

## OUTLINE FOR REPORT

Introduction to genesis and mission of the committee	DONE
Letter from committee chairs	DONE
Resolution creating the ad hoc committee	DONE
<ul style="list-style-type: none"> <li>Ad Hoc Committee Process and Activities (How the committee worked (process and activities), including review of OIR report, research, meetings, opinions presented to committee, and timeline</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Summary of OIR Report Recommendations (Hi-level, from OIR materials)</li> </ul>	DONE
Executive summary	
Conclusions/recommendations (includes OIR/City Atty/MPD input and CRT approved CRT recommendations)	
<ul style="list-style-type: none"> <li>Civilian oversight/independent auditor and Community Advisory Board)</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Ordinance to create independent auditor's Office</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Citizen Involvement</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Municipal Oversight</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Use of force standards</li> </ul>	DONE
<ul style="list-style-type: none"> <li>Accountability Includes: Internal review/evaluations, audits/reports, interventions/discipline, body-worn cameras; officer statements after critical incident</li> </ul>	
<ul style="list-style-type: none"> <li>Hiring, Training, and Culture Seniority shift assignments, sergeants and representation</li> </ul>	
<ul style="list-style-type: none"> <li>Contacts with Community Dispatch, etc., EROs, MHOs</li> </ul>	
Appendix	
<ul style="list-style-type: none"> <li>OIR Overview of Items?</li> </ul>	
<ul style="list-style-type: none"> <li>List of other relevant reports?</li> </ul>	

*Note: Those items not marked as "done" do not yet have their introduction written. This is either because the committee member who was going to write the intro has not been able to do so or because the draft of that section by the writer needs approval.*

## Civilian Oversight/Independent Auditor's Office

*"Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community."*

Recommendation 2.8 President's Task Force on 21<sup>st</sup> Century Policing – 2015

The Ad Hoc Committee believes that civilian oversight is critical to ensuring the vigilance and attentiveness necessary to ensure that the MPD is the progressive department that it says it is, and moreover, that it is making continuous progress toward achieving: 1) its own ideals and the expectations of itself and the requirements its own rules and procedures impose; 2) the requirements imposed on it by the Common Council and Mayor, pursuant to this report; and 3) the mandates emanating from the President's Work Group, as well as other initiatives-to-come.

MPD has, admirably, responded to the OIR Report by examining itself and agreeing to make changes in accordance with many, but notably not all, of the OIR Group's recommendations, including a number that the Ad Hoc Committee strongly endorses. There is no doubt that in many ways the MPD continues to push the edge of community policing, but as the OIR Group noted, there is what may be described as a tension between the MPD's long history of endorsing and espousing progressive policing ideals and its less-than-community-oriented policies and practices. A recurring theme the OIR Group encountered—both from those within the MPD and from Madison citizens—is the question: Is the MPD really what it once was and what it says it is? Does it uphold its own ideals and best practices?

We thus recommend the creation of an independent monitor overseen by a Civilian Review Board as our first recommendation. Our reasons for this are three:

- We have observed that some of Madison's many diverse communities perceive Madison's very fine police department as insular and unresponsive to their needs, and, therefore, fail to invest their trust in its officers.
  - Formalized civilian oversight is perhaps the most direct way the City can confront this challenge, ensure that the MPD is responsive to the needs and concerns of all segments of the community, and thereby build trust.
- It is our belief that, in a free and democratic society, the policing function must be controlled directly by the people themselves as much as possible.
  - To the extent that the community yields some of its freedoms to the authority of a police force in the interest of public safety and harmony, it must have tools to directly oversee the nature of that police authority; the community must have a strong voice in deciding how it wants to be policed.
- We see almost all of our other recommendations as contingent or dependent on the establishment of a civilian police review body.
  - In order to keep the process and the promise of reform ongoing, it is essential that the MPD continue to receive input from those outside of itself, including the public it serves and to which it is ultimately responsible.

The monitor's office must be strong and have full authority over and the cooperation of the MPD to permit it to engage in meaningful investigations and prescriptions. Importantly, the monitor must be sufficiently independent

of the MPD to ensure that its office does not become subject to administrative “capture,” as happens so often when agencies are monitored by people with whom they are too closely aligned. A Civilian Review Board must truly represent the community in all its diversity, including differences along divides of race, ethnicity, gender, sexual orientation, geographic region within the city, socioeconomic status, and prior experience with the MPD, including arrest and criminal conviction.

