



Recommendations for the South Bend Police Department

21CP Solutions

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Executive Summary

The City of South Bend engaged 21CP Solutions (“21CP”) to conduct an assessment of the South Bend Police Department (“SBPD” or the “Department”) in October 2019, focusing on six primary areas. 21CP met with departmental, community, and city stakeholders in November and December 2019. It reviewed use of force and misconduct investigation files from 2017, 2018, and 2019. It evaluated SBPD’s policy materials, data about the Department’s performance, and additional information in January and February 2020.

This report describes 21CP’s findings in the six areas of focus and provides specific recommendations to the Department for addressing challenges and leveraging opportunities going forward.

1. Use of Force & De-Escalation

21CP considered SBPD’s policies and practices regarding the use of force and de-escalation, making several specific recommendations. Among other things, SBPD should:

- **Ensure that its use of force policies better reflect an appropriate focus on objective, reasonableness, necessity, proportionality, and de-escalation where safe and feasible to do so.** First, current policy blurs the lines of objective versus subjective reasonableness. Second, SBPD’s policy should clarify that officers must only use force when it is necessary under the circumstances. Third, the policy should require that any force used be proportional to the nature of the threat.
- **Adopt a standalone policy on de-escalation.** The policy should require that officers use de-escalation tactics and strategies whenever it is safe and feasible to do so, regardless of whether the situation ultimately requires force.
- **Explore a potential over-reliance on CEW/Taser usage on non-aggressive subjects fleeing on foot.** SBPD should revise its policies to provide clearer guidance to officers on the circumstances that would make applying a Taser to a fleeing subject appropriate.
- **Examine its various force reporting and review mechanisms to ensure that they are streamlined and efficient for officers completing them, sufficiently rigorous and detailed, and consider a comprehensive array of policy and tactical issues.**
- **Reboot and relaunch a Crisis Intervention Training (CIT) program to ensure safe, effective response to individuals experiencing behavioral health challenges.** Although the Department indicates that it has a crisis intervention program, a more comprehensive program should be memorialized in policy and implemented Department-wide.

- **Ensure that it provides all officers with mandatory, ongoing in-service training grounded in practical, scenario-based instruction and conducted in a manner that reflects contemporary adult education practices.** Community members should assist the Department in identifying training priorities, developing curricula, and providing training where the community are appropriate subject-matter experts.

2. Body-Worn Cameras

With respect to body-worn camera technology, SBPD should:

- **Review and revise its policies to ensure that its requirements regarding body camera activation are clear.**
- **Ensure that it adequately addresses outstanding challenges with its body-worn camera system.**

3. Bias-Free Policing

SBPD's current policy expressly prohibits bias-based policing. 21CP identified some areas where the Department may strengthen its policies and procedures. Specifically, SBPD should:

- **Update its Bias-Based Policing policy to expand its statement of guiding principle and clarify the responsibility of officers to report incidents that they observe or otherwise become aware of that may violate the policy.**
- **Ensure the collection of rigorous data about all non-voluntary contacts.**

4. Accountability

With respect to SBPD's accountability systems, SBPD should:

- **Ensure that all instances of possible officer misconduct are investigated in a full, fair, and timely manner.**
- **Ensure that supervisors review all IA investigations and provide detailed documentation in their review and adjudication.** At the same time, chain of command review should engage specifically and meaningfully with the preliminary findings of investigators and/or prior reviews.
- **Ensure that residents can file complaints without intimidation or dissuasion.**

- **Work with the City to establish, in partnership with the community, protocols and timelines for the release of information and data following critical incidents.**
- **Provide meaningful and substantive opportunities for the community to provide feedback on proposed policy changes.**
- **Expand the Open Data Portal to include additional, real-time information.**
- **Post all policies, manuals, and related materials on its website, keeping such material up-to-date.**

Additionally, the Board of Public Safety should adopt and adhere to a “discipline matrix” that provides expected discipline ranges for various types or classes of policy violations. At the same time, the Board’s meetings records should be more readily accessible to the public.

South Bend also should explore the many models of civilian oversight nationally and adopt additional approaches that best match the needs of the South Bend community and SBPD. **This may include the revamping or restructuring of the Board of Public Safety. A civilian panel should select the model and assist in the implementation of the ultimate oversight approach.**

5. Community Engagement and Participation

To strengthen and expand community engagement and participation, this report recommends that SBPD:

- **Implement a comprehensive community and problem-solving policing model.** Currently, community policing within SBPD refers to a series of programs, initiatives, and partnerships. This is a strong platform for SBPD to embrace community policing as an overriding approach to policing that shapes the way that police conduct their work on a minute-to-minute, shift-to-shift basis.

As part of implementing this model, the Department should develop a written Community and Problem-Solving Policing Plan developed in collaboration with the South Bend community and focusing on community problem-solving becoming the core duty of all SBPD officers. This may include SBPD providing regular, unassigned time for patrol officers to conduct community engagement and problem-solving activities.

- **Consider expanded use of foot, bike, and other alternatives to motorized patrol.**
- **Work to establish structures and processes to effectively coordinate responses across city agencies to public safety and community well-being issues.**

- **Consider a formalized process and system for mental health professionals to provide mental health services for crime victims’ families and affected community.**
- **Look for opportunities to strengthen and build on the collaborative problem-solving opportunities of the Group Violence Intervention (“GVI”).**
- **Develop and implement mandatory training for all officers, and for community members, on community engagement and problem-solving skills.**

Across its community policing efforts, SBPD and its personnel must ground their interactions in person-to-person listening, candor, humility, and open-mindedness. The goal should be authentic collaboration with community on identifying and addressing community problems and public safety issues.

6. Officer Well-being, Recruitment, Retention, and Developing the Narrative

Because building trust and legitimacy in any organization starts with the cadre of officers hired and retained by the agency, SBPD should:

- **Create and implement a strategic plan for recruitment, hiring, and retention to ensure that SBPD attracts well-qualified, diverse recruits familiar with policing in a challenging urban environment and keeps them on the force so that the Department and community benefit from their long-term relationships with residents.** This plan may include formulating a comprehensive professional development program, exploring changes in officer compensation and benefits, reducing the length of the hiring process, reevaluating minimum hiring qualifications and/or disqualifying characteristics, and establishing recruitment activities as a continual, year-round effort.
- **Implement a comprehensive, 360-degree officer wellness program.** This includes establishing protocols for assisting officers who have responded to high-stress calls, implementing a structured peer support team, enhancing existing support services like the Employee Assistance Program, and enhancing mechanisms for officers to provide feedback about their experiences within the Department.
- **Implement a meaningful, non-disciplinary Early Intervention System aimed at identifying potentially problematic performance trends before they become problems.**
- **Provide opportunities for officers to interact directly with the Chief and senior command.**

- **Include individual officers in the policy development process.**
- **Partner with officers to construct a formalized communication plan aimed at ensuring more comprehensive and widespread dissemination of information about what the Department is doing.**

Introduction

The City of South Bend engaged 21CP Solutions (“21CP”) to conduct an assessment of the South Bend Police Department (“SBPD” or the “Department”) in October 2019, focusing on six primary areas:

1. Use of force and de-escalation;
2. Body-worn cameras;
3. Bias-free policing;
4. Accountability;
5. Community engagement and participation; and
6. Officer well-being, recruitment, retention, and developing the narrative.

In particular, the City asked 21CP to focus on forward-looking recommendations for how SBPD could strengthen and improve its operations, procedures, and approaches in the above areas. Consequently, **21CP’s work should not be considered to be a systematic evaluation of past practices, prior reforms, or previous changes. Instead, the focus is on SBPD’s current practices in the six areas identified above and on making recommendations for the future.** Likewise, because 21CP convened with stakeholders in late 2019 and formulated its recommendations in early 2020, the report cannot capture important local and national conversations around policing that have emerged more recently.

In 21CP’s experience, what a department does can often be very different from what it says it does – which may be different, in turn, from what its policies say it should do. 21CP’s analysis aimed to consider each of these different realities. Accordingly, in November and December 2019, a team of 21CP’s experts met with Department personnel from across ranks, engaged with community representatives, and reviewed use of force and misconduct investigation files from 2017, 2018, and 2019. In January and February 2020, 21CP evaluated SBPD’s policy materials, data about the Department’s performance, and additional information that it requested and was provided from SBPD.

21CP and its experts have yet to see a perfect police department – or a perfect human organization of any sort. All enterprises benefit from continuous, critical self-analysis and self-improvement. The indication, in the various recommendations that this report outlines, that SBPD can or should do better is not necessarily a criticism or critique that the Department has performed inadequately in the area previously. Instead, taken together, these recommendations may serve as a roadmap to ever-enhanced public safety service that continually re-invests in reflecting and responding to community challenges, concerns, and values.

The remainder of this report describes 21CP’s findings in the six areas identified above and provides specific recommendations to the Department for addressing challenges and leveraging opportunities going forward.

About 21CP

21CP Solutions helps law enforcement agencies and communities effectively tackle the challenges of delivering safe and effective policing in the 21st Century. From transforming day-to-day operations to imagining new deployment strategies to maximize resources, we partner with cities around the country to develop implement meaningful, practical policing approaches.

We are a diverse group of national experts in public safety. We are police chiefs who have turned around troubled law enforcement agencies and have worked to renew the community's confidence in the police. We are social scientists and academics who have spent careers understanding what works in policing and public safety. We are lawyers and community leaders who have overseen some of the country's most successful police reform efforts. And we are all professionals who have worked in, with, and for communities to drive safe, effective, and constitutional policing.

21CP is an outgrowth of many of its consultant's experiences on President Obama's Task Force on 21st Century Policing. Building on the Task Force's work, several members formed 21CP in 2015 to assist local law enforcement agencies and communities with implementing strategies for ensuring officer and public safety, constitutional policing, and authentic partnerships between communities and law enforcement. Jurisdictions from California to Connecticut and Seattle to Baltimore have turned to 21CP to help address their most difficult public safety and policing challenges.

1. Use of Force & De-Escalation

Recommendation 1.1. SBPD’s use of force policies and review procedures need to be revised to better reflect an appropriate focus on objective reasonableness, necessity, proportionality, and de-escalation where safe and feasible to do so. The revised policies should reflect the particular concerns, realities, and experiences of the South Bend community and officers.

Providing clear policies on when officers may and may not use force is critical for all law enforcement agencies. “To ensure fair, safe, and effective policing now and in the future, community members and police leaders should work together to create clear and specific guidance and expectations on appropriate use of force”¹ Federal and state law “outlines broad principles regarding what police officers can legally do in possible use-of-force situations, but it does not provide specific guidance on what officers should do.”² Therefore, it is the task of police agencies to continually assess and ensure that its policies provide more specific guidance and “rules of the road” than courts have specifically outlined.³

SBPD should revise its policies to clarify that force is justified when it is objectively reasonable under the circumstances. The Supreme Court made clear in *Graham v. Connor* that “the ‘reasonableness’ inquiry . . . is an objective one: the question is whether the officer’s actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”⁴ This means that the force inquiry focuses not on the situation and circumstances as subjectively perceived or understood by the involved officer but, instead, on what a reasonable officer, under the circumstances, would have perceived and understood. The involved officer’s “underlying intent or motivation” is not relevant.⁵

SBPD’s current policy risks blurring the lines of objective reasonableness – the guiding legal standard – and subjective reasonableness. Policy 300 begins by providing: “Officers shall use only that amount of force that reasonably appears necessary *given the facts and circumstances perceived by the officer . . .*”⁶ This fundamental policy mandate therefore risks situating reasonableness in terms of what the officer on the scene actually knew or perceived.

Similarly, although it goes on to indicate that reasonableness should be evaluated in light of “a reasonable officer at the scene at the time of the incident,” the policy provides that “circumstances may arise in which *officers reasonably believe* that it would be impractical or ineffective to use” the tools or methods provided by the Department, which would permit officers to use improvised force techniques.⁷ In describing the use of additional force techniques, then, the policy again risks suggesting that the standard

¹ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 112 (2019).

² Police Executive Research Forum, *Guiding Principles on Use of Force* 15 (2016) (emphasis in original).

³ *Id.* at 17.

⁴ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

⁵ *Id.*

⁶ South Bend Police Department Policy Manual, Section 300.3 (last rev. July 26, 2019) (emphasis added).

⁷ *Id.* at Section 300.3.2 (emphasis added).

is subjective – what officers in fact believe – rather than objective – what a reasonable officer under the circumstances would believe.

Second, SBPD’s force policies should expressly require that officers only use force when it is necessary under the circumstances. Currently, the policy notes that “[a]ny evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation,” while suggesting, with respect to improvised force responses, that at least some force responses can be “utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.”⁸ Thus, SBPD’s policy talks about necessity in terms of the *amount* or *degree* of force that an officer may deploy but not in terms of whether force should be employed in the first place.

SBPD points out that its policy does list some 17 factors that officers should consider “[w]hen determining whether to apply force” and that will be used when “evaluating whether an officer has used reasonable force.”⁹ However, though related, “reasonableness” and “necessity” are distinct concepts. The recommendation here is that SBPD should (1) expressly require in Policy 300 that force be used only when necessary, and (2) specifically define “necessary” in Policy 300 as the lack of any reasonably effective alternative.

SBPD can look to the policies of other departments for promising approaches. For example, the Cleveland Division of Police’s force policy requires that officers “use force only as necessary, meaning only when no reasonably effective alternative appears to exist.”¹⁰ The Baltimore Police Department’s use of force policy similarly gives officers “the authority to use Reasonable force when necessary to accomplish lawful ends,” with the policy providing that “[f]orce is necessary only when no reasonably effective alternative exists.”¹¹

Third, SBPD’s policy should require that any use of force be proportional to – that is, directly responsive to – the nature of the threat. Over half of the country’s fifty largest police departments have a proportionality requirement.¹² For instance, the New York Police Department’s policy requires that officers use only “the amount of force necessary to overcome resistance . . . to effect an arrest,” indicating that “[a]ll members of the service at the scene of a police incident must . . . use minimum necessary force.”¹³ The Seattle Police Department’s policy explains the importance of that agency’s proportionality requirement:

⁸ *Id.*

⁹ *Id.*

¹⁰ Cleveland Division of Police, General Police Orders, Use of Force: General at 1, <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

¹¹ Baltimore Police Department, Policy 1115, Use of Force, at 4, 6, <https://www.powerdms.com/public/BALTIMOREMD/documents/51042>.

¹² Brandon L. Garrett & Seth W. Stoughton, “A Tactical Fourth Amendment,” 103 *V. L. Rev.* 211 (2017).

¹³ New York Police Department, General Regulations, Procedure No. 203-11: Use of Force at 1 (Aug. 1, 2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf (emphasis in original).

Officers shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.¹⁴

To capture the concept of proportionality, some jurisdictions have found it useful to use graphical representations or flowcharts categorizing the types of force responses that may be consistent with various, corresponding levels of threats. These so-called use of force continuums, spectrums, or matrices can clarify the concept that an officer’s force response should be consistent with the nature of the threat. Whether a graphical representation or simply additional policy language, 21CP recommends that SBPD adopt a policy approach that effectively counsels officers on their duty to “find[] the most effective and safest response that is proportional to the threat” under the circumstances.¹⁵

As discussed further in Recommendation 1.3 below, de-escalation is currently referenced in SBPD’s policy manual only in policies relating to Crisis Intervention Incidents (Policy Sections 410.5 and 410.6), Involuntary Detentions (Policy Section 411.4), and on responding Civil Disputes (Policy 431.1). However, SBPD’s current use of force policy does not mention de-escalation. It should. “The term de-escalation can be viewed as a both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal.”¹⁶

SBPD should join the many jurisdictions that have made de-escalation an affirmative duty. For instance, the Minneapolis Police Department force policy provides that “[w]henever reasonable according to MPD policies and training, officers shall use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize use of physical force.”¹⁷ The International Association of Chiefs of Police’s *National Consensus Policy on Use of Force* similarly requires that “[a]n officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force.”¹⁸

¹⁴ Seattle Police Department Manual, Section 8.000: Use of Force Core Principles, available at <https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

¹⁵ Police Executive Research Forum, *Guiding Principles on Use of Force* 19–20 (2016) [hereinafter “PERF Guiding Principles”].

¹⁶ International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter “IACP Consensus Policy”].

¹⁷ Minneapolis Police Department, Policy 5-300, available at http://www.minneapolismn.gov/police/policy/mpdpolicy_5-300_5-300.

¹⁸ IACP Consensus Policy at 3.

Recommendation 1.2. SBPD’s use of force policies should clarify that all officers have an affirmative duty to intervene if they observe a member performing in a manner inconsistent with SBPD policy or a reasonable officer would believe under the circumstances that an officer may run a substantial risk of violating SBPD policy.

To enhance accountability and potentially prevent the application of force outside of policy, many departments articulate in policy an affirmative duty on officers to intervene in circumstances where they observe other officers violating force policy.¹⁹ SBPD Policy 300.2.1 currently articulates a “duty to intercede”:

Any officer present and observing another officer using *force that is clearly beyond that which is objectively reasonable* under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use *force that exceeds the degree of force permitted by law* should promptly report these observations to a supervisor.²⁰

This existing policy can serve as a strong foundation. However, as currently constructed, it runs the risk of placing officers in the potentially challenging position of needing to determine – perhaps in the context of a rapidly-evolving situation – whether the force of another officer is either “clearly” unreasonable or exceeds what would be “permitted by law.”

