
REPORT OF: CCOC Subcommittee on Police and Community Relations

TITLE: Recommendations on police policies and procedures

DATE: April 10, 2017

Introduction

The Common Council Organizational Committee Subcommittee on Police and Community Relations (the Subcommittee) held its first meeting on September 14, 2016 and confirmed the following objectives:

- a) Provide a forum for residents and members of the Council to discuss police and community goals, priorities and interactions. Build a deeper understanding of policing for elected officials and members of the public; and,
- b) Explore models and options from other communities related to policing and other police policies; and,
- c) Provide a forum for information sharing regarding police training, policies, data and trends including detailed presentations from the MPD related to policing; and,
- d) Make recommendations to the Council on short-term policy, procedure and training while waiting for the results of the Ad Hoc Review of Police Policies and Procedures.

Ald. Marsha Rummel chairs the Subcommittee and Ald. Shiva Bidar-Sielaff serves as vice chair. Ald. Rebecca Kemble, Ald. Sheri Carter and Ald. Denise DeMarb are members of the Subcommittee.

Overview of Activities

The Subcommittee has received several presentations from experts on policing, including the following:

Internal Investigations and Discipline

On Monday October 17, 2016, Capt. James Wheeler and Sgt. Erik Fuhreman presented information on the City of Madison Police Department (MPD) investigation and discipline process. The officers detailed the process MPD uses to conduct investigations of police misconduct. The vast majority of investigations are handled internally under the leadership of Professional Standards/Internal Affairs (PS/IA). PS/IA is staffed with two officers who rotate into that position for a period of two years.

On occasion, special investigations may be conducted by other departments as ordered by the Chief. All officer involved deaths are investigated by the State Department of Criminal Investigation. MPD compiles summary information regarding sustained complaints that resulted in discipline in a quarterly report to the Police and Fire Commission. The reports include a final

disposition of complaints. However, other information, such as the number of complaints deemed 'non-sustained,' is not readily available to the public.

Legal Authority of the Council Related to the Madison Police Department

On Wednesday November 9, 2016, City Attorney Michael May and Assistant City Attorney Marci Paulson presented information regarding the division of legal authority between the Police Chief, the Mayor and the Council in the operation of the police department. The City Attorney referenced a report concerning the legal authority of the Council to prevent MPD from utilizing tasers. The report to the Mayor and the Common Council dated April 7, 2005 explains that “[t]here is nothing in the law that prohibits the Mayor and Common Council, by means of an adopted resolution, from requesting that the Police Department cease engaging in a particular practice. The Police Chief is then free to consider such request and exercise his discretion to accept or reject it based upon his assessment of its wisdom, usefulness, practicality, hazard and other such relevant criteria.” The memo goes on to explain that these are not simple questions.

The memo concluded with the statement that Common Council likely has the authority to adopt a resolution prohibiting the use of tasers, however there are legal reservations. “Having the Council interject itself into areas which call for technical law enforcement expertise ... may not ultimately be the most prudent and safest course of action for officers and citizens alike. However, the Council’s authority is not limited merely to those actions which outsiders might believe are wise or correct – otherwise its jurisdiction would be unnaturally narrowed indeed.”

Implementation of the United Way/MPD Task Force Report on Use of Force

On November 21, 2016, Capt. Kristen Roman presented information about the 2016 Special Community/Police Task Force Recommendations Regarding Police ‘Use of Force.’ The United Way of Dane County, the Dane County Chiefs of Police Association and the Dane County Branch of the NAACP issued the report. The City of Madison and MPD contributed to the development of the Report and recommendations.

Since the publication in February of 2016, MPD has implemented some of the recommendations of the report including creating a new Use of Force Coordinator position to track all use of force incidents and provide regular reporting to the Chief on these incidents. Sgt. Kimba Tieu is the new Coordinator and he presented to the Subcommittee at a later date. The Department acquired new software, IA Pro, which provides data management for internal investigations. The Department also developed a new foot pursuit policy and a new Standard Operating Procedure (SOP) on de-escalation.

