

Recommendation #119: MPD should amend its SOP on Foot Pursuits to fully address the safety concerns associated with chasing a suspect without communicating with dispatch, solo foot pursuits, pursuing in unfamiliar areas or after losing sight of the suspect, and chasing a suspect while not in full patrol uniform and gear. [OIR Report #97]

This is an OIR recommendation on foot pursuit policy, to avoid dangerous situations likely to result in use of force. It was passed without modification by the Ad Hoc Committee. MPD (and Wahl specifically) claimed full implementation, but in reality MPD implemented only one of four changes recommended by OIR - and the provision it implemented was the least important one, and it was implemented in only a minimal way (suggesting only that officers "consider" a factor). Then MPD declared "mission accomplished."

The Ad Hoc Committee sought further restrictions in MPD foot pursuit policy, in addition to those recommended by OIR (see Ad Hoc Committee recommendation #120). Wahl specifically told the Ad Hoc Committee that MPD couldn't tighten foot pursuit policy further because it had just fully implemented the OIR foot pursuit recommendation and any further change in the short term would confuse officers. When I checked the SOP, I found that what Wahl had told the Ad Hoc Committee was not true.

The MPD update labels this as A/O (addressed/ongoing), stating "MPD SOP has been updated to address this."

The Ad Hoc Committee Final Report notes:

To provide guidance to officers and mitigate the danger, police departments, including MPD, have constructed foot pursuit policies. However, MPD's SOP provides less guidance than OIR recommends and that we agree is needed. OIR specifically recommends that MPD policy be modified to address the following four points:

1. "The SOP states it is the pursuing officer's responsibility to notify dispatch of pertinent facts, 'if possible.' Better practice is to require officers to terminate a pursuit if they cannot communicate with dispatch, or lose radio contact for any reason."
2. "Officers are instructed to consider the availability of backup when initiating a pursuit, but there is no prohibition on solo pursuits, or, at a minimum a requirement that a solo pursuer only chase for tracking purposes and not close the distance to apprehend a suspect on his or her own."
3. "The SOP does not instruct officers to terminate a pursuit if the officer loses sight of the suspect – jumping fences or entering buildings, for example – or becomes unsure of his or her location."
4. "The SOP does not address the risks of engaging in a foot pursuit for officers not in uniform or without a full set of authorized equipment on their belts (Detectives, for example)."

Since the OIR report was issued, MPD has altered the SOP to address point 4 (with the SOP now stating that factors to consider in initiating a pursuit include available equipment and whether a uniform is being worn), but it appears that point 1-3 remain unaddressed in policy.

Recommendation #86: MPD should clarify its SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers the opportunity to review any recording of the incident.

MPD update labels this as A/O and states “MPD SOP is largely in alignment with this concept, though it is a complex topic. MPD’s response to the OIR Report includes a more detailed response (page 36)”

MPD has not implemented this recommendation, yet incorrectly labels it as A/O. The Ad Hoc Committee explored this topic in depth, entertained all of MPD’s arguments, and stated in its report “Having considered all the factors articulated above, the Ad Hoc Committee believes that the MPD SOP should be amended to align with best practices and to concord in full with OIR’s recommendations.” MPD has not changed policy on this at all since OIR and the Ad Hoc Committee made their recommendations. Refusal to implement a recommendation should not be marked as A/O.

Recommendation #121. MPD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties.[OIR Report #98]

MPD labels this as A/O and says: "MPD SOP has been modified to address this recommendation"

Note that it doesn't exactly say the recommendation was fulfilled; just that the SOP was "modified to address" it.

The SOP has the same language that was in place with the Ad Hoc Committee report was issued. The report says:

This policy is more restrictive than the original MPD policy, and requires “continuing imminent risk,” but is less restrictive than the policies of cities such as New York, Philadelphia, and Washington D.C. The new MPD policy should somewhat reduce the risk of unnecessary use of deadly force relative to the prior policy. Note also that this new MPD policy could be interpreted as less restrictive than the OIR recommendation adopted by the Committee, in that that the OIR recommendation specified that MPD policy should not authorize shooting where there isn’t an “imminent threat” (where “threat” is generally understood in common usage and dictionary definitions as something “likely to cause” harm) against “identifiable” individuals, while the MPD policy requires only a “continuing imminent risk” (where “risk” is generally understood in common usage and dictionary definitions as “possibility” of harm) and does not appear to explicitly require that the individuals considered at risk be identifiable.

