

CITY OF MADISON  
**INTRA-DEPARTMENTAL**  
CORRESPONDENCE

**DATE:** January 4, 2019

**TO:** Madison Police Department Policy & Procedure Review Ad Hoc Committee

**FROM:** Victor Wahl, Assistant Chief of Police

**SUBJECT:** MPD Responses to Community Recommendations

This document outlines the Madison Police Department's response to the community recommendations received by the Ad Hoc Committee. Please understand that given the tight timeline for the committee to complete its work and review the department's response, these responses should be considered as somewhat abbreviated. Time does not permit a full internal vetting of each issue or a thorough discussion below of each recommendation. As some of these recommendations relate to those in the OIR Report, here are links to MPD's detailed responses to that report:

MPD's original response to the OIR Report (dated January 31, 2018):

<http://www.cityofmadison.com/police/documents/OIRresponse.pdf>

MPD's updated response to the OIR Report (dated November 19, 2018):

<http://www.cityofmadison.com/police/documents/OIRresponseUpdate2018-11.pdf>

I will also encourage the committee to take the department's limited resources into account while considering these recommendations. The OIR Report and these community recommendations together number almost 200. Even the simplest recommendations require staff time for research, planning and implementation. Many of the recommendations would require significant staff time for development as well as have substantial costs. Like any organization, MPD has a limited capacity and any recommendations for improvement should be cognizant of that reality.

Finally, as these recommendations were received from a variety of sources, they are not neatly organized or numbered; I have numbered them and categorized them to assist with review.

### **Community Response Team Recommendations**

*#1 MPD should take all steps necessary to ensure that any data released to alders or to the public (for example, in annual reports) is fully accurate. All data releases should be accompanied by rigorous definitions and descriptions of methodology, sufficient to enable completely unambiguous interpretation of all data provided. Misleading data practices should be avoided.*

MPD receives thousands of requests for records and data every year, and proactively releases data on a regular basis. The department is committed to locating, producing and releasing data that is accurate and meaningful to the public. Previous questions about data releases (format, description, etc.) have resulted in adjusted practices.

*#2 MPD should consider deploying additional protective equipment in squad cars, including but not limited to transparent acrylic personal protection shields and Kevlar stainless steel gloves, and provide training in their use.*

MPD would welcome funding for additional protective equipment, particularly ballistic shields for squad cars. In addition to acquisition costs, new equipment may require training prior to use/deployment.

*#3 MPD should consider acquisition and training in additional well-developed less-lethal tools, such as newer options for chemical sprays and better/safer kinetic weapons. An example of the former is the Piexon JPX4. An example of the latter is the 40mm platform with appropriate less-lethal ammunition.*

MPD would welcome funding for additional less lethal tools, particularly 40mm launchers. The department currently has a small number of 40mm launchers, but wider deployment would be beneficial. The equipment is fairly expensive, and additional training (both initial and ongoing) would be required (also with a cost).

The department is always looking at new technologies that might provide additional use of force options for officers. One example is the "Bolawrap 100," a new device that MPD is in the process of testing and evaluating.

*#4 MPD should train the Police Executive Research Forum recommendation that an ECW deployment that is not effective does not mean that officers should automatically move to their firearms.*

This is consistent with current MPD training.

MPD would welcome additional funding to support a transition to either the Taser X2 or Taser 7 (the X3 is no longer offered). Both offer the ability for rapid multiple shots if needed. Ineffective Taser deployments are not uncommon, and the immediate ability to deploy a second shot would be beneficial and likely avoid the need for additional force use in some instances. Transitioning Taser models would come at a significant cost, and the department transitioned from the X26 to X26P in 2016 (as the manufacturer discontinued support for the X26). However, it is likely that at some point the X26P will also be phased out and will require a transition.

MPD deploys only XP cartridges, and our evaluation has been that deployment of the 35' cartridge is inadvisable.

