

Monthly Progress Report

Of the Office of Inspector General



January 2017

Office of the Inspector General

Oakland Police Department

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INTRODUCTION

This is the first *Monthly Progress Report* of 2017 and the 17th Report since we, the Office of Inspector General, began our continued process of monthly inspections to maintain or improve best police practices in light of the Oakland Police Department's mission, goals and values. Since September 2015, OIG has completed 33 reviews, resulting in 80 recommendations to improve performance and service to the community. Thirty-seven of these recommendations have been closed or completed by the Department; 22 recommendations are awaiting policy review and/or approval for revision; and only eight of the remaining recommendations are categorized as both pending and priorities. Each of these reports and recommendations are available on the [Department's website](#), and we will continue to track and report on continued progress throughout the year.

Additionally, with guidance from the Office of the City Auditor and the Independent Monitoring Team, we have completed our report on the Department's hiring and training practices. The report, entitled [Officer Integrity Trends and Other Critical Observations Regarding Hiring and Training Practices](#), was formally completed and presented on December 2, 2016. Our observations produced 11 recommendations to systematically address preferred practices and strengthened control measures in order to hire, train and retain the most qualified officers while also appropriately addressing candidates who may pose an elevated risk of committing misconduct. Since preliminary recommendations were issued prior to the conclusion of our report, the Department has completed objectives, demonstrated improvement, and published its action plan in response to each recommendation. Again, the report and each of these recommendations and responses are available on the Department's website and we will continue to track and report on continued progress throughout the year.

This month's report evaluates the Department's efforts to comply with the recommendations resulting from two of our past audits: *Management –Level Liaison Review*, published June 2016 and *Audit of Personnel Arrested, Sued and/or Served with Administrative Process*, published October 2015. Next month's report will cover the quality and consistency of "Stop Data" and the handling of confiscated United States currency.

Respectfully submitted,



Christopher C. Bolton
Lieutenant of Police
Office of Inspector General

Management-Level Liaison Review of June 2016 Follow-Up Report

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

Objectives:

1. To evaluate the use of case evaluations as a supplemental measure to help ensure a broader review of dropped cases is being effectively performed.
2. Report any other major developments related to the Management-Level Liaison (MLL) policy.

Significant Finding: At the time of the original review, *Management-Level Liaison DGO A-18* was the governing policy. Since then, the Department has replaced it with *Policy 600: Investigation and Prosecution*. This new policy sets guidelines and requirements pertaining to the handling and disposition of criminal investigations and prosecution and captures the responsibilities of the MLL function. The change in policy is in accordance with a Department-wide initiative to update all policies and procedures. The new policy is currently under review.

Background:

The MLL role requires the tracking and review of cases not tried because they were lost, dropped, or dismissed due to:

- Poor reporting
- Defective search warrants
- Granted “motions to suppress”
- Contradictory evidence or testimony
- Some other indication of operational issue due to the Department’s handling of the case

The purpose of the MLL review is to ensure the Department is aware of, and properly tracking, any possible discrepancies associated with the performance of OPD personnel in association with criminal cases. Any possible discrepancies necessitate further investigation. Such cases are reported to the Internal Affairs Division (IAD) and members of command staff for review or investigation.

Currently, the MLL tracks and reviews only one of several different categories used by the District Attorney’s Office, called ‘T3 Admissibility Factors.’ This category covers operational policing issues such as inadmissible search and seizures due to questionable consent, probable cause, knock and notice, search, seizure, etc. Of all the various different categories, ‘T3 Admissibility Factors’ appear to hold the most value in reviewing cases not charged as opposed to, for example, a dropped case due to an uncooperative witness which holds no bearing on the Department’s performance.

In June 2016, OIG put forth the following recommendation:

The Department should consider the feasibility and value of tracking additional dismissed criminal cases, in which OPD was the arresting agency, in efforts 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.

