

# Monthly Progress Report

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Of the Office of Inspector General



**July 2016**

**Office of the Inspector General**

**Oakland Police Department**

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## INTRODUCTION

In March 2016, the Court appointed investigator, Swanson & McNamara, LLP, released a second report on the City's discipline and arbitration process. In that report, Swanson & McNamara recommended that the Office of Inspector General (OIG) conduct audits of the discipline process. In response to those recommendations, the OIG is issuing its first two reviews focusing on different aspects of discipline. Included in this report are reviews of the Skelly Hearing process and comparative discipline. In addition, the report includes a review of training received by investigators in the Department's Criminal Investigation Division.

Respectfully submitted,



Christopher C. Bolton  
Lieutenant of Police  
Office of Inspector General

## AUDITS, REVIEWS, and/or INSPECTIONS

### Review of Skelly Hearing Process

**Auditor:** Charlotte Hines, Office of Inspector General

**Objective(s):**

1. Verify that Skelly Officers met all requirements to serve
2. Determine whether the recommended discipline was per the formula and schedule set forth in the discipline matrix and confirm specific written justifications for any variances between the Skelly Officer and Chain of Command
3. Verify the appropriate participation and collaboration with the City Attorney's office

**Policy Referenced:** Department Training Bulletin TB V-T.4 (*Due Process Hearings*) and TB V-T Discipline Policy Appendix (*Discipline Matrix*)

**Significant Findings:**

The addition of a designated City Attorney's Office (CAO) Attorney assigned to OPD has improved the overall Skelly process. One of the results of the collaboration of the two agencies was a training course that all potential Skelly Officers were required to attend that covered such topics as Skelly Hearing Basics, the Skelly process, Skelly Officer Responsibilities, and Confidentiality.

**Overview**

In response to a recommendation made by an investigation into the Department's discipline process, the Office of Inspector General (OIG) conducted its first review of the Skelly Hearing process. The Federal Court appointed Swanson & McNamara, LLP to investigate the Department's discipline process in 2014. They completed their initial investigation in April 2015 and a follow up investigation in March 2016. One of the recommendations made in their March 21, 2016 report was for the OIG to conduct internal reviews of the discipline process. Skelly hearings are an essential part of the discipline process.

Department Training Bulletin V-T.4 sets forth policy and procedures for offering non-probationary members and employees facing disciplinary action a "Skelly" hearing.

**Definition:** *a permanent governmental employees' right to pre-disciplinary procedural due process generally triggered when the appointing authority deprives the employee of his or her salary through discipline or dismissal from employment. (Skelly v. State Personnel Board (1975) 15Cal.3d 194)*

The Training Bulletin states:

*The federal and state constitutions prohibit deprivation of life, liberty, and property without procedural due process. Courts have found that a member/employee's permanent civil service job is defined as "property." Accordingly, an employer seeking to deprive a civil service employee of pay must provide notice of the proposed discipline and an opportunity to respond at a pre-termination hearing. The hearing is not a full trial-type hearing. There is no right to representation by counsel or to confront or cross-examine witnesses. A member/employee may instead choose to respond in writing and forego a hearing.*

The purpose of a Skelly hearing is to determine "whether reasonable grounds exist for proposed discipline." Skelly hearings are facilitated by a Skelly Officer, who must be a reasonably impartial and noninvolved reviewer. The Skelly officer must not be a potential witness or have had a role in investigating the allegations or in the initial discipline recommendation.

### **Methodology**

To ensure each Skelly Officer met the requirements to serve, the OIG reviewer verified that they were listed in attendance on the class roster of the Skelly Process Training course which was conducted by the City Attorney's Office in January 2016.

The Office of Inspector General requested from the Internal Affairs Division (IAD) a listing of all Skelly hearings completed June 1, 2015 through May 31, 2016. During that period there were 19 hearings completed. However, given all of the recent improvements to the Skelly process only the Skelly hearings conducted since January 1, 2016 were selected for review, a total of four hearings. For the four cases selected, the skelly packets and case files were reviewed. In addition, the City Attorney assigned to assist the Department with discipline was interviewed.