*#5 MPD should fully implement the recommendation of the NAACP/United Way/Dane County Chiefs of Police Special Community/Police Task Force regarding police 'Use of Force': "Allow officers to use Electronic Control Devices (i.e., Tasers) when no immediate back up is present. Remove the requirement of lethal cover for ECD use (Taser)."*

The wording of the Police/Community Task Force recommendation was:

**Allow officers to use Electronic Control Devices (i.e., Tasers) when no immediate back up is present.  
Remove the requirement of lethal cover for ECD use (Taser).**

MPD officers are permitted to use Tasers when no immediate back up is present. The requirement for having an officer present with the immediate ability to deliver deadly force is limited to “cases where a subject is believed to be armed with a dangerous weapon.” While it is true that an unarmed subject can present a deadly force threat, it does not follow that arms or legs can qualify as a “dangerous weapon,” a statutorily defined term.

This SOP language has evolved, and language allowing an officer to deviate if “unique circumstances dictate otherwise” has been added. MPD officers regularly utilize Tasers with no deadly force cover present.

*#6 MPD should reach out to NYPD administration to gain a detailed understanding of NYPD’s schema of “firearms control”, to determine if NYPD’s approach, or elements of it, could be useful in reducing the frequency of officer involved shootings in Madison. If the answer is affirmative, MPD should consider incorporating this approach.*

From the provided material, it appears that many similar concepts are incorporated into MPD training and operations, though without the same terminology. We are not opposed to exploring this concept further.

*#7 MPD should reach out to the Police of Finland, particularly the Police University College, and send at least one command officer to Finland, to learn about Finnish Police methods (training, tactics, etc.) that may be useful for reducing the frequency of fatal officer involved shootings.*

It is very difficult to compare American policing with that of other nations, given the wide differences in crime rates, legal standards and gun ownership. However, we are not opposed to exploring Finnish police training/operations.

*#8 MPD should modify its foot pursuit policy to decrease risk of adverse events. Specifically, the following should be included:*

*a. A provision that directs officers to maintain a safe distance, rather than overtaking the suspect, until sufficient cover (e.g. backup officers, etc.) is available to take the suspect into custody. This provision may include a list of techniques to consider (e.g. paralleling the suspect, etc.; see Portland OR policy for an example of such a list).*

*b. A provision to the effect of “No sworn member shall be criticized for deciding against initiating or discontinuing his/her involvement in or terminating a foot pursuit.”*

*c. A provision specifying safety-enhancing explicit restrictions on engaging/continuing foot pursuit (see Portland OR policy for an example of such a list). Among other restriction, foot pursuit of armed suspects should be prohibited unless, in extreme circumstances, no other alternative strategy is feasible and a delay in the apprehension of the suspect would present a threat of death or serious physical injury to others.*

*d. A provision directing officers to consider factors related to the suspect’s behavior when deciding whether to initiate or continue pursuit (see Portland OR policy for an example).*

*e. Language requiring the officer to continually assess whether to continue the pursuit.*

*f. A provision specifying that, whenever possible, the first officer to reach the suspect should not go “hand on” with them, but instead wait for backup to take that role.*

The OIR Report included recommendations for changes to MPD’s Foot Pursuit SOP, and changes were made to the SOP as a result. This updated SOP has already been implemented and communicated to officers. Many of the concepts discussed above are already incorporated into MPD training and the updated SOP, and the department does not feel that additional modifications to the SOP are advisable.

*#9 MPD should seek a collaboration with statisticians from University of Wisconsin – Madison, or highly-qualified statisticians elsewhere who have researched policing and racial bias, to determine if communities of color in Madison are incurring differential policing. Specifically, analysis should be conducted to determine (a) if rates of stops, arrests, and citations by MPD are correlated with neighborhood racial composition after controlling for crime rates, and (b) if the proportion of stops resulting in arrests or citations (hit rates) differs across racial and ethnic groups. If analyses to evince differential policing, MPD should consider measures such as reallocation of policing resources across neighborhoods and corrective training.*

MPD supports using data to help guide operations, and is not opposed to this concept. Ideally, the City would provide funding for this effort to ensure quality and commitment on the part of research partners.