Use of Force Policies from Other Communities

On December 13, 2016, State Representative Chris Taylor presented her research regarding best practices from other communities and her planned legislative proposals to change use of force policies across WI. She highlighted several principles found in policies and procedures in other communities that she deemed important for Wisconsin communities. Representative Taylor highlighted the following principles:

- *A duty to preserve life* is included as part of NYPD policy. The MPD policy recognizes the “value of life” but does not affirm a duty to preserve life.
- *Deadly force as a last resort* is part of the Department of Justice guidelines. The U.S. DOJ guidelines say that deadly force is reasonable when all other means have failed or would

be likely to fail. Madison’s deadly force policy says that such force is authorized when “an officer reasonably believes a lesser degree of force would be insufficient.”

- *The principle of proportionality* is the requirement to only respond at the level of threat. This principle is not included in MPD’s use of force policies.
- *Tailored guidelines for managing resistant subjects who may be mentally ill or intoxicated.* NYPD has an extensive policy related to “emotionally disturbed persons” or EDPs. The NYPD policy provide guidelines for officers to assess, de-escalate, create safety zones, and “if the emotionally disturbed person is armed or violent, no attempt will be made to take the EDP into custody without the specific direction of a supervisor unless there is an immediate threat of physical harm to the EDP or others present.”¹

A Proposal for Community Control of the Police

On Monday January 18, 2016, representatives of Freedom Inc, provided a presentation of their proposal regarding community control of the police. The proposal would restructure policing districts to reflect “existing social cohesion of neighborhoods and communities therein.” The residents of those districts would then vote on whether they would like to retain the existing police department or replace the department with a force controlled by district residents. New forces would be run by a Community Police Control Board with the power to establish policies and priorities. Members of the Control Board would be chosen randomly from the districts rather than elected or appointed. Freedom Inc. stated that this proposal is legally plausible under existing state statute § 62.13(2e) which “allows cities to forgo the traditional police department and accompanying board in favor of a Combined Protective Services department.”²

Surveillance Technologies and Policies

Also on January 18, 2016, representatives from the ACLU provided a presentation on surveillance technologies and related policies. The ACLU shared information about new technologies related to video and audio surveillance as well as GPS and drones now in use by some police departments. The ACLU provided a proposal for the City of Madison to consider clarifying rules related to the acquisition, purchase, and use of technology, as well as the management of surveillance technology and data.

Dane County’s Efforts to Reduce Disparities in Arrests

On Thursday February 16, 2017, Colleen Clark-Bernhard, Equity and Criminal Justice Council Coordinator presented information on the initiatives from the Dane County Criminal Justice Council (CJC) to expand collaboration, data driven justice, and innovation. The CJC has focused on improving data management and capabilities as the foundation of their work and in 2016 hired a research analyst in the County Board Office to add analytical capacity to address issues of equity and transparency. Also in 2016 the CJC announced their partnership with the White House Data Driven Justice Initiative to use data to divert people with mental illness away from the criminal justice system and into community based treatment. Additionally, Dane County is expanding the Community Restorative Court to all of Dane County. This is an existing area of collaboration with Madison and Dane County which may have opportunity to grow as the CRC serves more local residents.

¹ NYPD Patrol Guide Tactical Operations Procedure No: 221-12 Mentally Ill or Emotionally Disturbed Persons. Issued 06/01/2016.

² Freedom Inc. Community Control Over the Police Brochure.