In response to the recommendation, the Department agreed that broader tracking could further ensure Department personnel are performing their duties per law and policy, yet the Department believed it may prove too administratively burdensome to track *all* categories given that the strike list¹ does not allow for an efficient method of review (i.e., arresting agency and identifying officer information are not provided) and therefore did not follow OIG's recommendation due to competing priorities and available resources.

Given the Department's response, OIG decided to assess the matter of broader tracking and review in a way that would not breach the constraints of the Management Level Liaison's role. Subsequently, OIG elected to initiate an audit to evaluate the use of case evaluations as a supplemental measure to help ensure a broader review of dropped cases is being effectively performed.

Methodology:

For this review, OIG Staff:

- Interviewed the Department's Management-Level Liaison and staff from the Criminal Investigation Division
- Reviewed one year's worth of dropped OPD criminal cases that were classified under various other categories in addition to any 'T3 Admissibility Factors' cases to determine whether there was indication that the arrest, search, investigation, or reporting process was not properly performed.
- In certain instances, OIG also reviewed corresponding PDRD footage and investigator case notes for further detail.

Finding #1

OIG found no officer performance deficiencies or operational issues within a one-year period of review. In the one instance in which a dropped case was labeled under 'T3 Admissibility Factors', the MLL followed the appropriate protocol.

Currently, the MLL tracks one category of dropped cases used by the District Attorney's Office to indicate the reason why a case will not advance. The category is called 'T3 Admissibility Factors' and includes the following subcategories:

¹ The District Attorney's Office provides "strike lists" to the MLL who then determines whether a case will advance in review. A strike list contains the names of individuals arrested within Alameda County along with the charges and codes indicating the category of each case's dismissal. The strike list does not include the arresting agency (e.g., Berkeley PD, Oakland PD, Emeryville PD, etc.) or any identifying officer information. In the past, there have been few instances in which the 'T3 Admissibility Factors' category was used by the District Attorney's Office (which may be considered a positive indication of police performance in general). The MLL reviews the strike list for any cases listed under the 'T3 Admissibility Factors' designation and prepares a memo summarizing their monthly review, which is forwarded to IAD, OIG and CID.

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

‘T3 Admissibility Factors’ could foreseeably indicate possible Department personnel or operational performance issues, hence the review by the Department’s MLL.

However, other general categories for case dismissal may capture instances of potential operational/performance issues. These categories, including categories like ‘T2 - Lack of Sufficient Evidence’ and ‘T7 - Interest of Justice’ are not currently reviewed by the MLL. To compare the proportion of cases classified under ‘T2 Lack of Sufficient Evidence’ and ‘T7 Interest of Justice’ against those labeled ‘T3 Admissibility Factors,’ OIG reviewed a sample of six months’ worth of dropped cases from 2015 to determine the distribution of dropped cases. The auditor reviewed the Alameda County-Wide Statistics on dropped cases, and found that 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 below shows dismissed cases from all law enforcement agencies within Alameda County.

Table 1

Alameda County Wide Statistics On Dropped Case Categories		
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%

Between May 2015 and May 2016, the District Attorney’s Office collectively dropped 4,246 cases for all Alameda County law enforcement agencies. Of those dropped cases pertaining specifically to the Oakland Police Department, OIG reviewed the arrest report in all cases within eleven general strike list categories. OIG reviewed 25 dropped case crime reports for specific articulation of lawful reasoning (reasonable suspicion and/or probable cause), elements of the crime and clearly stated evidence in a search for possible issues regarding the dispositions of arrests, searches, investigations, or reporting processes. There were three dropped cases labeled under ‘T7-K Police Request No Prosecution,’ and the OIG also reviewed any corresponding PDRD footage and investigator’s case notes for further detail. Table 2 below shows the Oakland Police Department cases dropped in a one year period, May 2015 to May 2016.