*#10 MPD should utilize ICAT as part of its training curriculum.*

MPD training staff personnel monitor trends in police training to ensure that the department’s offerings remain consistent with best practices. To that end, MPD personnel have attended the ICAT training, and found the content to be very consistent with the department’s current training. We are not opposed to formally incorporating ICAT into future MPD training, though there would be a significant cost (money and staff time) to do so.

*#11 MPD should encourage officers to use approaches such as verbal warnings, problem-oriented policing methods, dispute mediation, etc., in lieu of arrests or citations, for minor offenses, particularly in communities most impacted by policing (such as communities of color, communities of lower socioeconomic status, etc.).*

MPD does this now and is committed to these principles. The department has been the driving force behind a number of initiatives (such as the Community Restorative Court) to address racial disparities in the criminal justice system, and will continue to pursue these goals.

*#12 The City of Madison should advocate access to opioid agonist therapy (treatment utilizing Suboxone and methadone) for incarcerated individuals and those under community supervision.*

This recommendation is directed to the City of Madison.

*#13 An additional sentence to be appended to Recommendation 73, as amended by the committee. A re-interview of the involved and witness officers should be considered necessary if there is any possibility it would provide additional information or insights.*

MPD's response to the original OIR Report (and recommendation on this subject) adequately addresses the issue.

*#14 The Madison Metropolitan School District should be encouraged to consider implementing the Becoming A Man program, a cognitive behavioral therapy program for at-risk youth, to improve academic outcomes for at-risk youth and reduce juvenile crime.*

This recommendation is directed to the Madison Metropolitan School District.

*#15 In calculating time spent on reactive and proactive policing activities, MPD should adhere to the standard definitions for both (e.g. as used by Office of Community Oriented Policing Services reports). MPD should also provide an estimate of time spent on reactive and proactive activities that is comprehensive, encompassing all units in the field, including specialized units (such as community policing teams, neighborhood officers, etc.).*

Since the original Etico staffing study was conducted, MPD has internally performed an annual analysis of patrol staffing workload to determine patrol staffing needs (note that there were a few years where this was not possible due to significant software transitions). These annual analyses have not included any traffic stop activity as reactive work. MPD has a specific "traffic stop" incident type that is considered proactive work for the analysis.

The Etico methodology – consistent with that recommended by the International Association of Chiefs of Police (IACP) and Northwestern University Center for Public Safety – is focused on patrol staffing needs and allocation, and that is the manner in which it has been utilized by MPD.

*#16 MPD should examine whether it would be beneficial to include the M-PULSE Inventory as a pre-employment screening instrument.*

We have no objection to exploring this. There would likely be a cost to adding this to the hiring process, and any change to the process requires PFC involvement.

*#17 An additional sentence to be appended to Recommendation 99, as amended by the committee: To prevent the threat of being struck by a vehicle, officers should make every effort to avoid putting themselves into the path of any occupied vehicle and, when such positioning is unavoidable, to move out of the vehicle's path as soon as practical.*

MPD's report updating the community on progress in response to the OIR Report addresses this issue.

*#18 All of Fyfe's Principles should be incorporated into MPD's "Response to Persons with Altered State of Mind" SOP.*

While many of these principles are already addressed in one or more departmental SOPs, the department is not opposed to reviewing them and evaluating whether additional clarification or language modification is appropriate.

*#19 Change "shall" to "must" in section 2 of the SOP to read "In-car video equipment must be used to record the following."*

The word "shall" is used in numerous places within MPD's Code of Conduct and Standard Operating Procedures, and in City of Madison Administrative Procedure Memoranda (APM). In all circumstances where it is used it communicates a mandatory, required task or function. This understanding is shared by all relevant parties, including the Madison Professional Police Officers Association (MPPOA) and the Police and Fire Commission (PFC). Officers have been sanctioned many times for violating SOPs based on the understanding that "shall" creates an obligation or required duty; this includes the In-Car Video SOP.