<https://madison.legistar.com/View.ashx?M=F&ID=4970445&GUID=892D6EDB-7B83-4727-90AF-D35A1B70B570>

Weapons and Use of Force and Use of Deadly Force Policies at MPD

On March 2, 2016 at a special meeting of the Common Council (not a meeting of the Subcommittee), Sgt. Kimba Tieu presented a demonstration of the tools in an officers' belt including a taser, baton, hobble restraints, pepper spray, shotguns with non-lethal rounds and hand guns. Sgt. Kimba Tieu also presented the SOPs and answered questions regarding MPD's Use of Force policies and procedures. Sgt. Tieu explained that MPD believes that policing is done in partnership with the community. All use of force data is now available on the MPD website and that Sgt. Tieu is responsible for these data as the Use of Force Coordinator. He is watching for trends in these tactics and seeking to determine whether officers are getting hurt using a particular type of force or whether one type of force is more or less effective. When asked about specific scenarios and use of force Sgt. Kimba reiterated that officers are authorized to use force if they are acting "reasonably" given the totality of circumstances.

IA Pro Software (internal investigations software)

On Monday March 20, 2017 Lt. Amy Chamberlin and Assistant Chief Vic Wahl presented detailed information on the implementation of IA Pro Software and the plan to implement an Early Warning System utilizing the IA Pro Software to support internal investigations and personnel management. The program has been in place for one year and all complaints and all use of force data have been entered into the system since 1/1/2016. The data is reviewed daily and the Chief is briefed every Monday on the data. Some of the other data entered into the system include information related to pursuits, squad crashes, use of force, as well as audit results related to squad cars, email and messages. IA Pro allows PS/IA the ability to monitor officers who are on probation or "work rules". IA Pro has a great deal more capability than is currently in use. PSIA is looking at how best to utilize IA Pro to implement an Early Warning System.

Neighborhood Associations Weigh In

The Subcommittee has also reached out to neighborhood associations directly with a short survey. The goal of the survey is to understand the types of cooperative activities neighborhood associations have with MPD and to learn more about existing neighborhood watch programs as well as perceptions of public safety. Over 26 neighborhood associations responded. The most frequent public safety concerns cited were pedestrian safety and traffic/speeding issues as well as petty theft from autos/garages at night. Other public safety concerns cited by more than one neighborhood included gun violence, vagrancy, home burglaries, vandalism, and drug violence/activity. Many neighborhood associations noted that they have frequent positive interactions with MPD though few have certified neighborhood watch programs.

Recommendations

The Subcommittee reviewed a wide range of subjects relating to community and police relations throughout the course of their work. As a result, the Subcommittee noted that some of the issues are most appropriate for consideration by the Madison Police Department Policy and Procedure Review Ad Hoc Committee, while other issues could be addressed to the Common Council of the City of Madison.

The first set of recommendations are intended to be presented to the Common Council of the City of Madison. These recommendations are within the purview of the Common Council to implement in the short-term. The second set of recommendations is intended to be provided to the MPD Policy and Procedure Review Ad Hoc Committee for possible inclusion in their final report and recommendations. These latter recommendations require a more in-depth understanding and familiarity with police policies and procedures to evaluate and refine the recommendations.

Recommendations for the City of Madison Common Council

1. Surveillance Policies

Issue: Surveillance technologies are rapidly expanding governmental capabilities to gather data on individuals. The City of Madison values the principles of transparency, oversight and accountability and seeks to ensure that residents' civil rights and civil liberties are protected even as the city utilizes surveillance technology to protect public safety. A comprehensive policy governing the purchase and use of surveillance technology is required to ensure these protections.

MPD does have a policy governing use of audio and video surveillance. However, the City of Madison does not yet have citywide surveillance policies. Departments outside of MPD may purchase their own surveillance equipment or utilize equipment borrowed from other departments; this usage is not governed by any existing framework. The proposed policies would address all city employees' and departments' purchase and use of surveillance equipment.

Recommendation: The Subcommittee recommends the Common Council develop a policy governing the purchase and use of all surveillance equipment employed by all City Agencies including MPD. The policies will also address data management and storage.