### **Finding #1**

**Each Skelly Officer in the cases reviewed attended the most recent Skelly Hearing process training conducted in January 2016 and were impartial and noninvolved reviewers.**

In their April 2015 report, Swanson & McNamara recommended that Skelly hearing officers should be retrained and only Deputy Chiefs or higher should hear serious cases. The Department hosted training for all Commanders and Managers in January 2016 on the Skelly Hearing process. The Training was presented by the City Attorney's Office and the Department's Skelly subject matter expert. All Skelly officers in the population of this review attended the training.

The Department also committed to increasing consistency in the Skelly process by assigning all Skelly cases with a discipline recommendation of six days or higher to a designated Deputy Chief, whenever possible. The review found that the one case with a recommendation of

higher than a six-day suspension was assigned to the Department’s designated Deputy Chief. The remaining cases were less than six days and were assigned to Captains of Police.

In addition, each case was reviewed to determine if the Skelly officer assigned to the case was involved or impartial. The reviewer found no evidence that any of the Skelly officers were involved in the incident being investigated or were impartial.

**Finding #2**

**The recommended discipline was within the parameters of the formula and schedule outlined in the discipline matrix. Any variances between the recommended discipline of the Supervisor, Skelly Officer and/or Chain of Command included written justifications for the difference.**

For complaints of misconduct that result in sustained findings, the discipline process begins with a recommendation by the employee’s supervisor. The recommendation is reviewed by the employee’s chain of command up through the Chief of Police. Upon approval by the Chief, the employee is notified of the discipline and for anything more than a written reprimand, the employee has a right to a Skelly hearing. The Skelly officer either concurs with the Chief’s discipline or recommends a change based on the results of the hearing. The Chief of Police can subsequently accept or reject the Skelly officer’s recommendation. Any time there is a change with the recommended discipline during the process, the recommended change must be justified.

In two cases, the chain of command, Skelly officer and Chief of Police all agreed with the same recommendation. There were no discrepancies in the recommended discipline throughout the process. In addition, these recommendations were within the Matrix. In the other two cases, there were changes to the recommended discipline at some point in the process.

**Table I: Recommended discipline**

Case #	Violation*	Supervisor recommended discipline	Within Discipline Matrix	Skelly Officer recommended discipline	Within Discipline Matrix	Chief Approved discipline	Within Discipline Matrix
15-0543	MOR 398.76-2	1-day Suspension	Yes	Written Reprimand	Yes	Written Reprimand	Yes
15-0562	MOR 314.42-1	10-day Suspension	Yes	10-day <sup>1</sup> Suspension	Yes	10-day Suspension	Yes
15-0758	MOR 342.00-2	1-day Suspension	No	3-day Suspension	Yes	3-day Suspension	Yes

<sup>1</sup> A 10-day suspension was recommended by the Chain of Command, however, the Skelly Officer decided to hold the 10 days in abeyance because the employee had completed a Department approved wellness program, which is allowable by policy.

15-0874	MOR 398.76-1	5-day Suspension	Yes	5-day Suspension	Yes	5-day Suspension	Yes
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\*MOR 314.42-1: Obedience to Laws – driving under the influence  
MOR 342.00-2: Department property and equipment – preventable collision  
MOR 398.76-1: Failure to accept or refer a complaint – intentional  
MOR 398.76-2: Failure to accept or refer a complaint – unintentional

In Case 15-0543, an officer misinterpreted statements made by a complainant as being satisfied because there was not a direct request to file a complaint. The Supervisor recommended a one-day suspension, however, the Skelly Officer deemed this excessive and downgraded the discipline to a written reprimand which falls within the discipline matrix guidelines. The Skelly Officer documented the justification for changing the discipline in the Skelly report.

In Case 15-0758, an officer had a third preventable collision. The supervisor listed reasons for a one-day suspension, however, the supervisor’s commander was not compelled to move outside of the boundaries of the discipline matrix. He justified his change in the pre-discipline report. The Skelly Officer agreed with the Commander’s recommendation of a three-day suspension, which is the lowest option in the discipline matrix for the third offense.

