

Monthly Progress Report

Of the Office of Inspector General



June 2016

Office of the Inspector General

Oakland Police Department

455 7th Street, 9th Floor | Oakland, CA 94607 | Phone: (510) 238-3868

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INTRODUCTION

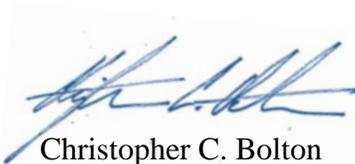
AS A LAW ENFORCEMENT OFFICER, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I WILL keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I WILL never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I RECOGNIZE the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before all to my chosen profession...law enforcement.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

*Law Enforcement Code of Ethics, CA POST Administrative Manual 3-2

Audit of Citizen's Written and Videotaped Statements

Lead Auditor: Rebecca Johnson, Office of Inspector General

Objective(s)

1. Evaluate whether the Oakland Police Department's (OPD) police officers working in field operations are taking statements from complainants and witnesses, if applicable, in all assault and private person arrest cases.
2. Evaluate whether the OPD's police officers working in field operations are documenting the statement-taking process in the offense report.
3. Evaluate whether the OPD's police officers working in field operations are following protocol when taking a statement from a suspect who waives his/her rights.
4. Evaluate whether the OPD's police officers working in field operations are following protocol when a suspect refuses to provide a statement.
5. Evaluate whether the OPD's police officers working in field operations are following protocol when a suspect is not to be interviewed immediately or asked to provide a statement.
6. Evaluate whether the OPD's police officers working in field operations are ensuring a citizen, at minimum, signs his/her written statement and initials any corrections made to his/her written statement.
7. Evaluate whether the OPD's police officers working in field operations are following protocol when taking a videotaped statement from a citizen.
8. Evaluate whether the OPD's police officers working in field operations ensure a citizen documents his/her consent to a videotaped statement.
9. Evaluate whether the OPD's police officers working in field operations ensure videotaped statements are recorded as an individual, separate file.

Policies Referenced: Report Writing Manual S-1, *Statement (536-200-1/2)*, effective July 29, 2015 and Departmental General Order I-15.1, *Portable Video Management System*, effective July 16, 2015

Significant Findings

The OPD's police officers working in field operations are not precisely following policy when taking written and videotaped statements. In addition, RWM S-1 policy and procedures requirement for police officers to make particular notations such as "Admonished/Suspect Waived Rights; Admonished/Suspect Refused; Suspect Not Admonished/No Interview; and/or Taped Statement" may be too specific when there is alternate wording that achieves the same results.

Recommendations

It is recommended that the OPD review its policy and procedures and revise them, if necessary. Once the policy and procedures have been reviewed and revised, if necessary, the OPD should conduct remedial training on statement taking procedures for all officers. In the short term,

the Department should provide quick reference sheets to its police officers to ensure adherence to protocol. In the long term, the Department should provide instructor-led training on the subject matter. Moreover, it is recommended that newly hired police officers spend some time working in the Criminal Investigations Department investigating cases to understand the importance of following protocol when taking a citizen's written and/or videotaped statement.

Overview

According to the Oakland Police Department, accurate and complete statements are vital to the criminal investigation and prosecution process. In many cases, the District Attorney's Office will not issue a complaint until statements have been taken from victims, witnesses, and cooperative suspects. Hence, the most opportune time to obtain a statement occurs during the preliminary investigation.¹ Because of the importance of statements when prosecuting cases, the Office of Inspector General (OIG) initiated an audit on April 18, 2016, to evaluate whether the OPD's police officers working in field operations are following the protocol for written and videotaped citizen statements as stipulated in Report Writing Manual S-1, *Statement*, and Departmental General Order I-15.1, *Portable Video Management System*, respectively.

Methodology

To conduct the audit, the auditor examined the OPD's policies, procedures, and practices related to citizen written and videotaped statements. The established guidelines for taking statements from citizens (i.e., victims, witnesses, and suspects) are found in two distinct policies: (1) Report Writing Manual S-1, *Statement* and (2) Departmental General Order I-15.1, *Portable Video Management System*. The auditor reviewed these policies to determine the protocol that police officers working in field operations should follow. In addition, the auditor reviewed a sample of offense reports and any associated written and/or videotaped citizen statements in assault and battery case files to evaluate whether the police officers working in field operations followed protocol.

Population and Random Sample

The population for this audit consisted of February 2016 assault and battery cases with at least one charge of PC 243(e)(1), domestic violence. There were 233 case files with a charge of domestic violence and a random sample of 68 case files was reviewed. There were two case files that were deselected. One case file was deselected because upon the police officer's arrival, the victim and the subject were no longer on scene. The other case file was deselected because the citizen, for documentation purposes only, completed a *Citizen Crime Report* in 2016 for a crime that occurred in 2012. Therefore, the findings in this audit are a result of the review of the offense reports and any associated written and/or videotaped citizen statements in the remaining 66 case files.