Table 2 Dropped Oakland Police Department cases from May 2015 to May 2016

General Strike List Category	Oakland Police Department
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1	T2-E Insufficient quantity of drugs	1
2	T2-D Insufficient Evidence to Connect Suspect	0
3	T3-D Questionable Probable Cause	0
4	T3-E Questionable Search and Seizure	1
5	T7-K Police Request No Prosecution	3
6	T7-Other	1
7	T8-B Referred to Law Enforcement Administration	1
8	T1-A Conduct Lawful	3
9	T1-B Insufficient proof of value	0
10	T1-C No Jurisdiction	5
11	T7-E Interest of Justice Other	10
	Total	25

For the one instance in which a dropped case was labelled under ‘T3-E Questionable Search and Seizure’ (the category that the MLL is required to review), the MLL correctly followed policy. An IAD Complaint Preliminary Investigation was forwarded to Internal Affairs, both the IAD Commander and Deputy Chief responsible for the Bureau of Investigations were notified, and the MLL personally reviewed the case as well. A Case Evaluation Report was also generated in response to the dropped misdemeanor charge. IAD opened an administrative investigation and returned a finding of ‘exonerated’ for the allegation of unintentional improper search and seizure. OIG concluded that policy and procedure were followed as intended and appropriate oversight was provided by the Department in response to the dropped case.

OIG found the details listed in twenty-four crime reports to be appropriately written, defensible, and in accordance with the handling of criminal cases. In one instance, OIG remained uncertain as to the particular handling of an arrest and therefore referred the matter for review to Department subject matter experts. This arrest related to a dropped case listed under ‘T7-K Police Request No Prosecution.’ Despite few reported cases (three in one year’s time) OIG recommends the Department should track dropped cases classified under ‘T7 – Police Request No Prosecution’ in addition to ‘T3’ cases. The T7 category of dropped cases may have similar potential for operational discrepancies that would warrant further review of the dispositions of arrests, searches, investigations, or the reporting process by Department personnel.

Finding # 2

The Department has begun finalizing a more concise and streamlined policy regarding the Management Level Liaison’s role and responsibilities.

Since OIG’s June 2016 review, the Department has replaced its *Departmental General Order, Management-Level Liaison*, with *Policy 600: Investigation and Prosecution*. This new policy sets guidelines and requirements pertaining to the handling and disposition of criminal investigations and prosecution and captures the core responsibilities of the MLL function. Policy changes related to the MLL function include removing language requiring monthly meetings with the Alameda County District Attorney’s Office and Public Defender’s Office. Per the Department, these meetings have proven to be rarely utilized. Nonetheless, language remains in the updated policy that requires communication amongst the MLL, the Alameda County District Attorney’s Office, and the Public Defender’s Office remain open, and that these offices

are made aware of potential instances of misconduct or poor performance that impact the rights of community members and defendants. Crime reports and statuses will remain tracked and available upon request by both agencies.

The draft *Policy 600: Investigation and Prosecution* (which was prepared by the Department's Research and Planning Unit) has been subsequently reviewed by OIG as the first in a series of reviews and approval. The draft will be further reviewed by;

- Office of the City Attorney
- Department's executive command staff
- NSA Plaintiff's Attorneys
- Negotiated Settlement Agreement's Independent Monitoring Team
- Multiple workers' unions (sworn and professional staff) who are entitled to a meet and confer process regarding proposed changes that could impact City/Labor agreements and/or working conditions

Other Reportable Matters

The Criminal Investigation Division's investigator's analysis and summary of a dropped case is not being entered in the Department's early warning Internal Personnel Assessment System (IPAS).

Presently, the Department documents both charged and dropped cases through its case evaluation process regardless of category. For dropped cases, criminal investigators working in the CID perform case evaluations for cases that were prepared preliminarily by field officers who responded to the incident, arrest and/or investigation of a suspect(s) but were subsequently not charged by the District Attorney's Office. Once reviewed by a CID investigator for possible operational or officer performance discrepancies, these case evaluations are forwarded to a Police Records Specialist who manually enters the case evaluation report into IPAS. Case evaluations include details of the crime, charge and reason for the cases not being charged.