*#20 Dashcam video and audio mics must be manually engaged in circumstances where automatic initiation of recording is disabled i.e. lights and sirens have been turned off due to the officer's desire to be stealthy for tactical reasons.*

*#21 During events that by policy require or recommend the use of recording devices, officers should be required to make complete, uninterrupted audio recordings as sometimes evidence does not reveal itself as such until after the fact. Records must not be edited in real time and be continuous. Redactions that pass the "balance test" may be applied at the time of a record request and the reason for redaction must be reasonably articulated.*

*#22 Add to part 6 of IN CAR VIDEO SYSTEM SOPS, OPERATION OF THE IN-CAR VIDEO SYSTEM the following language: "Officers must articulate why they or their supervisor stopped recording the event in their report of the event."*

While these specific recommendations are not feasible as proposed, MPD is not opposed to reviewing the In-Car Video SOP for possible modifications to address these concepts.

*#23 In addition to CORE, MPD should add a volunteer, incentivized and paid continuous leadership-competency component called a "learning community" with adults and perhaps, older youth, from the public. The members of each learning community should represent a broad cross section of the socio-economic, racial, gender and ability groups that MPD typically interacts with in the community. Look to UW Madison's Leadership Institute to develop learning communities with members of the public who share a range of social identities. See below for details.*

MPD puts forth significant effort to engage members of the community, and is not opposed to exploring the Leadership Institute as another opportunity for engagement.

*#24 MPD should integrate into its staff psychologist/peer support program an annual wellness support program that mandates annual mental wellness assessments with ongoing stress management counseling, restorative support and restoration practices built into police shifts. With all officers participating in this program, it's fundamentally equitable. No single officer's participation will appear out of the ordinary thus protecting them for an invasion of privacy or being ostracized.*

*#25 MPD should establish a policy to ensure privacy and confidentiality of all officers as they participate in the mental wellness program.*

The department recognizes the toll that police work takes on individuals and is committed to supporting all MPD employees (commissioned and civilian). This support comes through a variety of mechanisms, including the City's Employee Assistance Program (EAP) and MPD's Peer Support program. The OIR Group recognized the strength of these efforts:

**We find the level of attention to and support for an officer's mental and emotional well-being, particularly following a critical incident, to be exceptional in its thoroughness, detail, and appreciation for the ways officers' psychological health can affect future performance.**

Wellness consultations are required after certain officer involved critical incidents, and in 2019 the department will begin mandatory wellness consultations for a small number of employees with particularly challenging assignments.

MPD would welcome funding to expand wellness support and service for employees. A mandatory, agency-wide program might create some unanticipated issues or objections, but the department supports additional resources to expand current wellness offerings.

*#26 Madison should seek an amendment to WI state statute 175.47(5)(a)(b), requiring that investigators of an officer-involved force incident provide the report to the chief judge of the judicial administrative district, and that judge must appoint a special prosecutor who then must determine whether to prosecute the officer. If the special prosecutor files charges against the officer, the special prosecutor shall be the prosecuting attorney in the case. In the absence of a statutory change, Madison should cite the inherent conflict of interest between the D.A. and law enforcement and request the D.A. allow the courts to appoint a special prosecutor who does not share that same or any other conflict of interest.*

It is not clear if this recommendation is directed to the City of Madison in general, or specifically to MPD. However, the department's position is that the current statute – recognized nationally as a model and best practice – is appropriate in its current form.

*#27 To increase the potential for objectivity, the appearance of impartiality and consequently, public trust, a policy should be written that requires an impartial auditor or review board to review MPD officer-involved force incidents and they should make the final determinations as to whether or not the officer violated police policy or standards.*

This recommendation does not appear to be directed to MPD.