2. Safeguarding People Exhibiting Signs of Mental Illness or Intoxication Who Are Resistant to Medical Assistance or Arrest

Issue: The majority of officer-involved shootings in the last 3 years in the City of Madison have involved a person with a mental health issue or an intoxicated person. The Subcommittee would appreciate further clarification of policies relating to people exhibiting signs of mental illness or intoxication who are resistant to medical assistance or arrest.

The MPD SOP on Mental Health Incidents/Crises (12/22/2016) provides some degree of guidance related to this issue. The SOP describes the value in de-escalating crisis situations, the role of Mental Health Officers and the process to assess a person in crisis. However, the SOP does not detail tactics or procedures to de-escalate the situation or establish safety for all persons affected by the situation. A specific protocol is needed to clarify how an officer should interact with resistant people in crisis.

Recommendation: The Common Council of the City of Madison will request that MPD issue a SOP that explicitly details the goals, tactics, policies, and procedures to deal with a person in crisis who is resistant to medical assistance or arrest. The Subcommittee would request that MPD consider incorporating Fyfe's principles for interacting with resistant incapacitated subjects. Those principles include 1) keeping a safe distance, 2) avoiding unnecessary and provocative displays of force, 3) working with back-up, 4) one officer should interact with the subject, others should remain quiet, 5) the officer interacting with the subject is in charge, no one else should take unplanned action, 6) make it clear officers are there to help not threaten, and finally 7) officers should take as much time as necessary for an arrest, even hours or days if that is that is what is required.³

3. Use of Force Policies

Issue: The Subcommittee found that the principles of de-escalation and the duty to intercede are included in certain MPD policies but are not incorporated into the MPD Use of Force and Use of Deadly Force policies. Incorporation of these principles into the Use of Force policies would clarify the duties of officers to put these principles into action especially in scenarios that may require force.

De-escalation tactics and techniques are actions used by officers which seek to minimize the likelihood of the need to use force during an incident. Officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution. The duty to intercede is the principle that Officers have a duty to stop other officers who are using excessive force and report them to a supervisor.

Recommendation: The Common Council of the City of Madison will request that the MPD issue updated MPD Use of Force and the Use of Deadly Force policies that explicitly incorporate the duty to intercede and de-escalate.

4. Waiting for Back-Up

Issue: Officers are at higher risk, and may be more likely to use deadly force because of that risk, when they engage alone in a situation in which there may potentially be a resistant subject.

Recommendation: The Subcommittee requests MPD to reinstate a back-up policy most recently utilized in November 2016. That policy required officers to wait for backup before physically

³ Fyfe, James J. PhD. Policing the Emotionally Disturbed. Journal of American Academy of Psychiatry and the Law. 28:345-7, 2000

approaching any involved subject(s), unless an officer reasonably believes there is a substantial risk of bodily injury to any person(s).⁴

"Officers shall not disregard backup, if so assigned by dispatch. Additionally, officers shall wait for backup before physically approaching any involved subject(s), unless an officer reasonably believes there is a significant risk of bodily injury to any person(s)."

5. Communication with City Council

Issue: MPD and the Council could work together more closely if communication was enhanced. The Subcommittee found great value in the presentations from MPD relating to internal investigations, use of force, data analysis with IA Pro software and implementation of the community task force recommendations on use of force. The Council recognizes that MPD is a department that generates a high level of interest for members of the public and hopes that increased reporting will allow for greater understanding and transparency of the work of MPD.

Recommendation: Chief of Police will provide quarterly written and verbal updates to City Council (verbal as a standing quarterly agenda item at either Council or the Common Council Organizational Committee) to include the following information: 1) any changes to Code of conduct and SOP, 2) any changes in training, 3) any new initiatives, 4) MPD arrest data by reason for arrest and race/ethnicity, 4) parking enforcement revenues, and 5) use of force incidents.

⁴ The current MPD policy related to back-up states, *"Officers shall not disregard backup, if so assigned by dispatch, prior to arrival at the scene and assessment of the situation."*

AD HOC COMMITTEE RECOMMENDATIONS

Oversight of Internal Investigations

Oversight of internal investigations may take many forms. Two ideas presented here include an audit mechanism of internal investigations and external investigations of complaints.