Finding #1

¹ Reporting Writing Manual, S-1, *Statement*, pg. 1

The audit indicated that the OPD's police officers working in field operations are not consistently taking statements from complainants and witnesses, if applicable, in all assault and private person arrest cases.

Report Writing Manual S-1, *Statement*, Section II, Subsection C, reads, in part:

"The following statement-taking procedures shall be observed:

1. Statements shall be taken from complainants in all assault or private person arrest cases. This includes domestic violence cases even if the victim does not desire prosecution.
2. Statements shall be taken from percipient witnesses.
3. The reason for not taking a statement shall be documented in the offense report. Reasons include, but are not limited to, an excepted crime at the direction of an investigator, supervisor or commander; subject unable due to medical condition; unsafe conditions; or a language barrier."

Upon review of the offense reports in the 66 assault and battery case files, there were a total of 78 documented complainants and/or witnesses. Explicitly, there were 67 complainants, 10 witnesses, and 1 reporting person. There were 54 (69%) documented citizen statements taken (44 complainants, 9 witnesses, and 1 reporting person) and 24 (31%) citizen statements not taken (23 complainants and 1 witness). The reasons for not taking a statement from a citizen varied. There were 18 instances in which the police officers documented in the offense report that the citizen refused or did not want to provide a statement, and the majority of these refusals were due to the respective citizens not wanting to press charges or assist in the prosecution. There were five instances in which there was not any mention of the respective officer(s) attempting to taken a written or videotaped statement. Lastly, there was one instance in which emergency cover was requested prior to the officer being able to finish the written statement and when the officer followed up by calling the complainant, the complainant did not answer the phone call.

Finding #2

Overall, the OPD's police officers working in field operations are consistently documenting the statement-taking process in the offense report.

Report Writing Manual S-1, *Statement*, Section II, Subsection C, reads, in part:

The statement-taking process shall be documented in the appropriate offense report. The report shall:

1. Fully identify the victim, witness or suspect;
2. Include a summary of the information obtained in the statement(s);

3. Indicate the name and serial number of the member...taking the statement;
and
4. Indicate whether a written and/or PDRD statement was taken.

In the 66 assault and battery case files, there were a total 73 offense reports reviewed. Other than six offense reports not including the serial number of the member taking the statement, the audit indicated that statement taking process was documented in all the offense reports.

Finding #3

The audit indicated that the OPD's police officers working in field operations are not sufficiently following protocol when taking a statement from a suspect who waives his/her rights.

Report Writing Manual S-1, Statement, Section IV reads, in part, as follows:

"Custodial interrogations may not occur until the suspect has been admonished and has waived his/her rights to refuse an interview. If a suspect initially waives these rights and subsequently indicates that he/she no longer wishes to talk, the interview must cease immediately. However, voluntary, spontaneous, and incriminating remarks by suspects shall be recorded verbatim in all cases.

...The *Miranda* admonition shall be documented as follows:

After reading the admonition from the *Statement* form and prior to interviewing or taking a statement from a person considered to be a suspect in a criminal offense, read the question of, 'Do you understand each of these rights I have explained to you?'

Record the suspect's answer verbatim. Ask the suspect to initial his/her response on the line next to the question...If the person indicates he/she understands the admonition as read and expressly or impliedly wishes to talk, proceed with the statement. Make the [following] notation in the narrative section of the *Probable Cause Declaration* (electronic) or on the *Consolidated Arrest Report* (hard copy) if in custody. If not in custody, make the notation in the Offense Report:

'ADMONISHED/SUSPECT WAIVED RIGHTS''

Upon review of the offense reports in the 66 assault and battery case files, there were a total of 10 documented instances in which statements were taken from suspects, all of which were in-custody. In the 10 instances, there was only one (10%) instance in which the *Probable Cause Declaration* (PCDec) included language that indicated that the suspect "was admonished, waived her rights, and gave a written statement." In the remaining nine (90%) instances, there was not a notation of "Admonished/Suspect Waived Rights" on the PCDec or on the

Consolidated Arrest Report (CAR). The auditor did note that in all nine instances, on the CAR form, there was a “Y” in the boxes for “Admonished” and “Waived Rights.”

In addition, in the ten instances in which there was a statement taken from the suspect, there were nine (90%) *Statement* forms reviewed. There was one *Statement* form missing from the respective case file in which a statement was taken from the suspect. Of the nine *Statement* forms reviewed, there were only three (33%) forms in which the respective police officer recorded the suspect’s answer verbatim and the respective suspect initialed his/her response. On the remaining six (67%) forms, there were four instances in which each respective suspect did not initial his/her response and there was not an explanation documenting the absence of the suspect’s initials in the respective offense report or on the *Statement* form. There was one instance in which the suspect’s response to understanding the admonishment was not documented. Lastly, there was one instance in which the reason for the suspect not signing was documented on the *Statement* form as “Unable to Sign (Handcuffed).”