#### **Emailed Community Member Recommendations**

***(Note: there was some variation in wording and specifics incorporated into these recommendations in individual emails, so similar recommendations have been consolidated. General comments not phrased as specific recommendations were not been addressed)***

*#28 In order to keep up with their workload, urge Mayor Soglin and the Madison Common Council to make the funding of additional police officer positions a priority.*

This recommendation is directed to the Mayor and Common Council. MPD evaluates staffing needs regularly and incorporates requests for new positions into the annual City budget process.

*#29 Make it a requirement for Mayor Soglin, all members of the Council, as well as any city official who has a relationship with the Madison Police Department to attend at least one Citizen's Academy and at least three police ride-alongs per year. How can they fairly create policies without understanding the demands of the job?*

This recommendation is directed to the Mayor and Common Council. MPD supports any efforts by elected officials or community stakeholders to become more familiar with the realities of police work through ride-alongs, attending the MPD Community Academy or other efforts.

*#30 Urge Mayor Soglin and Madison Common Council to find ways to consistently and publicly support our cops.*

This recommendation is directed to the Mayor and Common Council.

*#31 I support the use of body cameras. Body cameras should automatically turn on, and without interruption or the ability to counter their activation, whenever a gun is drawn out of a holster and remain on until the gun is replaced into the holster.*

MPD's response to the OIR Report addresses this issue.

*#32 Raise the standard of what it means to protect and serve Madison.*

MPD is committed to serving the public; the department's Core Values, Mission Statement and Code of Conduct communicate this to employees and to the public.

*#33 Disarm rookie cops and cops with a history of violence.*

New police officers are fully trained and expected to fulfill all of the duties of an officer as they serve the public. MPD has a rigorous internal process for reviewing and tracking use of force by officers.

*#34 Urge Mayor Soglin and Madison Common Council to find ways to consistently and publicly support our communities from a public health perspective and not from a criminal one.*

This recommendation does not appear to be directed to MPD. The department supports efforts to analyze and address violence from a public health perspective and is fully engaged in supporting those efforts.

*#35 Fund additional police officer positions to provide all of us some relief from these criminals who prey upon us.*

This recommendation is not directed to MPD.

*#36 Acknowledge the stellar leadership of Chief Koval and pro-actively support our law enforcement officers. We are lucky to have them.*



This recommendation is not directed to MPD.

*#37 Allow MPD to do their job!*

This recommendation is not directed to MPD.

**Keith Findley Recommendations**

*#38 Policy on banning or limiting the use of deceit in interrogations, and use of Reid technique of interrogation.*

No MPD personnel have been trained in or utilized the Reid Technique of interrogation for many years. Use of deceit during interviews is constitutionally permissible and can, in some instances, be an effective strategy to resolve a case, protect the community and bring justice to a victim.

*#39 Proper procedures for submitting evidence to the crime laboratories so as to minimize bias.*

Department SOP requires that all forensic nurse examiner (FNE) evidence kits collected as part of sexual assault investigations must be taken to the Wisconsin State Crime Lab (WSCL). The WSCL has specific guidelines on what evidence will be accepted, so MPD has somewhat limited discretion in this area. The department supports procedures that enhance the reliability of WSCL processes.

*#40 Providing mentors for promising officers from underrepresented groups to help them prepare for and be motivated to apply for promotions.*

MPD has a formal mentorship program, where all newly hired officers are paired with a veteran officer/mentor. Commanders and supervisors are encouraged to identify promising officers – including female officers and officers of color – and provide support and mentorship to them. This can include providing encouragement, or more direct support (such as identifying relevant training to attend).

MPD is nationally recognized for its racial and gender diversity; females and people of color are well represented in the promoted ranks. The department remains committed to having a diverse workforce and to all ranks reflecting that diversity.

*#41 Governing when police should stop people for driving without a valid license, or when they ticket and/or arrest homeless people (for trespassing or obstructing the sidewalk, etc.), or ticket and arrest people for engaging in other low-level offenses that tend to disparately affect low-income people.*

For years, MPD has encouraged officers to view their role as broader than simply making arrests or issuing citations. Recognizing the broad discretion that officers have, Chief Koval has repeatedly expressed his expectation that officers find the “best possible resolution” (BPR) when addressing an incident or problem. This “BPR” often will not incorporate an arrest or citation, but some other strategy to resolve the situation.