**Finding #3**

**The City Attorney’s Office is collaborating with the Department on high level cases and is available and accessible for assistance on any Skelly hearing.**

The participation and collaborative efforts between OPD and the City Attorneys’ Office were verified with an interview with Ms. Veronica Harris, Deputy City Attorney assigned to OPD. Ms. Harris stated that while attendance at hearings is not mandatory for the CAO, she often attends the hearings for Class I violations as well as on lower level cases in which her attendance is requested. The CAOs’ purpose is mainly advisement of proper procedures to follow in order to receive a favorable outcome. The CAO sometimes initiates collaboration with the Skelly Officer, however, the Skelly Officer usually contacts the CAO for assistance. Certain information regarding Skelly hearings, although documented, is classified as attorney client privilege and not accessible for review.

The CAO provided input on the following cases:

In Case #15-0562, an officer was charged with a DUI. A 10-day suspension was recommended by all, however, the suspension was held in abeyance for one year. Per the Discipline Matrix (via a footnote in the policy) the abeyance is allowed if an approved wellness program is completed. Ms. Harris had several discussions with the Skelly officer regarding the circumstances and how to proceed with this case.

In Case #15-0874, an officer failed to accept or refer a complaint. The officer expressed that he did not take the complainants’ statements seriously. The recommended five-day suspension

was agreed upon by the supervisor, Skelly Officer and Chief of Police. Ms. Harris was included in discussions and provided written comments regarding this case.

### **Conclusion**

It should be noted that this review was strictly on the “Skelly Hearing” process, not the entire discipline process (i.e. internal investigation and arbitration). The recent changes and additions to the Skelly Hearing process should achieve better results when arbitration becomes necessary.

## **Review of Comparative Discipline**

**Auditor(s):** Rose Sutton, MPP, CGAP, Office of Inspector General

### **Objectives:**

1. Review cases for possible inequities in discipline across various comparative dimensions (e.g., among officer ranking, civilian and sworn personnel, type of discipline levied for the 1<sup>st</sup> and subsequent offenses)
2. Examine questionable labeling of violations and severity of discipline given (e.g., labeling the violation into a greater or lesser category, not terminating an employee when the only recommended discipline is termination and compounding discipline for a single violation)
3. Review discipline that represents a significant departure from what the discipline matrix recommends, given the specific violation and the individual’s offense history
4. Review all sampled cases for clear articulation of reasoning to support the recommended discipline, including the use of ‘aggregating up’ or ‘mitigating down’ as justification

**Policy Referenced:** Departmental Discipline Policy, Index Number V-T and Discipline Policy Matrix Appendix

### **Significant Findings:**

Generally, it appears discipline is equitable with reasoning being articulated on the Pre-Discipline Report. Additionally, trends show as the severity of discipline increases, the rate of violations decrease, with the exception of the number of ‘terminations’ given. But areas for policy improvement exist, including updating the written policy and matrix to be fully reflective of all discipline options that are used in practice.

### **Recommendations:**

1. OIG recommends updating the written policy and matrix to be fully inclusive and transparent of all discipline options used.

## Overview

OIG did not review the manner in which misconduct was investigated, but rather looked at the comparative equity and the degree to which reasoning for discipline was articulated. Additionally, for added context, descriptive information regarding the rates and distribution of discipline among types of violations are reported herein. It is always expected that when an administrative investigation ends with a sustained finding (i.e., sufficient evidence determines that the alleged conduct did occur and was in violation of law and/or Department policy), that the discipline given is well-reasoned and applied equitably across all Department personnel.

## Background

The objectives of this report were informed by the latest report issued by the Department's Court-Appointed Investigator who mentioned certain violations are subject to a wide range of discipline options.<sup>2</sup> The Court Appointed Investigator also mentioned the consideration of comparable discipline in all cases and that the Department should "consider whether it would be beneficial to specifically document that analysis in cases that involve misconduct with a wide range of discipline". And while OIG serves as an internal audit function with no administrative decision-making authority, it did seek to conduct a high level review and identify possible discrepancies by examining past discipline and offer additional recommendations for policy improvement.

