdemeanor/warrant offense. Since misdemeanor/warrant arrests do not require a supervisor to come to the scene to approve the arrest prior to transporting the arrestees to jail, a supervisor was not summoned to the scene. In all three cases, felony and/or drug charges were added to the arrestees’ offense(s) once at the jail. In two instances, drugs were found in the arrestees’ wallets, folded in a dollar bill. Only in one instance did a supervisor go to the jail to approve the additional drug charge. In the remaining case, during a report review, a lieutenant directed two officers to add a felony charge to a CAR, and a sergeant went to the jail to approve the arrest.

Unclear Language

DGO M-18, Section III, subsections A and B, reads, in part:

“Officers are to request their immediate supervisor to respond to the scene and obtain arrest approval *prior to transporting the arrestee* for (1) felonies, (2) arrests for possession of narcotics, drugs, or marijuana if the arrestee is to be transported to jail for possession of narcotics; drugs or marijuana; and (3) Penal Code § 69, 148, and 243 (b) or (c) offenses....The arresting officer shall complete the appropriate arrest reports documenting the probable cause for the arrest and if applicable, the reasonable suspicion for the detention that preceded the arrest prior to seeking arrest approval...supervisors shall respond to the scene of any arrest...described in PART III, A, 1-2...[and]...shall advise the Communications Division of their arrival on scene.”

Up to this point, the policy implies that the supervisor will arrive on scene to approve or disapprove the arrest based on the presence of probable cause and prior to transporting the arrestee. Yet, there is language in the policy that implies that there could be movement of the arrestee prior to approval or disapproval, which contradicts the requirement that supervisors respond to the scene of the arrest.

“Upon completion of this assignment, the approving supervisor shall provide the disposition SAA (supervisor’s approval of arrest) for the incident to the Communications Division via radio or MDC...Disapproving an Arrest—If the supervisor does not find probable cause exists, the supervisor shall ensure that the arrested person is released and offered transportation to the site of the arrest or another location that reasonably accommodates the arrested person.”

The words “Upon completion of this assignment” suggests that the supervisor can advise the Communications Division of his/her arrest approval at the end of the assignment, an unknown time in space, instead of advising the Communications Division, in a timely manner, of his/her approval of the arrest once he/she confers with the arresting officer and determines there is probable cause for the arrest. The audit indicated that, in practice, the documented information in CAD shows that the Department’s supervisors are advising the Communications Division of their approval of the arrest in a timely manner, which is prior to the transporting of the arrestee. In addition, there is vague language present in the policy under *Disapproving the Arrest*. Wording such as “ensure that the arrested person is released and offered transportation to the site of arrest or another location that reasonably accommodates the arrested person” suggests that the arrestee has already been transported prior to the disapproval of the arrest.

CONCLUSION

Currently, the Department is updating all its policies and procedures. Since correcting ambiguous language does not require an actual policy change to DGO M-18, the auditor submitted recommended word changes to the Department’s Research and Planning Unit handling such changes. The recommended word changes have been acknowledged. Additionally, as OIG audits have twice now determined significant improvement is needed in terms of supervisors notifying Communications of their arrival to the scene of an arrest, the Department should either firmly address the need through training or mechanisms of accountability or alter the policy requirement itself if sufficient and redundant documentation of supervisor response and approval exists.

NEXT MONTH’S PLANNED REVIEWS

February 2016

1. Personnel Assessment System
2. Executive Force and Force Review Board Recommendations and Deliverables