Recommendation #8: MPD should continue its active role in collaborative programs that address systemic inequity, like the “Unpaid Ticket Resolution Days,” and set internal goals for accomplishing such events each year and encourage MPD to hold community courts in cooperation with community partners.

The MPD update states: “MPD remains committed to programs and initiatives that address inequity. While the “Unpaid Ticket Resolution Day” had some unintended consequences and has not been repeated, a number of other initiatives continue to be led by MPD....”

An excerpt from the Ad Hoc Committee Report:

while the forfeitures imposed for violating a municipal ordinance can be an annoyance and inconvenience for some members of the community, they can be financially devastating for others. Even a \$25 parking ticket can bust the budget of someone making minimum wage, especially given the high cost of living in Madison. Most forfeitures are much more than \$25, often as much as several hundred dollars. And, the failure to pay a forfeiture can lead to further penalties. For example, a person who does not pay a forfeiture can have their vehicle registration suspended, thus subjecting them to additional forfeitures if they keep driving. In addition, an arrest warrant can potentially be issued for failure to pay or failure to appear in court. To the extent that socio-economic status correlates along racial lines in Madison, the practical effect of the traditional court system response to these low-level law violations is to perpetuate Madison’s racial disparity problem....

The City Attorney’s Office and MPD expressed concern about specifically repeating “Unpaid Ticket Resolution” days on a regular basis, noting that only 39% of participants actually paid the reduced fines and/or completed the community service hours (assigned in lieu of the forfeiture), and arguing that it could undercut the deterrent effect of citations by circumventing the usual process. However, Committee members noted that in terms of community engagement and trust-building by MPD, this initiative would appear to have been very beneficial; and that a success rate of less than 50% for ticket resolution should not be deemed a failure. In addition, committee members noted that involving advocates from community organizations (such as Centro Hispano), who engage with ticketed individuals and the court process, could greatly increase accountability for community service hours. Committee members also believed that the process itself—requiring the individual to come in and negotiate a resolution—would itself continue to provide significant deterrent effect for traffic violations.

Therefore, the Ad Hoc Committee recommends MPD continue its role in all these types of programs and encourages it to pursue other non-traditional responses to low-level law violations. An example of a non-traditional response that could benefit the community and reduce the justice system’s disparate impact is holding municipal court in neighborhoods, making it more accessible to community members. Efforts by both MPD and community partners to make people aware of this opportunity would enhance its impact. The Committee therefore adopted OIR recommendation 2 with the additional language, “and encourage MPD to hold community courts in cooperation with community partners.

Note: Ad Hoc Committee members wanted continuation of “Unpaid Ticket Resolution Days” (in addition to other initiatives). MPD has not continued this program.

Recommendation #13: Should future presentations by Judgment Under the Radar (or any other group) touching on bias be met with strongly negative reactions, MPD leadership should assess the underpinnings of the behavior.

MPD update: Marked as A/O, even though MPD notes elsewhere “The Judgement Under the Radar group has not been active recently, due to resignations and decreased capacity in CORE.”

Ad Hoc Committee report notes:

MPD concurs with this recommendation, noting that it “routinely seeks input/feedback on all training that employees attend, both internal and external. Adjustments in training occur as a result.” This can be challenging to implement at full depth. OIR notes that “we heard repeated references to the backlash against the 2015 training block that Judgment Under the Radar offered the Department. Not only did the subject matter seem to generate significant disagreement, but the reactions of fellow officers, and the harshness of the subsequent critiques, made a strong and disappointing impression on team members and their supporters.” MPD, however, suggests that it believes a negative response that the 2015 Judgment Under the Radar training received was directed more to the teaching style of the program than “to the overall principle of the training.” The Committee urges the MPD to fully explore any negative responses to all bias-related training to determine and address its underpinnings, to ensure that it does not represent resistance to de-biasing efforts, and where necessary, to take remedial action.

Recommendation #20: MPD should consider implementing the 21st Century Policing Task Force’s Action Item to make all department policies available for public review.