Finding #4

The audit indicated that the OPD’s police officers working in field operations are not sufficiently following protocol when a suspect refuses to provide a statement.

Report Writing Manual S-1, *Statement*, Section IV reads, in part, as follows:

“Miranda invocations (refusals) shall be documented by the exact words used by the arrestee, in the narrative of the *Probable Cause Declaration* (electronic) or on the *Consolidated Arrest Report* (hard copy). *Admonished/Suspect Refused alone* is not acceptable and shall not be used to document refusals.

...The *Miranda* admonition shall be documented as follows:

After reading the admonition from the *Statement* form and prior to interviewing or taking a statement from a person considered to be a suspect in a criminal offense, read the question of, ‘Do you understand each of these rights I have explained to you?’

Record the suspect’s answer verbatim. Ask the suspect to initial his/her response on the line next to the question...If the person expressly indicates that he/she wants an attorney and no longer wishes to talk, questioning must cease.

1. Record the person’s refusal verbatim on the *Statement* form and ask the suspect to initial his/her refusal.
2. Make the notation in the narrative section of the *Probable Cause Declaration* (electronic) or on the *Consolidated Arrest Report* (hard copy), if in custody. If not in custody, make the notation and response in the Offense Report:

‘ADMONISHED/SUSPECT REFUSED,’
and the verbatim response such as,

‘I want a lawyer.’
‘I don’t have anything to say to you right now.’
‘I don’t know anything so leave me alone!’
‘I don’t’ have anything to say about the robbery.’

3. Include the initialed *Statement* form with the report.”

Upon review of the offense reports in the 66 assault and battery case files, there were a total of 11 documented instances in which the suspect in some manner refused to provide a statement. There were only two (18%) instances in which the *Statement* form was present in the respective case file, documenting the subject’s refusal verbatim. In the remaining nine (82%) instances, there was not a *Statement* form included in the respective case files. In addition, a review of the respective PCDecs and CARs for each of the 11 instances in which the suspect refused to provide a statement found that not one of the respective PCDecs or CARs included the notation “Admonished/Suspect Refused.” However, there were a variety of documented notations:

Sample No.	PCDec or CAR	Notation
13	PCDec CAR	“Suspect was advised of his rights and admonished, in which he invoked his rights. “Not Right Now”
38	CAR	Silence
51	PCDec CAR	“Suspect was admonished, invoked rights and did not provide a statement.” Shaking Head
73	CAR	“Don’t want to speak.”
89	CAR	“Lawyer”
95	CAR	“My report will be about the police dept.”
108	PCDec CAR	“Suspect was admonished and invoked her rights.” Refused
117	CAR	“I want to wait for my lawyer.”
121	CAR	No (sic) Uncooperative
201	CAR	“LALALALALALALA”
228	PCDec	“Suspect invoked after being admonished.”

Finding #5

The audit indicated that the OPD’s police officers working in field operations are not sufficiently following protocol when a suspect is not to be interviewed immediately or asked to provide a statement.

Report Writing Manual S-1, *Statement*, Section IV, Subsection B, reads as follows:

“If an adult suspect is not to be interviewed immediately or asked to provide a statement and is therefore not admonished, make the following notation in the narrative section of the *Probable Cause Declaration* (electronic) or on the *Consolidated Arrest Report* (hard copy) if in custody. If not in custody, make the notation in the Offense Report:

‘SUSPECT NOT ADMONISHED/NO INTERVIEW’”

Upon review of the offense reports in the 66 assault and battery case files, there were a total of ten documented instances in which the suspect was not admonished or interviewed. There were eight instances in which the suspect was in custody, and not one of the respective PCDecs or CARs included the notation “Suspect Not Admonished/No Interview.” However, there were a variety of notations on the respective CARs:

Sample No.	PCDec or Car	Notation
21	CAR	“Intoxication”
48	CAR	“Did not need statement.”
100	CAR	“Not Questioned”
110	CAR	“Not Questioned”
139	CAR	“Call Out”
149	CAR	“Intoxication”
161	CAR	“Did Not Question”
162	CAR	“Did Not Question”

In the remaining two instances, there was one suspect who was in custody, but the offense report did not mention any attempt to take a statement from the suspect. In addition, the respective PCDec and the CAR did not include the notation “Suspect Not Admonished/No Interview” or any other documented notation. Lastly, there was one suspect who was not in custody, and the offense report did not mention any attempt to take a statement from the suspect. The offense report also did not include the notation “Suspect Not Admonished/No Interview” or any other documented notation.

Finding #6

The audit indicated that the OPD’s police officers working in field operations are not consistently getting signatures from suspects or ensuring corrections are initialed by the respective citizen when taking written statements.

