

Fort Worth Police Department Expert Review Panel Status Report

Preliminary Observations and Recommendations Regarding Use of Force, Internal Affairs and Community Oversight

July 31, 2020

I. Introduction

The following is an initial set of impressions and recommendations of the Fort Worth Police Department Expert Review Panel (Review Panel). The Review Panel is still in the investigation stage of its work. In coming months, we will engage in additional document review, interviews, data analysis, and community meetings. When we started this project, we committed to be transparent with the City of Fort Worth and its residents. As part of that commitment, we promised to raise any significant concerns as we uncovered them so that the city could address them without having to wait until our review is final.

The Review Panel commends Chief Ed Kraus, the command staff, and officers throughout the Fort Worth Police Department (Department) for their assistance. They have been professional, candid, and helpful. Moreover, leadership within the Department appears to have committed to identifying and correcting policies, training, supervision and tactics that lead to the use of force. We look forward to continued dialogue regarding the observations and recommendations in this preliminary report and on other issues we have yet to investigate.

We also are grateful to the many members of the Fort Worth community who have shared their stories about their experiences with the Department. While our efforts to engage in community meetings were disrupted by travel restrictions, stay-at-home orders, and the need for social distancing created by COVID-19, the input from community members has informed this report and its recommendations and will be critical to the Review Panel's work moving forward.

The viral pandemic has limited in important ways this review. The Review Panel had to cancel monthly site visits and scheduled community meetings. We continued to conduct remote interviews and document and file review throughout the stay-at-home order period. We also note that the City and the Department were required to address the public health emergency caused by the spread of coronavirus. The Department undertook important measures to ensure the safety of the community and its officers during this crisis, including implementing a policy to discourage custodial arrests and policies regarding the use of personal protective equipment. Despite these efforts, at least seven officers contracted COVID-19. The City's law enforcement response to the COVID-19 pandemic and enforcement of the public health orders is not part of this review.

Finally, in the wake of the deaths of George Floyd, Breonna Taylor, and other African Americans in police custody, communities across the nation have mobilized, seeking reforms to policing practices. Thousands of people took to the streets in Fort Worth to protest police violence. There were confrontations between Fort Worth police officers and demonstrators and several dozen people were arrested. The Review Panel has not assessed concerns that have been raised in the community about the Department's actions during the demonstrations or concerning the arrests.

This moment in history has also brought a new level of importance to this work. As communities across this country share in their collective grief, people are rethinking how policing should work and how it can work so that Black, Latinx, and other people of color feel and *are* safe. This poses difficult questions for law enforcement officials as they are forced to grapple with the systemic problems that give rise to police violence. This review is intended to identify and offer remedies for policy or constitutional violations. We note, however, that it is only one piece of the puzzle. The City and the Department will have to engage with the communities it serves to have hard conversations about what real public safety means and how Fort Worth can achieve it.

II. Background

On October 12, 2019, Atatiana Jefferson was shot and killed by a Fort Worth police officer. Ms. Jefferson was in her home playing video games with her nephew at the time of the shooting. She was shot through the back window of her house. The officer involved in the shooting resigned and has been charged with murder. Ms. Jefferson's death was the seventh officer involved shooting between June 1 and October 12, 2019. Of those, she was the sixth death; only one person survived. This series of officer involved deaths over a short period led to calls for an independent investigation by members of the Fort Worth community.

The Fort Worth Police Department has jurisdiction over a diverse and rapidly growing population. The City has nearly one million residents. Forty percent of the residents are white, 35 percent Latinx, and nearly 20 percent Black. Sixteen percent live in poverty and a third speak a language other than English in the home.¹ Common to many cities, the legacy of residential housing segregation² still divides Fort Worth.³

¹ Census Quickfacts, Fort Worth (TX), <https://www.census.gov/quickfacts/fact/table/fortworthcitytexas/PST045219>.

² Richard Selcer, Fort Worth, Texas, Where The West And The South Meet: A Brief History Of The City's African American Community, 1849-2012, Black Past, August 1, 2012, <https://www.blackpast.org/african-american-history/fort-worth-texas-where-west-and-south-meet-brief-history-citys-african-american-communi/>

³ Fort Worth Housing Solutions, North Texas Regional Housing Assessment, 2018, <https://www.fwhs.org/wp-content/uploads/2015/12/FWHS-AFH-Report-Draft-10-4b-18.pdf>.

Public safety concerns are also not evenly distributed across the City. Low-income communities and communities of color experience the highest rates of crime in the City and have more encounters with Fort Worth officers.⁴ The need for the Department to have credibility among, and the trust of, all communities is critical to ensuring a safe and healthy Fort Worth.