Ad Hoc Committee report states:

The Committee decided to review MPD’s confidential policies in closed session with Assistant Chief Vic Wahl, to make a fully informed decision on this recommendation and properly evaluate potential risk. The Committee delineated three options for the possible course of action it could take: 1. The Committee could reject the recommendation, so that MPD could continue to withhold from its website the currently confidential SOP information. 2. The Committee could amend the OIR recommendation to state that everything should go on the website, but that MPD could redact, in a publicly visible and understandable way, only those very specific items that are tactically sensitive (where there is a need to protect legitimate tactical objectives) and that could affect officer safety or effectiveness of police responses to these types of critical incidents. But that redactions should be kept to a minimum and that these redaction decisions would be subject to review by the Council. 3. The Committee could adopt the original recommendation in full, requiring MPD to make all SOP information publicly available in full on the website. The Committee noted that, under this option, whatever MPD’s policies were at the time that this recommendation went into effect would be what was to be made public, but that MPD could amend the policies, through their ordinary channels, to whatever extent they wanted, before the recommendation went into effect.

After having carefully reviewed the confidential SOPs in question, and having considered all the factors articulated above, the Ad Hoc Committee decided upon the third option – that the OIR recommendation should be adopted in full, such that all MPD SOPs should be made fully publicly available. The Committee believes that this is important for transparency and true public oversight of MPD, and it is consistent with the recommendations of the nation’s top policing experts. The Committee also notes that this recommendation will permit the MPD the flexibility to rewrite its SOPs, prior to posting them on its web site, to remove any purely tactical guidelines which legitimately deserve secrecy and which are not relevant to the rules about performance that might subject an officer to a citizen complaint or department discipline.

The MPD update states:

At the time the OIR was completed, the department had over 130 SOPs posted on the MPD website. Eight SOPs were not posted publicly. The department engaged in an internal review of those SOPs to consider their appropriateness of posting them on the website. As a result of this process, several SOPs were posted to the website in their entirety, and the remaining were posted with partial redactions. The redacted material in these few SOPs contain information that could jeopardize investigations or adversely impact tactical response during high-risk incidents. Restricting public access to sensitive SOPs is a common practice for police agencies; many agencies do not make any SOPs/policies readily available to the public.

MPD marks this as A/O, even though MPD did not implement the recommendation as stated in the Ad Hoc Committee report. MPD presented the approach it wanted to take (incomplete posting of policies with redaction) to the Committee. This is what it now has done, even though this course of action was explicitly rejected by the Committee as inadequate, as is clearly stated in the Ad Hoc Committee report.

Recommendation #23: MPD should conduct town halls and listening sessions after all critical incidents, including officer-involved shootings as follows:

- **In the first few days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern, and**
- **After the conclusion of the investigation, MPD should provide a public debriefing of the incident highlighting any performance issues that were identified for improvement and reform.**

The MPD update states:

MPD officers have been involved in two officer-involved shootings since the OIR report was released. Community meetings have been held shortly after both of them, and MPD provided a public release at the conclusion of each internal investigation. The full State of Wisconsin Division of Criminal Investigation (DCI) investigative reports are also released to the public at the conclusion of the investigation.

Note: Though I could be wrong, I know of no community meetings, of the type described in the OIR and Ad Hoc Committee reports, that were held after these shootings and that were specifically about the shootings. A general MPD “community meeting” that happens to be held at a point after a shooting (e.g., an omnibus event of the sort that MPD periodically does that isn’t about the shooting) is not what

this recommendation is calling for – it should specifically be a town hall/listening session devoted to addressing the shooting. Also, releasing a report to the public is not the same as the type of “public debriefing” recommended.

Recommendation #26: 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.

The Ad Hoc Committee report states:

For elected officials and the public to draw valid conclusions, it is critical that all data releases be unambiguous and free of errors. In existing MPD data releases, terms are sometimes not adequately defined and methodology not explicitly stated. In the absence of this information, it is not possible to correctly understand the data (i.e. since multiple different interpretations are possible). Moreover, it is important that graphics not distort data (e.g., via truncation of axes). The representation of numbers, as physically measured on the surface of the graphic itself, should be directly proportional to the quantities represented.

The MPD update labels this A/O and states:

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 meaningful to the public. Examples of proactively released data include the Chief’s Quarterly Update to the Common Council, the MPD Accountability Report, and quarterly data releases consistent with recommendations in the 2015 President’s Task Force on 21st Century Policing.