Report Writing Manual S-1, *Statement, Completion of Form (536-200-1)* Section, reads, in part, as follows:

“The *Statement* form is the only form used to document statements. Statements shall not be recorded on narrative pages of offense reports...

Statement Section: Record all pertinent information, including any elements of the offense known to the person giving the statement...

Have the person initial any corrections in the statement narrative. Do not use Wite-Out® or any correction fluid/tape in the narrative section of the statement.

SIGNATURE: If there is room, draw a diagonal line from the last line of the statement to the bottom of the unused portion of the statement section and have the person sign [his/her] name on the diagonal line and write the date on the diagonal line next to [his/her] signature.

If there is no room for a diagonal line, have the person sign [his/her] name and write the date next to, or as close as possible to, the last word in [his/her] statement.

Multi-page statements shall have a signature and date on each page (on a diagonal line or next to, or as close as possible to, the last word in [his/her] statement...

REFUSAL: If the individual refuses to sign a completed statement, write ‘Refused to Sign’ on the diagonal line. Document the reason(s) for the refusal to sign, if known, in the appropriate offense report and submit the report in the normal manner.

In addition, Report Writing Manual S-1, *Statement Continuation (536-200-2)* Section, reads, in part, as follows:

“Statement Section: ...Use the *Statement Continuation* when the written narrative is too long to fit on a single page. Ensure the person giving the statement signs and dates each *Statement Continuation* page. Draw a diagonal line from the last line of the statement to the bottom of the unused portion on the last page of the statement section. Have the person sign and write the date on the diagonal line. If there is no room for a diagonal line, have the person sign [his/her] name and enter the date next to, or as close as possible to, the last word in [his/her] statement.”

Upon review of the offense reports in the 66 case files, there were 46 documented written citizen complaints (10 suspects, 29 complainants, 1 reporting person, and 6 witnesses). The auditor was able to locate a *Statement* form for only 43 (93%) of the citizen statements since 3

(7%) *Statement* forms were not in the respective case files. Below, by category, is a summary of the results:

Suspects' Written *Statement* Forms

There were nine *Statement* forms reviewed, and there were five (56%) forms that included, at minimum, the required signature. However, there were three (33%) forms that did not include a signature from the suspect, and there was no documentation on any of the *Statement* forms indicating that the suspect "Refused to Sign." Lastly, there was one (11%) form that did not include a signature from the suspect, but the form did include a notation, "Unable to Sign (Handcuffed)."

Of the nine forms reviewed, there were only four forms that included corrections. There were two (50%) forms in which the corrections were initialed by the respective suspect, and there were two (50%) forms in which the corrections were not initialed by the respective suspect.

Complainants', Witnesses', and Reporting Person's Written *Statement* Forms

There were 34 *Statement* forms reviewed, and there were 33 (97%) forms that included, at minimum, the required signature. There was one (3%) statement from a citizen that had one name and signature on the first page of the *Statement* form and another name and signature on the *Continuation Statement* form. In addition, there was no documented explanation for the change in names on this statement.

Of the 34 forms reviewed, there were only 19 applicable *Statement* forms that included corrections. There were 12 (63%) forms in which corrections were initialed by the respective citizen, and there were 7 (37%) forms in which the corrections were not initialed by the respective citizen.

Finding #7

The audit indicated that the OPD's police officers working in field operations are not sufficiently following protocol when taking a videotaped statement from a citizen.

Report Writing Manual S-1, *Statement*, Section V, Subsections A-D, reads, in part, as follows:

"When personnel decide to use a PDRD² to take a statement, prior to taking a statement, they shall...[f]or victim or witness statements only, when PDRD activation is not required, ...advise or obtain consent from the victim or witness to record [his/her] statement. If [he/she] refuses to be recorded, personnel shall take a written statement.

For every statement, members...shall substantially state the following on the recording:

² PDRD denotes Portable Digital Recording Device

1. The date and time of the statement;
2. The location where the statement is being taken;
3. The name of the person taking the statement and the names of any other persons present during the statement;
4. The fact that the statement is being recorded (if a witness or victim); and
5. The Miranda Admonition, if applicable.

If a member...determines a follow-up statement is necessary during [his/her] preliminary investigation, [he/she] shall repeat the above steps and the steps below upon conclusion of the statement:

1. Have the subject sign the *Statement* form, if safe to do so...;
2. If applicable, have the subject initial the [Miranda] Admonition, if safe to do so...;
3. State the end time of the statement; and
4. Deactivate the recording device.
5. Reactive the recording device if required to continue recording as specified in DGO I-15.1.

Upon review of the offense reports in the 66 assault and battery cases reviewed, there were a total of 18 documented instances in which a citizen's (15 complainants and 3 witnesses) statement was videotaped. The auditor reviewed each videotaped statement and found that not one police officer stated the aforementioned information on the recording. In addition, there was not one videotape that recorded the respective citizen signing his/her *Statement* form.