The 2019 fatal shootings occurred against the backdrop of a series of high-profile incidents involving Fort Worth police officers and members of the Black and Latinx community. Following a series of incidents in 2016 and 2017 and protests by community members, in June of 2017, the City Council created the Fort Worth Task Force on Race and Culture (Task Force). The Task Force completed its work and issued a final report on December 4, 2018. The report contained a broad range of recommendations, including around criminal justice reform. Among the recommendations was the creation of community oversight bodies and increasing diversity on the police force.⁵

The Task Force was not the first initiative the Department had undertaken to address police-community tensions. In 2014, under the tenure of Chief Rhonda Robertson, Fort Worth was chosen as one of six pilot sites for the Department of Justice's National Initiative for Building Community Trust and Justice (National Initiative).⁶ The National Initiative's goal for the project was "to develop and implement intervention strategies aimed at enhancing procedural justice, reducing implicit bias, and encouraging reconciliation processes, as well as to test the impact of these strategies in Ft. Worth to determine whether this combined approach yields measurable changes in metrics relevant to community trust, public safety, and criminal justice practice."⁷

The Department received a detailed three-year implementation plan for reforms in 2015. By this time, Joel Fitzgerald had become the Department's first African American chief. As part of the National Initiative, the Department established a Chief's Advisory Board (CAB) to "provide a public forum for police-community engagement around public safety."⁸ It is unclear how long the CAB was in existence, but it was reestablished in 2017 as a forum to hear

⁴ Fort Worth Police Department, First Quarter Crime Report, January – March 2020, <https://online.flippingbook.com/view/529863/>.

⁵ Fort Worth Task Force on Race and Culture (December 4, 2018), <http://fortworthtexas.gov/files/7a533a57-d2d0-4427-a1ee-8951ac7e0fc1.pdf>.

⁶ National Initiative for Building Community Trust and Justice, <https://trustandjustice.org/pilot-sites/info/fort-worth-texas>.

⁷ National Initiative for Building Community Trust and Justice Implementation Plan 3 (2015), https://uploads.trustandjustice.org/misc/Ft_Worth_Implementation2015.pdf.

⁸ National Initiative for Building Community Trust and Justice, <https://trustandjustice.org/pilot-sites/info/fort-worth-texas>.

community concerns.⁹ The Department also trained officers in procedural justice and implicit bias and began the reconciliation process with communities historically impacted by police misconduct.¹⁰

Following Ms. Jefferson's death, community members renewed their calls for reform. In response, City Manager David Cook appointed this panel. He gave the panel the following mandate:

The purpose for this review is to identify patterns and practices related to police interactions with the public during investigative stops, searches, arrests, de-escalation and use of force incidents. The panel will examine police policies, operational practices, training, documentation, accountability systems, corrective and reporting procedures, and technology applications. The review will include substantial interaction and listening sessions with community members, groups, and police personnel. Other areas the panel is expected to review include community policing and engagement, Internal Affairs complaints, recruiting, hiring, and promotions, critical incident interactions within the mental health community and interactions with youth.¹¹

The panel is chaired by Dr. Alex del Carmen, criminologist, and former Arlington, Texas police chief and deputy city manager Dr. Theron L. Bowman. Both Dr. del Carmen and Dr. Bowman have extensive experience in police pattern or practice investigations and consent decree monitoring.

Other members of the panel are:

- Lynda Garcia – Policing Campaign Director, The Leadership Conference on Civil and Human Rights
- Emily Gunston – Deputy Legal Director, Washington Lawyers' Committee for Civil Rights and Urban Affairs and former Deputy

⁹ Fort Worth Police Department, Chief's Advisory Board, <https://police.fortworthtexas.gov/About/Chief-Advisory-Board#:~:text=The%20%E2%80%9CNew%E2%80%9D%20Police%20Chief's%20Advisory,concepts%20and%20increasing%20public%20awareness.>

¹⁰ National Initiative for Building Community Trust and Justice, Fort Worth 2018 Interim Status Report, https://s3.trustandjustice.org/misc/National_Initiative_2018_Interim_Status_Report_Fort_Worth.pdf.

¹¹ Fort Worth City Manager's Office, <https://fortworthtexas.gov/FWPDRReview/>. See the Review Panel's scope of work at <https://fortworthtexas.gov/files/b3de01df-de2f-497b-ae6f6-c5c3b4ccbd66.pdf>.

Chief of the Special Litigation Section of the United States
Department of Justice Civil Rights Division

- Thomas Petrowski – Assistant Professor, Criminal Justice Program, Tarleton State University, former Legal Counsel for the Federal Bureau of Investigation
- Jonathan M. Smith – Executive Director, Washington Lawyers’ Committee for Civil Rights and Urban Affairs and former Chief of the Special Litigation Section of the United States Department of Justice Civil Rights Division
- Marcia K. Thompson- Vice President, Law Enforcement Consulting, Hillard Heintze, civil rights attorney, consent decree monitor and consultant
- Dr. Rita Watkins – Executive Director of the Law Enforcement Management Institute of Texas¹²

III. Preliminary Observations

There is broad recognition in the top levels of the Department that policies and practices that encourage community trust are necessary and that the need for police services and how they are provided is evolving. It is our observation that leadership’s vision and the implementation of policies they have promulgated to address legitimacy and trust are lagging and not reflected in most of the police encounters that were reviewed by the Panel. This appears to be an ongoing issue that National Initiative experts raised in 2018.¹³ The mismatch between the Department’s expressed values and the experience of many members of low-income communities and communities of color creates tension and mistrust that interferes with the Department’s ability to achieve its mission.