SBPD should clarify that intervention is appropriate and necessary whenever a reasonable officer, under the circumstances, would conclude that another officer may run a substantial risk of violating SBPD policy. In instances where intervention is not feasible under the circumstances, SBPD policy should clarify that officers have an affirmative responsibility to report instances where they observe or become aware of officers whose performance or actions could constitute a violation of the policy.

Recommendation 1.3. SBPD should adopt a standalone policy on de-escalation that requires officers to deploy de-escalation strategies and tactics whenever it is safe and feasible to do so.

Again, the word “de-escalation” does not currently appear in SBPD’s Use of Force Policy (Policy 300). Again, across SBPD’s policy manual, de-escalation is referenced in a policy on Crisis Intervention Incidents (Policy Section 410.6), in the policy on Involuntary Detentions (Policy Section 411.4), and in a policy on responding to Civil Disputes (Policy 431.1). While SBPD’s policy on crisis intervention incidents references de-escalation, that policy indicates that de-escalation is equivalent to “taking no action or passively monitoring the situation” and suggests that de-escalation may somehow only be

¹⁹ Campaign Zero, Police Use of Force Policy Analysis (September 20, 2016), at 11, *available at* <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e1b5cc2994ca4ac1d97700/1474409936835/Police+Use+of+Force+Report.pdf>.

²⁰ South Bend Police Department Policy Manual, Section 300.2.1 (emphasis added).

appropriate in interactions with individuals experiencing mental health issues.²¹ This underscores the importance of SBPD’s policies being revised to situate de-escalation as a set of proactive tactics and strategies that must be employed across encounters.

As noted above, SBPD should prominently address de-escalation in its core use of force policy. However, SBPD must also emphasize that the duty to de-escalate is applicable across *all* interactions and encounters, regardless of whether the incident ultimately involves the need to use force. To do so, SBPD might, like the Seattle Police Department and the Cleveland Division of Police, establish a standalone, separate de-escalation policy that outlines the general de-escalation imperative and inventories critical de-escalation tactics – such as the use of cover and concealment, tactical repositioning, calling in additional resources, and strategic communication skills.

Recommendation 1.4. SBPD should address what could appear as an over-reliance on CEW usage and deployment on subjects who did not appear to be physically aggressive toward officers or others but, instead, were fleeing on foot.

SBPD’s current policy on Conducted Energy Devices (CED or Taser), Policy 303, provides that “[m]ere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the Conducted Energy Weapon System to apprehend an individual.”

Despite this appropriate policy, in several force cases that 21CP reviewed, SBPD officers applied the Taser to fleeing subjects. It is possible that, under the various circumstances, the use of the Taser was justified in light of “other known circumstances or factors.” However, the case files found little evidence of investigators or the chain of command review expressly weighing whether the various circumstances or factors were sufficient to justify Taser applications:

- Officers were dispatched to a call of a possible burglary. Officers saw a subject running from a backyard. One officer initiated a foot pursuit, noting blood on the subject’s face and arms. The subject, ignoring commands to stop, attempted to clear a fence. The officer fired the Taser into the subject’s back. The documentation available does not articulate the reason for deploying the Taser, does not specify whether the Taser application was effective, and does not specify the subject’s location when he was struck by the probes and whether the subject fell from the fence to the ground.

The force in this instance appears to have been reviewed by only one level of SBPD supervisor. The review contained no engagement with the officer’s commander addressing the decision to deploy the Taser on a fleeing subject while that subject was on a fence. Given the risks of incapacitating the neuro-muscular system of a subject at an elevated position, these topics should have been meaningfully addressed.

²¹ *Id.* at Section 410 (last rev. July 26, 2019).

- Officers responded to a domestic violence call. Upon their arrival, the subject got up to run out the door of a residence but was grabbed by an officer. A scuffle ensued in which the officer and subject both tumble down concrete steps, injuring the officer’s wrist and cutting his elbow. The subject subsequently took off on foot, and another officer gave chase. During this chase, the officer deployed his Taser but missed. The subject ultimately was brought into custody after he stumbled and fell to the ground.

There is a reasonable question here as to whether the subject, who was the subject of another domestic violence investigation and who had scuffled with officers previously, posed a present threat to officers or the public while fleeing. Regardless, even if force were justified under the circumstances, it is not clear whether the Taser was the most effective choice from a tactical perspective. However, the force review process was not well-documented, and the reasons for using force and using the Taser in particular are not articulated or explored either by the reporting officer or a subsequent SBPD reviewer.

- An officer responded to a robbery call. Upon arrival, the subject immediately began to run away. A foot pursuit ensues, and additional SBPD personnel become involved. During this time, one officers appears to have his firearm unholstered as he attempts to close the distance with the subject. The foot pursuit concludes with a Taser deployment, which may be a simultaneous deployment by two officers, though this is not explored in any reporting. After the subject is handcuffed, and while being escorted away, the subject gets away from officers, flees, and is tased again.

The facts of the case appeared somewhat jumbled, as no clear narrative summarizing the incident into a factual narrative was included in the materials made available for review. The file did not contain evidence that SBPD considered the many policy and tactical issues that the case raised – including approaching a subject and attempting to grab him while an officer has a firearm displayed, the possible simultaneous deployment of two Tasers, the escape of a subject after officers believe that he was under control, and the use of a Taser on a fleeing, handcuffed subject.

SBPD should revise Policy 303 to provide more tailored and clearer guidance to officers on the types of “circumstances or factors” that would make the specific application of a Taser to a fleeing subject appropriate. For instance, the Cleveland Division of Police’s Taser policy specifies that “[o]fficers shall not use the CEW . . . [o]n fleeing subjects who do not pose a threat of physical harm to the officer, bystanders, or themselves.”²² The Police Executive Research Forum recommends that, among other factors:

²² Cleveland Division of Police, Use of Force – Intermediate Weapons 7 (Apr. 5, 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d810f6944702a0d34279cf5/1568739178021/Ex+C+Intermediate+Weapons.pdf> (emphasis in original).

Personnel should consider the severity of the offense, the subject’s threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject.²³

Additionally, SBPD’s policy should also prohibit “simultaneous applications by more than one” Taser²⁴ and strengthen the existing language regarding the application of a Taser against handcuffed individuals. The current language provides that officers should not apply the Taser to handcuffed or restrained subjects unless: (1) “the totality of the circumstances indicates that other available options reasonably appear ineffective” or “would present a greater danger to the officer, the subject or others,” and (2) “the officer reasonably believes that the need to control the individual outweighs the risk of using the device,” and (3) the “subject is, at a minimum, acting in a manner that may cause injury to the subject or officers” or “the subject’s actions may damage police and/or public property” and this “result[s] in the chance to escape police custody.”²⁵ This requirement is convoluted and challenging for officers to apply in fast-evolving situations. Instead, SBPD should adopt language that prohibits the use of the Taser against handcuffed or restrained subjects unless the subject is displaying aggressive physical resistance and lesser means have been tried and failed or would be ineffective under the circumstances.²⁶ Such a policy accounts for the dramatically reduced threat that a handcuffed individual typically poses to officers and the expanded tactical alternatives often available when addressing a handcuffed subject.²⁷

SBPD should also provide its officers with additional Taser training. For one thing, other important elements of the Department’s Taser policy – including the requirement that a verbal warning precede a Taser application, the prohibition against using the Taser on “[i]ndividuals whose position or activity may result in collateral injury (e.g., falls from height . . .),” and the implicit prohibition on application against individuals who are not physically resistant²⁸ – were implicated in cases we reviewed and generally not meaningfully explored in post-incident investigation and review.

²³ Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* 20 (2011) [https://www.policeforum.org/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf](https://www.policeforum.org/assets/docs/Free%20Online%20Documents/Use%20of%20Force/electronic%20control%20weapon%20guidelines%202011.pdf).

²⁴ *Id.* at 13; see *Gilliam ex rel. Waldroup v. City of Prattville*, 667 F.Supp.2d 1276, 1285, 1289 (M.D. Ala. 2009) (“There are few situations where it would be reasonable for police officers to apply two tasers simultaneously against a single person . . .”).

²⁵ South Bend Police Department, Policy 303.5.2, Special Deployment Considerations.

²⁶ Cleveland Division of Police, Use of Force – Intermediate Weapons 2 (Apr. 5, 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d810f6944702a0d34279cf5/1568739178021/Ex+C+Intermediate+Weapons.pdf>.

²⁷ Police Executive Research Forum, *2011 Electronic Control Weapon Guidelines* 20 (2011) [https://www.policeforum.org/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf](https://www.policeforum.org/assets/docs/Free%20Online%20Documents/Use%20of%20Force/electronic%20control%20weapon%20guidelines%202011.pdf).

²⁸ South Bend Police Department Policy Manual Sections 303.4, 303.5. Current policy permits Taser use when a “subject is violent or is physically resisting” or when a “subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officer, him/herself or others.” Policy 303.5.1. By implication, then, Taser application is not authorized when an individual is not violent, physically resisting, or demonstrating an intention to be violent or to physically resist – such as when an individual is passively resisting or failing to comply but not posing a threat to officers, themselves, or others.

More fundamentally, one reason that departments discourage the application of a Taser to fleeing subjects is because Taser use is often ineffective in such circumstances – which can present a significant officer safety risk. Tasers work by firing two darts or probes at a subject. “If both darts make contact, a circuit is completed and a[n] . . . electrical charge cycle is initiated” that temporarily incapacitates the subject and allows police officers to bring the subject under control.²⁹ The likelihood of an officer firing a Taser while moving and both darts hitting a moving subject is, practically, lower than when one or both are stationary – making successful application far more of a “Hail Mary” than a “sure thing.” Thus, officers should receive practical, scenario-based training where they must make decisions not simply about whether the use of a Taser would be authorized by a policy but also, from a tactical perspective, whether the Taser is the best force option under the circumstances.

Ultimately, SBPD needs to ensure that its officers do not become over-reliant on the Taser. Although it is an important and potentially effective tool for successfully bringing subjects posing a threat under control and into custody, it may not be the best tool to use in all circumstances.

Recommendation 1.5. SBPD should explore mechanisms for clarifying, streamlining, and introducing efficiencies into post-incident reporting, including in use of force reporting.

SBPD needs to clarify some of its post-incident reporting mechanisms. Currently, officers report the use of force on the *Response to Resistance Form*. While it collects many important data points and critical information, there appears to be some inconsistencies between the Form and the Department's use of force policy. For instance, the *Response to Resistance Form* references terms like psychological intimidation, defensive resistance, passive resistance, active aggression, and aggravated active aggression. However, these terms are not referenced or defined in SBPD's policy manual. Across all post-incident information-gathering mechanisms, the Department should ensure that officers receive appropriate guidance on how to effectively and efficiently fulfill their reporting requirements.

SBPD may be able to streamline the various reporting processes that officers must use in their work. In focus groups with SBPD officers, 21CP heard from officers that post-arrest or post-interaction reporting processes are overly cumbersome and time-consuming. Officers appear to understand the need to provide information on what they do, but they worry that they spend more time reporting than policing. 21CP recommends that SBPD, using a process that prominently includes patrol officers, evaluate its reporting mechanisms – seeking to eliminate redundancies, collapse requirements as possible, and introduce additional technological solutions (such as the use of mobile devices for reporting) to make it easier for officers to provide the information that the Department needs while not forcing officers to provide the same types of information across many different forms or systems. Greater efficiency in post-incident reporting can boost morale and make officers more efficient, allowing them to cover greater ground and have more time to engage with the community on a day-to-day, shift-to-shift basis.

²⁹ *Beaver v. City of Federal Way*, 507 F. Supp. 2d 1137, 1142–43 (W.D. Wash. 2007).

To be clear, because the use of force implicates important rights and responsibilities, comprehensive documentation must occur. The challenge for any organization is to ensure that the documentation is as efficient as possible while providing the Department and the City with the information that is necessary. It is, crucially, a matter of quality and rigor rather than the length of a form or the quantity of information gathered.

Recommendation 1.6. SBPD should revise its Use of Force Review Form, currently used by its Use of Force Committee, to analyze the incident more comprehensively and in light of a more specific force policy rather than simply law.

The Department’s Use of Force Committee structures its deliberations around a *Use of Force Review Form*. 21CP recommends that SBPD revise the version of the form provided to it in December 2019.

First, the current form appears overly focused on minimum compliance with *Graham v. Connor* rather than ensuring compliance with the Department’s actual use of force policy. SBPD representatives, in describing the Use of Force Committee, confirmed the current understanding that the charge for Committee members is to “review force cases in terms of *Graham v. Connor*, their experience, and training.” Even to the extent that policy and *Graham* are consistent, the guiding form of analysis should be the Department’s specific policies.

The form also appears to mis-state the standard of review articulated in *Graham*, suggesting that “reasonableness will be judged from the perspective of the officer NOT with 20-20 hindsight” when the operative legal standard is *objective reasonableness*, i.e. from the perspective of a reasonable officer on the scene, under the circumstances encountered by the involved officer. As noted previously, “the subjective motivations of the individual officers . . . ha[ve] no bearing on whether a particular seizure is ‘unreasonable’ under the Fourth Amendment.”³⁰ The form should be revised to ensure that the Committee’s inquiry focuses on what the hypothetical reasonable officer, under the circumstances presented to the involved officer, would do.

Ultimately, any use of force review process should entail a comprehensive, 360-degree inquiry – one that looks squarely at whether the force was consistent with the Department’s policy but also at the extent to which the force, regardless of whether consistent with policy, suggests any tactical, training, policy, or other issues. SBPD indicates that, at command staff meetings on a weekly basis, they engage in this type of comprehensive inquiry as part of a standard use of force review that evaluates incidents from training and policy perspectives. Although 21CP did not attend such meetings, to the extent that this is a forum for identifying areas of potential improvement across all force incidents, SBPD would benefit from the Use of Force Committee similarly addressing such concerns – and becoming an internal hub of innovation and continuous self-improvement when it comes to use of force issues.

³⁰ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

Recommendation 1.7. SBPD’s recently-initiated after-action report process, which many officers are finding helpful, should be expanded and institutionalized – enabling the Department to incorporate ongoing lessons learned into their day-to-day practices, to identify future training priorities, and to develop specific, real-world scenarios for such training.

Focus groups with SBPD officers mentioned SBPD’s after-action report process. Purportedly, the process has begun again, after some time dormant, and 21CP heard positive feedback about this. According to discussions with Department personnel, the after-action process is intended to involve a comprehensive, 360-degree view of the personnel performance and the department’s response. It appears that officers value the process as a potential means for officers to understand what is happening with the department and South Bend community and to learn from peers and colleagues.

Recommendation 1.8. SBPD needs to reboot and relaunch a meaningful Crisis Intervention Training (CIT) program to ensure safe, effective response to individuals experiencing behavioral health challenges.

Police officers increasingly must respond to individuals experiencing mental health, substance abuse, and other behavioral health challenges. Studies suggest that as many as 10 percent of all police encounters with the public involve individuals experiencing a behavioral health crisis.³¹ With the Centers for Disease Control (CDC) recognizing mental health as a critical and broadly distributed public health challenge, behavioral health issues, and law enforcement response to them, are significant issues for large and small departments alike.³²

A true Crisis Intervention Team (“CIT”) Model, sometimes referred to as the Memphis Model, “is a solution focused community response to helping people with mental illness” and other behavioral health crises that “bring[s] stakeholders together from the law enforcement, behavioral health and advocacy sectors, along with people with lived experience with mental illness, to develop solutions for safely re-directing people in crisis away from the judicial system and into the health care system whenever possible.”³³ “The centerpiece of the model is 40 hours of specialized training for a select group of officers that volunteer to become CIT officers” who are specially designated and dispatched to take the lead on calls involving individuals who may be experiencing behavioral health challenges.³⁴ The objective of a CIT program is to ensure better outcomes for subjects in crisis and safer, more effective resolution of encounters involving individuals in crisis for law enforcement.

³¹ Martha W. Deane, “Emerging Partnerships Between Mental Health and Law Enforcement,” 50 *Psychiatric Services* 99 (1999).

³² Center for Disease Control and Prevention, *Mental Health*, <https://www.cdc.gov/mentalhealth/index.htm> (last visited Jan. 21, 2020).

³³ CIT International, *CIT Program Overview*, <http://www.citinternational.org/resources/Documents/CIT%20Program%20Overview.2017.pdf> (last visited Feb. 23, 2020).

³⁴ Amy C. Watson and Anjali J. Fulambarker, “The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners” 8 *Best Pract. Ment. Health* 71 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/>.

SBPD indicates that it has a crisis intervention program. However, in numerous conversations with Department stakeholders, it became clear that few within SBPD seem to understand what CIT entails, how cities and departments benefit from it, and how it can lead to safer outcomes for both officers and subjects. For example, some officers suggested that the purpose of the crisis program was to provide assistance to officers themselves rather than members of the public who are experiencing behavioral health challenges. The location of the Team currently within the Department's officer wellness initiative seems to underscore some fundamental confusion about the purpose and role of crisis intervention.

SBPD also has suggested that, because they have provided CIT training to all hostage negotiators, they have adopted a CIT program. Although this is commendable and highly useful training for these experts, a true CIT program provides intensive training to a cadre of volunteer patrol officers and ensures that crisis-trained officers respond to calls involving individuals experiencing behavioral health crises.