We recognize that this recommendation will require fiscal outlays. But we firmly believe this oversight is well worth the cost, given that it is the most effective way we can see to build true trust in and accountability between the community and the MPD, and to ensure that our recommendations do not become just another report that gathers dust on a shelf. We cannot estimate the total cost of creating a monitor’s office at this time because we do not know yet how much the monitor and civilian board will be called upon to undertake investigations and other actions as a part of oversight. We suggest that, at a minimum, the City begin by hiring a highly qualified individual to serve as monitor and provide staff support, an office physically apart from the MPD, and operating expenses for the monitor. With time and experience, the monitor and the City can then gauge what is needed to fully implement the responsibilities of this new position and office.

We thus recommend that the Common Council adopt an ordinance to be signed the Mayor stating that:

**Recommendation #1:**

- 1) The City should enhance its civilian oversight by establishing an independent police auditor’s office staffed by an independent monitor and reporting to a civilian police review body. [OIR Report #146]  
*MPD notes that it does not oppose this recommendation and the City Attorney’s Office notes that it may support it, pending additional information about how the auditor and auditor’s office would function.*

## Citizen Feedback/Involvement

To facilitate the work of the Civilian Oversight Board, the Ad Hoc Committee recommends establishing practices for incorporating the Board's feedback and soliciting the ongoing input of citizens more broadly. It is the opinion of the Ad Hoc Committee that fulfillment of these practices is an important part of ongoing oversight and essential to MPD's incorporation of the rest of the Committee's recommendations.

Where MPD, MPPOA, or the City Attorney's Office has questioned or noted constraints on implementing a specific recommendation, we note this throughout this report in italics. Disagreement with a recommendation is noted in bolded italics. We note the original OIR Report number for each recommendation in brackets.

### Recommendation #2:

MPD should closely consider and take into account the OIR Report's and the Ad Hoc Committee's recommendations while creating its new strategic plan in 201~~X~~. [OIR Report #1]  
*MPD notes that this effort will require additional resources.*

### Recommendation #3:

MPD should implement 21<sup>st</sup> Century Policing recommendations to make all department policies available for public review. [OIR Report #10]  
***MPD disagrees: MPD notes that it will review the few SOPs that are not already available and posted to determine if they should be posted, but has not yet made a commitment to post all.***

In order to better understand, receive ongoing feedback from, and build a working relationship built on trust with members of Madison's diverse communities, the Ad Hoc Committee further recommends that MPD:

### Recommendation #4:

MPD should conduct town hall and listening sessions after all critical incidents so that it may listen to community concerns, respond empathically, explain process, and then debrief the public. [OIR Report #13]  
***MPD disagrees: MPD notes that the effort to keep the public in the loop in the early stages of an investigation may ultimately meet with public frustration as it cannot release information that conflicts with its state law mandate to remain a spectator during the early stages of an investigation, which could undermine the integrity of an investigation. After an investigation MPD agrees to hold public listening sessions, as it now does.***

### Recommendation #5:

MPD should engage with the community about controversial events, including officer conduct that does not reflect core values or best performance. [OIR Report #14]

### Recommendation #6:

MPD should find new ways to solicit and encourage feedback about performance from the community. [OIR Report #16]

### Recommendation #7:

MPD should continue to expand Captains' Advisory Groups. [OIR Report #22]  
*MPD notes that this will require additional resources.*

### Recommendation #8:

MPD should review the Special Community/Police Task Force Recommendations to integrate them into MPD culture and to embrace their spirit and underlying rationale. [OIR Report #27]

**Recommendation #9:**

MPD should engage community members at the interview stage of its promotional process.

[OIR Report #114]

***MPD and the City Attorney's Office disagree: Both note that this would be subject to bargaining since the current process does not involve a traditional interview.***

**Recommendation #10:**

MPD should routinely seek input from community stakeholders and professionals regarding performance of officers assigned to specialized units. [OIR Report #30]

***MPD disagree: MPD notes that it regularly received such feedback and that it would be hard to formalize the process.***

**Recommendation #11:**

MPD should seek input proactively from City stakeholders and the public before completing and implementing any new policies or changes to existing policies through the creation of a formalized, tiered process, ranging from working groups (for major changes) to notify them of interim implementation, with provision that minor or urgent rules can become effective during the notice period before final adoption.