Finding #8

The audit indicated that the OPD's police officers are not consistently ensuring a citizen documents his/her consent to a videotaped statement.

Report Writing Manual S-1, Statement, *Completion of Form (536-200-1)* Section, reads, in part, as follows:

"If a statement was taken verbally using an audio or video recording device, then draw a diagonal line through the statement section and write 'TAPED STATEMENT' on that line. Have the person giving the statement sign their name and write the date on the diagonal line..."

There were a total of 18 documented instances in which a citizen's (15 complainants and 3 witnesses) statement was videotaped. However, there were only five (28%) instances in which a *Statement* form was included in the file and all were signed by the respective citizen. One *Statement* form included the notation "TAPED STATEMENT," and the other four forms included

the notation "PDRD STATEMENT" instead of "TAPED STATEMENT." Lastly, the remaining 13 (72%) case files did not include a *Statement* form.

Finding #9

The audit indicated that the OPD's police officers ensure videotaped statements are recorded as an individual, separate file 89 percent of the time. However, most of the videotaped statement files are not easily located because the labeling does not include language that indicates that the file is a statement and the name of the respective citizen.

Departmental General Order I-15.1, *Portable Video Management System*, Section II.D.2, reads, in part, as follows:

"Personnel are authorized to use the PDRD to record statements in lieu of taking a written statement...

- a. Personnel shall advise or obtain consent from victims or witnesses when taking a PDRD recorded statement.
- b. PDRD statements shall be recorded as an individual, separate file, barring exigent circumstances. Therefore, during a required activation, where none of the deactivation criteria have been met, members may temporarily deactivate their PDRD to record individual, separate statements.
- c. Personnel shall follow the steps below when deactivating their PDRD for statement taking:
 1. Prepare to immediately take the statement;
 2. Deactivate the PDRD. Then immediately reactivate the PDRD and begin taking the statement; and
 3. Upon completion of the statement, deactivate the PDRD. Then immediately reactivate the PDRD if continued recording is required.

Members shall repeat the above steps when deactivating/activating their PDRD to take multiple statements.

- d. Personnel whose PDRD is not already activated shall activate it before and deactivate it after each statement is taken to create a separate, individual file."

In addition, Report Writing Manual S-1, *Statement*, Section V, Subsections A-D, reads, in part, as follows:

...Statements taken on a PDRD shall be uploaded to the server as specified in DGO I-15.1. Appropriate notations shall be entered in the Veripatrol³ system such as *Victim Smith Statement*.”

Upon review of the 18 videotaped citizen statements, there were 15 (83%) instances in which the statement was a separate, individual file. There were two (11%) instances in which the videotaped statements were part of a 52 minute video and there was not a documented reason in the respective offense report to account for not creating separate, individual files. Lastly, there was one (6%) instance in which the auditor was unable to locate the respective videotaped statement.

Additionally, the auditor sought the videotaped statement files in the Veripatrol system and found that the separate, individual files are not easily located because of their labeling. For example, some files are labeled as “PDRD Statement,” but this type of labeling does not include the name of the respective citizen whose statement was recorded. Some are labeled “Interview,” but this type of labeling does not include whether this interview is actually a statement and it does not include the name of the respective citizen whose statement was recorded. While the majority of the 18 citizen videotaped statement files reviewed are not labeled as statements and with the name of the respective citizens, the auditor was able to find the correct videos to review because the majority of the files, at minimum, were labeled with the report and/or incident numbers correlating to the respective offense reports.

Additional Observations

The OIG’s audit manager and lead auditor met with the Criminal Investigations Department (CID) commander and some of the investigators to attain insight on the issues found in this audit. It was determined investigators are having to spend time calling back victims because the victims’ respective written or videotaped statements do not consistently include the elements of the offense, which aids in charging the case. In addition, a CID investigator recommended that police officers are given a quick reference sheet regarding statement taking to ensure adherence to protocol. The OIG notes that, although sometimes necessary to provide clarification, the routine act of calling back a victim is not efficient when a police officer is required to obtain the elements of the offense while taking the statement in the field. In addition, the OIG agrees that the OPD, as a short-term remedy, should provide its police officers a quick reference sheet regarding statement taking to ensure adherence to protocol.

Chief’s Review

Upon review of the audit, the Chief of Police noted that RWM S-1 policy and procedures requirement for police officers to make particular notations such as “Admonished/Suspect Waived Rights; Admonished/Suspect Refused; Suspect Not Admonished/No Interview; and/or Taped Statement” may be too specific when there is alternate wording that achieves the same

³ Veripatrol is a system that police officers use to upload their respective PDRD videos.

results. He recommends that the Department's policy and procedures be reviewed and revised, if necessary.