## Methodology

For descriptive purposes, OIG quantified all sustained cases administered from January 2014 to present (May 2016). OIG also read a limited sample of cases to determine whether the reason for a particular degree of discipline was adequately documented. OIG excluded from its sample those cases that are still pending and cases where the employee retired or was released from probation. Given time constraints, OIG did not review changes in discipline as a result of arbitration.

- Total number of sustained cases: 270
- Total number of sustained violations: 334
- Total number of employees who received discipline: 233

## Finding # 1

**As the severity of discipline increases, the rate of violations decreases, with the exception of the number of 'terminations'**

As the severity of discipline increases, the rate of sustained violations decreases, with the exception of terminations given. Generally, this inverse relationship might suggest that the Department is implementing the appropriate degree of discipline to cause a reduction in the occurrence of unfavorable conduct among employees.

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<sup>2</sup> Swanson, E. (March 21, 2016). *Second Report of the Court-Appointed Investigator in Delphine Allen v. City of Oakland*. Swanson & McNamara, LLP.

**Table a** Count and percentage of all discipline given for all sustained violations

Type of Discipline	Count of Violations	Percentage of All Violations	% Change
Counseling & Training	127	38%	
Written Reprimand	93	28%	↓ 10%
<10 day penalty	68	20%	↓ 8%
>10 day penalty	19	6%	↓ 14%
Last chance agreement	2	1%	↓ 5%
<b>Termination</b>	<b>24</b>	<b>7%</b>	<b>↑ 6%</b>
No Discipline	1	<0%	

Again however, the trend does not hold true for the number of violations that resulted in termination. Of all 334 sustained violations, 24 (or 7%) resulted in the termination of 10 employees, each having received at least one or more sustained violations. The specific violations for those terminated employees include:

- Absence from duty
- Consumption of intoxicants
- Falsifying time card for financial gain
- Inappropriate use of privileged information
- General conduct; disrepute to the Department
- Insubordination; refusal or failure to obey a lawful order
- Disobedience of laws; driving under the influence, misdemeanor/infraction and felony
- Conduct towards others; workplace violence, demeanor, harassment and discrimination

The Department has controls in place, including its progressive discipline policy, that are meant to mitigate misconduct. However, the Department is presently committed towards identifying and implementing additional safeguards that may be used to further prevent wrongdoing that warrants termination.

**Finding #2**

**‘Preventable vehicle collisions’ represents the majority of all sustained violations and no evident pattern suggests inequity in the type of discipline given between sworn and nonsworn, nor among varying rank.**<sup>3</sup>

<sup>3</sup> Because the data used to create the frequency distribution did not indicate personnel classification and given time constraints, a fully exhaustive analysis for all types of sustained violations was not possible. OIG therefore looked at the largest category of sustained violations, which was ‘preventable vehicle violations’ for any possible patterns or trends.

OIG reviewed the largest violation category for which discipline was administered to compare possible preferential treatment among Departmental personnel. Preventable vehicle collisions accounted for 35% of all discipline administered from January 1, 2014 to present (May 2016).

The overall distribution of discipline for preventable vehicle collisions centers around ‘counseling and training’ for *all* personnel. Additionally, the rate of discipline lessens for *all* personnel as the severity of discipline increases and the rate of discipline among all groups appears proportional to the population it represents. For example, given there are far fewer command staff, it reasonably follows that there should be far fewer incidents of sustained violations among this group compared to the number of officers and sergeants.

According to policy, the discipline matrix is meant to provide consistency and predictability in the discipline process regardless of rank or position. In regards to the largest violation category for which discipline was administered, there appears to be no clear pattern suggesting preferential treatment either between sworn or nonsworn, or among varying rank.