The Department's current Policy Manual does relatively little to clarify confusion. SBPD Policy 410 addresses Crisis Intervention Incidents. The current policy does a relatively good job of outlining the important issues that interactions with individuals in crisis may implicate³⁵ and the types of signs to which all officers should be attuned as potential indicators of a mental or behavioral health issue.³⁶

However, the policy leaves somewhat muddled the nature of the response that the Department will aim to provide where officers identify that a given subject maybe experiencing a crisis. Indeed, the Department's policy seems to reference only broad aspirations rather than provide specific details about a comprehensive crisis intervention program or approach. For instance, section 410.4.1 contains one of the Policy Manual's few references to Crisis Intervention Teams and CIT-trained officers – but it simply indicates that a Division Chief should “coordinate department participation with any local crisis intervention team,” which might include “identifying CIT-trained officers” and incorporate state resources into the Department's “procedures as appropriate.”³⁷ Similarly, section 410.4, which addresses “Coordination with Mental Health Professionals,” outlines that “[t]he Training Division should designate appropriate personnel to collaborate with mental health professionals to develop an education and response protocol,” which would “include a list of community resources to guide department interaction with those who may be suffering from mental illness or who appear to be in a mental health crisis.”³⁸

It does not provide clear answers or rules for the road with respect to core crisis intervention issues, including but not limited to:

- Are some officers designated CIT officers? If so, who? How do officers become CIT officers?

³⁵ South Bend Police Department Policy Manual Section 410.1 (last rev. July 26, 2019).

³⁶ *Id.* at Section 410.3.

³⁷ *Id.* at Section 410.4.1.

³⁸ *Id.* at Section 410.4.

- What training is required for CIT officers? What training is required for all officers on crisis intervention issues?
- In what instances should officers call for a CIT officer?
- What protocols are in place to ensure that dispatchers identify potential crisis intervention incidents and send CIT-trained officers to respond to the scene?
- How are interactions with and responses to individuals in crisis documented and tracked within the organization?
- How might officers leverage assistance from social service providers and mental health professionals to respond effectively and safely in interactions involving individuals experiencing a behavioral health crisis?

In short, the Department needs to implement a *comprehensive* crisis intervention approach reflecting the traditional elements of the Memphis Model – including the designation and training of specialized Crisis Intervention officers – across ranks and specialties – and a broad-based collaboration with community stakeholders that addresses City-wide response to individuals experiencing behavioral health challenges.

Recommendation 1.9. The Department should provide all officers with mandatory, on-going in-service training grounded in practical, scenario-based instruction.

SBPD should work continually to enhance the quality, scope, and approach of its officer training. Specifically, the Department needs to provide all officers with mandatory, in-service training grounded in practical, scenario-based instruction; ensure that its approach and areas of focus in training are consistent with contemporary best practices; provide meaningful, substantive opportunities for the South Bend community to collaborate on the design and implementation of training programs; and design ongoing training opportunities for supervisors on the investigation and review of use of force.

To the Department’s credit, some significant range of ongoing training opportunities are made available to SBPD officers. Some courses or programs are provided by the Department itself. Other opportunities involve outside vendors or agencies.

Currently, however, training topics are variable and largely self-identified. With relatively few exceptions, officers select what courses to attend and when, and the Department’s Division chiefs meet weekly to approve or disapprove training requests. SBPD indicates that career path development is part of the lens through which the Department makes decisions approving or disapproving particular training requests.

This variability with respect to ongoing training for SBPD officers stands in contrast to the Department’s training approach to firearms training. 21CP understands that SBPD offers at least 7 “combat shoots” per year, and all officers are required to make at least two shooting qualifications. The Department indicates that the combat shoots involve both the shooting of a handful of rounds and “shoot/don’t shoot” scenarios that utilize a railroad tie house at the shooting range and require officers to respond to

situations and targets where a subject is pointing a gun and others where a presented silhouette is unarmed. Debriefing discussions address issues about backdrop and safety. The idea behind the combat shoots, according to the Department, is to encourage and foster “muscle memory” in the sense of equipping officers with the types of instinctive skills to be able to address potentially deadly threats.

Certainly, police officers need high-quality skills training to be able to effectively use force instruments when it is necessary and reasonable and the force is consistent with the nature of the threat that they are encountering. To the extent that “combat shoots” are the type of scenario-based training outlined above, periodic participating in the “shoots” could help to develop dynamic decision-making with respect to addressing threats and using force.

However, the frequency of SBPD’s “combat shoots” suggest a stronger emphasis on firearms qualifications than on core tactical training focusing on more general use of force decision-making skills and other core operational and enforcement issues. At the least, referring to training opportunities involving firearms as “shoots” places an undue emphasis on the deployment or use of the weapon, rather than on use of force decision-making, while use of the term “combat” suggests a militaristic environment that runs the risk of countering the Department’s community policing commitments.

Going forward, annual, mandatory training should instead be focused on integrated, scenario-based use of force decision-making, force reporting, de-escalation, bias-free policing, procedural justice, and problem-solving instruction. By integrated, scenario-based training, we refer to the types of instructional programs that provide the opportunities to “practice, in interactive environments,” the real-world decision-making skills that officers must provide in the field on a daily basis.³⁹ Incorporating contemporary adult education techniques, this type of scenario-based training gives police professionals the opportunity to build and challenge their skills while proceeding through realistic situations. This type of “reality-based training” has been demonstrated to be “a strong, if not the strongest method of overcoming stress and solidifying task proficiency” in law enforcement training.⁴⁰

These training programs should largely be provided to officers in an ongoing capacity, throughout each year, and the Department should identify a slate of core, mandatory training for officers in order to ensure common, shared understanding of departmental expectations. Although there is undoubtedly room for officers to elect to receive additional professional training on specific topics, SBPD needs to do a better job of ensuring a shared starting point on issues related to use of force; bias-free policing; stops, searches, and arrests; responding to individuals experiencing behavioral crises; and similar, core enforcement topics.

³⁹ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair, Safe, and Effective Community Policing* 143 (2019); accord Final Report of the President’s Task Force on 21st Century Policing 52 (2015).

⁴⁰ David Blake, “Truly Test Your Officers with Reality-Based Training,” *PoliceOne.com* (Apr. 25, 2014), <https://www.policeone.com/police-trainers/articles/truly-test-your-officers-with-reality-based-training-4TdWfK0tGPJRFdUW/>.

Recommendation 1.10. SBPD needs to ensure that all of its training is consistent with contemporary best practices.

During its review, 21CP identified a number of areas where the Department may be able to enhance its training approach to align more closely with contemporary best practices. First, 21CP heard from SBPD personnel that a major mode of instruction for new SBPD recruits on the Department’s use of force policy is for everyone, in a training conducted by Internal Affairs staff, to “read the use of force policy line-by-line, everyone together.” The Department indicates that all new recruits proceed through a constitutional law training that involves scenarios, use of force videos, classroom discussion, and other learning approaches.

As described in Recommendation 1.9, all of SBPD’s training – whether for officers in the Academy or veteran officers – should take advantage of adult education techniques and give officers the ability to practice decision-making skills in real-world scenarios. The type of rote, passive technique of having a large group of new officers read a policy simply does not provide the crucial ability for officers to practice applying the policy, and we question the utility of the approach. To the extent that training on force contains rote or passive learning approaches, the Department should consider modifying them in favor of contemporary adult education practices.

Various SBPD personnel suggested that largely discredited training addressing the 21-foot rule, excited delirium, and other topics has been provided to personnel recently. Briefly, “the so-called 21-foot rule” was advanced “in a 1983 magazine article to describe the” purported “distance that an officer must keep from a suspect with a knife, in order to give the officer enough time to draw and fire his gun if the suspect suddenly charges him with the knife.”⁴¹ This rule “has sometimes been used wrongly to suggest that if a suspect moves to close the distance between himself and the officer, the officer can shoot the suspect and cite the 21-foot rule to justify the use of deadly force.”⁴² As the Police Executive Research Forum has observed, rather than training that explicitly or implicitly reinforces the concept of force being somehow authorized when an armed subject gets to within 21 feet of an officer, “officers should be given broader training in sound decision-making, de-escalation strategies, and tactics for creating time and distance, so they can better manage the incident without needing force.”⁴³

Similarly, with respect to the concept of “excited delirium,” neither the American Medical Association nor the American Psychological Association recognizes excited delirium as a medical condition or psychological diagnosis. Although some continue to argue nonetheless that it is a legitimate condition, “excited delirium” is poorly operationalized within police training and not well understood – tending to

⁴¹ Police Executive Research Forum, *Critical Issues in Policing Series: Re-Engineering Training on Police Use of Force* 5 (Aug. 2015), <https://www.policeforum.org/assets/reengineeringtraining1.pdf>.

⁴² *Id.*

⁴³ *Id.*

be applied to generically refer to a cluster of observed subject characteristics and behaviors rather than to any verifiable physiological phenomenon.⁴⁴

21CP urges the Department to continually reassess its training curriculum and approaches to ensure fidelity to contemporary and evidence-based best practices.

Recommendation 1.11. The community should participate with SBPD in identifying training priorities, developing curricula, and providing training where the community are the appropriate subject-matter experts.

President Obama’s Task Force on 21st Century Policing recommended that “[l]aw enforcement agencies . . . engage community members in the training process.”⁴⁵ Such engagement includes community members giving input into the type and design of training provided to officers – to ensure that instruction reflects the specific needs and characteristics of their communities. This type of police-community collaboration can enhance the quality of training and community trust.

Community engagement training may also provide community members the ability to provide certain types of police training. Some areas where community may be well-suited to serve as primary subject-matter experts include the histories of South Bend’s diverse neighborhoods, implicit racial bias, considerations in police interactions with LGBTQ+ populations, and procedural justice.

Recommendation 1.12. SBPD supervisors should receive in-depth training on the investigation and review of use of force, including but not limited to:

- **The distinctions between policy and practice;**
- **Whether supervisors seek to locate and contact witnesses;**
- **Whether efforts are made to memorialize all officers who are on the scene and obtain statements or narratives from witness officers;**
- **Whether there is a custom or practice to consistently review video footage during a supervisory force review; and**
- **The role of command staff in reviewing force.**

As a general matter, any police department’s supervisors are vital in ensuring accountability and adherence to the agency’s policies. Nowhere is this more critical than areas relating to force, where supervisors can be implicated in a number of different ways. These include responding to the scene of an incident and guiding officer responses or investigating uses of force by officers under their command. With the exception of officer-involved shootings (investigated by an outside agency) or incidents that

⁴⁴ Justin Jouvenal, “‘Excited Delirium’ Cited in Dozens of Deaths in Police Custody. Is it Real or a Cover for Brutality?,” *Washington Post* (May 6, 2015), https://www.washingtonpost.com/local/crime/existence-of-excited-delirium-ruling-in-va-womans-death-has-experts-split/2015/05/06/b1cc9499-daa-474c-9e8a-9ae89a9ae679_story.html; Laura Sullivan, “Death by Excited Delirium: Diagnosis or Coverup?,” “All Things Considered,” *NPR.org* (Feb. 26, 2007), <https://www.npr.org/templates/story/story.php?storyId=7608386>.

⁴⁵ Final Report of the President’s Task Force on 21st Century Policing 54 (2015).

suggest, from the outset, some possibility of misconduct (which would be investigated by Internal Affairs), it is typically SBPD supervisors that review lower-level use of force incidents.

In the context of investigating and reviewing force, all police supervisors benefit from receiving ongoing training on assessing and analyzing force. Conducting an internal review of officer performance is different than conducting a criminal investigation. The scope, purpose, and issues that it raises are different and should typically go far beyond whether an officer's specific conduct, at the time that force was used, was consistent or inconsistent with policy.

SBPD indicates that supervisors receive a two-day internal affairs training and regular updates on internal affairs matters. This may be a strong start from which SBPD can consider further opportunities for innovation and improvement. To the extent that SBPD wants to continually learn from uses of force to make officers, the public, and subjects safer in the future, investigators need to receive instruction and have the opportunity to practice conducting inquiries that analyze all elements of police response in a given incident and consider all decision-making before, during, and after the application of force. The Department should ensure, both by providing in-house instruction and taking advantage of many regional and national training on investigations, that supervisors regularly receive training on the investigation and review of officer use of force.

2. Body-Worn Cameras

The use of body-worn cameras has dramatically accelerated across the policing profession in recent years. By the end of 2018, “about 10,500 agencies, or 58 percent of all law enforcement departments in the U.S., used body cameras.”⁴⁶ The use of body cameras has been linked in a number of jurisdictions to decreases in use of force and civilian complaints about officer conduct. For instance, in Mesa, Arizona, officers using body cameras had 65 percent fewer complaints than officers who did not use the technology – and were the subject of 60 percent fewer complaints as compared to their numbers during the year before they started wearing cameras.⁴⁷ A 2017 randomized controlled trial in the Las Vegas Metropolitan Police Department “found that officers with body-worn cameras generated fewer use-of-force reports and complaints from citizens compared to officers without body-worn cameras.”⁴⁸

Body-worn cameras have been generally associated with a number of benefits. “First, body-worn cameras may result in better transparency and accountability and thus may improve law enforcement legitimacy.”⁴⁹ Second, cameras “may lead to a faster resolution of citizen complaints and lawsuits” by resolving issues and factual disputes effectively and efficiently.⁵⁰ Third, “[f]ootage captured may be used as evidence in arrests or prosecutions.”⁵¹ Footage also provides a host of training opportunities and paths for the department to learn from its performance.⁵² Finally, “[b]ody-worn cameras may also result in higher rates of citizen compliance to officer commands during encounters,” with civilians and police officers alike changing their behavior when they know that they are being recorded.⁵³

However, for these benefits to be fully realized, agencies need clear policies on when body worn cameras must and may not be used, as well as infrastructure that allows officers to store captured video. For cameras to foster transparency and accountability, there must be a department and community-wide understanding of when officers activate and do not activate their cameras as well as an effective, efficient process for officers to flag, tag, and store footage.

Recommendation 2.1. SBPD should review and revise Policy 424 to ensure that its requirements regarding body camera activation are clear.

⁴⁶ Ben Miller, “Just How Common Are Body Cameras in Police Departments?,” *Government Technology* (June 28, 2019), <https://www.govtech.com/data/Just-How-Common-Are-Body-Cameras-in-Police-Departments.html>.

⁴⁷ Michael D. White, Office of Justice Programs Diagnostic Center, U.S. Dept. of Justice, *Police Officer Body-Worn Cameras: Assessing the Evidence* 21 (2014) (summarizing Mesa Police Department, *On-Officer Body Camera System: Program Evaluation and Recommendations* (2013)), available at <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

⁴⁸ Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 3 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

⁴⁹ *Id.* at 2.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 2 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

South Bend deployed body camera technology in the Summer of 2018. In mid-2019, the Department publicly indicated that its policy was to require officers to “activate their body cameras during all work-related interactions with civilians.”⁵⁴ SBPD represents that this 2019 guidance was not a policy change. A separate, formal December 2019 policy edit did not delete any policy language and added some language regarding when recording should be stopped and how supervisors audit the body-worn camera system.

21CP does not see the broad duty – to record any interaction with civilians except when those interactions are not work-related – that SBPD articulated in mid-2019 memorialized in SBPD’s body-worn camera policy. In both the camera policy provided to 21CP during its review, and in the version of the policy linked on the Department’s Transparency Hub, Policy 424, “Mobile and Portable Audio/Video Recorders (includes Body Worn Devices)” as recently as February 20, 2020, the requirements for activation are less precise than they should be.

Specifically, the Department’s policy manual indicates that “[m]embers should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.”⁵⁵ It goes on to provide that “[t]he recorder shall be activated in any of the following situations”:

- (a) All enforcement and investigative contacts including stops and field interview situations (including assisting/back-up officers)
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops (including assisting/back-up officers)
- (c) Self-initiated activity in which an officer would or should normally notify [the] Communication Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would otherwise not require recording.

Taken as a whole, it is not clear whether this list of specific situations is subject to the overriding requirement that an officer record when they feel it might be “appropriate or valuable.” Separately, the list addresses many, but not necessarily all, situations that should be recorded by the Department’s purported mandate of mid-2019 that officers simply record “all work-related interactions with civilians.” The mid-2019 indication that SBPD officers “activate their body cameras during all work-related interactions with citizens” would, on its face, appear to require recording during voluntary contacts with civilians and self-initiated activity beyond enforcement, investigative, or traffic-related contacts that would not rise to the level of needing to contact the communication center. Additionally, the policy guidance that members should record “any time the member believes it would be appropriate or valuable” to do so does not articulate a standard against which the department can hold officers accountable, as, by itself, it ultimately divests authority and discretion entirely to an officer’s judgment.

⁵⁴ “South Bend Police to Get Body Camera Upgrades After Fatal Shooting that Sparked Protests,” *Associated Press* (Jul. 19, 2019), <https://www.chicagotribune.com/nation-world/ct-nw-south-bend-police-body-camera-pete-buttigieg-20190719-5kv6jzt3azcyxns77eu57ouohi-story.html>.

⁵⁵ South Bend Police Policy Manual Section 423.6 (last rev. July 26, 2019).

It is unclear – especially in the context of the Department’s understanding of the “reasonable officer” recommendation, discussed in Recommendation 4.3 – as to whether it is the specific list of situations in the policy or, instead, an officer’s subjective belief of the propriety or value of recording that ultimately controls in those instances where policy would normally indicate that recording should occur but an officer indicates that he or she did not find recording to be appropriate or valuable. Put differently, if an officer indicates that he or she did not believe that activating the camera was appropriate or valuable, does that mean that failing to follow the typical policy protocols is automatically permissible? Ultimately, even if the Department’s 2019 directive to officers carries the weight of formal policy, SBPD needs to revise Policy 424 to clarify and harmonize its guidance to officers on precisely when the camera must be used.