Conclusion

The issues found in the audit appear to be systemic. Therefore, it is recommended that the OPD review its policy and procedures and revised them, if necessary. Once the policy and procedures have been reviewed and revised, if necessary, the OPD should provide remedial training to its police officers to ensure that the official documented protocol for taking written and videotaped statements from citizens is evident in practice. In the short term, the Department should provide quick reference sheets to its police officers to ensure adherence to protocol. In the long term, the Department should provide instructor-led training on the subject matter. Moreover, it is recommended that additional training is provided that requires newly hired police officers to work in the Criminal Investigations Department investigating cases to understand the importance of following protocol when taking a citizen's written and/or videotaped statement.

Review of Transporting Detainees and Citizens

Lead Auditor: Charlotte Hines, Office of Inspector General

Objectives

1. To determine if the Department is completing and maintaining compliance with all requirements of its transportation of persons in custody and citizens policy.

References: Department General Order (DGO) O-2 *Transportation of Prisoners and Persons in Custody* and Special Order (SO) No. 8262 *Transportation of Persons in Police Vehicles*

Significant Findings

While the Department is mostly complying with the transport requirements, it appears that the Fugitive Unit is not calling in their transports and providing the required transport information. In addition, the purpose of the transport for non-jail and non-hospital transports are sometimes not documented.

Recommendations

The Fugitive Unit Commander should ensure that the Unit either follow policy or determine if exemption from policy is appropriate. If exemption is granted, policy revisions would be necessary.

Overview

The Office of Inspector General conducted a review of officer transports of detainees and citizens. There have been several reviews of these transports conducted in the past. The first IMT (Independent Monitoring Team) conducted three audits (April 2005, July 2007 and

December 2008); the OIG completed reviews in May 2006, April 2010 and June 2013. The Department has been in compliance since the IMT audit of December 2008. The policy requires that transporting officers log into the radio and provide the following information to Dispatch, which is documented in the CAD:

- Transporting member identification
- Gender of transportee(s)
- Purpose of transport (i.e. jail, hospital, courtesy ride etc.)
- Location
- Starting mileage

The transporting officers must log back into the radio at the end of the transport and provide their ending mileage. The time of transport is also required, but is automatically documented in the CAD report when the officer logs in.

Methodology

The reviewer obtained the arrest logs for April 2016 from the Criminal Investigations Division (CID) Unit. During the period of April 18, 2016 through April 30, 2016, there were a total of 339 arrests. However, 55 of those arrests were made at the PAB (455 7th Ave) and usually do not require a transport, therefore were removed from the review population. The resulting population was 284 arrests. Using a one tail test (95% confidence level and +/- 4% error rate), 72 arrests were randomly selected for review. There were 112 transports of individuals to various locations associated with the 72 selected arrests.

Once the arrests to be reviewed were identified, using various data sources (i.e. LEAP, Vision-Tek, and WebSMART), the computer assisted dispatch (CAD) reports for those arrests were pulled and reviewed in order to verify that each of the requirements was completed. There were nine arrests in which the reviewer was unable to locate a CAD report, and for those arrests, Communications/Dispatch Unit reviewed the audio. Communications was able to locate transport information upon reviewing audio or identifying the proper incident number for four arrests. The remaining five arrests had no transport information.

Finding #1

The Department is documenting most of the requirements as mandated by policy; however there are a couple of areas that need improvement, purpose of transport and ending mileage.

There were no CAD reports documenting six transports. The incident reports for the associated arrests indicate that transports occurred, but no CAD report was located documenting the required transport information. These six transports were considered non-compliant. The results for all transports are in Table 1.

Table 1: Transport Results

CAD includes Member ID	CAD includes Gender of Transportees	CAD includes Purpose of Transport	CAD includes Location	CAD includes Beginning and Ending Mileage	CAD includes Time	Log In/Out	Total # of Trans.
105	106	91	106	99	106	99	
94%	95%	81%	95%	88%	95%	88%	
							112

Most transports were directly to jail (Santa Rita or North County) or the hospital, so the purpose was determined from the location. In 15 transports, the purpose of transport was not documented and could not be determined from the location. The 15 transports missing purpose of transport, in addition to the six transports for which there was no CAD report, resulted in an 81% compliance rate.

There were seven transports with no ending mileage, which also means the officer did not log back into the radio at the end of the transport. One transport missing the ending mileage was to Santa Rita Jail (SRJ). The reviewer noted that the current radio system is not accessible in Dublin, CA, which is where SRJ is located. This may explain the missing ending mileage. The seven transports with no ending mileage, in addition to the six transports for which there was no CAD report, resulted in an 88% compliance rate.

Finding #2

Four of the six transports that were missing CAD reports were made by the Fugitive Unit. The arrest reports indicate that transports occurred but there was no documentation which recorded the required information for the transports. Policy does not include an exemption for the Fugitive Unit regarding transport documentation.

