

Recommendation xx: MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy, as well as compliance with any other policies implicated such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force. [OIR 80]

Discussion: MPD's introduction of the Use of Force Coordinator position and creation of the use-of-force database in 2016 were significant steps toward implementation of a robust and comprehensive review and analysis of use-of-force incidents by its officers. However, currently all of the review and analysis undertaken by the MPD Use of Force Coordinator is informal. MPD requires no documented review process that concludes whether a use-of-force is within policy, and it does not ensure that supervisors and executives within the MPD are reviewing and examining each use-of-force incident in a meaningful way in order to identify performance issues – both exemplary and otherwise. Such a review process would also help identify other concerns about tactics, training, equipment, supervision, or compliance with the MPD de-escalation policy.

In addition to implementation of previous recommendations calling for a more robust investigative process, OIR noted that MPD should modify its policies and protocols to require a more exacting review of use-of-force incidents. OIR recommended that first-level supervisors should prepare a thoughtful narrative explaining their preliminary conclusion about whether the use-of-force was consistent with MPD policy. In addition to that baseline conclusion, supervisors responsible for reviewing the incident should know the answers to a number of questions before concluding whether the force was within policy, and in order to determine whether alternative strategies could have been used short of force. OIR noted that these questions include:

- What were the officer's words, gestures or actions prior to, during and after the time he or she used force?
- Was there any relevant prior "interaction" or "relationship" between the officers using force and the person against whom force was subsequently used?
- What was the physical or mental condition of the person against whom force was used?
- Was there a reasonable opportunity to safely de-escalate the incident in order to lessen the likelihood of the need to use force or to reduce the level of force necessary? If so, did the officer using force attempt to do so? If not, what was the reason?
- Was there a reasonable opportunity to safely use tactical options such as increasing time and distance, using cover and concealment, using or creating barriers, calling and waiting for additional personnel, etc. which might have lessened the likelihood of the need to use force or reduce the level of force necessary? If so, did the officer attempt to do so? If not, what was the reason?
- What was the underlying offense, infraction, or conduct that precipitated the initial contact and subsequent use of force?
- Was the force reasonable when compared to the threat posed and all other surrounding circumstances?
- Was there a reasonable opportunity to safely use a weapon, device, instrumentality, or force technique that might lessen the force needed to overcome the threat posed? If so, did the officer attempt to do so? If not, what was the reason?
- Once the use of force commenced, was it reasonably decreased or stopped as the level of resistance, /threat/harm decreased or stopped?
- Was there any evidence indicating that the force used by the officer was motivated in whole or in part by any improper purposes such as, but not limited to, punishment, retaliation, discrimination, bias, improper coercion, infliction of unnecessary pain, harassment, ridicule, abuse or any other improper reason?
- Did involved and witness officers notify a supervisor of the force incident in a timely way?
- Did involved and witness officers promptly write reports that thoroughly answered all relevant questions about the incident?
- Did the involved or witness officers have access to any video of the incident prior to writing their reports?
- Were the officers' written reports consistent with each other, and with any video of the incident? If not, account for and/or explain these inconsistencies.

- Were the officers' written reports consistent with witness interviews? If not, account for and/or explain these inconsistencies.
- Was the person against whom force was used provided prompt medical assessment and care?
- What was the nature and extent of any injuries to the person against whom force was used?
- What was the nature and extent of any injuries sustained by the involved officer(s)?
- Were the injuries noted and/or documented by medical providers consistent with the level of force reported?

OIR states, "Prompting supervisors asked with reviewing force at all levels to answer these questions allows the Department to scrutinize the incident through different prisms, with an eye toward maintaining accountability while ensuring that every incident is seen as a learning opportunity. The Use of Force Coordinator's weekly meetings with the Chief may regularly address these questions, but any remedial measures coming out of these discussions are not documented as part of the force review, making it difficult to demonstrate that command staff is attentive to force incidents for the purposes of transparency and from a risk management and civil litigation perspective."

MPD noted in its response that "[t]he MPD use-of-force coordinator ... reviews every use-of-force incident.... Requiring a narrative document reviewing each incident is not feasible, without additional staffing for this position. However, MPD recognizes that some standardization would be beneficial, and steps will be taken to fine-tune this process." But, in its supplementary report, OIR noted, "While MPD does indicate it is willing to 'fine tune' this process, our position is that a more substantive change should be a priority."

The Committee was informed by MPD Captain Mary Schauf that MPD was generally in agreement with this recommendation. But MPD had concerns about the time that would be required of field supervisors. MPD also felt that there was no need to provide an analytical narrative and documentation for a review decision if the use-of-force was judged to be consistent with policy. In addition, MPD argued that the use-of-force coordinator was the most appropriate party to perform any reviews, since they would have more expertise on use-of-force and would have all relevant report documents available to them, but that, without additional staffing, writing statements to document all decisions on cases of recordable force would be too time consuming for the use-of-force coordinator.

In response to these concerns, Michael Gennaco further clarified OIR's position: Such a review should be one of the responsibilities of first-level supervisors, and the field supervisor's assessment could consist of a concise statement – a few sentences providing an analysis that the use of force was within or outside agency policy. This should not overburden the field supervisor – given the relative infrequency of use of force, "this isn't going to be something like a sergeant having to make a decision on whether or not force was within policy four or five times a shift." Moreover, a supervisor should have basic knowledge of the Supreme Court's decision in *Graham v. Connor*, which established the constitutional use-of-force standard, and MPD use-of-force policy, at least sufficient to be able to understand whether or not an officer using force faced a threat sufficient to justify the force. While there is some potential benefit to having the use-of-force coordinator perform the reviews, if there is only that one level of review, it could overburden the coordinator. The burden and responsibility for a review at first blush should be shared by the supervisor in the field. Moreover, the use-of-force coordinator would have the opportunity and ability to override a decision that's not based on fact and to kick it back to the sergeant for further work, and that could improve the performance of the sergeant on a forward-going basis.

Committee members also noted that requiring an analytical narrative from the field supervisor provides a redundant filter – essentially double checking, where the field supervisor could flag a critical detail that the use-of-force coordinator might otherwise miss. Moreover, requiring field supervisors to provide a report would let MPD know if they actually know the standard, or if, instead, they might not be enforcing the standard incorrectly and require additional training.

During the discussion of this recommendation, Michael Gennaco noted that "[w]e've worked with close to 200 agencies now, and MPD is the first one we've ever encountered where a supervisor isn't required to make a finding as to whether or not force, by one of the officers that she or he supervises was within or outside of policy, with a couple of sentences explaining the basis for his recommendation or her recommendation.... It really was, of all the things we looked at, one of the most shocking deficits we found MPD to have compared to other agencies its size across the Country." Gennaco further stated, "In America, force is the third rail in policing right now. It is an awesome responsibility we give our officers authority to use. It just needs to be very carefully reviewed. If that

means shuffling away some other responsibilities or increasing some resources, here or there, I get it. But, you know, force is key here. And I think our community is really interested in ensuring that whenever force is used, it is carefully and thoroughly vetted and documented.”

Given all the above consideration, the Ad Hoc Committee endorses this OIR recommendation and believes that it should be implemented in full.