¹² Biographies of the Expert Panel Members are available at <https://fortworthtexas.gov/files/14b9f66f-95aa-4675-acdc-dd10e7bdc407.pdf>.

¹³ Center for Policing Equity, National Justice Database, Policy Review 6 (July 8, 2018).

Fort Worth’s policy language does not provide a clear picture of what community trust-building activities the department is engaged in. The department provided examples of initiatives and units that were working toward this objective, but policy-level descriptions related to specific unit activities, how officers are expected to build community relationships, trainings, or ongoing evaluations of public sentiment do not offer a clear picture of how the department is advancing this objective.

The Review Panel's observations and recommendations concerning specific policies and procedures are described in greater detail below. The following summarize our areas of concern based on the review to date. Further explanation is provided in Section IV below:

First, we have reviewed encounters that raise concerns that officers are not consistently adhering to policies and training to avoid force during encounters with community members and these policies are not enforced by the Department. Department policies emphasize the sanctity of human life, procedural justice, and de-escalation. Based on our review to date it appears that officers' conduct in the community does not uniformly adhere to these policies. This issue manifests in a variety of ways: failure to de-escalate or conduct that actually escalated the confrontation; failure to wait for back-up or other tactical decisions that placed officers at heightened risk or that create the need to use force; inadequate investment in crisis intervention and lack of city-funded community-based services to serve at-risk populations; and the failure of accountability systems to correct conduct that increases the need for use of force.

Second, the Department needs to build trust with all communities and develop stronger partnerships to co-create public safety. The Department values, but has struggled with, its relationship with communities of color and low-income communities in Fort Worth. In part, this is because of highly publicized officer involved shootings or other use of force incidents. But the lack of trust runs much deeper and often stems from unnecessarily negative individual interactions between officers and community members. Indeed, in a 2016 community survey, 49 percent of the respondents said they believed that police treat people differently based on their race or ethnicity and only 38 percent thought that police are held accountable for misconduct.¹⁴

Policy and training are not translating into office conduct in a uniform way and this is interfering with the part of the Department's mission "to enhance public safety through partnering and building trust with our community."¹⁵ Moreover, the role of "community policing" is assigned to certain officers and is not considered an essential role for all officers or part of the Department's culture. Developing community relationships is essential to providing police services that reflect the values of communities and should be a core value of every officer's job. Fostering community trust is not only more effective, it also promotes just outcomes, is safer, less stressful, and more rewarding for officers. While the panel will provide additional recommendations in subsequent reports, if the steps recommended in this Preliminary Report are essential to community trust.

¹⁴ National Initiative for Building Community Trust and Justice, Fort Worth 2016 Community Survey Results 2 (Sept. 2016).

¹⁵ General Order 220.03.

Third, the Department lacks functioning crisis intervention services. The Department does not have a functioning Crisis Intervention Unit. While officers respond to a high volume of calls for services with people experiencing homelessness or with substance use disorders, there are no protocols for adequate referrals to service providers. Many of the encounters with the unhoused population or people with substance use disorders also appear to be self-initiated, although officers do not have the adequate tools or resources to assist these individuals. The Homeless Outreach Program Enforcement Unit (HOPE Unit), implemented in 2019, is an important innovation, but not a complete solution to this problem.¹⁶ The City and the Department should explore increased investments in alternative services and programs similar to the HOPE Unit to better assist these populations and reduce the reliance on individual officers. Alternative services will also avoid the criminalization of community members who would be better served through coordinated response and referrals to professional services.

Fourth, increased integration of accountability structures would facilitate consistency in accountability and promote compliance with policy. The Department's Internal Affairs and other accountability systems are fractured and spread across multiple chains of command. While an effective accountability system requires the engagement of a broad range of disciplines and decision-makers throughout the Department, the diffusion of responsibility makes accountability disjointed and reduces its effectiveness. Existing accountability systems do not share information or report to a single member of the command staff. As a result, the Department has no mechanism to ensure discipline is applied in a consistent manner or that aggregate information concerning officer behavior is analyzed for organizational purposes. A senior member of the command staff should have overall responsibility to address individual misconduct and to make recommendations for changes to address policy, training, and supervision issues that emerge from the various departmental reviews and committees.