Investigations into police misconduct are traditionally handled internally, however all officer-involved deaths are investigated independently by the State Department of Criminal Investigation. The majority of Madison cases are handled internally in the City of Madison by the MPD PS/IA. The City of Madison PS/IA Office is staffed by officers who serve on two-year rotations before returning to other posts.

Cities such as Portland, Los Angeles and Tucson utilize auditors outside of the police departments⁵ to provide reviews and reports of the investigation process by their police departments and to provide recommendations on a regular basis. Such a system provides the benefits of external accountability at a minimal cost. The auditor would regularly review the process for submitting complaints, investigating and disposing of complaints. Such an auditor can help provide the public and elected officials with an impartial analysis of the department's handling of complaints.

Alternatively the City may consider external investigations. Given the public interest surrounding policing and the public's frequent demand for independent investigations into misconduct, a policy which directs an external investigator to investigate certain complaints may enhance community trust. There is also a benefit to innocent officers when they are investigated externally. Officers declared innocent of the complaint charge by an external body are more likely to be considered innocent by the public, rather than those officers declared innocent by their own departments. External investigations may "help reassure a skeptical public that the department already investigates citizen complaints thoroughly and fairly."⁶ The City may consider hiring an investigator to investigate complaints submitted to the PFC so that an external report on the facts of a complaint case may be provided to the Police and Fire Commissioners for review.

Early Intervention Warning System

Early Warning Systems, also called Early Intervention Systems, are tools to monitor officers who are frequently the subject of citizen complaints or demonstrate behavioral issues. Early Warning Systems are becoming increasingly popular, as of 1999 the most recent survey on early warning

⁵ The Portland Auditor is tasked with reviewing investigations of police conduct as well as managing reviews for other city agencies. The Portland Auditor Mary Caballero is elected to her position and has a background in auditing performance management. <https://www.portlandoregon.gov/auditor/27392>. This is not staffed by former law enforcement.

The Tucson Independent Police Auditor is managed by a long-time city employee who previously investigated equal opportunity claims and has an investigator on staff. This is not staffed by former law enforcement.

<https://www.tucsonaz.gov/manager/independent-police-auditor-civilian-investigator>

The Los Angeles Audit Division was established in 2001 as a result of the Consent Decree and is now staffed by over 30 sworn officers and civilian professionals including CPAs, fraud examiners, an professional auditors.

http://www.lapdonline.org/inside_the_lapd/content_basic_view/8772

⁶ Peter Finn. Citizen Review of Police: Approaches and Implementation. U.S. Department of Justice. National Institute of Justice March 2001. NCJ 184430.

systems, 39% of all police forces serving communities of more than 50,000 have a system in place or are planning to implement one.⁷ The City of Madison Police Department has purchased police data tracking system called IA Pro, which includes the capabilities of an Early Intervention Warning System. As the Department prepares to implement the early intervention program within IA Pro, it will be valuable to monitor the use of the tool.

The Ad Hoc Committee may consider working with MPD to further explore the IA Pro capabilities in this regard. In addition, the Ad Hoc Committee may be interested in speaking with the University of Chicago Data Science for Social Good statisticians to better understand the opportunity to collaborate on developing a predictive early warning system.

Root Cause Analysis

The National Transportation Safety Board and many hospitals utilize root cause analysis processes to determine the factors that may have contributed to an adverse event such as a plane crash or an outbreak of disease. The purpose of root cause analysis is not to assign blame but to enable complex organizations to identify opportunities for improvement. The Subcommittee encourages the Ad Hoc Committee to consider the value of a root cause analysis process and protocol for MPD to examine critical incidents and broader trends. Such a system would require robust data analytics, which may be available through expansion of the IA Pro system or other data systems.