The Fugitive Unit transports persons arrested by other California agencies pursuant to Oakland warrants which are deemed extraditable. These transports occur when OPD is notified and Fugitive Unit officers respond to the outside agency facility to take custody of an arrestee for transport to Alameda County jail facilities.

Patrol wagons (dedicated prisoner transport vehicles) are exempt from the transport requirements when Transportation Logs are utilized. Although it can be argued that Fugitive Unit transports are closely aligned with the intent and mission of a dedicated Patrol Wagon, Fugitive Unit personnel do not utilize a Transportation Log and fall under the language and requirements of the transport policy when and if their transports occur by vehicle.

Other Observations

Due to the unavailability of radio access for transports to Santa Rita Jail (SRJ), officers are unable to report their ending mileage via the radio. The only way to meet this requirement is to

call Communications with a cell phone - noting that cell phone service is sometimes unavailable - or wait until they return to Oakland. The Department is currently implementing a new radio system that is expected to correct the issue of no access in the Santa Rita Jail area.

Management Level Liaison Review

Auditor: Rose Sutton, MPP, CGAP, Office of Inspector General

Objectives

1. Determine whether the Management-Level Liaison policy and process provides effective tracking and reporting of criminal cases that are lost, dropped, or dismissed due to bad reports, defective search warrants, granted "motions to suppress," contradictory evidence or testimony, or any other indication of performance problems or misconduct by Oakland Police Department personnel.

Policy Referenced: Management-Level Liaison DGO A-18

Significant Findings

The Department's Management-Level Liaison has tracked and communicated criminal cases not being tried by the Alameda County District Attorney's Office as a result of the possible misconduct by OPD personnel. However, as a general performance measurement tool, broader tracking would provide a more holistic assessment of possible trends in handling cases that do not directly suggest misconduct by a specific individual, but rather highlight weaknesses within the Department's operational processes. In addition, the MLL has made recommendations to improve the current written policy to remove redundancies, create greater consistency and better accommodate the work schedules of county judges and attorneys.

Recommendations

1. The Department should consider the feasibility and value of tracking additional dismissed criminal cases, in which OPD was the arresting agency, in an effort to better identify patterns or trends that suggest organizational inefficiencies that prevent the fulfillment of justice; and to report and correct these inefficiencies to the extent that it is within the Department's administrative control.

Overview

The Department's Management Level Liaison (MLL) serves as the Department's contact person for the Alameda County courts, the District Attorney's Office and the Public Defender's Office. The role also requires the MLL to track all cases that were not tried (because they were either lost, dropped, or dismissed due to poor reporting, defective search warrants, granted "motions to suppress," contradictory evidence or testimony, or there is some indication of performance problems or misconduct) and to report those cases to the Internal Affairs Division (IAD) and

members of command staff. The purpose is to ensure the Department is aware of, and properly tracking, any possible discrepancies associated with the performance of OPD personnel in handling criminal cases. Possible discrepancies necessitate further investigation by the Department.

Background

The Department's MLL is made aware of potential performance issues/misconduct by reviewing a list of criminal cases in which charges were dropped (known as a "strike list") supplied by the Alameda District Attorney's Office. A strike list contains the names of citizens arrested within Alameda County, the charges and the codes indicating the outcome of each case not going to trial (for the admissibility factors listed above). The strike list does not include the arresting agency (e.g., Berkeley PD, Oakland PD, Emeryville PD, etc.) or officer information. Regardless of whether the DA's strike list contains a case that was processed by the Department, the MLL will prepare a monthly memo summarizing their review. The MLL also contacts a designated representative in the DA's Office and the Public Defender's Office on a monthly basis to proactively determine if there are any issues, concerns, or reports of misconduct. The memo details these monthly contacts, as well as any meetings and/or other communications held with judges of the Alameda County Courts, DA's Office, Public Defender's Office and the Department's Internal Affairs Division.

Methodology

OIG interviewed the Department's Management-Level Liaison to learn more about how the process is working and to obtain necessary supporting documentation. OIG reviewed all supporting documentation and sought the input from representatives of the Alameda District Attorney's Office and the Public Defender's Office in efforts to obtain an informed and independent perspective on the matter. OIG audit staff reviewed and analyzed the MLL's monthly reports starting January 2015 through April 2016.

Finding # 1

The MLL has maintained effective communication and referral to IAD of possible misconduct by law enforcement personnel that assisted in criminal cases

OIG identified two criminal cases within the period of review that resulted in admissibility issues. Review of the MLL's monthly memos mentioned these two cases, but more importantly both were forwarded to IAD. This was determined by the IAD case numbers included in the memos indicating IAD had been made aware of the cases and had begun an administrative investigation. OIG followed-up with IAD to determine the status of these cases, both of which are currently being investigated.