Fifth, Fort Worth has made important investments in policy development, training, technology, and facilities. The Review Panel commends the City and Department leadership on their forward-thinking approach to improving critical infrastructure. The Department has adopted and is frequently updating its policies, is committed to scenario-based training, and provides officers with important resources. While we make recommendations to address important concerns, the Department has demonstrated the capacity and culture to address them.

Sixth, the Department should more effectively use the data it collects and strengthen its systems to learn as an organization. The Fort Worth Police Department has modern and effective systems to collect data, comprehensive policies, and persons in leadership positions that seek to lead through evidence-based best practices. However, in many cases, the data collected, especially regarding officer conduct, is not effectively used to identify strengths and weaknesses in training, supervision, policy, tactics, or accountability. For example, the Department does not have an Early Intervention System in place to analyze data and identify potential issues with

¹⁶ Homeless Outreach Program & Enforcement Unit, Standard Operating Procedures (June 18, 2020).

officer performance or conduct. While the Department is taking important steps to implement review systems to improve policies and practices, such as the re-establishment of the Use of Force Review Board, there are insufficient mechanisms in place to ensure that the issues identified result in systems change. As a result, practices that are leading to undesirable outcomes or creating tension between officers and the community are often not addressed. The Review Panel recommends a much greater focus on the development of practices to collect and analyze data so that the Department can use it to improve organizationally.

Finally, it is important to note that there are key areas of Phase I and Phase II of the Panel's review¹⁷ that are incomplete and on which we cannot opine at this time. We note that the

¹⁷ The Expert Review Panel project was designed to be completed in two phases, available at <https://fortworthtexas.gov/files/b3de01df-de2f-497b-aef6-c5c3b4ccbd66.pdf>:

Phase I

Goal:

- Identify patterns and practices related to police interactions with the public during investigative stops, searches, arrests, and use of force incidents.
- A review and report of the evolution/changes of Police policies related to Stops, searches, arrests, Use of Force, Implicit Bias, De-escalation and Procedural Justice from 2014 to 2019.
- Detailed review of current Stops, searches, arrests, and Use of Force related policies and practices to include training, documentation, accountability, audit, corrective and reporting procedures and technology applications with recommendations on potential improvements.
- Detailed review of policies, training and accountability systems related to achieving biased free policing with recommendations on potential improvements.
- Detailed review of current De-escalation policies, practices and training with recommendations on potential improvements.
- Initiation of community engagement program, conduct community listening sessions, engage community leaders from diverse communities.

Phase II

Goal:

- Review overall other police policies, general orders and practices related to interactions with the public and citizens to identify opportunities to improve trust and confidence in the police department. These should include Community Policing and Engagement, Misconduct complaints (The apparatus for receiving and acting on internal and external police complaints), Recruitment, Hiring, and Promotions, Critical Incident Interactions (Mental Health) and Interactions with Youths.
- A review of training associated with traffic stops and other more routine police-community interactions. Provide recommendations for improvement.
- A review of accountability and discipline related procedures.
- Outreach throughout the Ft. Worth community to engage diverse community members and develop confidence in the recommendations and reform process.
- Publish report of conclusions and recommendations.

use of force review is still underway, and our recommendations will not be limited to the ones in this preliminary report as we have yet to reach final conclusions. Importantly, our assessment of the Department's deadly force incidents will be included in the final report. When the Review Panel undertook this project, we committed to the City, the Department, and the community to be transparent in our process and to provide our observations and recommendations as we were able to develop them. As we work toward our final findings and review of additional topics, we will provide additional status reports.

IV. Observations and Recommendations

The following are the preliminary observations and initial recommendations of the Review Panel on key areas of the investigation.

A. Use of Force

Police officers are among the few public officials authorized to use force, including deadly force, in their official capacity. The execution of stops and arrests “necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it.”¹⁸ The authority to use force, while broad, is not unlimited. The Fourth Amendment establishes the right of “people to be secure in their persons” and to be protected from “unreasonable searches and seizures.”¹⁹ It has long been understood that the Fourth Amendment places limits on the use of force by law enforcement.

Force, to be constitutional, must be objectively reasonable.²⁰ Objective reasonableness is determined by a series of factors, including: “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”²¹ Any use of force is “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”²²

The use of force is also among the most controversial areas of policing and understandably is a flash point in community relations. Even when the force used is constitutional, it can be contrary to the values of the community or the policies of a department, and even a small percentage of unnecessary or excessive uses of force can undermine trust and

¹⁸ *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

¹⁹ U.S. Const. amend. IV.

²⁰ *Graham v. Connor*, 490 US 386 (1989).

²¹ *Id.* at 396.

