

Recommendation xx: As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention. [OIR 11]

Discussion: Restorative Justice programs provide a valuable process through which individuals can be diverted from the criminal justice system. The OIR report states that “one of the more impressive features of recent MPD efforts in the area of community relations and innovation has been its active support of, and participation in, the various restorative justice initiatives in both the Dane County and Madison Municipal Court systems.” As part of their review, OIR spoke to MPD members involved in the process, as well as community stakeholders involved in the collaboration and found that all were consistent in their enthusiasm for the program and praise of MPD’s leadership in this area.

OIR further notes: “The principle behind this movement (restorative justice) is very much in keeping with progressive thought about criminal justice reform, and speaks directly to the racial inequity realities that persist in Madison and elsewhere [R]estorative justice recognizes that alternatives to traditional punitive sanctions are both more meaningful—for offenders and their victims alike—and less limiting of people’s potential for positive development. Both of these benefits are important, especially in the context of the younger individuals that the program serves. While not applicable in the same ways to more serious offenses, restorative programs have yielded impressive results in constructively addressing misdemeanor violations....”

OIR’s recommendation recognizes both the program’s initial success, and the need to ensure that individuals who are involved in incidents without a high media profile have access to the program. OIR described two high-profile incidents in which two females in their teens were arrested by MPD and referred to the Community Restorative Court (CRC). The arrests garnered a great deal of attention and were widely publicized. The first case revolved around the amount of force used by officers when taking a young woman into custody. The second case involved the arrest of a promising student at school after a fight in the cafeteria, which resulted in serious charges against the student. Per OIR, under the current standard eligibility requirements neither of these youths would have qualified for the CRC. However, the program provides the District Attorney the discretion to accept persons who might not otherwise be qualified to be accepted into the program, and he exercised that discretion in these cases. OIR considered both these decisions to be very appropriate but noted that media attention and public scrutiny contributed to an outcome not available to many other similarly situated individuals. OIR argued that youth involved in similar incidents that may not have received the same level of notoriety should be afforded the same access to the program. This recommendation urges MPD to work with its partners to ensure equitable access to the program.

In its written response to the OIR Report MPD stated that “the Community Restorative Court’s growth has been intentionally slow to provide time for a thoughtful analysis as capacity increases.” Additionally, MPD noted that at the time it provided its response there had been over 100 cases completed by the CRC, with the majority of those cases referred by MPD. MPD informed the Committee that all of the CRC participating agencies, including MPD, are committed to equitable access to the CRC and that they are open to accepting cases that fall outside of the regular program selection criteria. MPD Assistant Chief Vic Wahl noted that the Restorative Justice Court expansion efforts have been focused on geographic area rather than incident type, with the initial goal of expanding the program County-wide prior to consideration of expanding the types of cases referred. Assistant Chief Wahl stated that the MPD has no opposition to expanding the Restorative Justice Court provided adequate resources are made available for the expansion. He further stated that “MPD is not in disagreement with this recommendation.”

Recommendation xx: MPD should revise policy discouraging the use of family, friends, or bystanders to serve as translators except when MPD or City resources are not available and the situation is exigent, or when the person initiates contact or volunteers to continue conversation with police either by phone or in person and requests that a family member or friend serve as an interpreter and the person is not the subject of a criminal investigation or interrogation. In cases when civilians are used as translators, the non-availability of other MPD resources should be documented. [OIR 18]

Discussion: Individuals who are not proficient in English can face significant barriers in accessing police services or responding to police investigations. MPD's Standard Operating Procedure states a preference for utilizing MPD personnel to provide necessary interpretation services. However, OIR noted that, both per policy and current practice, MPD officers sometimes utilize family members or bystanders to interpret.

Utilizing family members, friends or bystanders as interpreters presents inherent challenges to the investigative process and the accuracy of information gathered. Utilizing family, friends or bystanders can result in breaches of confidentiality, conflicts of interest, and in some cases inadequate interpretation. While MPD acknowledges these problems, current MPD policy allows for the use of family, friends or bystanders to provide interpretation for informal, non-confrontational contexts when other MPD resources are not available. OIR notes, however, that the current SOP language, "Informal, non-confrontational contexts," is not defined, thereby allowing for a good deal of ambiguity that could undermine the effectiveness of an investigation.

OIR and the Ad Hoc Committee recognize that MPD faces challenges in providing adequate, timely, and accessible interpreter services. Among those challenges is the reality that some MPD officers who have some bilingual skills are hesitant to provide translation services, and that the level of language proficiency among officers varies greatly, which further complicates the ability of MPD to identify personnel who are qualified to serve as interpreters. MPD is currently waiting on a study of the operating costs to the Department related to testing officers for the purpose of creating a list of authorized/qualified MPD officers who can serve as interpreters. Furthermore, providing interpretation is a skill that goes beyond language proficiency, so language proficiency in and of itself may not guarantee that an individual is adept at providing interpreter services.