Additionally, communities in some jurisdictions have raised issues about the privacy implications of police deploying body camera technology. First, unlike other types of surveillance cameras or in-car video systems, body-worn cameras can “give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service.”⁵⁶ Consequently, the body camera policies of a number of jurisdictions provide specific guidance on the use of cameras in sexual assault cases.⁵⁷ Separately, some officers also may feel that the cameras, at least in some circumstances, intrude on their personal privacy – potentially capturing mundane or private elements of their time. Additionally, some communities, including immigrant communities, might hesitate to interact with police in the presence of a body camera.

SBPD should explore enhancements to its body camera policy that meaningfully engages with these issues, including providing more specific guidance on when camera activation may be discontinued in order to be appropriately responsive to privacy concerns. For example, the Salt Lake City Police Department allows officers to suspend recording in particular instances, including “during a conversation with a sensitive victim of a crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity” if certain conditions are met, as well as “during a significant period of inactivity.”⁵⁸ When video is discontinued, “[t]he officer shall also document the reason for placing the body cameras into Privacy Mode in a written report.”⁵⁹

Recommendation 2.2. SBPD should ensure that it adequately addresses outstanding challenges with its body-worn camera system.

⁵⁶ Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 11 (2014).

⁵⁷ See National Sexual Violence Resource Center, *SART Toolkit Section 5.6*, <https://www.nsvrc.org/sarts/toolkit/5-6> (last visited Feb. 23, 2020); Pennsylvania Coalition Against Rape, *The Use of Body-Worn Cameras with Victims of Sexual Violence* (2017), https://pcar.org/sites/default/files/resource-pdfs/body_worn_cameras_factsheet.pdf; Mary D. Fan, “Privacy, Public Disclosure, Police Body Cameras: Policy Splits,” 68 *Alabama L. Rev.* 395 (2016), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1059&context=faculty-articles>.

⁵⁸ Police Executive Research Forum, *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault* 69 (May 2018), <https://www.policeforum.org/assets/SexualAssaultResponseExecutiveGuidebook.pdf>.

⁵⁹ *Id.* at 70.

In discussions with SBPD officers in November and December 2019, 21CP heard a great deal about various challenges that officers were having with SBPD's body-worn camera system. 21CP understands that at least some officers may have been skeptical about, or opposed to, the implementation of body-worn cameras. Accordingly, it is possible that some of the issues were overstated. 21CP also understands from SBPD command staff that it has made progress in addressing or eliminating a number of these concerns.

Issues that officers identified with respect to the body-worn camera system in late 2019 included:

- ***Holster sensors.*** Some officers are currently equipped with holster sensors that automatically activate an officer's body camera whenever the officer removes a gun from his or her holster. This technology was a more-recent addition to South Bend's camera system, with the holster technology not available when South Bend originally procured the cameras.⁶⁰

21CP understands that, as of December 2019, the holsters were failing as frequently as half of the time. An update had been pushed out to address these problems but that officers were continuing to encounter difficulties. SBPD indicates that it is still trouble-shooting the issue with officers.

- ***Uploading video.*** When an officer has been involved in an interaction where the body-worn camera has been activated, they generally have an obligation to initiate the uploading of that captured video to a cloud storage environment. As we heard from Information Technology personnel, there were some issues with getting this video data to upload from SBPD patrol vehicles to the cloud.

21CP also heard about the possibility that the City received at least one large bill from its cellular provider because officers grew so frustrated with waiting for a hotspot to upload the video that they used the cell system to "force upload" captured videos. There were attempts to have units allowing for transmission via cell networks installed in cars but, as of the end of 2019, problems with uploading video were continuing to plague the system and frustrate officers.

SBPD indicates that, as of the end of March 2020, it has addressed and resolved the issue. SBPD patrol cars are now outfitted with cellular cards to facilitate uploading of videos.

- ***Fixing broken units.*** Officers appeared frustrated with the process for addressing technical issues and having malfunctioning units fixed – which requires that the officers themselves

⁶⁰ Lincoln Wright, "South Bend Police Getting Body Camera Upgrades to Activate When Gun is Drawn," *South Bend Tribune* (Jul. 19, 2019), https://www.southbendtribune.com/news/publicsafety/south-bend-police-getting-body-camera-upgrades-to-activate-when/article_2dedfc10-fd8d-54cd-99f4-42c2c2d4921d.html.

call a helpline. SBPD indicates that it is helpful to have a 24/7 helpline – which is available to officers when IT is not available. They suggest that, instead of an officer having to return to a station, get a spare BWC unit, turn the malfunctioning unit into IT, many issues can be immediately repaired through a helpline representative “remoting in” to the unit. Regardless of the potential merits of the helpline, the Department may benefit from outreach and communication to officers on BWC troubleshooting.

In conversations with officers, it was clear that officers were not aware that SBPD maintains spare BWC units in the event of a serious malfunction that cannot be sufficiently addressed by using the helpline. Although the Department indicates that it has publicized this, at least through email communications, the fact that officers do not know about the availability of spare units suggests that the Department may benefit from outreach and communication on this front, as well. SBPD may also want to consider stocking ample back-up units so that officers could consider using them more regularly upon encountering malfunctions or technical difficulties, in order to minimize officer downtime, rather than relying exclusively on the helpline for assistance.

- ***Position of camera.*** Because the body-worn units affix to a pocket holder on the duty shirt, many are concerned about how to use the units in conjunction with a winter coat. 21CP understands that officers do have the option to have the BWC camera mount installed on a winter coat, which has been communicated to officers at least through email. Here, too, additional communication and outreach to rank-and-file officers may address the concern.

Many officers say that the system was not adequately field-tested before being deployed across the Department. Although 21CP can neither corroborate nor disprove this, the fact that officers believe that the technology was not subject to their input and testing is a continuing challenge to the Department’s comprehensive embrace of the body-worn technology. SBPD indicates that the FOP was engaged in the body-worn camera process and was a proponent of the particular technology system that was selected. Even to the extent that this is true, the lingering perception among a number of patrol officers that the technology as not adequately field-tested at the line level is something that 21CP heard repeatedly. 21CP recommends that an ongoing steering committee comprised of IT professionals, command staff, and patrol officers be convened not only to manage the continued implementation and maintenance of the body-worn camera system but to address other technology issues as they arise and other technology-related initiatives as they become necessary. In short, because the technology most fundamentally impacts patrol officers, those members of the Department should have a place to raise problems from the field and to solve problems in partnership with other SBPD personnel.

3. Bias-Free Policing

Bias-based policing is the differential treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws – as well as any other discernible personal characteristics of an individual such as disability status, economic status, gender identity, homelessness, mental illness, national origin, political ideology, or veteran status.

The subject of bias in police operations has typically been focused on those law enforcement activities that, whether because of express bias or subconscious bias, lead to the disparate impact and/or disparate treatment of certain individuals. Thus, a department’s decisions to stop and detain individuals on the suspicion that they are engaged in criminal activity have been increasingly subject to scrutiny. At the same time, many agencies are looking to address how their practices may not have a discriminatory effect even when they do not have any discriminatory intent.⁶¹

SBPD’s current policy expressly prohibits “bias-based policing.”⁶² Bias-based policing is defined as:

An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement.

Although it is relatively brief, the policy appropriately addresses the types of characteristics or traits that – unless linked to “credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes to establish reasonable suspicion or probable cause – may not form the basis for enforcement activity or police treatment.⁶³

Recommendation 3.1. SBPD should update its Bias-Based Policing policy (currently Policy 401) to:

- **Expand its statement of guiding principle; and**
- **Clarify that officers have an affirmative responsibility for reporting incidents where they observe or otherwise become aware of officers whose performance or actions could constitute a violation of the policy.**

Although Policy 401 indicates that the policy is intended to “affirm[] the South Bend Police Department’s commitment to policing that is fair and objective,”⁶⁴ the Department may wish to clarify and describe in

⁶¹ National Academies of Sciences, Engineering, and Medicine, *Proactive Policing: Effects on Crime and Communities* (2018).

⁶² South Bend Policy Department Policy Manual Section 401 (last rev. July 26, 2019).

⁶³ *Id.*

⁶⁴ *Id.* at Section 401.1.

greater detail the Department’s values with respect to bias-free policing – for both its officers and for the South Bend community. For instance, the Seattle Police Department’s general policy on bias-free policing provides that:

The Seattle Police Department is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner.

The Department recognizes that bias can occur at both an individual and an institutional level and is committed to eradicating both.

Our objective is to provide equitable police services based upon the needs of the people we encounter.

The intent of this policy is to increase the Department’s effectiveness as a law enforcement agency and to build mutual trust and respect with Seattle’s diverse groups and communities.⁶⁵

Additionally, SBPD Policy 401.4 provides that “[m]embers, when reasonable to do so, intervene *to prevent* any bias-based actions by another member.”⁶⁶ This is appropriate and commendable. However, the policy should be clearer about what an officer’s duties are when problematic performance has *already occurred*. It might simply provide that officers have an affirmative duty to report all instances of possible bias that they observe, or about which they otherwise become familiar, to a supervisor and/or to Internal Affairs.

Recommendation 3.2. SBPD policy should ensure the collection of rigorous information about all interactions with residents or civilians that are non-voluntary contacts, including field interviews, Terry stops, and traffic stops.

Current SBPD policy does not clearly appear to require the documentation of *Terry* stops, traffic stops, field interviews – that is, all non-voluntary law enforcement interactions. It should. Even as stops of the sort officers initiate because he or she concludes that there is reasonable suspicion to believe that the individual is, has been, or is about to commit a crime may be relatively more common among day-to-day police activity, any non-voluntary stop constitutes a Fourth Amendment intrusion and is a temporary seizure of a person. The significant constitutional concerns that are implicated warrant regular, pragmatic documentation of whom an officer stops and why.

Even if current SBPD policy is understood as requiring the documentation of *Terry* stops, traffic stops, field interviews, and other non-voluntary encounters, SBPD needs to ensure that its policy expressly and specifically requires that, for all non-voluntary encounters, officers provide information about:

⁶⁵ Seattle Police Department Policy Manual Section 5.140, Bias-Free Policing, <https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing>.

⁶⁶ South Bend Police Department Policy Manual Section 401.4 (last rev. July 26, 2019) (emphasis added).

- The location of the investigatory stop or encounter;
- The race, ethnicity, gender, and age of the subject;
- A specific, free-response description of the legal justification for the stop or encounter (such as the reasonable articulable suspicion necessary to justify a *Terry* stop)
- The duration of the stop or encounter;
- Whether a frisk or other search was conducted, and what, if anything, was discovered pursuant to the search; and
- The outcome of the interaction (such as an arrest, citation, warning, or the interaction concluding without any specific action or activity).⁶⁷

SBPD should ensure that officers can use high-quality data technology systems to provide information about non-voluntary encounters. The use of systems that can pre-populate previously captured data fields from other law enforcement systems or that can use adaptive response techniques – only displaying questions to be answered that are relevant in light of previous response or information entered – are a few ways that departments can ensure that strengthened reporting requirements are efficient for officers.

Additionally, SBPD policy should require supervisory review of documented stops, searches, and arrests to ensure compliance with law and policy. For example, the Chicago Police Department requires, for instance, that “supervisors review the facts and circumstances of Investigatory Stops, Probable Cause stops, Protective Pat Downs, or other searches.”⁶⁸ The Seattle Police Department similarly provides that “[a]bsent extenuating circumstances, by the end of each shift, supervisors will review their officers’ Reports and Field Contacts that document the Terry stops made during the shift to determine if they were supported by reasonable suspicion and are consistent with SPD policy, federal, and state law.”⁶⁹ SBPD indicates that, at present, information about stops, searches, and arrests are logged in its record management system and captured on body-worn camera. However, even the many other agencies that have record management systems and use body cameras often require that specific information be logged about all non-voluntary encounters with civilians – typically as a standalone form or a discrete template within the record management system – so that information can be more readily aggregated and analyzed.

Finally, SBPD’s policy should likewise require that the Department conduct an annual analysis of aggregate trends with respect to stops, searches, and arrests – including the effectiveness of stops, trends in the demographic categories of those stopped, and other relevant issues.

⁶⁷ See, e.g., Cleveland Division of Police, General Order, Investigatory Stops (Apr. 25, 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d81088a7a152a6219030763/1568737418788/Ex+B+Investigatory+Stops.pdf> (listing required types of information and data that officers must report).

⁶⁸ Chicago Police Department, Special Order S04-13-09, Investigatory Stoop System (July 10, 2017), <http://directives.chicagopolice.org/directives/data/a7a57b99-151b6927-49f15-1b69-2c32e99868b316b0.html>.

⁶⁹ Seattle Police Department, Policy 6.220, Voluntary Contacts, Terry Stops & Detentions, <https://www.seattle.gov/police-manual/title-6---arrests-search-and-seizure/6220---voluntary-contacts-terry-stops-and-detentions>.

4. Accountability

This section addresses recommendations relating to SBPD’s accountability systems. In considering this area, 21CP reviewed misconduct investigation files from 2017, 2018, and 2019. It must be noted that the focus of the review, and of the recommendations here, is on the quality of the investigations themselves and on the Department’s review and consideration of those investigations. Accordingly, the following does not make determinations or pass judgment on the nature of the underlying conduct or on whether the Department’s ultimate findings or dispositions were appropriate in specific cases.

Recommendation 4.1. SBPD must ensure that all instances of possible officer misconduct, whether identified by a member of the public or the Department, are investigated in a full, fair, and timely manner.

As a general matter “all complaints made by members of the public and all internal complaints of a serious nature . . . must be investigated.”⁷⁰ “The rules and procedures for an [internal affairs] investigation must be framed to ensure its integrity, thoroughness, and fairness.”⁷¹

Recommendation 4.1.1. IA should serve as the hub for all investigations of officer misconduct – either conducting investigations themselves or coordinating and overseeing investigations conducted elsewhere in the department or by outside entities.

SBPD indicates that, appropriately, some lower-level performance and misconduct issues are addressed at the shift level – that is, by supervisors in the field rather than by Internal Affairs investigators. 21CP recommends

Recommendation 4.1.2. SBPD should establish an IA Manual with rigorous protocols, procedures, and processes for conducting investigations.

21CP reviewed internal investigations from 2017, 2018, and 2019. Across the misconduct files reviewed, 21CP observed inconsistency in the overall quality of investigations. Some investigations appeared thorough, fair, timely, and addressed all relevant investigative avenues of inquiry, included proper canvassing for witnesses and private video, and the like. For example:

- A woman, the ex-girlfriend of an officer, complained that the officer was harassing her while on duty, which included driving by the woman’s residence outside of South Bend city limits. After discovering that the patrol car’s in-car camera was inoperable because a cable was disconnected, and that there were missing GPS coordinates during the time period in

⁷⁰ United States Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 27 (2008), <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.

⁷¹ *Id.*

question (suggesting that the unit had been manually switched off via access to a modem inside the patrol vehicle), the investigator talked to a number of the woman's neighbors – who verified seeing a South Bend patrol vehicle and the officer in the vicinity of the woman's house while on duty. The investigator also interviewed multiple departmental personnel to confirm that there was no permission for the officer to leave the city while on duty. Ultimately, the investigation was thorough, with all relevant leads sufficiently pursued.

- An accidental discharge occurred in the bathroom of another police department when a South Bend officer was participating in a training program at the jurisdiction. The Department's subsequent investigation was comprehensive, addressing all material lines of inquiry and containing ample documentation of relevant photographic evidence and documentation of witness interviews.
- SBPD detectives observed a car driving through stop signs and nearly causing an accident. Detectives, indicating that they believed the man may be having a medical problem because of his erratic driving and location near a hospital, proceeded to follow him. When the man proceeded to stop his vehicle in a parking lot, one detective approached the car and walked toward the man's vehicle. The man exited the vehicle with a handgun. One detective yelled "gun" to the other and fired four rounds, striking the man twice. The subject survived, admitting to investigators that he had raised his revolver before police officers shot him. Internal Affairs was involved because neither detective notified dispatch of their location or called for assistance before exiting their vehicle and proceeding to the man's vehicle.

Although the investigative file does not include medical records regarding the subject, which we might usually expect to see, the investigation was thorough and complete – and featured a comprehensive, objective investigative summary.

Other investigative files appeared to be less thorough, with material avenues of inquiry not adequately explored, substantial timeliness issues noted, and incomplete or missing information identified. For instance:

- A civilian complainant alleged that, among other things, an officer did not provide a badge number when asked. In an investigation that interviewed numerous witnesses and was thorough with respect to other allegations, the investigator failed to consider the matter of the officer purportedly refusing to provide a badge number. Reviewing command staff did not identify that the issue was unaddressed.
- Officers responded to a call involving domestic violence and violation of a protective order. A suspect, to whom SBPD officers had needed to apply a Taser, was arrested. That suspect filed a complaint alleging that officers had stolen money and credit cards. A witness represented to officers that he did not see the officers remove any property from the complainant's pockets. However, that witness provided a handwritten statement from an

individual who purportedly lived next door alleging that officers used excessive force. It did not appear from the case file that investigators had followed up with the additional witness – or that the excessive force allegation was comprehensively considered. Although prosecutors did not identify wrongdoing, and witnesses were interviewed at some juncture, the investigative file itself was less comprehensive than it could have been.