Despite case evaluations being recorded in the Department's internal personnel assessment system, the practice appears to be performed inconsistently among units within CID. Per the CID staff, some CID units experience a backlog of cases given their high caseload volume, shortage of staff and the need for supervisor approval. Moreover, although some dropped case evaluations are being entered into IPAS, the investigator's actual analysis and summary - arguably the most meaningful of all information - is not currently transferred into IPAS. Additionally, review of Department policy found that there appears to be no current governing policy related to the case evaluation process as it pertains to the entry of information in IPAS, specifically, what should or should not be included. Without guidance provided by a written policy, the variation in practice over the years is not surprising. Mediating factors include a review of case evaluations as part of the annual performance appraisal process and bi-weekly review by supervising sergeants. The Commanding Officer of CID has agreed to prioritize the complete and consistent data entry of case evaluations among all CID unit staff.

Dropped cases are not considered a key performance indicator that triggers a review once a threshold is met.

Additionally, dropped cases are not considered a key performance indicator that triggers a review once a threshold is met (unlike the number of use of force or internal affairs complaints received per officer). In other words, an officer could theoretically have many recorded instances of dropped criminal cases, potentially due to his/her poor handling and no amount of cases will trigger a review of his/her performance. The rate of dropped cases is only reviewed whenever an individual surpasses a peer threshold for a key performance indicator. Yet, IPAS staff lack written guidance on the degree of review they should give when Department personnel under IPAS review have dropped cases to their credit. In speaking with IPAS personnel staff, it has not been a common occurrence, if at all, to observe an individual under review who has had dropped cases. According to IPAS, in the event an individual under review has dropped cases, they would review the associated crime reports for further indication of patterns or trends related to poor performance in handling criminal cases.

Including summary descriptions of reasons for lack of case charging in IPAS may advise and inform Department personnel, supervisors and command about training, equipment, or personnel monitoring and intervention needs. The ability to set or monitor thresholds for dropped cases may also provide future opportunity to add to or enhance the Department's early warning system capabilities. But the manner and method of this record keeping and communication ultimately needs to adhere to an employee's right to review and respond to any adverse comment that is entered in what may be considered a "personnel file...or any other file used for personnel purposes by his or her employer (Gov. Code §3255)."

Recommendations

1. The Department should begin tracking dropped cases classified under 'T7 – Police Request No Prosecution' as there may be similar potential for operational discrepancies in the handling criminal cases as those labeled under 'T3 Admissibility Factors.' This review should be handled by the MLL.
2. The Department should evaluate whether the number of dropped criminal cases should be added as a category in its early warning system as another measure to detect employee performance issues.

Audit of Personnel Arrested, Sued and/or Served with Administrative Process Follow-Up Report

Auditor: Charlotte Hines, Office of Inspector General

Objective(s):

Evaluate whether the Oakland Police Department implemented the recommendations in the Office of Inspector General's audit entitled *Audit of Personnel Arrested, Sued and/or Served with Administrative Process* and published October 2015. The recommendations are as follows:

1. All personnel assigned to specialized units have to complete an annual *Statement of Compliance File* and the file has to be forwarded to the Internal Affairs Division. Therefore, the list of specialized units should be updated to remain consistent with the intent and spirit of the policy.
2. Departmental General Order E-3.1, *Department Notification Compliance Verification*, should be amended to say anyone "loaned or transferred" to a specialized unit shall complete a *Statement of Compliance File* to ensure at risk individuals can be identified more efficiently.
3. Command staff should immediately take action when being alerted to a driver license suspension/ revocation by preparing and serving an advisement memorandum to the affected employee.
4. The affected employee's supervisor shall document the serving of the advising memorandum in an Internal Personnel Assessment System (IPAS) Supervisory Note File.

Policies Referenced:

- Internal Affairs Division Policy & Procedures Manual Policy 07-04, *California Driver's License Verification*
- Departmental General Order B-6, *Performance Appraisal*
- Departmental General Order (DGO) F-7, *Drivers' Licenses*
- Department General Order E-3.1, *Department Notification Compliance Verification*

Overview/Background:

The Office of Inspector General (OIG) conducted a follow-up review to evaluate the Department's effort to implement the four aforementioned recommendations above resulting from its *Audit of Personnel Arrested, Sued and/or Served with Administrative Process*, published October 2015 in the *Monthly Progress Report*.

