

Recommendation xx: MPD should make clear through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report. [OIR 78]

Discussion: Current MPD policy on use of non-deadly force requires any officer using force to document the use of force in a case report. The case report documents all of the officer's activities with respect to a given call, including all of the circumstances surrounding a subject's arrest and any evidence gathered in support of potential charges. A field supervisor is then required to review the use of force for compliance with MPD procedures. MPD policies require an additional reporting step for a subset of force incidents deemed "recordable force" (defined as: takedowns, active countermeasures, OC spray, impact weapons, hobble restraints, less lethal projectiles, Taser deployments, K9 apprehensions, and use of deadly force) as opposed to merely "reportable force" (i.e., all the types of force that must be documented in the case report—a broader category which also includes pain compliance techniques, escort holds, handcuffing, etc.). "Recordable force" in general corresponds to more serious types of force use, and for recordable force instances, the supervisor must enter corresponding data for inclusion in the MPD use-of-force database. The Department's Use of Force Coordinator then conducts further review of recordable force, including the identification of trends or training issues.

Though OIR expressed some reservations about the MPD practice of using a single case report document for the dual purposes of documenting both use of force and the legal basis for prosecution of an individual, they praised the exceptional quality of MPD case reports. OIR noted that "[t]he level of detail in their descriptions of the circumstances justifying the force, their account of the type and manner of force used, and the organizational structure of their reports demonstrates a commitment to excellent report writing." That said, OIR further stated that for MPD there is generally a disconnect between the quality of the officers' report and the thoroughness of the investigation that follows. As OIR noted: "The person on whom force was used is not generally interviewed regarding the force. There is no documentation by officers who witnessed the force but who otherwise have no cause to write a supplemental report, and officers generally do not seek out or interview civilian witnesses about the force. If there is dash cam, surveillance, or other video available it may be collected and attached to the report, though there is no policy requiring this."

OIR found that one important piece necessary for "a full and accurate accounting of force generally was missing from many MPD reports: officers who witness force are not required by policy to report what they saw. In many cases we reviewed, officers who witnessed but did not use force documented their observations on a supplemental report. However, officers generally only wrote these supplemental reports when they had some reason apart from witnessed force to do so, such as participating in the booking of evidence or performing a drug test."

In general, MPD did not express opposition to this recommendation requiring reporting/documentation by witnessing officers. MPD noted that it already does require officers to intercede and report when they observe excessive force. MPD also expressed some concern with redundancy in requiring witnessing officers to report use of force, particularly for lower levels of force (such as handcuffing of compliant suspects, escort holds, etc.). MPD further stated that it is willing to review whether additional SOP language or training is needed on this matter.

OIR's Mike Gennaco noted that OIR's concern was that instances of reportable force not fall through the cracks, remaining unreported. There are times in which an officer's self-interest might get in the way of the reporting requirements. If an officer chooses not to report their own use of force, under current MPD policy, that could result in no record at all of the use of force. Moreover, MPD does not use body cameras, which could capture such information if it were omitted from case reports. In addition, the current policy, which requires witnessing officers to only report excessive force, is insufficient to ensure

that use of force is documented. A witnessing officer might misjudge the appropriateness of the force being applied and therefore fail to recognize and report excessive force, or the officer might feel the force used by another officer was excessive, but nonetheless not feel comfortable reporting it. Both of these problems would be resolved if there were a standard requiring officers to create a record any time reportable force is being used. Complaints from civilians also cannot be relied on to capture use of force information because there are many reasons why a civilian upon whom force has been used may choose not to file a complaint, including fear of retaliation, lack of understanding of the complaint process, or lack of resources or time to file a complaint. Mike Gennaco noted that this recommendation is not intended to enlarge the set of types of force that must be reported, but only to ensure that if an officer who employs force is required to report it, witnessing officers must also report it. Gennaco further indicated that it is particularly important to ensure that witnessing officers be required to report instances of recordable force—a subset of reportable force that generally corresponds to higher levels of force.

The Committee agreed with OIR that this recommendation increases accountability and transparency related to the use of force and that it does not appreciably add to the reporting requirements of officers on a scene. Moreover, given that one of the Committee's primary objectives is to find ways to mend the distrust that exists between MPD and some Madison communities, particularly regarding use of force, adoption of this recommendation would have the virtue of impressing upon each officer and the community that every use of force is seen as a serious event and that MPD is committed to treating it that way.