Internal Affairs representatives outlined a number of efforts that they had taken on in an effort to expand the quality of its operations and ensure the rigor of its individual investigations. They indicated that some of the deficiencies identified in some cases above have been addressed via those recent initiatives. Indeed, 21CP was favorably impressed with the Internal Affairs staff’s thoughtfulness and commitment.

At some point, however, current Internal Affairs personnel will move on to another assignment or retire. Many of the changes and innovations that they have implemented are not yet reduced to writing or formalized procedure. Although SBPD’s existing policy manual contains some guidance about internal investigations in Policy 1007, 21CP recommends that the Department create an Internal Affairs Manual that sets forth detailed protocols, procedures, and processes for how IA functions and how investigators must proceed through their investigations, including but not limited to:

- ***How complaint allegations are classified or categorized.***
- ***Timelines and requirements for notification to implicated personnel and communication requirements for complainants on the status of ongoing investigations.*** “Completion of Internal Affairs investigations should occur as rapidly as is reasonably necessary to fulfill the investigative mission.”⁷²
- ***Requirements surrounding the interview of complainants, officers, and witnesses.*** This includes whether various interviews must be audio- or video-recorded.
- ***An investigative checklist of tasks that must be completed during an investigation or a detailed investigative chronology.*** “A sound investigative practice common to investigations includes the use of a chronological log in which investigators make entries as they advance their investigations.”⁷³ Such a log “allow[s] supervisors to determine the effectiveness of their investigators and also helps other investigators take over a case when the original investigator is on leave or is removed from the case.”⁷⁴
- ***Guidelines for what should be included in an investigative report,*** including that:
 - All allegations are clearly stated and clearly answered.
 - All relevant facts bearing on the truth of each allegation are clearly stated.
 - All evidence (e.g., photos, recordings, etc.) is included or its means of retrieval specified.
 - Contact and identification information for all persons interviewed and for the investigator(s) is included.

⁷² *Id.* at 33.

⁷³ *Id.* at 38.

⁷⁴ *Id.*

- The report is impartial, with no bias for or against any party.
- The report is logically organized with the aim of helping the reader understand it.
- Its language is clear, and where special terms of art are used, they are defined. The reader should not have to presume or guess the meaning of a term.
- It avoids conclusionary statements wherever possible.
- Sentences and paragraphs are direct, simple, and easy to understand, using the fewest words to clearly convey the point.
- Estimates of time, distance, or other quantities should be as precise as reasonably useful, but need not be precise beyond that.
- Unless explicitly permitted by agency policy, personal opinions should be avoided. If they are permitted, they should include explicit evidence to support the opinion.⁷⁵

SBPD notes that many of the above elements are either already in policy or are otherwise things that Internal Affairs personnel or the Department already do. The underlying point of this recommendation is that the Department needs to ensure that future Internal Affairs personnel have a detailed, step-by-step guide of all of the Department's requirements and expectations when it comes to misconduct investigations – from broad objectives to granular administrative requirements. A written Internal Affairs Manual will assist substantially in ensuring high-quality investigations into the future.

Recommendation 4.1.3. SBPD should ensure that IA personnel receive regular, ongoing training on administrative investigations.

SBPD should ensure that Internal Affairs investigators received ongoing training on conducting administrative investigations. This will include basic investigative skills and more specialized training addressing the particular issues and concerns that arise during the investigation of police conduct and performance. Training conducted by outside agencies and third-party vendors may be especially useful in this regard.

Recommendation 4.2. SBPD should ensure that supervisors review all IA investigations and provide detailed documentation as to the nature of their review, their recommended adjudication, and the grounds or justification for their adjudication determinations.

In some internal affairs case files that 21CP reviewed, the file contains no clear sign-off by anyone higher than the investigator as to findings, which is problematic. SBPD should ensure, likely by updating policy and establishing an IA Manual, that supervisors provide detailed documentation about the nature of their review and the grounds for their adjudication determinations. This process of ensuring that decisions are appropriately explained and documented makes the overall investigation fairer and more thorough. It also makes it more likely that the Department's discipline determinations can fairly withstand scrutiny if discipline is appealed or subsequently reviewed further.

⁷⁵ United States Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 36–37 (2008), <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.

Recommendation 4.3. SBPD must ensure, across all supervisory personnel, that the reasonable officer standard forms the foundation of the review of specific officer performance when appropriate and that command staff review directly addresses the preliminary factual findings of prior review by investigators and/or chain of command.

Command staff adjudication decisions need to clearly and fairly apply departmental standards and policies and should meaningfully engage with the preliminary findings or determinations of investigators or chain of command review below.

- A responding officer was met by a woman who states that her ex-boyfriend was in her apartment complex harassing her. The woman proceeded back into her apartment. When the officer saw a man knocking on the door and asked the subject's name, the man declined to provide it. The apartment door opened, and the male subject rushed inside, locking the door. The officer stood outside the door, with body camera footage capturing yelling and loud arguing. The officer left and cleared the call, saying that the victim allowed the suspect in her apartment. After the officer departed, the subject became violent, which included the subject putting his hands near the woman's nose and mouth, causing breathing difficulties, and the woman grabbing a knife. When the man was subsequently arrested, he said, "I'm coming to get your whore ass" and "that's why I'm gonna choke that bitch."

The Internal Affairs investigator concluded that the officer left the victim in a dangerous situation, where she was assaulted by the subject. A reviewing lieutenant agreed, concluding that the officer "did not correctly assess the situation and should have intervened" and that "[a]ll the evidence clearly supports the listed allegations."

Senior command did not sustain the allegations. Although there was no discipline imposed, the officer was referred for follow-up training.

Rather than engaging with whether the particular officer here violated a specific department policy or failed to take reasonable steps under the circumstances, as well as the findings of personnel below in the investigation, senior command engaged in an extended philosophical discussion of the "reasonable officer" standard, noting in part:

"Most' reasonable officers would've/should've taken further steps . . . Rhetorically, who gets to define a reasonable officer? If the findings were sustained, that would mean [the officer] is either an unreasonable officer or at least would have been at the time of the incident and everyone else in this investigation is reasonable, but none of us were there and all of us have 20/20 hindsight luxury"

I find nothing nefarious, intentional, or even ill-will [sic] that [the officer] had purposely neglected his duty or oath nor conduct [sic].

The general attack on the “reasonable officer” standard is troubling. For one thing, considering how a hypothetical reasonable person, in the circumstances that the involved individual encountered, would have responded is not a type of inquiry to which police are singled out. Indeed, “[f]or as long as there has been a tort of negligence, American courts have defined negligence as conduct in which a reasonable man . . . would not have engaged.”⁷⁶ As a long-settled, general rule, to determine whether an individual’s actions fall below the general standard of care required of all of us, “[t]he test is the conduct of the average reasonable man—not the ideal citizen, but the normal one.”⁷⁷ “The reasonable person standard . . . is *objective*, in the sense that it does not depend on the particular preferences or idiosyncratic psychological features” of the person whose conduct is being analyzed.⁷⁸ Wherever the issue of negligence – “the failure to exercise the care of an ordinarily prudent and careful man”⁷⁹ – is implicated in law, the reasonable person test typically follows close behind. To the extent that the South Bend Police Department takes issue with reasonableness as a standard for assessing an individual’s actions, it takes issue with a core, long-established concept and standard in American jurisprudence.

For another, the analysis might be read as a comprehensive rejection of a “reasonableness” inquiry across any inquiry into officer performance. This suggests, for instance, that the Department may not be as well-equipped as they should be to appropriately conduct the *Graham v. Connor* “reasonableness” required by the Fourth Amendment in the context of use of force – where “the ‘reasonableness’ inquiry . . . is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, *without regard to their underlying intent or motivation*.”⁸⁰ The command staff analysis excerpted above suggests (1) that no after-the-fact reviewer of an officer’s performance can make any valid conclusion about the appropriateness of the officer’s conduct, and (2) that an officer’s lack of nefarious intent is a critical, or even dispositive, fact in the reasonableness inquiry. This runs counter to well-established law.

Under the facts of the case, it may well be a close call as to whether a reasonable officer under the circumstances would have remained at the scene for a longer period of time or made an affirmative effort to check on the welfare of the woman inside the apartment. Indeed, it is clear that different police professionals within SBPD weighed the evidence differently, with the internal affairs investigator and a reviewing lieutenant recommending a different outcome than what was ultimately found.

⁷⁶ Stephen G. Gilles, “On Determining Negligence: Hand Formula Balancing, the Reasonable Person Standard, and the Jury,” 54 *Vanderbilt Law Review* 813, 822–23 (2001).

⁷⁷ Francis H. Bohlen, *The Probable or the Natural Consequence as the Test of Liability in Negligence*, 49 *American Legal Reg.* 79, 83 (1901), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=6002&context=penn_law_review.

⁷⁸ Keith N. Hylton, “The Reasonable Person,” in *Tort Law: A Modern Perspective* 102, 102 (2016).

⁷⁹ Richard A. Posner, “A Theory of Negligence,” 1 *Journal of Legal Studies* 29 (1972), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13834&context=journal_articles.

⁸⁰ *Graham v. Connor*, 490 U.S. 386, 397 (1989) (emphasis added).

Senior command staff should have simply discussed the specific factors that led to a conclusion to exonerate the officer on neglect of duty charges. Instead, the overly broad rejection of “reasonableness” as a standard of inquiry suggests some fundamental misunderstandings about core analytical concepts. This gave 21CP some concern that, unless investigative details are established as incontrovertible, officer misconduct was intentional, or the actions from their subjective perspective were somehow problematic, SBPD does not believe that it can address performance deficiencies. Enhancements to the Department’s policies, and the creation of an Internal Affairs manual, may help to ensure that the adjudication of investigations is fair and thorough and that determinations are well-supported.

Recommendation 4.4. To promote community trust and officer confidence in the fairness and integrity of the accountability process, Board of Public Safety should adopt and adhere to a “discipline matrix” that provides expected discipline ranges for various types or classes of policy violations.

21CP heard from a variety of stakeholders about concerns with the Board of Public Safety’s discipline determinations. In particular, there were concerns – from quite different quarters – about the perceived fairness and predictability of discipline imposed. The use of a “discipline matrix” has emerged as a best practice in police agencies precisely as a means of providing fair notice to officers and the community about the expected employment ramifications of specific classes or types of misconduct or deficient performance.⁸¹

A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer’s previous disciplinary record.

The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.⁸²

A matrix helps to establish–“in advance–the most appropriate penalty for common forms of misconduct” and to ensure that individuals “committing the same act of delinquency will receive equal punishment.”⁸³

⁸¹ Jon Shane, “Police Employee Disciplinary Matrix An Emerging Concept,” 15 *Police Quarterly* 62 (2012).

⁸² Sam Walker, *The Discipline Matrix: An Effective Police Accountability Tool?*, Conference Report, University of Nebraska (2004); *quoted in* Darrel W. Stephens, National Institute of Justice, “Police Discipline: A Case for Change” (June 2011) at 10, <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>.

⁸³ Richard R. Johnson & Matt Nolan, Federal Bureau of Investigation, “Making Discipline Stick Beyond Arbitrator Review,” *Law Enforcement Bulletin* (Dec. 9, 2019), <https://leb.fbi.gov/articles/featured-articles/making-discipline-stick-beyond-arbitrator-review>.

A 2015 study that randomly surveyed departments of 100 or more officers in the United States found that some 37 percent used discipline matrices overall.⁸⁴ However, among larger and more urban departments, there is reason to believe that adoption is broader, with a matrix in effect in cities such as Cleveland; Denver; Los Angeles County; Madison and Milwaukee, Wisconsin; Oakland; Philadelphia; San Diego; and Tucson, Arizona.

“The codification and implementation of a discipline matrix can be collaboratively designed by management in partnership with line employees.”⁸⁵ 21CP recommends that the City consult early and often with police officers, their unions, and employee organizations to ensure greater collaboration and buy-in.

Recommendation 4.5. SBPD should ensure that residents can file complaints without intimidation or dissuasion.

As a general matter, “[t]he public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear.”⁸⁶ To the contrary, a law enforcement agency should ensure that residents can make a complaint through whatever mechanism or mode may be most accessible or comfortable.

In some discussions with community stakeholders, 21CP identified a skepticism, at best, and a fear, at worst, about the ability for South Bend residents to file complaints that might be meaningfully investigated by the Department. It appears that at least some members of the public believe, based on prior experiences or their understanding of the experiences of others, that SBPD discourages complaints.

At the same time, SBPD has taken a number of steps and made a number of commitments to ensuring that it seriously addresses all civilian complaints. For example, SBPD’s policy on complaints, among other things:

- Provides that the Department’s policy is “to ensure that the community can report misconduct without concern for reprisal or retaliation”;⁸⁷
- Allows individuals to make complaints “in any form, including in writing, by email, in person, or by telephone”;⁸⁸ and
- Permits the acceptance and investigation of “[a]nonymous and third-party complaints.”⁸⁹

⁸⁴ Christopher J. Harris, et al, “The Prevalence and Content of Police Discipline Matrices,” 38 *Policing: An International Journal* 788 (2015).

⁸⁵ Vera Voglesang-Coombs, *The Political Ethics of Public Service* 294 (2016).

⁸⁶ United States Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 17 (2008), <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.

⁸⁷ South Bend Police Department Policy Manual, Section 1007.2 (last rev. July 26, 2019).

⁸⁸ *Id.* at Section 1007.3.2

⁸⁹ *Id.*

Consistent with the above, SBPD indicates that charges are not sought with respect to false complaints in recognizing that doing so could potentially chill legitimate complaints in the future.

SBPD should consider building on its existing policy to ensure that acceptance is uniformly broad. Specifically, section 1007.4.2 indicates that any department member must accept a complaint, with “written complaints . . . preferred,” though “a complaint may also be filed orally, either in person or by telephone.”⁹⁰ The policy goes on to suggest that “[a]lthough not required, complainants should be encouraged to file complains in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.”⁹¹ Because these policy provisions express at least a preference for in-person, written complaints, and seem to be not entirely harmonized with Section 1007.3.2, the Department needs to ensure that officers understand that, first and foremost, their duty is to take any complaint in any format. This may go some distance toward ensuring that personnel are not, in a good-faith effort to comply with Section 1007.4.2, placing pressure on complainants to provide a complaint in particular way that is interpreted as dissuasion or discouragement.

Separately, the Department should consider providing additional, clarifying instruction for officers about their duties and obligations with respect to civilian complaints. Periodic roll call training on the topic may ensure that complaints are addressed uniformly and appropriately by any SBPD personnel that receives one.

Recommendation 4.6. SBPD and the City of South Bend should establish, in partnership with the community, protocols and timelines for the release of information and data following critical incidents.

In conversations with various community stakeholders, 21CP heard some concerns about the timeliness and availability of information to the public about critical incidents such as use of force. For some community members, a lack of advance understanding about what is chosen to be released, when they release it, and the circumstances under which information becomes available fuels skepticism and mistrust.

As the President’s Task Force on 21st Century Policing noted:

Policies on use of force should clearly state what types of information will be released, when, and in what situation, to maintain transparency. This should also include procedures on the release of a summary statement regarding the circumstances of the incident by the department as soon as possible and within 24 hours. The intent of this directive should be to share as much information as possible without compromising the integrity of the investigation or anyone’s rights.⁹²

⁹⁰ *Id.* at Section 1007.4.2.

⁹¹ *Id.*

⁹² Final Report of the President’s Task Force on 21st Century Policing 22 (2015).

A number of jurisdictions have found establishing clear protocols for the public release of information in the wake of critical incidents to have significant benefits. For instance, the Las Vegas Metropolitan Police Department has established a detailed policy on “Response to Deadly Force Incidents” that provides protocols and procedures for the public release of information about deadly use of force encounters.⁹³

The Department should, in collaboration with community and other government stakeholders, establish clear protocols for information release with respect to use of force and other critical incidents – so that there is clarity among SBPD, the City, and the community, well before an incident may occur, about what should be released to the public, and when.

Recommendation 4.7. SBPD should provide meaningful and substantive opportunities for the community to provide feedback on proposed policy changes, as well as to set an agenda for subsequent policy innovation.

Policing in a democratic society requires that the public be informed about what law enforcement is doing to protect and serve their communities – and to participate in the development of protocols for how officers conduct policing. Forward-thinking approaches in policing are emphasizing the primacy of community participation in policing.⁹⁴

The community’s voice should inform all aspects of department operations, from how departments are structured to how officers use their time. Department leaders should seek community members’ concerns and desires when devising policing strategies, and community members should be able to provide input when policies are created and revised Departments that seek community voice enhance police legitimacy and strengthen democracy. Many cities are experimenting with models that amplify community perspectives on police operations.⁹⁵

As the 2019 Community Advisory Groups sponsored by the Board of Public Safety appeared to demonstrate, a number of members of the South Bend community are ready and eager to engage in substantive dialogue about the practices, procedures, and approaches of SBPD when it comes to a host of issues facing the city’s neighborhoods. 21CP heard from a number of community stakeholders that, in

⁹³ U.S. Department of Justice, Office of Community Oriented Policing Services and Crime and Justice Institute, Community Resource for Justice, *Assessment of the Collaborative Reform Initiative in the Las Vegas Metropolitan Police Department: A Catalyst for Change 20-22* (2017), https://www.crj.org/assets/2017/07/5_COPS_LVMPD_report.pdf.

⁹⁴ See, e.g., Barry Friedman, *Unwarranted: Policing Without Permission* (2017); Tracey Meares, “Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation,” 111 *Northwestern University Law Review* 1525 (2017); Imani J. Jackson and Frank LoMonte, “Policing Transparency,” *Human Rights* (Jan. 7, 2020).