In the October 2015 audit, the auditor cited four findings regarding the Department's handling of personnel arrested, sued, and/or served with administrative process:

- All personnel assigned to specialized units have to complete an annual *Statement of Compliance File* and the file has to be forwarded to the Internal Affairs Division. The list of specialized units in the Department's policy was outdated because the names of some of the units had changed.
- Employees loaned or transferred to a specialized unit were not instructed, per policy, to complete an annual *Statement of Compliance File*.

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- Departmental General Order F-7, *Drivers' Licenses*, places the responsibilities of handling notifications of employees' driver license suspensions/revocations upon both the Internal Affairs Division Integrity Testing Unit (ITU) and the affected employee's unit commander. Yet, only the ITU handled notifications of employees' driver licenses suspensions/revocations.
- There was no documentation stating that the affected employee's supervisor served him/her with an advisement memorandum regarding his/her license suspension.

Objectives one and two above refer to policy revisions, and at this time, the follow up on those revisions is being deferred since the Department is revising all of its policies. OIG will follow-up at a later date. This follow-up report therefore focuses on objectives three and four.

Specific OPD policy and procedures exist to ensure all Departmental personnel, whose job require the possession of a California Driver License, possess and maintain a valid license. The requirements and accountability measures serve to enhance employee and public safety.

The current process for reviewing the status of employees' driver licenses starts with a member of the Communications Division who runs a Department of Motor Vehicle (DMV) query of employees on a monthly basis. Employees are selected each month by the Personnel Division based on the first letter of their last name according to the performance appraisal review schedule outlined in DGO B-6, Section IV, Subsection A. Each employee is reviewed annually. The Personnel Division provides a list of employee names (a report entitled *CDL Report*) to Communications for the DMV query. The Communications Division documents the results of the query in a memo and forwards the memo to the Integrity Testing Unit (ITU) for further review. While the memo from Communications includes the status of all licenses that are expired, suspended, revoked and/or show a discrepancy in the data (i.e., incorrect dates of birth or CDL numbers) between the Personnel database and the DMV database, ITU is concerned solely with driver licenses that are expired, suspended or revoked.

The ITU runs a subsequent DMV query to confirm the CDLs status of expired, suspended or revoked. If the DMV query confirms a license is expired, the ITU will send a notification memo to the employee's commander requesting the matter be corrected immediately. The ITU also requests the commander to report back on the matter once it is corrected. In cases when the DMV query is run and the issue has already been corrected, a copy of each DMV query is maintained as supporting documentation that the matter has been corrected.

The last review of DGO F-7 was conducted by the OIG in October 2015 and included the following recommendations:

- Section, DGO F-7 places the responsibilities of handling notifications of member/employees' Driver License suspension/revocations upon *both* the IADITU and the effected member/employee's unit commander. The auditor recommends that Command staff immediately take action when being alerted to a license suspension/revocation by preparing and serving an advisement memorandum to the affected member/employee. By not relying on the IADITU staff to start the process, the

likelihood of a notification being missed (due to personnel movement, human error, etc.) will be greatly reduced.

- Additionally, the auditor recommends that the affected member's supervisor shall document the serving of the advising memorandum in an iPAS Supervisory Note File

The Office of Inspector General initiated a follow-up review to determine whether the recommendations above were implemented.

Methodology:

To conduct the follow-up review, the OPD's Communications Division and Integrity Testing Unit personnel were contacted. First the Communications Division was contacted, and the auditor requested copies of all monthly driver license checks and memos completed during the period of March 2015 through October 2016. A spreadsheet was created detailing the specifics of each month's review results. Secondly, the ITU was contacted and copies of all documentation of driver's licenses reported as expired, revoked or suspended were requested. The OIG auditor met with ITU personnel and reviewed documentation verifying the proper review process had been completed as instructed in each of OPD's applicable manuals. .