²² *Id.*

legitimacy in an entire department. Moreover, force that may be legally authorized may not be appropriate and may well be viewed as illegitimate by members of the community. Indeed, many police policies or uses of force are “lawful but awful” practices that disserve police and the public – in 2015, the President’s Task Force on 21st Century Policing discussed the negative effect of inappropriate uses of force on community perceptions.²³ The President’s Task Force recommended policies and trainings on use of force that emphasize de-escalation.²⁴ Likewise, community members expect that police officers will make concerted efforts to avoid and minimize the use of force and that force will be limited to those circumstances in which alternatives to force cannot be safely applied.²⁵

The Department provides its officers policy guidance and training on the appropriateness of the use of force.²⁶ The policies and training recognize that the constitutional standard of objective reasonableness is the legal foundation when deciding whether to use force, but that officers’ authority to use force is more limited. The sole question under the Department’s police should not only be is use of force lawfully authorized, but it should include an assessment of whether it was appropriate under the circumstances and whether it could have been avoided through de-escalation or changes in tactics..

. Among the guiding principles articulated by the Department for policy and training are the following:

A reverence and respect for the dignity of all persons and the sanctity of all human life shall guide all training, leadership, and direction as well as guide officers in the use of force. Members of law enforcement derive their authority from the public; and therefore, must be ever mindful that they are not only the guardians, but also the servants of the public.²⁷

²³ Final Report of The President’s Task Force on 21st Century Policing 36 (May 2015) (“Use of force, even when lawful and appropriate, can negatively influence public perception and trust of police.”), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

²⁴ Id. at 20.

²⁵ See e.g., Mourtgos & Adams, Assessing Public Perception of Police Use-of-Force: Legal Reasonableness and Community Standards, Justice Quarterly (October 2019), <https://www.tandfonline.com/doi/abs/10.1080/07418825.2019.1679864>.

²⁶ General Orders 306.00 et seq.

²⁷ General Order 306.06 B.

The Review Panel has made observations and has recommendations regarding de-escalation and the use of Tasers. Review of these and other force, including deadly force, is ongoing.

1. Failure to De-Escalate

The policies of the Fort Worth Police Department require officers to “use de-escalation techniques consistent with department training whenever possible and appropriate before resorting to force and to reduce the need for force.”²⁸ The policy requires officers to use “advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force” and to “withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options.”²⁹ Elsewhere in the General Orders, officers are instructed that “[u]nder no circumstances will the force used by an officer be greater than is necessary . . . or longer than is necessary.”³⁰

The Review Panel’s examination of a sample of use of force files, interviews with officers and members of Internal Affairs, and reports from community members, found that the de-escalation policy is not uniformly followed and is inadequately enforced.³¹ The failure to de-escalate is more dangerous for officers and residents, contrary to departmental policy, and contributes to a sense of mistrust between officers and community members.

The Review Panel’s observations are based on a broad range of sources. There was a high degree of consistency in the information reported to us by members of the Department, members of the community, and in the documents that we reviewed. Among the sources upon which we rely are the following:

- Community members reported to the Review Panel that encounters are often hostile and threatening and that officers are often aggressive from the initiation of any encounter and shout and curse at them. Community members also report that there is often little or no effort to engage or to de-escalate. The Review Panel will continue its outreach when community gatherings and travel are permitted to hear additional reports from a broader swath of the community, including both concerns and success stories.

²⁸ General Order 306.04 A.

²⁹ General Order 306.04 A 1 & 2.

³⁰ General Order 306.05.

³¹ Attached to this report is a listing of the files and records received and reviewed, the persons interviewed and the community meetings attended by the Review Panel.

- Characterizations we heard from some officers that the general approach to achieve compliance is to use escalating steps, which require they first “ask,” followed by a “command,” and then “make” the individual comply if they do not follow the command. Several officers told Review Panel members that they considered their presence alone to be a de-escalation tactic. Video footage that we reviewed confirmed this approach, with several examples in which officers immediately resorted to aggressive, profane language in interactions where the person did not pose an immediate danger and was not offered adequate explanation of the basis for the detention.
- Review of case files, including body-worn camera video, of interactions in which officers failed to employ de-escalation techniques that may have avoided the need to use force. Many of the cases reviewed involved a person in mental health crisis but there was no indication that a Critical Incident Team (CIT) officer was called or consulted to assist the person that had been recognized as experiencing mental health crisis.
- Similarly, there was no indication that these incidents were analyzed after the fact to determine whether a different course of action may have avoided the need to use force against a person in mental health crisis. Rather, every review we observed was limited to whether force was “lawful” and did not extend to whether it was avoidable, necessary, or appropriate. For example, one case reviewed involved a person who was potentially suicidal. Officers were able to handcuff the person and place them in the police vehicle. The person then became agitated and officers deployed Oleoresin Capsicum (OC) spray against them while still inside the car. Afterwards, officers did not render aid or rinse the person’s eyes, and instead waited for EMS to arrive. In another instance, officers responded to a report of a suicidal teenager. The young woman refused to get out of a parked car to speak with the officers. The officers immediately began to forcibly remove her from the car and slammed her to the ground. After they handcuffed her, one officer dragged her across the sidewalk and street by her hands. The officer then aggressively pushed her into the car as she begged to speak to her mother. As she resisted, the officer grabbed her by her legs and shoved her in; she had urinated on herself and her shirt fell off exposing her breasts. The officers made no attempt to de-escalate and did not call or consult with a CIT officer. When she stepped outside of the car again nude from the waist up, an officer sprayed her with pepper spray 4 times directly in the face.
- Review of files also revealed encounters that start with officers yelling a command, often with weapons drawn, under circumstances where no apparent threat is present. In other cases, officers failed to take the time to permit a subject