⁹⁵ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing 22* (2019).

particular, they want an opportunity to engage with the Department on matters of departmental policy before such policies go into effect.

Consequently, 21CP recommends that SBPD provide, per formal departmental policy, a mandatory, 30-day public comment period for any new or revised SBPD policies during which it makes the proposed policy available on its website and through other relevant channels and accepts community feedback. SBPD should be transparent in responding to received comments and detail why it did or did not accept public feedback.

Likewise, SBPD should structure processes for community members to raise potential policy issues with the Department – so that the community can help drive how SBPD may be formally addressing matters of community concern in its policies rather than simply the Department asking the community for input on matters that it believes are important.

Recommendation 4.8. SBPD’s current Open Data Portal, which is a commendable initiative aimed at information-sharing and public transparency, should be expanded further to include additional real-time information.

In 2013, the City of South Bend began to establish an Open Data Portal.⁹⁶ The purpose was to provide greater transparency and access to information about various governmental services,⁹⁷ “from finance to code enforcement.”⁹⁸

As part of and consistent with this larger initiative, the South Bend Police Department maintains a Transparency Hub. It is intended to allow members of the public “to access and analyze raw data as well as to explore interactive visuals that provide context and help you interpret information about your Police Department and our community.”⁹⁹

21CP applauds the City and Department’s commitment to providing information to the community about the Department’s activity and performance. We recommend that SBPD strengthen its commitment to transparency by continually providing more up-to-date information on the Transparency Hub. Currently, at least some data does not seem to be updated consistently. For

⁹⁶ City of South Bend, Executive Order No. 2-2013, <http://docs.southbendin.gov/weblink/0/edoc/118395/Executive%20Order%202-2013%20Establishment%20of%20Open%20Data%20Policy%20and%20Portal%20for%20Public%20Information.pdf>.

⁹⁷ Erin Blasko, “City Joins Open Data Movement,” *South Bend Tribune* (Aug. 23, 2013), https://www.southbendtribune.com/news/local/city-joins-open-data-movement/article_db8a2cee-0b6b-11e3-be06-001a4bcf6878.html.

⁹⁸ Danielle Fulmer, “Paving a Path from Open Data to Open Government in South Bend,” Harvard Kennedy School, Ash Center for Democratic Governance and Innovation (May 8, 2017), <https://datasmart.ash.harvard.edu/news/article/paving-a-path-from-open-data-to-open-government-in-south-bend-1039>.

⁹⁹ South Bend Police Department, *South Bend Police Dept. Transparency Hub*, <https://police-southbend.opendata.arcgis.com/> (last visited Feb. 27, 2020).

instance, as of February 27, 2020, the latest-reported use of force incident occurred on September 13, 2019 – nearly five and a half months earlier.¹⁰⁰ As of the same day, information on criminally “fatal and non fatal, criminally assaulted shootings in South Bend” had been last updated in June 2019 – and encompassed information from the years 2015 through 2018.¹⁰¹

Some statistics are relatively more up-to-date, with crime statistics updated through December 2019 as of the end of February¹⁰² and a partnership with CrimeReports.com/CityProtect by Motorola displaying basic information about more recently-occurring crimes. The Department may want to build on processes that allow for more regular updating to ensure more up-to-date provision of information across issues, areas, and datasets.

Recommendation 4.9. SBPD should post on its website all policies, manuals, and related written materials (such as forms or electronic data templates) and keep such materials up-to-date.

The President’s Task Force on 21st Century Policing found that, “[t]o embrace a culture of transparency, law enforcement agencies should make all department policies available for public review”¹⁰³ It noted that this type of “technology-based community engagement” can “increase[] community trust and access.”¹⁰⁴

Some SBPD policies, including the Department’s body-worn camera, use of force, and vehicle pursuit policies, are available via links from the City’s transparency portal¹⁰⁵ and SBPD’s Transparency Hub.¹⁰⁶ However, SBPD does not currently post its complete policy manual, addressing core enforcement and operational activities, on-line. The Department should join the numerous jurisdictions, including many that – like SBPD – have based policies on those provided by the Lexipol organization, that currently do so.¹⁰⁷

¹⁰⁰ South Bend Open Data Portal, *Police Use of Force Incidents*, <https://data-southbend.opendata.arcgis.com/datasets/police-use-of-force-incidents/data?page=18> (last visited Feb. 27, 2020).

¹⁰¹ South Bend Open Data Portal, *Criminally Assaulted Shootings*, https://data-southbend.opendata.arcgis.com/datasets/criminally-assaulted-shootings?geometry=-86.593%2C41.644%2C-85.94%2C41.734&orderBy=USER_Date (last visited Feb. 27, 2020).

¹⁰² South Bend Police Department, *South Bend Police Dept. Transparency Hub*, <https://police-southbend.opendata.arcgis.com/> (last visited Feb. 27, 2020).

¹⁰³ Final Report of the President’s Task Force on 21st Century Policing 13 (2015).

¹⁰⁴ *Id.* at 36.

¹⁰⁵ City of South Bend Indiana, *Public, Public Safety Policy*, <http://docs.southbendin.gov/WebLink/Browse.aspx?startid=290022> (last visited Feb. 27, 2020).

¹⁰⁶ South Bend Police Department, *South Bend Police Dept. Transparency Hub*, <https://police-southbend.opendata.arcgis.com/> (last visited Feb. 27, 2020).

¹⁰⁷ See, e.g., Salt Lake City Police Department, *SLCPD Policy Manual*, <http://www.slcdocs.com/police/ppm.pdf> (last rev. Feb. 12, 2019); Elk Grove Police Department, *Policy Manual*, http://www.elkgrovepd.org/divisions/administrative_resources/egpd_policy_manual (last visited Mar. 31, 2020); San Mateo County Sheriff’s Office, *Policy Manual*, https://www.smcsheriff.com/sites/default/files/content_files/San_Mateo_County_SO_Policy_Manual%28Web_1

Recommendation 4.10. The Board of Public Safety’s meeting records should be more readily accessible to the public.

Currently, the Board of Public Safety’s meeting records are not as accessible as they might be. Minutes of the Board’s meetings are available online, but they (1) are difficult to navigate, and (2) often provide relatively minimal context or detail about the nature of the Board’s actions or decisions, about both personnel and policy matters. For instance, the minutes for the Board’s May 16, 2018 meeting note that the Board approve the removal of Policy No. 301 from SBPD’s Duty Manual.¹⁰⁸ The Minutes provide that “when the Duty Manual is updated, it often causes conflicts with old policies, and occasionally there are significant grammatical errors in them and they need to be replaced or removed.” However, the Minutes contain no explanation as to what Policy No. 301 addressed, what the specific issues were, and how the complete elimination of the policy rather than edits or modifications was necessary to address those issues.

Similarly, in the minutes of a December 19, 2018 meeting, the Board considered a recommended thirty-day suspension of an SBPD employee. The minutes note that the suspension was “due to violations of Duty Manual Sections 320.4, 320.5.8, and 320.5.9” and that upon a motion, and a second, by Board members, “the recommended discipline was approved as requested.”¹⁰⁹ The Minutes provide no summary of the underlying factual allegations and no explanation of the underlying policy provisions cited.

Both when considering SBPD policies and procedures and when reviewing SBPD discipline, the Board needs to ensure that a record is generated that provides the public with sufficient detail, context, and explanation of both the underlying issue, case, or misconduct and the reasons for why the Board ultimately made the decisions that it did. The City should explore mechanisms for reporting on the Board’s activities that are more navigable and accessible than static PDFs organized as administrative logs of meetings rather than around specific actions or subject matter areas.

Recommendation 4.11. South Bend should explore the many models of civilian oversight functioning across the country and adopt additional approaches that best match the needs

19%29.pdf (last rev. Feb. 4, 2019); Tigard Police Policy Manual, https://www.tigard-or.gov/document_center/Police/policy_manual.pdf (last rev. Jan. 6, 2020); see generally Los Angeles Police Department, Policy Manual, *Table of Contents*, http://www.lapdonline.org/lapd_manual/table_contents.htm; New Orleans Police Department, *Policies*, <https://www.nola.gov/nopd/policies/>; San Francisco Police Department, *Your SFPD, Policies, General Orders*, <https://www.sanfranciscopolice.org/your-sfpd/policies/general-orders>; Phoenix Police Department, *Operations/Orders*, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf; Minneapolis Police Department, *Policy & Procedure Manual*, <http://www.ci.minneapolis.mn.us/police/policy/index.htm>; Greenville North Carolina, *Police, Policy and Procedures*, <https://www.greenvillenc.gov/government/police/policy-and-procedures>; Pasadena Police Department, *Policy Manual*, <https://www.cityofpasadena.net/police/wp-content/uploads/sites/28/Pasadena-Police-Department-Policy-Manual.pdf>.

¹⁰⁸ South Bend Board of Public Safety, Minutes at 26 (May 16, 2018), <http://docs.southbendin.gov/weblink/0,0,0,0,0,0/doc/172085/Page1.aspx>.

¹⁰⁹ South Bend Board of Public Safety, Minutes at 7 (Dec. 19, 2018), <http://docs.southbendin.gov/weblink/0,0,0,0,0,0/doc/276932/Page1.aspx>.

of the South Bend community and SBPD. This may include the revamping or restructuring of the Board of Public Safety. A civilian panel should select the model and assist in the implementation of the ultimate oversight approach.

Civilian oversight – which “refers to government institutions that empower individuals who are not sworn police officer to influence” directly and formally the operations of a department¹¹⁰ – is often pointed to as a critical “public-confidence building mechanism as well as a device for providing feedback on police organizational performance.”¹¹¹ A 2020 survey of the country’s one hundred largest cities found that more than three out of five (61 percent) had some form of civilian oversight.¹¹²

Civilian oversight bodies can have many different functions:

- **Investigative Function.** Some civilian oversight entities “investigate[] police incidents independently from the police department,” employing “professional investigator[s]” and reaching findings of fact based on their independent inquiries.¹¹³
- **Review, Appellate, or Audit Function.** “Review and appellate models typically go to work only after the law enforcement agency itself has completed an internal investigation of a citizen’s complaint.”¹¹⁴ The oversight entity may “review[] or monitor[] investigations of police incidents being conducted by the police department” or may review the “outcome[s] of disciplinary investigations upon the request of either the complainant or the accused officer.”¹¹⁵ The body may review every police investigation or might instead audit a sample or some sub-set of investigations conducted by a police agency.¹¹⁶
- **Adjudicative Function.** Some bodies “adjudicate[] specific disciplinary matters by making findings and recommendations” based on an internal investigation.¹¹⁷
- **Supervisory Function.** Supervisory oversight bodies “make[] high-level policy and strategic decisions regarding police department operations.”¹¹⁸

¹¹⁰ Stephen Clarke, “Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How It Fails,” 43 *Columbia Journal of Law and Social Problems* 1, 2 (2009).

¹¹¹ Andrew J. Goldsmith and Colleen Lewis, *Civilian Oversight of Policing: Governance, Democracy and Human Rights* 7 (2000).

¹¹² Sharon R. Fairley, “Survey Says: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy,” *Cardozo Law Review De Novo* 9 (2020), http://cardozolawreview.com/wp-content/uploads/2020/01/FAIRLEY.DN_2019.pdf.

¹¹³ *Id.* at 8.

¹¹⁴ Police Assessment Resource Center, *Review of National Police Oversight Models for the Eugene Police Commission* 7 (Feb. 2005).

¹¹⁵ Sharon R. Fairley, “Survey Says: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy,” *Cardozo Law Review De Novo* 8 (2020), http://cardozolawreview.com/wp-content/uploads/2020/01/FAIRLEY.DN_2019.pdf.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

- **Advisory Function.** Advisory oversight entities “make recommendations to the police department regarding high-level policy and operational strategies,” though they may not have any authority to mandate the adoption of their recommendations.¹¹⁹
- **Evaluative Function.** The goal of an evaluative civilian oversight entity “is to look at the Department in its entirety [and] to make judgments over time regarding how well the Department minimizes the risk of police misconduct, identifies and corrects patterns and practices of unconstitutional and illegal behavior, and finds solutions to systemic failures.”¹²⁰ Such bodies analyze the department’s performance across time, cases, incidents, and officers.

Civilian oversight bodies may perform one or many of these functions. South Bend’s current Board of Public Safety fulfills many of these functions, including elements of review, supervisory, and advisory functions, as it is responsible for:

- Adopting policies applicable to the Police and Fire Departments;
- Adopting general and special orders to the Police and Fire Departments;
- Approving the employment and training of police officers and firefighters;
- Swearing in of police officers and firefighters upon completion of training;
- Disciplinary actions for police officers and firefighters; and
- Approving police and fire coverage to newly annexed or other areas.¹²¹

There is no “one-size-fits-all” civilian oversight mechanism. Part of the diversity among oversight models is because all have been created under different local and political circumstances – to address the particular needs of the community and the police department on which the entity focuses. What works in one jurisdiction may not work in another.

Accordingly, 21CP recommends that the City consider an inclusive, collaborative process that considers the role and functioning of South Bend’s current Board of Public Safety; the functions that South Bend residents, officers, and other community stakeholders want for a civilian oversight entity to fulfill; and establish a detailed vision and plan for either enhancing the duties of the Board or supplementing the functioning of the Board with another oversight mechanism.

¹¹⁹ *Id.*

¹²⁰ Police Assessment Resource Center, Review of National Police Oversight Models for the Eugene Police Commission 13 (Feb. 2005).

¹²¹ City of South Bend, Boards and Commissions, Board of Public Safety, <https://southbendin.gov/board/public-safety/> (last visited Mar. 6, 2020).

5. Community Engagement & Participation

Recommendation 5.1. SBPD should implement a comprehensive community and problem-solving policing model – one that is created in true collaboration with the community and that makes community engagement and addressing community problems the shift-to-shift and minute-to-minute way that SBPD does business.

Public safety is a community problem, not just a police problem.¹²² The police cannot fight crime and address public safety issues alone. Instead, they must build partnerships with the residents of their precinct to identify and help solve community problems.

Police departments have increasingly embraced community-oriented policing as an organizational philosophy. Nationally, the concept of community policing has taken many different forms, with the concept at times causing confusion among agencies and communities as to what community policing is and how it should be implemented.¹²³ Community policing should, at its core, involve collaboration between the community, the police department, and other city-based institutions to create a feedback loop of recommendations to reduce crime. Residents must have a collaborative role in identifying the problems in their community, it should not be just issues targeted by the police.¹²⁴ Effective community policing gives residents ownership and responsibility in the problem-solving work born of such partnership.

Within SBPD, community policing currently refers to a series of various programs and initiatives that principally focus on community engagement and one-off interactions. These efforts focus on fostering one-on-one interactions or relationships with South Bend residents and include, for example:

- A “Popsicles Patrol,” where SBPD passes out popsicles to the community on hot days;
- A city-wide Cops and Goblins Halloween Party with an estimated 7,000 attendees;
- The Police Athletic League, which thousands of South Bend youth have gone through;
- School, foot, and bike patrols; and
- Regular meetings throughout the City with neighborhood organizations.

This approach has been codified in the *South Bend Police Department Relationship Based Policing Strategic Plan*.

These community engagement opportunities are clearly appreciated by a number of South Bend residents and enjoyed by SBPD staff. Undoubtedly, the types of engagement events in which SBPD

¹²² Gene Ellis, “Prevention-Focused Community Policing Building Public Trust,” *Police Chief*, <https://www.policechiefmagazine.org/prevention-focused-community-policing/> (last visited Mar. 9, 2020).

¹²³ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 9 (2019).

¹²⁴ Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1, 5 (1995).

participates can help to build a bridge between the Department and South Bend’s communities, with residents able to get to know individual officers in a more direct, human-to-human way.

These engagement events are largely coordinated by a few officers who informally identified as the community policing leaders and volunteered countless amounts of hours to their unmandated community engagement initiatives. Especially in the wake of the highly scrutinized shooting of Eric Logan, SBPD has an opportunity to partner with the community to build a true community and problem-solving policing philosophy that informs everything that the Department does. A comprehensive community policing model addresses the many desired roles and strategic staffing of the police to provide opportunities for officers to engage in problem-solving as a fundamental crime prevention and community wellness strategy.

Real community policing is an overriding approach to policing. It is *not* a series of disconnected or “one-off” programs, an isolated assignment, or an extracurricular activity. It is *not* a scattered series of initiatives, partnerships, or activities. It is not a list of various programs, initiatives, and events that a Department sponsors. Instead, true community policing is the fundamental way that police conduct their work on a minute-to-minute, shift-to-shift basis. Specifically:

[Community policing] should be the standard operating method of policing, not an occasional special project; (2) it should be practiced by personnel throughout the ranks . . . ; (3) it should be empirical, in the sense that decisions are made on the basis of information that is gathered systematically; (4) it should involve, whenever possible, collaboration between police and other agencies and institutions; and (5) it should incorporate, wherever possible, community input and participation, so that it is the community’s problems that are addressed (not just the police department’s) and so that the community shares in the responsibility for its own protection.¹²⁵

Ultimately, a Department that adopts community policing as the way it does its work “embraces a broad view of the police function rather than a narrow focus on crime fighting or law enforcement.”¹²⁶

For example, police departments in cities like Chicago,¹²⁷ Cleveland,¹²⁸ and New York¹²⁹ are implementing community police models that focus on providing officers with time “off the radio” when,

¹²⁵ Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1, 5 (1995).

¹²⁶ *Id.* at 2.