Finding(s):

Not all instances of driver's license expiration, revocation or suspension were appropriately reported and resolved.

The auditor requested each of the memos and CDL Reports produced from March 2015 to October 2016 from the Communications Division. There were 20 months of data requested, and the auditor received 16 months of data in which both the respective memo and CDL Report was received. However, there were four months in which documentation was missing. In July and October 2015, the memorandums created by the Communications Division that details the review results were missing. In addition, in June and November 2015, both the CDL Reports and the memorandums were missing. The missing documents could not be located by the Communications Division or ITU, calling into question whether the employees reviewed during these months had any CDL issues which may have gone undetected for at least a year. Subsequently, a review of the remaining 16 months of documentation identified a total of 11 expirations and 1 suspension.

Expired Licenses

Of the 11 licenses that were listed as expired, there was documentation in the ITU that verified eight licenses had been corrected. ITU could not provide supporting documentation for the other three expired licenses. However, the auditor was able to verify that the names did not appear on the Communications Division memorandum for the following year and concluded that the licenses had been successfully renewed.

Suspended Licenses

The ITU provided supporting documentation verifying that the one suspended license was reviewed appropriately and all required steps had been taken.

Policy references and documents require updates.

It was determined that there is language in the memorandum completed by the Communications Division that should be updated, specifically the reference to Special Order (SO) 8160. After much research and numerous inquiries it was concluded that SO 8160 no longer exists and has been incorporated into the language found in Departmental General Order F-7 - "*Drivers Licenses*" and Departmental General Order E-3.1 - "*Department Notification compliance Verification*." Therefore, the reference to the SO has to be deleted.

Supervisors are not documenting CDL issues as required within IPAS.

There were 12 expired, revoked or suspended licenses identified in this inspection. The auditor verified the IPAS Supervisory Note Files of each corresponding member/employee and found there was only one SNF recorded in IPAS.

Additional Observations

For all discrepancies and/or concerns such as an incorrect date of birth or a discrepancy in the driver license number, the Personnel Unit is notified and responsible for any necessary corrections that need to be made to the Personnel database. During the follow-up review, the auditor noted that the Communications Division memos included a total of 11 licenses that listed other discrepancies. Four licenses had date of birth issues and the other seven licenses had incorrect CDL numbers. Therefore, the auditor met with the Personnel Unit and was able to verify that all four date of birth issues and six licenses with incorrect CDL numbers had been corrected in the Personnel Database. However, the one remaining license with an incorrect CDL number did not show any correction had been made.

The auditor noted that the ITU still takes the lead in handling issues of expired, suspended, and revoked licenses and that the Department has not implemented OIG's previous recommendation to have command staff immediately take action when being alerted to a license suspension and/or revocation by preparing and serving an advisement memorandum to the affected member/employee. The auditor finds the ITU's current process acceptable and no additional follow-up is necessary.

Recommendation(s):

- 1) OIG recommends that both the Communication Division and the ITU establish a thorough filing and document retention system that encompasses each phase of the review and incorporate the entire processes in the respective policies.
- 2) The Communications Division should revise and/or update the memorandum it creates when reporting the results of the monthly driver license reviews by eliminating the obsolete Special Order language.
- 3) OIG re-emphasizes the recommendation that Supervisors document the serving of the advising memorandum to an employee/member in the IPAS Supervisory Note File and include this as a requirement of the Supervisor in Department policy DGO F-7, *Drivers Licenses*.

Conclusion:

It should be noted that during this follow-up review, the Communications Division was actively in the process of updating the memorandums to reflect its references to the Departments' current policies. These processes remain in need of further improvement in order to address risk, and OIG will assess, track and address each recommendation along with the presence or absence of future remedial actions.

NEXT MONTH'S PLANNED REVIEWS

The reviews scheduled for February 2017 are:

1. Stop Data Accuracy and Consistency
2. The Handling of Confiscated United States Currency