to calm down or comply, take advantage of distance, or wait for backup that might have had a calming effect. Officers frequently curse at arrestees, use what the officers perceive to be slang in a racially offensive way, or mock or humiliate arrestees. For example, in one Taser case review, an officer had stopped a man who they suspected was intoxicated, although it is not clear how or why the interaction began. When the officers asked the man for his identification, the man said it was in his car and started to go back to it to retrieve it when the officer grabbed him to arrest him. A second officer ran up and immediately told the man “you need to relax or I’m going to bust your face.” In several other reviews, we observed similar use of language at the outset of the encounters when the individuals appeared to be confused as to why they were being arrested. Rather than take the time to apply procedural justice principles and calmly explain why they were being stopped or arrested, officers simply expected people to do as told. In the Taser incident described above, when the man asked why he was being arrested, the officers told him he did not need to understand. There were some encounters in which officers did not activate their cameras, and we recommend that the Department reissue department-wide guidance on the requirements for activating cameras when engaging with community members

- We heard consistent reports from members of Internal Affairs and from more senior officers in the Department that there has been an increase in recent years of complaints by members of the public that officers have been “discourteous.” Generally, supervisors noted the policy violation in their administrative review but responded by “talking to” the officers. Because of the seemingly frequent nature of the use of foul or profane language, the Department should consider retraining on policies prohibiting this conduct. The Department could also consider more discipline beyond a “talking to” to better deter this seemingly wide-spread conduct. Throughout our interviews we heard that the level of tension and mistrust between officers and the community has increased in recent years. Some senior officers attributed the increased incidents to the rushed hiring and training of the last four academy classes.³² We also heard from several

³² Many of the confrontational tactics that we observed on body-worn camera video are inconsistent with the very notion of de-escalation. We strongly recommend that all officers be trained and held accountable to the LEED Model (Listen and Explain with Equity and Dignity). See e.g., Principles of Procedurally Just Policing, the Justice Collaborative at Yale Law School, https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf:

Principle 30:

De-escalation tactics—whether verbal or physical—should be used where possible.

- In order to de-escalate a situation, officers should attempt to use one or more of the following techniques, in addition to any other techniques, words, or actions reasonably intended to slow down an encounter and engage the individual(s) in the encounter:

Department officials that the Department or its officers have a “para-military” mindset, which would involve more aggressive tactics when interacting with community members.

- In our interview with the Use of Force Coordinator he advised the Review Panel that de-escalation had only recently been emphasized in the training curriculum. He stated that the Department in “in transition” on the issue.

It is important to note that the Department’s Control Tactics Manual, which the policy references as the primary source on de-escalation, contains a discussion of de-escalation that emphasizes the importance of avoiding the use of force. However, the associated use of force training does not include a de-escalation component. Instead, the training focuses on the increasing “phases” of use of force. The Review Panel has not yet observed the scenario-based de-escalation training, which we understand is the core module on the topic. Nevertheless, it is concerning that the core training materials on use of force are limited to the question of “how” an officer should use force and do not meaningfully address the question of “when” an officer should use force or does not need to use force. De-escalation and problem-solving skills should be emphasized in every component of training.

De-escalation should be a core value for the Department and be uniformly applied by officers. While use of force may be necessary in some circumstances, unnecessary or avoidable use of force places the individual and the officer at risk and erodes confidence in the legitimacy of the Department in the eyes of the public.

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- **Verbal de-escalation:**
 - Use the Listen and Explain with Equity and Dignity (LEED) framework:
 - *Listen*—allow people to give their side of the story; give them voice
 - *Explain*—officers should explain what they are doing, what the individual can do, and what will happen
 - *Equity*—officers should explain why they are taking action; the reason should be fair and how that the individual’s statements and input were taken into account
 - *Dignity*—officers should act with dignity and leave the individual with their dignity
 - Echo back the individual’s statements to show that the officer is listening
 - Communicate using verbal persuasion, including advisements
 - **Physical de-escalation:**
 - Avoid physical confrontation, unless immediately necessary to prevent direct harm to others or to stop behavior that may result in serious harm to others
 - Use physical de-escalation techniques, including:
 - moving temporarily to a safer position
 - communicating from a safe position
 - decreasing exposure to potential threat using distance or cover

2. Conducted Electrical Weapon (CEW or Taser)

The Review Team is currently in the process of analyzing use of force incidents, including Tasers. Accordingly, our observations on the Department's use of force are limited as this part of the investigation is underway. In our preliminary work, however, we did see serious indicators of problematic conduct regarding the use of Tasers that we did not want to delay bringing to the City's attention because of the seriousness of the issues raised. In our next report, we will be able to address this issue in more depth at a systemic level, but encourage the City to begin to internally address these observations.