¹²⁷ NYU School of Law Policing Project, Neighborhood Policing Initiative, <https://www.chicagonpi.org/npi> (last visited Jan. 15, 2020) (describing program to “provide all officers uncommitted time in which to engage in relationship-building and problem-solving within the neighborhoods they serve”).

¹²⁸ Cleveland Division of Police, Community and Problem-Oriented Policing Plan 6 (2019) <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5c796361e2c48323a6b4064b/1551459170892/CPOP+Ex+A.pdf> (providing patrol officers with 20 percent of their time to devote purely to community engagement opportunities).

¹²⁹ New York Police Department, Neighborhood Policing, <https://www1.nyc.gov/site/nypd/bureaus/patrol/neighborhood-coordination-officers.page> (last visited Jan. 15,

not needing to respond to an urgent call for service, they can engage in meaningful relationship-building and can proactively solve community problems. This typically takes the form of specific time during which dispatchers do not route new calls for service to an officer, allowing the officer to engage in community-building and problem-solving activities. Individual engagement and community problem-solving efforts are logged and tracked, both to ensure that officers are effectively using the time and to inventory community and concerns for follow-up and analysis. Community contacts and problem-solving becomes the basic unit of concern, operation, and focus within the police department.

Consequently, community policing cannot be seen as a one-time activity, a standalone function, or the job of only particular personnel. To create a sustainable model of meaningful engagement and trust building with the residents of South Bend, all SBPD officers must see community policing as part of their core, minute-to-minute and shift-to-shift duties because *community policing is effective policing*. This requires however, continuous collaborative problem-solving sessions, relationship-building as a result of ongoing interactions, and direct community engagement that makes substantive plans for change to address the identified concerns, issues, and gaps.

In South Bend, where a majority of the police officers do not currently live in the city, 21CP found that both the residents and the police tend to see one another as an “other” rather than as a collaborative partner. Residents regularly stated that, without living in the community and getting to know those they serve, SBPD officers may not as immediately recognize the value in certain communities and the rich contributions of those communities to the history to the region. Many officers said that the community does not seem to take into account the positive interactions and problem-solving that the Department has done – and are quick to assume bad intentions when interactions result in the use of force or an arrest.

In 21CP’s estimation, the perceptions of community and SBPD officers are real and authentically held. At the same time, many officers and residents alike cited an equally authentic desire to transform those dynamics and to renew and reset the relationship between the community and law enforcement. To build a stronger relationship with the community and to create a positive future and for strategic organizational growth, SBPD must become highly attuned to the needs of the community it serves, creating a city-wide culture where neither entity views their peers as the “other,” or even as the “served” entity but rather they feel they are working together. Therefore, all SBPD officers need to see community problem-solving and engagement as their fundamental role and SBPD must implement an integrated, comprehensive community and problem-oriented policing model.

Recommendation 5.2. Building on promising dialogues in the Community Advisory Groups sponsored by the Board of Public Safety, SBPD should develop a Community and Problem-Solving Policing Plan developed in true partnership with all of South Bend’s diverse communities, including SBPD officers at all levels. The focus should be on

2020) (describing “off-radio time” provided to officers “so they are not exclusively assigned to answering calls for service” and “used to engage with neighborhood residents, identify local problems, and work toward solutions”).

strategies for ensuring that engagement and problem-solving becoming the core duties of all SBPD officers.

It is 21CP's understanding that, prior to the recent series of Community Action Group meetings addressing specific policies and practices around South Bend, the primary and potentially exclusive role for public participation in policing issues was public comment at open meetings. A constrained three minutes of public input time at the Board of Public Safety hearings is too limited and too structured to permit the type of community deliberation, education, and collaboration that is necessary to establish a re-imagined vision of public safety for South Bend going forward. The community needs time and concrete opportunities to give voice to their histories, experience, values, and goals – as well as to work together to develop possible solutions and changes going forward.

The City of South Bend and SBPD need to develop a comprehensive, detailed community policing plan in partnership with South Bend's many communities. Writing in *Police Chief* magazine about the development of such a community policing plan for the City of San Francisco, the Chief of Police and Commander of the Department's Community Engagement Division cited four lessons learned, all of which point to the fundamental importance of community collaboration in the development of a community policing approach:

- Development of the plan must be a true partnership. Community policing necessitates that the community itself have a voice and so should officers of all ranks
- Beginning the process by outlining desired outcomes from community policing will serve as a guide for the work. It is very difficult to define a process if the end goal is not articulated
- Diverse viewpoints (by demographics, geography, politics, background, opinion of the police, and more) are critical for creating a plan that can be accepted as legitimate by the community.
- Transparency and an open, accessible process are just as important as the resulting plan in earning the community's trust; the act alone of creating a community policing plan is not enough. The community members involved in creating the plan should provide input about how to make the process as inviting and available as possible.¹³⁰

Similarly, the Cleveland Division of Police, as part of federal reform after controversial use of force incidents, including the shooting of 12-year-old Tamir Rice, which received national attention, developed a community and problem-oriented policing plan in 2019.¹³¹ That Plan was the culmination of a collaborative, City-wide initiative that included community roundtables, meetings in various police

¹³⁰ William Scott and David Lazar, "Community Policing Strategic Plans," *Police Chief* (Oct. 3, 2018).

¹³¹ Cleveland Division of Police, *Community and Problem-Oriented Policing Plan* (2019), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5c6c64fc15fcc006885690b1/1550607613358/CDP+Community+and+Problem-Oriented+Policing+Plan.pdf>.

districts, and outreach with substantial numbers of community organizations comprised of or representing various of Cleveland’s diverse communities.¹³²

The plans generated in San Francisco and Cleveland were not perfect. No community policing plan can be. It is undoubtedly true that community engagement and collaboration in both places could have been broader, deeper, and reflective of more engagement with hard-to-reach populations. However, the discussions about what policing should look like in those jurisdictions going forward helped to establish a substantive, dynamic partnership between community and police and to develop a detailed plan for implementing a new approach to policing.

Ultimately, the City, SBPD, and the South Bend community will need to decide what should be included in a community policing plan. However, 21CP strongly recommends that community stakeholders consider the following elements during its deliberations.

Recommendation 5.3. SBPD should consider broader use of foot, bike, and other alternatives to motorized patrol.

A number of community members complained in conversations with 21CP about the lack of police interaction with their communities. They indicated that police cars drive by, through, and monitor their neighborhoods – but that the officers sat inside the car with their windows up, not engaging with the community. Police officers didn’t disagree. They indicated that a good part of this stems from their need to run from call to call and fulfill various administrative requirements – leaving them relatively little time to engage with neighborhood residents.

Many studies suggest that the effective implementation of alternatives to motorized patrol, including foot and bike patrols, are one common and successful step that can support an overriding community policing approach.¹³³ These non-vehicle-based patrol strategies can serve as expanded opportunities for SBPD officers to say hello to those they pass, stop for one-on-one conversation, and begin to establish clearer routines of the community through a more casual observation of and interaction with day-to-day life in South Bend.

A 2016 Police Foundation study evaluating foot patrol programs nationwide, found that, among other benefits, foot patrols “facilitate relationship-building between officers and the community,” “[e]nhance the enforcement and problem-solving capability of law enforcement,” “can change how the community

¹³² See Cleveland Police Monitoring Team, *Sixth Semiannual Report* 14–19 (March 2019) (describing development of Community and Problem-Oriented Policing Plan); “Clevelanders Discuss Ideas for Community Policing Policy,” WOSU.com (Mar. 22, 2017), <https://radio.wosu.org/post/clevelanders-discuss-ideas-community-policing-policy> (addressing process of public input for community policing plan).

¹³³ Gary W. Cordner, “Community Policing: Elements and Effects,” *5 Police Forum* 1, 4 (1995); A. Gerasimos Gianakis, et al, “Reinventing or Repackaging Public Services? The Case of Community-Oriented Policing,” *58 Public Administration Review* 485 (1998).

views police officers,” and can “increase the legitimacy of the police in the eyes of the community.”¹³⁴ Consequently, foot patrols should also become a priority for all SBPD officers in the field. Although it is often believed that foot patrols are overly resource-intensive because they limit the ability of an officer to move quickly with response to calls, in a city the size of South Bend a strategic approach to staffing allocation may be possible.

Meanwhile, among South Bend Police Officers, there was a continuous request that the popular but essentially defunct mountain bike patrol be revived. In 21CP’s experience, such tools do not have to be, and should not be, relegated to a few officers within the Department. Instead, the installation of a bike rack on the back of all unit cars can give many officers the opportunity to park, get out, and use the bike for a few blocks when they aren’t forced to move from call to call.

Recommendation 5.4. SBPD should provide regular, unassigned time for patrol officers to engage with community members, ensuring that officers do not spend entire shifts simply running from call to call and have meaningful time to proactively solve the types of community problems that cause and promote crime – which appears equally important to South Bend residents and officers.

For a comprehensive community and problem-oriented policing approach to work, officers need sufficient time to engage with the community in a capacity that is not purely focused on enforcement or call response.¹³⁵ There is a recurring reality in many jurisdictions “that responding to calls for service leaves [police officers] with too little time to practice community policing.”¹³⁶ When the call volume is lighter, “patrol officers’ time not committed to handling calls is either spent simply waiting for the next call or randomly driving around.”¹³⁷

Community policing models do not come without organizational change and redesign. They require effective planning and implementation. As noted previously, many large and small agencies have undergone the growing pains of strategic development to build in necessary “off-radio” time that allows officers to decline calls for service in order to engage with the individuals on the beat. In order to do this, specific times for community policing need to be built into an officer’s shift during which dispatch routes calls to other officers in the area – ensuring that officers can use the time for intentional engagement and community problem-solving rather than being pulled away for calls for service.

¹³⁴ Brett M Cowell & Anne L. Kringen, Police Foundation, *Engaging Communities One Step at a Time: Policing’s Tradition of Foot Patrol as an Innovative Community Engagement Strategy* iv (2016), https://www.policefoundation.org/wpcontent/uploads/2016/09/PF_Engaging-Communities-One-Step-at-a-Time_Final.pdf.

¹³⁵ Allison T. Chappell, “The Philosophical Versus Actual Adoption of Community Policing: A Case Study,” 34 *Criminal Justice Review* 17–18 (2009).

¹³⁶ *Id.* at 18 (summarizing R.W. Glesnor & K. Peak, *Implementing Change: Community-oriented Policing and Problem Solving*, 65 *FBI Law Enforcement Bulletin*, at 14–21 (1995)).

¹³⁷ Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1, 3 (1995).

Just as SBPD currently has business check-in logs where an officer can step into a business and sign a book proving they have patrolled that area and met with the manager, “off-radio” time needs to be tracked. Officers should be able to note how many individuals that chatted with, if there were any problems identified and solutions so that it may be tracked later in the collaborative partnership meetings and issues that need to be forwarded to other city agencies can be appropriately routed, as Recommendation 5.5 discusses.

Recommendation 5.5. As part of a renewed focus on community problem-solving, SBPD should ensure structures and processes for feedback loops to be closed and for SBPD to help effectively coordinate responses across city agencies.

As with any city in the United States, many issues affecting public safety are not primarily handled by police. Concerns like abandoned buildings, abandoned cars, overgrown lots, and poor street lighting impact community safety and well-being, and law enforcement, but are not within the primary roles and responsibilities of law enforcement. A system that allows police and community to identify those underlying conditions and have them addressed in partnership with other city agencies is an essential part of effective community policing and problem-solving. For example, SBPD estimates that approximately 40 percent of its budget involved repeated/returning visits to the same nuisance properties wasting the SBPD’s time and continuously frustrating the community for which this property exists.

A dynamic, problem-solving approach that attempts to address the underlying nature of the properties and how they might be addressed can strengthen public safety in the long-term. For instance, in Philadelphia, a coordinated city services meeting was held once a quarter and issues, identified by police and community alike, were provided to city agencies to be addressed and remedied.¹³⁸ Dashboards were created to ensure follow-through. The process has been credited with addressing important, underlying public safety issues in the city.

Recommendation 5.6. The Community and Problem-Solving Policing Plan should consider a formalized process and system for mental health professionals to provide mental health services for crime victims’ families and affected community.

Trauma-informed policing has become the standard of operation for victim services interviews in many agencies nationally. No longer can a victim of crime expect to see *only* a police officer after a major incident has occurred in their home, workplace or life. Instead, community-based “wrap-around services” with city-wide stakeholder engagement are regularly offered to victims following an incident to ensure that a variety of needs are met – from medical care and counseling services to legal service referrals.

¹³⁸ Philadelphia Police Department, *The Philadelphia Police Department Moving into the 21st Century 2018–2015*, <https://www.phillypolice.com/assets/directives/MovingThePhiladelphiaPoliceDepartmentIntoThe21stCentury.pdf> (last visited Mar. 9, 2020).

A number of community representatives shared concerns with 21CP about the nature of officer interactions with crime victims. Accordingly, 21CP recommends that SBPD provide ongoing training to officers on trauma-informed care and victims services:

Unaddressed trauma can lead to behavioral and physical health conditions, including mental health issues—anxiety, depression, post-traumatic stress—and substance use, which can lead to contact with the criminal justice system. For law enforcement officials, trauma-informed policing practices that enhance officers’ understanding of trauma and its effects can facilitate criminal investigations through a greater awareness of a victim’s needs, reduce the potential recurrence of criminal behavior through early intervention and community trust in police, and connect traumatized individuals to appropriate community services and supports.¹³⁹

Recommendation 5.7. The City and SBPD should look for opportunities to strengthen and build on the collaborative problem-solving opportunities of the Group Violence Intervention (“GVI”).

The Group Violence Intervention (“GVI”) in South Bend is a current problem-solving initiative aimed at violence prevention. Based on the work of David Kennedy at John Jay College, the GVI is comprised of stakeholder agencies citywide that address crime, juvenile resources, post incarceration employment, and various at-risk communities in partnership with the SBPD’s Strategic Focus Unit (SFU) command. Their goals are:

- (1) Building relationships;
- (2) Decreasing crime through information sharing and collaboration;
- (3) Growing younger adult engagement; and
- (4) Preventing crime rather than just prosecuting it.

When interviewed, the GVI members identified concerns around the limited hiring of minority police officers, concerns that community policing was seen as one person’s job rather than a pillar or foundation of being a strong police agency, and that there was not enough youth engagement to drive the police-youth relationship going forward.

Much like the Community Action Groups (CAG) established in South Bend to help create community dialogue around critical issues, the GVI is an opportunity for SBPD to capitalize on a pre-established group of engaged community leaders in order to address community needs and trust building through collaboration, listening and partnership. SBPD should continue the SFU engagement in the GVI, and

¹³⁹ Altovise Love-Craighead, Vera Institute of Justice, “Building Trust Through Trauma-Informed Policing,” *Police Perspectives* (Mar. 20, 2015), <https://www.vera.org/blog/police-perspectives/building-trust-through-trauma-informed-policing>.

increase the involvement of others within the Department. The Department should likewise make reporting to command staff about problems, issues, and ideas generated from the GVI a priority.

Recommendation 5.8. SBPD’s community engagement and partnership efforts need to be grounded in person-to-person listening, candor, humility, and open-mindedness. The goal of such engagement should be authentic collaboration with community on identifying and addressing community problems and public safety issues.

Informed community policing starts with meeting people where they are: in their communities; in the community centers, schools and churches; and without an agenda – to listen and learn. Partnering with the community means that officers first show up in the community’s (rather than the Department’s) space to learn about what drives the neighborhood, its residents and their needs. In addition, officers given the time should seek every opportunity they can to engage in community listening session, planning meetings and vigils or peacemaking events. Relationship building starts from a basis of human understanding and goes from there.

21CP recognizes that, for the men and women of the SBPD, criticism of the Department and of their profession generally can be difficult to encounter. It can be challenging for individual officers, committed to principles of justice, fairness, and equity to interact with community members who do not believe that police officers are committed to such values. Several members of 21CP, who have spent their careers in public safety, know how challenging, dispiriting, and even painful it can be when criticisms from the public sometimes feel like overly broad-stroke indictments of individual officers.

At the same time, policing is a challenging profession. Individuals ask the police to address emergencies, crises, and urgent situations that they cannot address themselves. Consequently, law enforcement requires individuals who can interact with individuals – of all backgrounds, stations, and experiences – with humanity, integrity, thoughtfulness, and professionalism. These attributes are necessary whether an officer is addressing a public safety emergency, investigating a crime, helping to solve a community problem, or interacting with individuals who are critical of how police do their business.

The skills required to effectively navigate challenging situations such as these cannot be assumed to be innate for everyone. Rather, it requires practice and training. SBPD officers should be educated on the history of the Department, the South Bend community, and the issues around their own personal bias so they learn about themselves, the challenges of their role, best communication practices and their duty as a guardian in the community. Additionally, repeated conversations and increased learning about those in their districts can build upon an officer’s knowledge in a way that can help to better navigate these community dynamics and challenges over time.

Recommendation 5.9. After establishing a Community and Problem-Solving Policing Plan, SBPD should develop and implement mandatory training for all officers, and for community members, on community engagement and problem-solving skills.

Officers will need to receive comprehensive and ongoing training on new community policing expectations. This training should address, among other things:

- Problem-oriented policing tactics;
- Conflict resolution, including verbal de-escalation of conflict;
- Cultural awareness training that addresses the history and culture of South Bend's diverse communities;
- Public safety and crime prevention strategies through community engagement, neighborhood partnerships, and addressing quality-of-life issues; and
- Methods of ongoing, person-to-person community engagement.