**Table b** Frequency distribution of discipline given among groups for sustained 'preventable vehicle collision'

Discipline Given	Nonsworn <sup>4</sup>		Sworn				Grand Total
	Police Evidence Technician		Officer and Sergeant		Lieutenant, Captain, DC Chief, Asst. Chief and Chief		
No Discipline	0	0%	1	1%	0	0%	1
Counseling & Training	4	100%	65	62%	5	63%	74
Written Reprimand	0	0%	25	24%	3	38%	28
<10 day penalty <sup>5</sup>	0	0%	13	12%	0	0%	13
>10 day penalty <sup>6</sup>	0	0%	1	1%	0	0%	1
Grand Total	4	100%	105	100%	8	100%	117

From an aggregate perspective, the range of discipline appears equitable. However, a closer review of the 13 preventable vehicle collision cases in which officers and sergeants received discipline of a suspension of 10 days or less shows a more nuanced range of discipline given. Within this category, OIG summarized a list of all preventable vehicle collisions from the last

<sup>4</sup> No other nonsworn personnel aside from Police Evidence Technicians received discipline for preventable vehicle collisions. This is likely because most other nonsworn personnel do not frequently drive in order to fulfill their job function. Police Evidence Technicians routinely drive to crime scenes to collect evidence, handle firearms and to transport victims and witnesses.

<sup>5</sup> Includes suspensions, time deducted and ‘held in abeyance agreements’ of ten days or less.

<sup>6</sup> Includes suspensions, time deducted and ‘held in abeyance agreements’ of more than ten days.

five years (including the violation in OIG’s sample) to see whether a history of collisions per officer could further explain the variance.<sup>7</sup>

Commonalities among violations in this category include each violation being a stand-alone offense with no other additional violations occurring at the time of the vehicle collision. And all but two individuals had a previous preventable vehicle collision on record.

**Table c** Distribution of discipline given for Officers and Sergeants of a suspension of ten days or less

<b>Rank</b>	<b>Total Vehicle Collision History for the Last 5 Years</b>	<b>Discipline Given</b>
Sergeant	1 incident including broadside and sideswipe	1 day suspension
Officer	1 incident including broadside	3 day suspension
Officer	2 incidents including sideswipe and rear-end	1 day suspension
Officer	2 incidents including rear-end and hitting a fixed object	1 day suspension
Officer	2 incidents including ‘other’ and hitting an object	1 day suspension
Officer	2 incidents including hitting an object and broadside	2 day suspension
Officer	2 incidents including side swipe and broadside	–
Officer	2 incidents including backing and pedestrian	Time Deducted
Officer	2 incidents including backing and pedestrian	3 day suspension
Sergeant	3 incidents including hit object and sideswipe	2 day suspension
Officer	3 incidents including rear end, broadside, and sideswipe	3 day suspension
Officer <sup>8</sup>	3 incidents including hitting objects and rear-ending	3 day suspension
Officer	3 incidents including hitting objects and rear-ending	–
Officer	3 incidents including hitting objects and rear-ending	Held in Abeyance
Officer	3 incidents including hitting objects and rear-ending	7 day suspension
Officer	<i>Record not accessible - Officer no longer with OPD</i>	1 day suspension

Without thorough review of the particulars of each case however, OIG cannot further assess the possible nuanced inequity.

**Finding # 3**

**The discipline matrix does not include all discipline options mentioned in the corresponding written policy. Additionally, a ‘last chance’ agreement is also absent from both the discipline matrix and the written policy, though only used 1% of the time.**

<sup>7</sup> Per policy, an employee’s history of sustained violations for the prior 5 years of employment may be used in determining the appropriate degree of discipline in a current case. Older violations may not be taken into consideration.

<sup>8</sup> This officer is the same as the officer who received a 7 day suspension. This individual had two sustained violations in the sample reviewed.

The department's written policy includes a varying degree of seven progressive discipline options ranging from counseling and/or training, written reprimand, salary reduction, fine, demotion, suspension and termination. However, the policy's accompanying discipline matrix excludes mention of salary reduction, fine or demotion as options. Additionally, 'last chance' agreements are missing from both documents despite on rare occasion being administered as a form of discipline 1% of the time. OIG recommends updating the written policy and matrix to be fully inclusive and transparent of all discipline options.

#### **Finding # 4**

**For repeat violations of the same offense, discipline was appropriately escalated, with one exception. Additionally, discipline for the second offense was within a reasonable degree of the first level of discipline given.**

According to policy, "progressive discipline is a process for dealing with behavior which fails to meet established and communicated performance standards. The primary purpose of progressive discipline is to assist members and employees to overcome behavioral problems and satisfy performance expectations." Of the 233 individual employees who received discipline, 14 (or 6%) committed the same offense more than once. Among these 14 repeat offenders, all but one received an increased level of discipline for their second offense.