Note: MPD’s statement is not responsive to the recommendation. What steps have been taken to correct the problems being pointed out?

Recommendation #44: Consistent with this Report, MPD should develop formal mechanisms whereby a broader group of community stakeholders are brought into the selection process for special assignment officers, except for selection of traffic crash specialists or criminal intelligence officers.

MPD labels this A/O and states:

MPD has long been committed to these principles, and outside stakeholders have regularly been involved in selection processes for closed positions. In 2018, the department and Madison Professional Police Officers Association (MPPOA) updated the agreement governing the selection of officers for specialized positions. The new agreement encourages the inclusion of a community member on the interview panel involved in the process, and this continues to be the standard practice.

The Ad Hoc Committee report states:

MPD's November 19, 2018, updated response to the OIR Report references the MPPOA contract, under which "a civilian (preferably from within the department)" is included on the interview panel for specialized assignments. The Ad Hoc Committee encourages MPD to embrace this recommendation in full, bringing a broad group of community stakeholders (truly representative of the community) into the selection process.

Note – MPD's response is actually misleading. MPD is implicitly asserting that bringing a civilian member of MPD into the selection process fulfills this recommendation. It most emphatically does not, as the Ad Hoc Committee report explicitly points out.

Recommendation #97: 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 Report #79]

The MPD update labels this A/O and states:

Department SOP has been amended to address this recommendation. The SOP clarifies expectations for officers who use recordable force and requires that a field supervisor respond to the scene when certain types of force have been used or where significant injury has occurred. The SOP was changed in late-2018 and all MPD field supervisors were provided training prior to implementation.

The Ad Hoc Committee report states:

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.

Note: MPD has labeled this as A/O even though it has not implemented the recommendation as stated. The current MPD SOP requires investigations under a much narrow set of circumstances than recommended by OIR and the Ad Hoc Committee, and doesn't meet the investigative standards specified by OIR and the Ad Hoc Committee.

Recommendation #110: MPD should modify its use of force policies to more clearly instruct officers on the duty to employ tactical alternatives to force, and to make clear the Department's expectation that officers follow tactical principles of officer safety. [OIR Report #89]

The MPD update labels this A/O and states: "Department SOP has been amended to address this recommendation. The change was implemented in early 2019, and all MPD officers were provided training prior to implementation."

The Ad Hoc Committee report notes:

In explicating this overall recommendation, the OIR Report made two specific recommendations on policy language:

1. OIR noted: "The current 'Purpose' statements at the beginning of both the deadly and non-deadly force policies states, 'The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics, when feasible.' This provision could be strengthened and clarified, to further reinforce the idea that the Department's interest is to reduce incidents of force to a minimum. For example, instead of qualifying the statement with 'when feasible,' the policy could be modified to include language such as:

The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics. When time, circumstances, and safety permit, officers should consider these alternatives to using force."

2. OIR also recommended that MPD specifically include the following language in its use-of-force policies:

Police officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or improper actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than the immediate use of force.

This provision goes to the heart of OIR Recommendation 89. It is identical to the core language of the "totality of officer conduct" precautionary principle specified in President's Work Group Action Item 5 and adopted by the Ad Hoc Committee in Recommendation #109. Specifically, the "totality of officer conduct" principle consists of this language, prefaced by the sentence, "The reasonableness of an officer's use of force includes consideration of the officer's tactical

conduct and decisions leading up to the use of force.” In its supplementary report, OIR further notes: “MPD responds that it already has adopted language that speaks to the ‘same concepts.’ We respectfully disagree.” MPD subsequently incorporated the following sentence, partially responsive to this recommendation, in its de-escalation SOP: “Officers should utilize appropriate tactical and officer safety principles to avoid placing themselves at risk unreasonably.” This is a beneficial addition, but less explicit than the language recommended by OIR and was not included in the use-of-force policy as OIR recommended (it was included instead only in the de-escalation SOP). Moreover, current MPD SOPs do not appear to explicitly mention the option of tactical withdrawal. MPD stated that officers would receive training on the updated SOP. It will remain important that the Independent Monitor proposed in Recommendation #1 of this Report review the adequacy of and compliance with this new SOP.

Note: MPD implemented this OIR recommendation in only a partial manner. Current MPD SOPs do not fully incorporate the concepts and language specified in the recommendation.