Recommendation xx: MPD should amend its force reporting protocols so that, for certain categories of force, at minimum those that are recordable incidents, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it. [OIR 79]

Discussion: In its report, OIR noted that many law enforcements agencies in the United States have adopted a more robust paradigm for the investigation of use of force incidents than the MPD. Those agencies prepare a separate investigation package requiring minimal standards of investigation. These standards would require that a field officer do the following:

- Interview individuals on whom force was used;
- Interview civilian witnesses to the force and the events leading up to it;
- Ensure that all officers who participated in or witnessed the force incident have prepared thorough reports with an account of what they did or saw;
- Obtain medical records of any injuries or treatments to either the person on whom force was used or the involved officer(s);
- Secure photographs documenting any injuries, or the absence of injuries;
- Search, retrieve, and attach any video or audio recordings of the incident;
- Identify and attempt to resolve evidentiary discrepancies through additional investigation where possible.

Adopting such an investigative model would allow supervisors who are responsible for reviewing the use of force to engage in a more meaningful and accurate review of the entire incident.

In its response to this recommendation, MPD noted that “the PS&IA unit investigates any time there is a citizen complaint. Some other use of force incidents may also be subject to internal investigation or administrative review. Every use of force incident is reviewed by the Use of Force Coordinator and summarized for the Chiefs on a regular basis. But requiring more full-fledged investigations or reviews of

all use-of-force incidents would be a significant drain on limited supervisor resources. MPD does recognize, however, that certain use-of-force incidents might benefit from additional front-end work by a patrol sergeant. The department will explore additional SOP language or training to address this.”

In discussion of this recommendation and MPD response, Ad Hoc Committee members noted that there are many reasons why a civilian may not report a use-of-force incident in which they were the target of the force. The process can be arduous and it requires time, which can also mean a certain level of privilege that the target of the use of force may not have. Members of vulnerable populations may be hesitant to subject themselves to possible harassment should they file a complaint. As a result, there are likely incidents in which use of force is not thoroughly investigated because there is no “citizen complaint.” The integrity of the force-review protocols should not be reliant on outside individuals and whether or not they decide to file a formal complaint.

In response to MPD’s concern that requiring a full-fledged review of all use-of-force incidents would be a drain on Department resources, the Committee modified the recommendation to include “at minimum those that are recordable incidents” (where “recordable” force includes takedowns, active countermeasures, OC spray, impact weapons, hobble restraints, less lethal projectiles, Taser deployments, K9 apprehensions, and use of deadly force). Furthermore, in discussion, Mike Gennaco of OIR noted that the recommendation intentionally left the phrase “certain categories” undefined, allowing MPD to determine the trip wires for the kinds of cases that would be subject to this more thorough investigation. Gennaco noted that police departments might define the category as cases in which the use of force results in observable injury or a complaint of significant pain, or by the use of certain types of instruments like Tasers, batons, etc. MPD staff expressed general support for the modified recommendation and stated that the Department was already working on SOP language to address it.

The Committee believes that the revised recommendation strikes the right balance between acknowledging MPD resource constraints and protection of the overall health, well-being, and civil rights of the residents of the City of Madison.

On November 16, 2018, MPD implemented a modified SOP under which a field supervisor should immediately respond to the scene and conduct investigation in cases of 1. less lethal impact projectile deployment, 2. K9 bite, 3. impact weapon use, or 4. injury to subject consistent with substantial bodily harm. This is substantially narrower than the minimum of “recordable” instances recommended by the Committee (since it does not include Taser use, OC spray, active countermeasures, takedowns, etc.), and the criterion that injury rise to the level of substantial bodily harm appears quite restrictive. The modified MPD SOP further states that:

The responding field supervisor should ensure that initial information is obtained and preserved to thoroughly document the incident. This should include the following:

- Interviewing the subject (supervisor responsibility) if appropriate
- Ensuring that photographs of subject and scene are taken
- Ensuring that civilian witnesses are identified and interviewed
- Ensuring that any video/photo evidence is identified and preserved

This includes most, but not all, of the investigative standards recommended by OIR. The Committee commends the steps MPD has taken toward implementation of this recommendation, and encourages expansion to, at a minimum, all instances of recordable force, and explicit inclusion of all investigatory standards suggested by OIR.