Department officers are authorized to carry a department-issued Taser. The use of the Taser must be consistent with Fort Worth Police Control Tactics Training Manual, and the Taser Training Guidelines.³³ Tasers are defined by the Department as "intermediate force" or "A level of force that has the potential to cause injury or substantial pain and is greater than low level force."³⁴ The Department's General Orders establish that:

Officers shall only draw or exhibit a Taser when:

- (1) Conducting the department-approved spark test to ensure the proper operation of the Taser, or
- (2) There is articulable belief that use of the Taser is in conformance with the General Orders, the Fort Worth Police Control Tactics Training Manual, and the Taser Training Guidelines.

It is important to note that all of the training materials made available to the Review Panel focus on how to use Tasers, but none discuss when their use is authorized or appropriate.³⁵ This is a significant gap in training and policy; every force instrument should have specific policies guidelines to ensure officers use them appropriately and only when necessary. The failure to meaningfully define in policy the limits on Taser use make it impossible for the Department to hold officers accountable for the unnecessary or inappropriate display of a Taser.

The only limitation in policy or training is contained in the General Orders:

Officers shall consider the physical condition of the subject and the subject's surroundings which could potentially result in a high-risk danger such as, but not limited to, a fall from a great distance or into

³³ General Order 306.05(3)(2).

³⁴ Fort Worth Police Department Control Tactics Manual at 14.

³⁵ General Orders 306.05 3.B.

the path of a moving vehicle when determining whether the CEW is an appropriate option. CEWs are prohibited on the following high-risk population unless exigent circumstances exist or to prevent serious bodily injury or death to the subject, the officer, or a third person:

- (1) Infirm (frail, weak)
- (2) Elderly
- (3) Low body-mass index (BMI)
- (4) Pregnant
- (5) Small child
- (6) Person in water (drowning risk) ³⁶

Tasers are a valuable less-lethal weapon and can be used in some circumstances to avoid the use of deadly force or more significant less-lethal force options. However, Tasers exert a significant amount of force and should not be used in a retaliatory or punitive manner or without adequate justification. “The impact is as powerful as it is swift. The electrical impulse instantly overrides the victim’s central nervous system, paralyzing the muscles throughout the body, rendering the target limp and helpless. . . . The tasered person also experiences an excruciating pain that radiates throughout the body.”³⁷ The Review Panel observed that Fort Worth officers use Tasers as a weapon of first resort, often pulling them at the very beginning of an encounter. We observed situations where officers immediately resorted to a Tasers without attempting de-escalation techniques that might have proved more effective than threatening to use a Taser.

The Review Panel is also concerned about the Department’s training on the use of Taser in drive-stun mode. Tasers have two forms of use: firing darts that remain connected to the Taser and conduct an electronic charge by pressing the Taser on the body and delivering the charge through probes. This method temporarily incapacitates the person. Drive-stun mode does not incapacitate but causes pain, and in some circumstances exacerbates the situation, placing the officer at greater risk. Drive-stun should be reserved for circumstances when no other lesser force is available. ³⁸While we did not observe any instance of the drive-stun mode being used improperly in the files we reviewed, this gap in policy should be corrected.

³⁶ General Orders 306.05 3.G.

³⁷ *Bryan v. McPherson*, 590 F.3d 767, 773 (9th Cir. 2009).

³⁸See, e.g., Electronic Control Weapons Guidelines, Community Oriented Policing Service, United States Department of Justice

We heard from a few officers that Tasers are their “primary” form of de-escalation and that they will display a Taser during virtually every encounter. Tasers are an important less-lethal force option, but the overuse of Tasers is inconsistent with de-escalation or LEED principles (Listen and Explain with Equity and Dignity). By displaying a Taser at the initiation of an encounter, officers create an implied threat of force that makes verbal compliance strategies more difficult and limit options and control because officers have only one free hand. Moreover, by displaying Tasers in circumstances in which its use is not justified, officers present an image to the individuals and any bystanders of over-reaction and a militarized presence. Displaying a Taser when not necessary may also breed hostility between members of the community and the Department because they feel unnecessarily threatened or simply harassed.

3. Deadly Force

The Review Panel has not completed a sufficient review of the use of deadly force policy, training, or practices to provide meaningful observations or recommendations at this time.

4. Recommendations Concerning Use of Force

The Review Panel’s review of use of force policies, training, and practices is ongoing. The following are recommendations that address de-escalation and use of Tasers.

a. Officers need additional policy guidance on when force is permitted and how to de-escalate.