Use of Force Policies

Use of Force policies are of particular interest to the Subcommittee. In the near term, the Subcommittee will encourage the Council to request that MPD to incorporate de-escalation and the duty to intervene into the MPD Use of Force Policies (see previous section). These concepts are present in other MPD SOPs. Similarly, the Subcommittee will encourage the Council to request that MPD develop a new policy specifically for interactions with resistant subjects in crisis (see previous section).

In addition, the Subcommittee wanted to make note of the research provided by Representative Chris Taylor. Rep. Taylor highlighted the principles of the a duty to preserve life, use of deadly force only as a last resort, and the principle of proportionality. The Dallas Police have focused on de-escalation, proportionality and preserving life and have seen a drop in excessive force complaints and officer involved shootings from 2010. These principles may prove useful in the evaluation and recommendations of the Ad Hoc Committee.

Increasing Supports for MPD Officers Interacting with Incapacitated Individuals

The Subcommittee identified other possible supports for MPD officers interacting with incapacitated people. The Subcommittee would encourage further investigation into the types of training and on-going training strategies that will improve interactions with intoxicated people or those experiencing a mental health crisis. The ProTraining (Edmonton Model) has been presented to the committee as an effective training model. The Subcommittee would also like to learn more about the opportunities to hire social workers to work with officers to support interactions with incapacitated people.

⁷ Shultz, Ashley. Early Warning Systems: What's New? What's Working. CNA Analysis & Solutions. December 2015. https://www.cna.org/cna_files/pdf/CRM-2015-U-012182.pdf

Conclusion

The Subcommittee achieved the objectives established in September 2016 and has created five recommendations for the Common Council. Those recommendations include calling for;

1. a new city-wide surveillance technology and data policy,
2. a policy for interactions with resistant subjects incapacitated by drugs or alcohol or experiencing a mental health crisis,
3. clarifying use of force policies,
4. reinstating a recent back-up policy, and
5. enhancing and regularizing communication with the Common Council.

These recommendations are short-term policy recommendations which are designed for consideration before the completion of the work of the Ad Hoc Committee. The Subcommittee also evaluated several other areas of interest and hopes that this report will serve as a resource. The Subcommittee learned a great deal through its work and wishes to express its gratitude residents of Madison, the Madison Police Department, the Ad Hoc Committee and the Common Council for their participation and support of this effort.

APPENDIX

Madison Police Oversight Committees

Madison Police and Fire Commission	Public Safety Review Committee	Madison Police Department Policy and Procedure Review Ad Hoc Committee	Common Council Organizational Committee Subcommittee on Police and Community Relations
Permanent, established by WI Statute	Permanent, established by Common Council	Temporary, established by Common Council	Temporary, established by Common Council
Madison General Ordinance Sec. 33.06 and State Statutes 62.13 - Appoints the chief of each department; approves or disapproves promotions and supervision of the hiring process, with certification of an eligibility list and approval of those who are finally hired; holds hearings on disciplinary matters brought to its attention either directly or through appeal and imposes discipline if appropriate.	Madison General Ordinance Sec. 33.22 - The board shall be advisory to the mayor and Common Council to assist them in the performance of their statutory duties. The board may review and make recommendations concerning departmental budgets; review service priorities and capital budget priorities of the Police and Fire Departments; serve as liaison between the community and the city on public safety issues; and review annually and make recommendations to the Common Council regarding the annual work plans and long-range goals of the departments.	The Committee's objective is to complete a thorough review of the Madison Police Department's policies, procedures, culture and training using the consultant report, other resources and testimony. Creating resolution RES-15-00477, File ID# 37863; effective 5/21/2015	The Subcommittee's objective is to provide a forum for residents, to share information on Madison policies and procedures, to explore police policies and procedures from other communities, and to make short-term policy recommendations while waiting for the results of the Madison Police Department Policy and Procedure Review Ad Hoc Committee. Established 9/14/2016.