[OIR Report #88]

***MPD disagree: MPD notes that local Captain's Advisory Groups may be one mechanism for public input.***

**Recommendation #12:**

The city should institute protocols calling for a performance evaluation process that includes members of the community, prioritizing socio-economic diversity among those members, for the Chief of Police at fixed intervals, with the evaluation being a potential basis for a finding of 'cause' should the Chief's performance fall significantly below community expectations. This evaluation should not be conducted by the PFC. [OIR Report #141]

***City Attorney questions: CAO does not believe that there "should or could be a finding of 'cause' if someone believes the Chief's performance has fallen significantly below community expectations (Wis. Stat. sec. 62.13(3))***

## Use of Force

The Ad Hoc Committee's overall goal with regard to review of policies involving use of force has been to balance the safety of the public and officers with that of a suspect to make sure that everyone involved in a tense situation walks away from it safe and sound. We focused our discussion on emphasizing the importance of reliance on non-violent tactics, including de-escalation, and the less-than-lethal tactics available to officers when engaging with a dangerous suspect.

The Ad Hoc Committee therefore began by making sure we understand the genesis of the Constitutional legal standard that governs police use of force in the U.S. We engaged in a process of robust and informed community engagement, discussions with experts, and readings to consider the potential risks and benefits to be gained by refining MPD's use of force guidelines and raising the base standard governing use of force in Madison. **Cite who Ad Hoc Committee heard from.**

### Constitutional Standard

Currently, MPD follows the base constitutional or Fourth Amendment standard, which governs use of force. Fourth Amendment inquiry focuses on whether the seizure (in this case, the shooting) was objectively reasonable to someone standing in the officer's shoes and not on what the most prudent course of action may have been or whether there were other alternatives available. It does not require an officer to use the least-deadly or less-than-deadly force as long as it was reasonable for the officer to use deadly force.

**MPD SOP takes as its starting point** *Graham v. Connor*, 490 U.S. 386 (1989), which determined that an objective reasonableness standard applies in instances of officers' use of force in making an arrest, investigatory stop, or other "seizure" of a person. "Reasonableness" of a seizure "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."

**Paragraph to include summary and what MPD's policy looks like in practice here.**

Our recommendations rely upon expert work already done in the field of policing; the guidelines established by President Obama's President's Work Group on 21st Century Policing; and a group of national experts on law enforcement and criminal justice, including Madison's former police chief, Noble Wray, and the Dane County United Way President's Work Group. The latter work group 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 standard operating procedures (SOPs).

Therefore, the **Ad Hoc Committee recommends that MPD adopt the President's Work Group's precautionary principle as part of use of force guidelines, specifically adding language that reads:**

NUMBER De-escalation tactics and techniques are actions available to officers that 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.

Additionally, the President's Work Group found that MPD's Use of Deadly Force SOP recognizes "the dignity of all people and the value of human life" as important principles. Other cities have policies that utilize stronger language and state an officer's "duty to preserve life." For example, NYPD's policy includes the language: "The primary duty of all NYPD officers is to protect human life, including the lives of individuals being placed in police custody."

**The Ad Hoc Committee further recommends including precautionary use of force principles, such as these taken from a presentation by Representative Chris Taylor to the President's Work Group:**

- **Necessity:** Deadly force should only be used as a last resort. The necessity to use deadly force arises when all other available means of preventing immediate and grave danger to officers or other persons have failed or would be likely to fail.
- **Proportionality:** When force is needed, the force used shall be in proportion to the threat posed.
- **Reassessment:** Officers shall reassess the situation after each discharge of their firearm.
- **Totality of officer conduct:** 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. 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.
- **Immediate threat:** Deadly force is only authorized if the threat is immediate. A threshold of "immediate threat" reflects language in United States Supreme Court decisions. The latest model use of force policy published by the International Association of Chiefs of Police eliminate the term "imminent."

Lastly the **Ad Hoc Committee recommends adopting the principle of proportional force**, explained as followings:

"Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. Proportionality involves officers: (1) using only the level of force necessary to mitigate the threat and safely achieve lawful objectives; (2) considering, if appropriate, alternate force options that are less likely to result in injury but will allow officers to achieve lawful objectives; and (3) considering the appropriateness of officers' actions.

Proportional force does not require officers to use the same type or amount of force as the subject. The concept of proportionality does not mean that officers, at the moment they have determined that a particular use of force is necessary and appropriate to mitigate a threat, should stop and consider how their actions will be viewed by others. Rather, officers should begin considering what might be appropriate and proportional as they approach an incident, and they should keep this consideration in their minds as they are assessing the situation and deciding how to respond. Proportionality also considers the nature and severity of the underlying events."

**In order to improve administrative, training, and review functions with respect to use of force, the Ad Hoc Committee makes the following recommendation.**

**Recommendation #17:**

MPD should review and integrate DCI protocols regarding contact with family members after an officer-involved shooting into its own officer-involved critical incident protocols. [OIR Report #70]

**Recommendation #18:**

MPD should consider using the Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting. [OIR Report #71]