Interpretation, as a service, is an internationally recognized profession. For example, The International Medical Interpreters Association has a Code of Ethics, as does the Registry of Interpreters for the Deaf and the National Association of Judiciary Interpreters & Translators, and the International Association of Professional Translators and Interpreters. The Wisconsin Court System also has a Code of Ethics for court interpreters and translators. These codes exist to protect individuals and ensure a level of proficiency, professionalism, confidentiality, impartiality, and accountability that cannot be guaranteed when utilizing family, friends or bystanders as interpreters.

As the Committee considered these recommendations we also sought input from the City Department of Civil Rights, professionals in the area of interpreter services, and community members. The Committee learned that the City's telephonic translator service, which is available to MPD, is not particularly helpful to officers as they engage with civilians, especially when they are in the field. MPD reports that it has been working with the Madison Department of Civil Rights to ensure that MPD Standard Operating Procedures are in alignment with the citywide plan to be put in place by the Department of Civil Rights. According to City staff and the Assistant City Attorney assigned to the Ad Hoc Committee, the policy being drafted by the Madison Department of Civil Rights is still in process and will perhaps require several years to be fully approved and implemented. Even after implementation, each City department will create its own policies in alignment with the City policy.

MPD informed the Committee that it is committed to providing quality services to individuals with limited English proficiency and that, in addition to maintaining and distributing a list of officers with bilingual capabilities, MPD provided department-wide training in 2017 on language and interpretation topics. These are laudable steps by the Department to improve its services. However, the Department is still utilizing family,

friends, and bystanders in some situations, and the steps outlined above do not address this practice directly or clearly outline the circumstances under which that practice is permissible.

The primary concern expressed by MPD during discussion of this recommendation was that officers need some flexibility in their informal contacts with the community or in situations where someone calls the police and asks them to allow a family member or friend to translate. Recognizing this concern, the Committee amended the recommendation to permit interpretation by a family member or friend if that is requested by a person who “initiates contact or volunteers to continue conversation with police either by phone or in person,” but only if the person “is not the subject of a criminal investigation or interrogation.” The Committee recognized that informal interpretation by family or friends should not be permitted in a confrontational situation, where someone is being accused or investigated as a suspect (note, moreover, that someone waiving their right to a real interpreter in such circumstances may not understand the ramifications). The Committee retained the original OIR recommendation provision requiring the officer to document “the non-availability of other MPD resources” in any situation in which family, friends, or bystanders are used to interpret because of exigent circumstances. The amended recommendation reflects the concerns raised by OIR and community members, as well as those of MPD. Feedback from MPD on the amended language was that they believed the amended recommendation to be reasonable and workable.

Recommendation xx: MPD should devise policy instructing its officers not to request social workers to provide translation services unless there is a pre-existing understanding with the social services agency that they agree to do so. [OIR 19]

Discussion: The role of a social worker is to provide responsive, confidential support to the individual with whom they are working. Social workers are not trained to be interpreters and it is not their role to serve as interpreters for their clients. In OIR interviews with bilingual social service staff, social service staff routinely expressed their discomfort at being asked by MPD to provide interpreter services. Asking social service staff to serve as interpreters can be problematic for several reasons. First, there are issues related to confidentiality. Second, putting a social worker in the role of an interpreter may create a conflict of interest should the focus of the police interview shift to viewing the individual as a suspect rather than a witness. Licensed social workers and professional counselors are required to adhere to a strict code of ethics related to conflicts of interest. Licensed human service staff who provide interpreter services may find themselves in violation of their professional ethics code and carry professional censure or revocation of licensing, thereby impacting their employment. Additionally, asking a social worker or social service staff person to serve as an interpreter takes the focus off the social worker's prescribed role and function—that of supporting the client—as they are now asked to serve, at least in a sense, as a *de facto* MPD officer.

While the Committee and OIR recognize the challenges faced by MPD in terms of accessing bilingual resources, the lack of resources does not mitigate the issues and potential problems raised by social services staff. As written, this recommendation does not prohibit MPD from meeting with and negotiating with social service agencies about the provision of interpreter services. However, it does require that those conversations take place ahead of time and provides that the agency has the right either to agree or decline to permit its staff to serve as interpreters. MPD noted that they already have agreements with several social service agencies and that they can work with Dane County Human Services to identify additional agencies with whom such an agreement might be beneficial.