In the one instance in which discipline was not progressive; the employee on his first offense did not call in sick within the 3 hour time window as required by policy. This constitutes a 'performance of duty' violation and in response, the employee received a 'written reprimand'. The employee's second offense involved his failure to cooperate with a Citizen Police Review Board investigation as required by OPD policy. Although unrelated in nature to the first offense, it was also labeled as a 'performance of duty' violation, thereby making it a repeat offense. The employee received 'counseling and training' for this second offense. According to the discipline matrix, the recommended progression of discipline should have begun with 'counseling and training' for the first offense and a 'written reprimand' for the second offense, not the other way around. Yet, further review of these two separate violations revealed that they occurred within 15 days of one another and parallel administrative investigations were performed that concluded within a week of each other. It is likely the close timing was what caused the exception in not giving progressive discipline.

Also, discipline given for all second offenses represented the next level of discipline recommended by the discipline matrix. In other words, no drastic leaps in discipline were evident for second offenses.

## **Finding # 5**

### **Reasoning for specific discipline was sufficiently articulated in the sample reviewed**

OIG did not seek to provide an opinion regarding discipline determinations, but rather sought to review the level of articulation given from among a judgmental sample of sustained cases. The following cases were selected because they represented a significant variance from the normal range or were within the normal range and used as a comparative case.

#### *Miranda Violations*

OIG reviewed four sustained Miranda violation cases. Three of the cases resulted in the subject employee receiving a two day suspension while in the fourth case the employee received a 30 suspension. Review of all four cases demonstrated certain articulable factors that either served to mitigate and/or aggravate the particular outcome of each case. Specifically, reasoning included whether the misconduct was willful or deliberate, premediated, whether the subject employee was truthful during the investigation and whether they accepted responsibility for their actions. Additional factors also included whether the employee should have simply known better based on the employee's length of service, experience, policy directives or the inherent nature of the act.

In the fourth case of the 30 day suspension, the chain-of-command communicated a series of compounding and aggravating factors not found in the other three cases that warranted a higher degree of discipline. OIG concludes that in all four cases, written articulation was sufficient and appropriate.

#### *Preventable Vehicle Collisions*

OIG reviewed two preventable vehicle collisions in which an unusual degree of discipline was given. Typically most discipline given for preventable vehicle violations resulted in 'counseling and training', however in one case, an employee received no discipline, while in stark contrast another employee received a 20 day suspension for the same offense.

Review of the first case indicated that while driving to assist officers, the officer encountered multiple close-range gunshots. In response, the officer abruptly stopped his patrol vehicle, at which time his partner sitting in the passenger seat exited without fully closing the door. The officer then attempted to reverse the vehicle out of the possible line of fire which caused the passenger side door to scrape the bumper of a parked car. Articulated mitigating factors included that this was the first offense for the officer, the possible immediate threat to officer safety, no injuries resulted from the event and minor damage was sustained to both vehicles.

In the case where the employee received a 20 day suspension; an officer while driving a patrol vehicle struck a pedestrian who later succumbed to their injuries. Aggravating factors included the resulting loss of life, litigation and the length of service and experience of the officer. Noted mitigating factors included that the misconduct was not willful, deliberate, or premediated, in addition to the officer being forthright, remorseful and truthful during the investigation and

that the officer immediately reported the harm caused. OIG determined that in both cases, written articulation was sufficient.

**Finding # 6**

**In the one instance in which terminating an employee was recommended, but not given, justification was articulated.**

Some of the most egregious violations relate more directly towards the critical job functions of sworn and uniformed personnel (like dispatchers and evidence technicians) versus administrative nonsworn employees. For example, testifying in court is considered an essential law enforcement function and an officer’s credibility can jeopardize the pursuit of justice if the officer has an established history of dishonesty. For that reason, dishonesty is included as one of the eleven violations in which termination is the first and only Departmental discipline recommended.