It's worth noting that, according to the MLL, he was first notified by the Department's Commanding Officer of the Traffic Operations Section in one of the two cases prior to receiving the strike list; in which case the MLL was able to proactively and promptly address the situation.

This instance highlights the importance of maintaining open and responsive communication not only with outside agencies like the DA’s Office, but also internally among the Department’s divisions, sections and units that understand the importance of the MLL policy.

Finding #2

Tracking all dismissed cases may highlight possible weaknesses within the Department’s organizational processes

Currently, the MLL tracks one category of codes used by the DA’s Office to indicate the reason why a case will not advance towards a trial. The category is called “TD Admissibility Factors” and includes the following codes/reasons;

- A – Questionable consent
- B – Questionable execution (search warrant)
- C – Questionable ID admissibility
- D – Questionable probable cause for Arrest/officer not present
- E – Questionable search and seizure problem
- F – Questionable statement by defendant

Through the course of this review, OIG learned that other general categories for case dismissal may capture instances of potential operational issues. These categories (called “T2 Lack of Sufficient Evidence” and “T7 Interest of Justice”) are not currently tracked or reported as part of the established MLL practice.

OIG compared the proportion of cases classified under “T2 Lack of Sufficient Evidence” and “T7 Interest of Justice” against those labeled “T3 Admissibility Factors” from a sample of six months’ worth of dropped cases from 2015. Roughly half of all dropped cases (47%) were labeled under “T2 - Lack of Sufficient Evidence”, while less than one percent fell under “T3 Admissibility Factors”.

Table 1 Dismissed cases from all law enforcement agencies within Alameda County, CA

Case Category	Number of Cases	Percentage of All Case Categories
T3 Admissibility Factors	1	<0%
T2 Lack of Sufficient Evidence	952	47%
T7 Interest of Justice	61	3%
All other categories	997	50%
Total	2,011	100%

It is important to note that the Department was the arresting agency for some, not all, of these dropped cases. The strike lists do not provide arresting agency or officer information and

manually reconciling the strike lists to include this information would be significantly burdensome and time consuming.

Additionally, whereas a T3 disposition code necessitates tracking and reporting to IAD, the categories of T2 and T7 do not necessarily indicate poor performance or misconduct on behalf of involved law enforcement personnel but *may* demonstrate patterns, trends, or issues regarding the dispositions of arrests, searches, investigations, or reporting processes if further assessment was possible. Due to time constraints, OIG was unable to further delve into its review, but plans to revisit this analysis at a later date. Absent further study at this time, OIG preliminarily believes that there may be important performance data which could be tracked - if efficient assessment is possible - in an effort to evaluate the quality and effectiveness of criminal case investigation and arrest.

OIG recognizes however the obstacles that prevent the Department from pursuing broader tracking. Specifically, the Department would need to review all categories on the DA's strike list and identify just those T2 and T7 dismissed cases pertaining to Oakland Police Department cases. For reference, in a six month period, there were 1,013 dropped T2 and T7 cases for all Alameda County law enforcement agencies of which the MLL would then have to search for and reference back each corresponding police report to determine whether the Department was the arresting agency and to identify the officer(s) involved. All dismissed cases involving Oakland Police would then have to be reviewed and discussed with the DA's Office to obtain the particulars of each case. At present, the process is too inefficient to warrant this practice. To make the process efficient, the Department would need to collaborate with the DA's Office about including additional information on the strike list so that the Department can more quickly identify which cases are OPD cases.

Finding #3

Suggested recommendations to the written procedures have been previously made by the MLL and the Department is currently in the process of revising its MLL policy and procedures

Recommendations to update the written policy have been previously communicated to the Department's Research and Planning Unit, which is presently updating and streamlining the Department's policy and procedure manuals. According to the Research and Planning Unit, detailed changes to the policy will be seen in the draft procedure manual, which it plans to begin revising in the coming months.

The MLL's recommended changes to the procedures include;

- Meeting at the request of representatives from the Alameda County Courts, District Attorney's Office and/or the Public Defender's Office, as opposed to scheduled quarterly meetings that in the past have proven ineffective because of inconsistent attendance.

- Removing a redundancy in administering corrective action at the division/unit level among commanders and managers because the Department's IAD will determine discipline for sustained administrative cases.
- Removing a redundancy in notifying a subject's unit commander via the MLL's monthly memo because they will be formally notified by IAD of an administrative investigation.
- Revising the retention period for keeping monthly reports for consistency with other Department retention periods.

It's important to note that language related to the City's Negotiated Settlement Agreement, specifically task 22.1 through 22.4, has not been changed and will remain present in the final written policy. Additionally, all revisions are subject to review and approval by the Department's Chain of Command, the City Attorney's Office and the Chief of Police.

NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for June 2016 are:

1. Consistency of Discipline
2. Skelly Hearings
3. Criminal Investigations Division (CID) Training