6. Officer Well-Being, Recruitment, Retention & Developing the Narrative

Building trust and legitimacy in any organization and community starts with the cadre of officers hired and retained by the agency.¹⁴⁰ Increasingly, law enforcement agencies are working to address the needs of their community by focusing on attracting officers and retaining those who possess skills, attributes, and life experiences that are consistent with those of the community that they will serve.¹⁴¹ As President Obama's Task Force on 21st Century Policing observed:

Law enforcement agencies should strive to create a workforce that contains a broad range of diversity including race, gender, language, life experience, and cultural background to improve understanding and effectiveness in dealing with all communities.¹⁴²

Police will be seen as more legitimate and may be better able to partner with community organizations in fighting crime if they more closely resemble and identify with the communities they serve.¹⁴³

Recommendation 6.1. SBPD should create and implement a strategic plan for recruitment, hiring, and retention to ensure that SBPD attracts well-qualified, diverse recruits familiar with policing in a challenging urban environment and keeps them on the force so that the Department and community benefit from their long-term relationships with residents.

The Department will benefit from the implementation of a strategic recruiting plan incorporating rank-and-file officers into the process of identifying potential future SBPD officers. Recruiting should be promoted as everyone's job within the Department, and the Department should therefore organize a system to collect names and contact information for people that current personnel encounter and refer.

Recommendation 6.1.1. The Department should formulate a comprehensive professional development program, including opportunities for leadership training, educational opportunities, and cross-training programs with neighboring jurisdictions and other city departments.

¹⁴⁰ U.S. Department of Justice, Office of Community Oriented Policing Services, *Law Enforcement Best Practices: Lessons Learned from the Field* 94 (2019).

¹⁴¹ Dwayne Orrick, International Association of Chiefs of Police, *Best Practices Guide: Recruitment, Retention, and Turnover*, <https://www.theiacp.org/sites/default/files/2018-08/BP-Recruitment.pdf> (last visited Feb. 25, 2020).

¹⁴² *Final Report of the President's Task Force on 21st Century Policing* 16 (2015).

¹⁴³ Carl F. Matthies, et al, RAND Center on Quality Policing, *Issues in Policing: Identifying Barriers to Diversity in Law Enforcement Agencies* (2012), https://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP370.pdf.

SBPD should consider establishing a coordinated professional development program so that officers across the Department can have access to educational and law enforcement opportunities that grow skills and cultivate expertise. The Department may find collaboration with local and regional academic institutions, peer law enforcement agencies, and other community resources to be valuable in this regard.

Recommendation 6.1.2. The City and Department should explore changes in officer compensation and/or benefits – which current SBPD officers say has the potential to improve morale and increase officer retention.

Conversations with departmental personnel suggested that compensation was a major reason that SBPD is increasingly having difficulty attracting well-qualified recruits and retaining its existing officers. Many observed that law enforcement agencies in surrounding areas are offering officers higher pay and strong economic incentives to work in communities where they will encounter less crime than in South Bend. Officers suggested that neighboring departments have consequently not experienced the same type of hiring problems that SBPD has.

Mindful of South Bend's many fiscal demands and competing social and civic priorities, including discussions about how the Department fits into the larger fabric of public safety overall, the City and Department may want to evaluate the impact of compensation and benefits on SBPD's ability to recruit and retain diverse, high-quality, community-centered officers.

Recommendation 6.1.3. The City, with SBPD, should explore mechanisms for reducing the length of the hiring process.

In today's competitive job market, a faster, more efficient application and hiring process is critical for success. Many potential job applicants who need to find employment are unable to wait for a police recruiting process that takes many months to complete.¹⁴⁴ Consequently, the City and Department should review the hiring process and consider taking steps to reduce the overall amount of time that it takes to be hired by the Department.

Recommendation 6.1.4. The City, with SBPD, should explore whether minimum hiring qualifications and/or disqualifying characteristics should be modified (such as the moratorium on beards and tattoos).

From SBPD and community stakeholders, 21CP heard the view that some specific qualification parameters may be preventing the Department from hiring otherwise-qualified police candidates. These included the prohibition on candidates with beards and on candidates with tattoos. 21CP understands from the Department that, recently, SBPD piloted a relaxation of the prohibition on beards. With

¹⁴⁴ Police Executive Research Forum, *The Workforce Crisis, and What Police Agencies Are Doing About It* 14. (Sept. 2019).

feedback from the community indicating general support for the initiative, SBPD is allowing, at least for the foreseeable future, officers to have beards. The Department also notes that no candidates have ever been turned away because of tattoos or beards. To ensure that no potential candidates determine for themselves not to apply because of the personal appearance requirements, and with other law enforcement jurisdictions increasingly relaxing personal appearance codes,¹⁴⁵ South Bend should build on its successful pilot approach and consider formally modifying its appearance requirements.

Recommendation 6.1.5. SBPD should ensure that its recruitment activities are a year-round effort, with sufficient resources allocated for personnel to work on recruiting activities and for marketing initiatives.

In 21CP's discussions with departmental representatives, it did not appear that recruitment is always seen as a critical, ongoing task. SBPD should designate specific personnel to lead its recruitment activities – and should earmark resources throughout the year for recruitment and marketing initiatives.

Recommendation 6.2. SBPD should implement a more comprehensive, 360-degree officer wellness program.

Policing is a dangerous and unpredictable job. Officers are expected to respond to the scene of situations that others have not been able to address and resolve situations in which people are at their worst or most vulnerable. They often are called to address situations and people that the remainder of the social service fabric has forgotten or left behind.

As a result of performing their everyday duties, police officers face unique physical and mental stress.¹⁴⁶ In 2016, more officers died of suicide than any single cause of death in the line of duty (and almost as many as all causes combined).¹⁴⁷ Officers also exhibit symptoms of post-traumatic stress disorder (PTSD) at a higher rate than the general population.¹⁴⁸

This ongoing stress affects more than simply officers themselves. It impacts spouses, children, and families—as well as the community that officers serve. Mental and physical health challenges can and

¹⁴⁵ Julie McClure, "Beards, Exposed Tattoos Approved for Police Officers: Changes Expected to Help Recruitment," *Columbus Republic* (Nov. 28, 2018), <http://www.therepublic.com/2018/11/29/beards-exposed-tattoos-approved-for-police-officers-changes-expected-to-help-recruitment/>; "Allowing Police Beards Is Right Move," *Houston Chronicle* (Dec. 29, 2019), <https://www.houstonchronicle.com/opinion/editorials/article/Allowing-police-beards-is-right-move-Editorial-14932987.php>; Billy L. Branch, *Police Agencies and Relaxed Grooming Codes: Why We Should Make the Change* (Nov. 8, 2018), <https://www.cji.edu/wp-content/uploads/2019/06/police-agencies-and-relaxed-grooming-codes.pdf>.

¹⁴⁶ Deborah L. Spence, et al, Law Enforcement Mental Health and Wellness Act: Report to Congress (2019).

¹⁴⁷ John M. Volanti, et al, "Law Enforcement Suicide: A National Analysis," 15 *Int'l J. Emergency Mental Health & Human Resilience* 289, 289 (2013).

¹⁴⁸ Nat'l Alliance on Mental Illness, *Law Enforcement Officers*, <https://www.nami.org/Law-Enforcement-and-Mental-Health/Strengthening-Officer-Resilience> (last visited Feb. 25, 2020); Ellen Goldbaum, University of Buffalo, "Police Officer Stress Creates Significant Health Risks Compared to General Population, Study Finds," (July 9, 2012), <http://www.buffalo.edu/news/releases/2012/07/13532.html>.

often do result in increased administrative costs from absenteeism, increased use of workers' compensation and sick days, and increases in early retirement. Likewise, "[w]hen exhausted, officers are unable to effectively communicate with community members and may even incite agitation among them."¹⁴⁹ "Officers who are equipped to handle stress at work and at home. . . . are more likely to make better decisions on the job and have positive interactions with community members."¹⁵⁰

Given the importance of officer wellness, President Obama's Task Force on 21st Century Policing advised that:

Support for wellness and safety should permeate all practices and be expressed through changes in procedures, requirements, attitudes, and behaviors. An agency work environment in which officers do not feel they are respected, supported, or treated fairly is one of the most common sources of stress. And research indicates that officers who feel respected by their supervisors are more likely to accept and voluntarily comply with departmental policies. This transformation should also overturn the tradition of silence on psychological problems, encouraging officers to seek help without concern about negative consequences.¹⁵¹

Officer wellness can be supported through a variety of mechanisms within a police organization:

There is clearly a continuum of mental health and wellness strategies, programs . . . that begins with recruitment and hiring and goes through retirement. It includes proactive prevention and resiliency building; early interventions; critical incident response; treatment, reintegration; and ongoing support for officers, staff members, and their families.¹⁵²

Recommendation 6.2.1. SBPD should establish a program and protocols to assist officers who have responded to high-stress calls, providing both mandatory and voluntary opportunities for officers to be matched with mental health services.

SBPD personnel appeared very open to opportunities to take advantage of both voluntary and mandatory mental health opportunities. The Department's Special Victims Unit personnel in fact requested an annual mental health check-in given the trauma to which personnel are exposed in the assignment. Across the Department, SBPD should consider annual, personal assessments with reminders about available mental health services.

¹⁴⁹ Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department* 7 (2018).

¹⁵⁰ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 312 (2019).

¹⁵¹ Final Report of the President's Task Force on 21st Century Policing 62 (2015).

¹⁵² 21CP Solutions, U.S. Department of Justice, Office of Community Oriented Policing Services, *Law Enforcement Mental Health and Wellness Programs: Eleven Case Studies* (2019), <https://cops.usdoj.gov/RIC/Publications/cops-p371-pub.pdf>.

Recommendation 6.2.2. SBPD should support the implementation of a robust, structured peer support team with clearly defined roles, responsibilities, and goals. Similarly, it should consider implementing a long-term mentoring program, matching officers with senior personnel from the time they are in the Academy.

A peer support program “gives officers the opportunity to talk with someone who understands their line of work and the associated issues that come with it” and can be valuable from both professional development and mental health perspectives.¹⁵³ Similarly, a mentoring program gives officers the ability to be assisted and guided by a more senior colleague.¹⁵⁴ Based on conversations with SBPD officers, structured peer and mentoring programs are the type of resources that many officers would appreciate and could help, at least to some extent, to address officer satisfaction and retention concerns.

Recommendation 6.2.3. Existing support services, like the Employee Assistance Program, should be better utilized within the Department.

SBPD should communicate and promote the use of its existing officer programs, including its Employee Assistance Program. Line officers and supervisors alike should understand available resources, how to engage them, and the opportunities for confidentiality where assistance may touch on underlying physical health, mental health, family, personal, or other sensitive issues.

Recommendation 6.2.4. SBPD should explore enhanced mechanisms for officers to provide feedback about their experiences, such as regular employee satisfaction surveys and improved exit interviews.

Most organizations benefit from providing employees with consistent opportunities for providing feedback. Within SBPD, officers indicated an interest in completing regular employee satisfaction surveys and in having an opportunity, should they leave the Department, to discuss their careers and experiences with the Department before leaving. Although 21CP understands that departing employees interview with City Human Resources personnel, the Department itself should consider holding exit interviews in order to hear direct and likely more specific feedback.

Recommendation 6.3. SBPD should implement a meaningful, non-disciplinary Early Intervention System aimed at identifying potentially problematic performance trends before they become problems – allowing the Department to provide opportunities for

¹⁵³ James Dudley, “How to Launch a Successful Peer Support Program,” *PoliceOne.com* (Sep. 13, 2018), <https://www.policeone.com/health-fitness/articles/how-to-launch-a-successful-peer-support-program-DltDMehcOKSk06lQ/>.

¹⁵⁴ Harvey Sprafka & April H. Kranda, International Association of Chiefs of Police/Bureau of Justice Assistance, *Best Practices Guide: Institutionalizing Mentoring into Police Departments* (Aug. 2018), <https://www.theiacp.org/sites/default/files/2018-08/BP-Mentoring.pdf>.

professional development and skill-building where the Department identifies needs among its personnel.

SBPD should implement an effective Early Intervention System (“EIS”) that tracks a broad range of officer performance data and provides a basis for non-disciplinary supervisor intervention to assist officers in avoiding potentially troubling behavior. Although the Department indicates that its IAPro system, which tracks some types of officer performance data, will flag some officers for review, the Department does not appear to have sufficiently comprehensive, express policies and protocols in place for that flagging process, for what supervisors should do to evaluate performance when flagging occurs, and what the Department may do when it identifies potentially problematic performance trends.

The concept of an “early intervention system” is not new. As early as 1981, a national civil rights commission recommended that police agencies develop systems to identify officers who might be prone to misconduct claims.¹⁵⁵ For decades, major law enforcement groups have endorsed the utility of law enforcement agencies identifying problematic performance trends early so that supervisors can provide mentoring, training, and other performance interventions.¹⁵⁶

Today’s early intervention systems are:

[E]arly in the sense that it helps to identify officer performance problems that do not warrant formal disciplinary action but suggest that an officer is having problems dealing with citizens. The major contribution of an EI system is its capacity to spot patterns of performance and to intervene before problems lead to a serious incident such as a lawsuit, a citizen complaint over excessive force, or some other public crisis involving the department. An EI system warns an officer to the extent that it sends an informal but nonetheless clear message that his or her performance needs improvement.¹⁵⁷

Across most early intervention systems, when an officer reaches a certain, defined threshold of performance, a supervisor must assess an officer’s performance to determine whether there are any patterns of conduct that may suggest potential deficiencies, the effects of stress, or some other issue that might be impacting the officer’s work or representing a problematic performance trend. If an issue is identified, an EIS provides a process and tools for the supervisor to provide assistance and support to the officer to try to address the potential issue.

It must be stressed that an early intervention system is *not disciplinary*. It seeks to identify officers at risk for performance issues or misconduct – and, ideally, to address issues before they manifest as problems or performance deficiencies. SBPD would benefit from fully establishing a robust EIS.

¹⁵⁵ U.S. Civil Rights Commission, *Who Is Guarding the Guardians?* 80 (1989).

¹⁵⁶ See CALEA Standard 45.1.15 cmt. (4th ed. 2001); International Association of Chiefs of Police, *Building Integrity and Reducing Drug Corruption in Police Departments* 80 (1989).

¹⁵⁷ Samuel Walker et al, Office of Community Oriented Policing Services, U.S. Dept. of Justice, “Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide” (2003) at 3, *available at* <http://www.cops.usdoj.gov/files/RIC/Publications/e07032003.pdf>.

Recommendation 6.4. The Department should ensure that line officers have ongoing, meaningful opportunities to interact directly with the Chief and senior command, especially after high-profile incidents and during times of heightened activity.

Some patrol officers with whom 21CP spoke expressed the desire to communicate more directly with the Chief of Police and senior command – especially in the wake of high-profile incidents or during moments where the Department is particularly busy or taxed due to public safety imperatives. 21CP is aware of the substantial responsibilities of senior departmental leadership, and current senior command appears genuine in wanting to interact in a meaningful, ongoing way with officers across ranks. Going forward, SBPD may wish to consider both formal and informal mechanisms to ensure more regular and ongoing interaction between officers and senior command.

Recommendation 6.5. In the same manner that new or updated policies should be the subject of community participation and collaboration, individual officers should be able to meaningfully participate in the policy development process.

Many SBPD officers indicated some variation of the belief that the Department sets policy and develops practices based on the views or input of a small handful of senior command staff. Officers suggested that the perceived failure of rank-and-file officers to participate in policy and technology discussions was particularly problematic in terms of the practicality and feasibility of various departmental initiatives. Yet others indicate that, in instances where feedback has been solicited from officers, few actually participated. Ultimately, in the same way that new SBPD policies or initiatives should be the subject of community collaboration and input, officers of all ranks within the Department should participate in deliberations about how the Department fulfills its duties and carries out its work. SBPD should collaborate with rank-and-file officers and police officer organizations to ensure processes for meaningful officer participation in policy development.

Recommendation 6.6. As part of its Community and Problem-Solving Policing Plan, SBPD should partner with its officers and members of the public to construct a formalized communication plan aimed at ensuring more comprehensive and widespread dissemination of information about what the Department is doing.

During 21CP's conversations with stakeholders, one recurring theme was the sense that the whole sweep of what SBPD is doing sometimes is not adequately disseminated to South Bend residents. Some SBPD personnel believe that community members only hear about the negative stories and occasional problems rather than about the good, everyday work that the Department performs to keep the city safe. At the same time, several community members indicated an authentic desire to know more about what the Department is doing on a day-to-day, person-to-person, and block-by-block basis.

21CP's scope of work encompassed "driving the narrative" – or what SBPD might do in order to foster better, sustained communication with the community about what it is doing and who it is as a

Department. A host of the other recommendations in this report – especially regarding community policing and engagement and transparency – speak directly to this issue. In particular, the construction of a Community and Problem-Solving Policing Plan will give SBPD an opportunity to come together in authentic partnership with the community to develop a formalized communication plan that may establish direct, express opportunities for the Department to interface directly with community stakeholders about everything that it does to promote public safety and enhance community well-being.

Ultimately, safe and effective policing in the 21st Century requires agencies to engage in continuous self-improvement, embrace new approaches to contemporary public safety challenges, and to partner authentically and with humility with all members of our communities. This type of collaboration, woven throughout the Department’s day-to-day activities, will drive the narrative forward more than any other, single step or isolated initiative.



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