OIG identified one sustained violation for truthfulness/dishonesty. In this particular case, the actual discipline given was a 30 day suspension. According to the discipline policy, “When a level of discipline is selected outside the established penalty range, specific justification for doing so shall be documented...” The policy further states, “In all cases, the Chief of Police retains full discretion to impose any level of discipline, which he/she deems appropriate to achieve the goals of the discipline policy.” In this instance, the Chief of Police acknowledged his departure from the recommended discipline and articulated that because the employee was a nonsworn member of the Department whose job function did not include testifying in court, that termination was not deemed as the most appropriate consequence.

This articulation complies with the Department’s policy of specifying the justification for any departure from the recommended discipline.

**Table d** List of violations where termination is initially recommended

<b>1st Offense that Warrants Termination</b>	<b>Occurrence</b>
Performance of duty – Intentional search, seizure or arrest	0
Performance of duty – Planting evidence	0
Identification of undercover Police Officer	0
Comprising criminal cases	0
Assisting criminals	0
Endorsements and referrals – Fee is exchanged	0
Subversives organization	0
Refusal to testify	0
Interfering with investigations	0
Retaliation	0
Truthfulness/dishonesty	1

## Audit of Criminal Investigation Division Training Program

**Lead Auditor:** Rebecca Johnson, Office of Inspector General

**Contributor:** Kristin Burgess-Medeiros

### **Objective:**

Determine whether the Oakland Police Department's sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units in the Criminal Investigation Division (CID) attend courses designed to ensure all investigators have the same investigative foundation<sup>9</sup>.

**Policy Referenced:** Oakland Police Department Criminal Investigation Division Policy and Procedures Manual, *Policy 13-05, CID Investigative Training Programs*

### **Significant Findings:**

Availability of courses, funding, and/or staffing issues impede sworn employees assigned to the aforementioned CID units from attending all four required courses.

### **Recommendations:**

The Department should revise its policy to meet its practice, ensuring that any sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units in the Criminal Investigation Division attend, at minimum, one investigative training course within six months of his/her assignment.

### **Overview**

On a daily basis, the Oakland Police Department's Criminal Investigation Division receives numerous in-custody case files. Some case files, based on the type of alleged crime committed and the solvability factor, are subsequently assigned to investigators in the misdemeanor, theft, burglary, robbery, felony assault, and/or homicide unit. At the very minimum, an investigator needs to have the basic knowledge, skills, and ability to conduct a follow-up investigation, and if necessary, to build a case to give to the District Attorney's Office for charging purposes. On June 3, 2016, the Office of Inspector General initiated an audit to determine whether the Oakland Police Department's (OPD) sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units attend training courses designed to ensure all investigators have the same investigative foundation.

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<sup>9</sup> Oakland Police Department Criminal Investigation Division Policy and Procedures Manual, Policy 13-05, effective October 8, 2014, pg. 2.

## Methodology

To conduct the audit, the auditor reviewed the OPD's policy, procedures, and practice related to training for CID sworn employees who are responsible for conducting follow-up criminal investigations for cases involving misdemeanor, theft, burglary, robbery, felony assault, and/or homicide crimes. The auditor reviewed the established training guidelines stipulated in the *Criminal Investigation Division Policy and Procedures Manual, Policy 13-05*, effective October 8, 2014, to determine which courses are required for sworn employees. Subsequently, the auditor requested from the Personnel Division a roster of the sworn personnel in the CID and secured the training records of each of the employees to ensure he/she attended the required training.

### *Population and Random Sample*

The population for this audit consisted of the training records of the sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units in the CID. There were 44 sworn employees assigned in the aforementioned units.

## Finding

Availability of courses, staffing issues, and/or budgetary constraints impede the OPD's ability to ensure its sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and homicide units attend all the required courses designed for all investigators to have the same investigative foundation.

