OPA Investigations of Force

REGIONAL LAW SAFETY & JUSTICE COMMITTEE | JULY 23, 2020

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SPD’s Use of Force Policy

- Developed during Consent Decree and approved by federal court
- Force must be:
  - **Reasonable** – comes from *Graham v. Connor*, multi-factor analysis, objective standard, hindsight analysis is prohibited
  - **Necessary** – no reasonably effective alternative appears to exist, and only then appropriate to the degree that is reasonable to effect a lawful purpose
  - **Proportional** – force must be commensurate to the threat facing the officer
Categories of Force

- **De minimis** – physical contact used to guide/control and that is not purposed to and does not cause complaints of pain.

- **Type I** – low level force that causes transitory pain or complaints of pain.

- **Type II** – force that causes or is expected to cause injury higher than transitory pain but less than serious physical harm; intermediate force.

- **Type III** – Force that causes or is reasonably expected to cause great bodily harm, substantial bodily harm, loss of consciousness, or death; serious and deadly force as contemplated by I-940.

- All force, except for de minimis, must be reported, investigated, and approved by the chain of command and, in some cases, the Force Review Board.
Other Policy Considerations

▪ De-escalation is *required* prior to using force when safe and feasible and without compromising law enforcement interests

▪ Specific policies cover the usage of lethal and less-lethal force tools (ex. Taser, OC spray, firearms)

▪ Force used to retaliate, punish, stop a subject from swallowing something, or solely address verbal confrontation is prohibited

▪ All force on restrained subjects is critically evaluated – Type II and III force is only permitted in exceptional circumstances
Administrative Force Investigation

1. Complaint Received
2. Intake
3. Classification

If classified as investigation:

4. Investigation
5. Recommended Findings

- Not Sustained
- Sustained

6. Discipline Meeting

7. SPD Chief Makes Final Discipline Decision
Force Investigations in 2019

- 68 OPA complaints involved allegations of improper force and/or de-escalation
- Of these 68 cases, 13% resulted in sustained finding(s) and discipline
- OPA investigated 156 allegations involving 109 employees
- OPA proposed Rapid Adjudication in one case; the employee accepted

2019 UOF Allegations by SPD Policy Section

- Use of Force: When Authorized: 110
- De-Escalation: 21
- Use of Force: When Prohibited: 6
- Canine Deployment: 6
- Rendering Medical Aid: 4
- Less-Lethal Tools: When Prohibited: 4
- Use of Deadly Force: 3
- TASER Application: 2
Seattle Prior to Initiative 940

- Type III uses of force require response of FIT, as well as OPA and the OIG.
- OPA monitors the investigation, including being present for walkthroughs, review of video, and witness/officer interviews.
- Except in rare circumstances, FIT interviews involved employees and direct witnesses the same day as the incident.
- OPA can exert jurisdiction over the incident at any time potential misconduct is identified.
- If so, FIT continues its investigation.
START

(required process for all Type III uses of force)

TYPE III Use of Force Reported

FIT Notifies CPA & OIG

Day 1

FIT Investigation Begins

Day 90

FRB Issues Findings

Day 180

FINISH

OPA Begins Administrative Investigation

(only if potential SPD policy violation)

(only if potential criminal law violation)

OPA Issues Findings

Chief of Police Makes Final Decision on Findings and Discipline

SPD or Other Agency Begins Criminal Investigation

Prosecutor Makes Charging Decision

Day 225

FIT: Force Investigation Team
CPA: Office of Police Accountability
OIG: Office of Inspector General
FRB: Force Review Board
Seattle’s Current Procedures

- Initial application of Initiative 940 rules was confusing and less robust than Seattle’s existing procedure
- OPA/OIG had diminished access to scene and evidence
- As a result, SPD reverted to pre-Initiative 940 procedures, which is permitted given ongoing Consent Decree
- Every use of deadly force is still criminally investigated by an outside law enforcement agency – usually King County Sheriff’s Office
Joint OIS Protocol

- Community-centered, responsive procedure for responding to families and communities affected by an OIS
- Model is sustainable, trauma informed, and recognizes the importance of resilience practices
- OPA piloted a version of the protocol following the December 31, 2018 OIS
Potential Next Steps

- Statewide, civilian-led entity with satellite offices investigates serious uses of force
- Special prosecutor reviews closed investigation for a charging determination
- Statewide dashboard of closed deadly force investigations, redacted where appropriate
- Uniform statewide force, de-escalation, and force reporting policies
Questions?