The department has incorporated language into the Code of Conduct to guide officers as they exercise discretion:

## 18. Police Discretion

Police officers, of necessity, exercise professional discretion in deciding whether or not to address violations of the law. In addition to other specific laws, Department policies, or orders of a supervisor may further limit officers' discretion and direct whether or not to affect an arrest.

In general, police officers, using sound professional judgment, may take the following factors into consideration when deciding whether or not to use police intervention:

- The seriousness and nature of the offense (generally, the more serious the offense, the more likely arrest is the preferred course of action).
- The potential that official intervention will effectively aid in the resolution of a conflict.
- The availability of legal alternatives to arrest that would adequately resolve the conflict or problem.
- The likelihood that the citizen will be deterred from future violations by warning and education.
- The officer's belief that the citizen made an honest mistake in violation of the law.
- The victim-witness' interest in prosecution.
- The likelihood of formal prosecution of the offense.
- The potential that arrest, or other interventions will create more serious breaches of the peace or other problems (i.e., inciting riot).
- Legitimate competing priorities for police resources.
- The officer's belief that the interventions will protect members of the community and/or the citizen.

The following factors are among those that are improper for a police officer to consider in deciding whether or not to use official interventions:

- The citizen's economic status, race, ethnicity, gender, or other status for which the law prohibits legal discrimination.
- The revenue likely to be generated by fines or penalties imposed upon conviction.
- The personal or professional relationship that the citizen has with the police officer or with other influential citizens.
- The personal advantage to the officer for processing or avoiding processing of the intervention (e.g., overtime compensation, desire to finish tour of duty, avoidance of paperwork, etc.).

*#42 MPD should reconsider its training protocols and policy regarding the use of "distraction blows." If distraction blows are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction blows policy should prohibit strikes to the head or strikes to individuals already in handcuffs.*

I have clarified with the author of this recommendation that it is intended to apply generally to the use of all strikes by officers, and not specifically to "distraction blows" or "compliance strikes" (as these are not terms, techniques or concepts trained or utilized by MPD or within the State of Wisconsin DAAT system). The State of Wisconsin's Defensive and Arrest Tactics (DAAT) system is a comprehensive curriculum that trains officers on how and when to use force. DAAT provides a broad "disturbance resolution" framework for resolving encounters; one component of that model – "intervention options" – focuses on the application of force (decision-making and specific tools/techniques).

One category of techniques within the DAAT system (intervention options) is referred to as “active countermeasures.” Active countermeasures include physical strikes, and are intended to “overcome continued resistance, assaultive behavior or their threats.” The DAAT system/curriculum provides detailed descriptions of particular types of active countermeasures and how they are intended to be utilized. Active countermeasures have been utilized fifty-one (51) times by MPD officers during the first nine months of 2018.

While use-of-force models, systems and terminology vary from state to state, all incorporate empty handed techniques, including physical strikes. I am not aware of any agency that has prohibited the use of strikes or active countermeasures, or has placed absolute bans on their use in specific situations. Doing so would be inadvisable.

### **Representative Chris Taylor Recommendations**

**(Note: comments related to use of force have already been considered by the committee)**

*#43 Shifting MPD to an independent internal review model.*

This appears to be consistent with the OIR Reports recommendation for an independent auditor. MPD’s full response to the OIR Report addressed this.

*#44 Review Police Executive Research Foundation guidebook on law enforcement response to sexual assault for possible improvements to MPD’s SOP on sexual assault investigations.*

MPD remains committed to conducting sexual assault investigations in a thorough, professional and compassionate manner. The department has strong partnerships with community stakeholders and has a focus on providing support to sexual assault survivors. We are not aware of any significant shortcomings in department SOPs that address sexual assault investigations, but have no objection to reviewing the PERF report and making adjustments if appropriate.