*Criminal Investigation Division Policy and Procedures Manual, Policy 13-05, Section II, Subsection A*, requires that all investigators attend four investigative courses within 18 months of their assignment to the CID: [1] Robert Presley Institute of Criminal Investigation (ICI) Core Course; [2] Behavior Analysis Training Institute (BATI) Interview and Interrogation Course; [3] 40 hour OPD Basic Investigators Course; and [4] 40 hour OPD Search Warrant Course. Although the policy states that an investigator should take the courses within 18 months of his/her assignment, the auditor sought only to determine whether the courses were taken. Time was not a factor in determining whether OPD complied with its policy.

An audit of the training records of the 44 sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units indicated that there were only seven (16%) employees who attended all four of the required courses. There were 37 employees who did not attend all four of the required courses, as shown in the table below:

Required Courses Taken	Number of Employees	Percentage
4 of 4	7	16%
3 of 4	10	23%
2 of 4	12	27%
1 of 4	11	25%
0 or 4	4	9%

Since there were 37 employees who did not attend all four of the required courses, the Office of Inspector General's Audit Manager and lead auditor met with the Captain and a lieutenant and sergeant assigned to CID to discuss the audit findings and to determine the reason(s) more employees had not attended all of the required courses.

### **CID's Response**

During the meeting, the CID staff informed OIG's audit team of three barriers that impede OPD's ability to ensure its sworn employees assigned to the misdemeanor crimes, theft, burglary, robbery, felony assault, and the homicide units attend required courses designed for all investigators to have the same investigative foundation. The three barriers are availability of courses, staffing issues, and/or budgetary constraints. Below is a synopsis of each barrier:

#### *Availability of Courses*

It is difficult to send employees to two of the four required courses because of course availability. The ICI Core course is offered quarterly—winter, spring, summer, and fall. Currently, the ICI Core Course is full until March 2017. In addition, the OPD Basic Investigators Course has not been offered in a couple of years.

#### *Staffing Issues*

There are various staffing issues. Due to staffing levels in each unit, the Captain can only allow one or two people to attend training at the same time. Moreover, it is difficult to plan ahead for employees to attend training because of frequent unforeseen employee transfers and/or promotions out of the CID.

#### *Budgetary Constraints*

When employees attend training, backfilling vacancies and unforeseen employee transfers and/or promotions can negatively impact CID's budget. When an employee attends training, CID incurs all vacancy backfill costs. Additionally, there are times a training investment is made for an employee who shortly thereafter is transferred and/or promoted out of the division.

Although the barriers that impede training are substantive, the auditor had concerns about the Department's CID staff operating in an insular manner. However, upon further review of the training records, the audit indicated that CID sworn employees are receiving much investigative training to enhance their skills. Below is a list of the various courses that the auditor noted while reviewing the training records:

- DNA Evidence for Investigators
- Electronic Surveillance—Wiretap
- ICI Homicide Investigation
- Officer-Involved Shootings
- Officer Safety/Force Encounters Analysis
- Officer Involved Shooting and Lethal Force Investigations

- Robbery Investigation
- Robbery Apprehension Team
- Specialized Surveillance Equipment
- Basic Investigative Report Writing
- Open Source Intelligence Techniques
- DNA Collection
- ICI Detective Symposium
- Advance Cell Phone Investigations
- Financial Investigations and Analysis
- Financial Industry Mail Security Initiative Training
- Financial Crime Investigation
- ICI Identify Theft Investigations
- Fraud and Forgery Investigations
- National Property Crime Investigations Seminar
- ICI Narcotics Investigations
- Detecting Deception
- Cellular Phone Forensics and Investigations
- Specialized Surveillance Equipment
- Violent Crime Behavioral Analysis

In addition to sending its employees to the various investigative courses above, the CID staff stated that they update their knowledge and skills by reading legal updates and attending Continued Professional Training courses. Also, because of the sporadic availability of the four required investigative courses, new investigators, upon being transferred to the division, shadow with an experienced investigator.

### **Conclusion**

There are some substantive barriers that impede the CID sworn employees from receiving the training as stipulated in policy. However, OPD's goal should be to create a training program that is achievable. Therefore, the OPD should revise its policy to meet its practice.

## **NEXT MONTH'S PLANNED REVIEWS**

The reviews scheduled for the August 2016 Report are:

1. Field Training Program
2. Refusal to Accept Complaints