We recognize that the Department has included de-escalation in its General Orders. The policy provides, in general terms, strategies that officers can take to de-escalate interactions with residents. According to a National Initiative report, the Department instituted revisions in 2017 to emphasize de-escalation, add a duty-to-intervene,³⁹ and require officers to warn individuals before using force or making a stop, search, or arrest.⁴⁰ The current de-escalation policy requires that:

(1011)https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapen%20guidelines%202011.pdf

³⁹ General Orders 306.02 Stipulations:

(D) Officers have the duty to intervene when observing another officer using force that is beyond that which is objectively reasonable under the circumstances.

⁴⁰ Center for Policing Equity, National Justice Database, Policy Review 7 (July 8, 2018). These recommendations are in General Orders 306.02 Stipulations:

1. Officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force.
2. Officers may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of force options.
3. Officers shall perform their duties in a manner that avoids unduly jeopardizing their own safety or the safety of others.⁴¹

In addition, as part of the de-escalation policy “[s]upervisors shall respond to incidents in a timely manner when a potential violent confrontation may exist.”⁴²

We recognize that the Department’s policy is consistent with that of other large urban police departments,⁴³ and reflects the best practices advanced by the National Initiative. However, given the observed failures of officers to de-escalate, additional policy guidance is necessary to ensure that officers employ the required practices. The policy would be significantly strengthened if it included more specific explanation that de-escalation is required in every encounter where possible, and how verbal techniques, positional withdrawal, and the use of delay can help control situations to avoid the need to use force. Techniques such as “tactical pause” or “distance, cover and time” should be explicitly discussed in the policy.⁴⁴ Moreover, while officers must be given discretion to make decisions in real time as to their own safety and the safety of others, making clear that de-escalation is mandatory and expected is critical. Training them how to do this will, over time, make it ingrained and a natural default.

In addition, officers should be given significantly more guidance on when and how to exercise discretion not to engage in an enforcement action. There are occasions when an officer

(C) If not already known by the subject to be detained, arrested, or searched, officers should, if reasonable, make clear their intent to detain, arrest or search the subject. When practicable, officers will identify themselves as a peace officer before using force.

⁴¹ General Order 306.04 (A).

⁴² Id.

⁴³ For example, the Fort Worth policy is nearly word-for-word the policy of the City of Chicago:<http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.pdf?hl=true>. See also, e.g., NATIONAL CONSENSUS POLICY AND DISCUSSION PAPER ON USE OF FORCE. https://www.theiacp.org/sites/default/files/all/n-o/National_Consensus_Policy_On_Use_Of_Force.pdf.

⁴⁴ The de-escalation policy of the Seattle Police Department is an example of the kind of detail that we urge the Fort Worth Police Department to consider adding to its General Orders. <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

may have the authority to take someone into custody, but circumstances dictate that there is little or no public safety benefit to doing so and the safer and better course is to withdraw. This is especially true in the context of minor offenses that do not threaten public safety.⁴⁵ Officers should be mandated to report options and efforts to de-escalate in every use of force encounter. The use of force report form should include a mandatory field for officers to report on de-escalation efforts and whether CIT was used. Supervisors should actively review and assess each encounter and when appropriate refer personnel for corrective action.

Finally, the Review Panel recommends that the policy requiring dispatch of a supervisor to the scene when there is a likelihood of a violent confrontation be strictly enforced. In our review of files, we observed use of force incidents in which it appeared that a single officer was forced to use a higher level of force because they were alone. Additional officers and the experience and judgment of a supervisor may well have made the use of force avoidable or unnecessary and changed the outcome.

b. Accountability systems should include a review of force incidents to determine whether de-escalation was used and whether officers failed to use de-escalation techniques.

While the de-escalation of force is the Department's policy, whether it was used is not consistently part of Internal Affairs' investigations. Internal Affairs only reviews whether force was authorized when it was applied and does not consider whether the conduct of the officer created or failed to avoid the conditions necessitating the use of force. This "final frame" review misses critical information necessary to holding the individual officer accountable to policy, but also to identify needed changes in policy and training.

Whether force was avoidable and whether de-escalation techniques could have been applied should be an explicit part of every Internal Affairs force review. Internal Affairs should determine (1) whether de-escalation was used, (2) whether de-escalation efforts were documented, and (3) whether the incident was reviewed by a supervisor. In interviews of members of Internal Affairs, none could identify a single case in which an officer was found to be in violation of policy for failing to de-escalate. To the extent the issue was ever considered, it was incidental to the inquiry of whether the force used was lawful. A review of whether de-escalation was used is important to determine whether corrective action is necessary and to recognize officers who skillfully use strategies to avoid force. It is important to commend and reward officers for successful outcomes.

⁴⁵ See, for example, the policy of the Saint Paul Minnesota Police Department. <https://www.stpaul.gov/books/40400-tactical-disengagement>.

We recommend that the failure to de-escalate be added to the Disciplinary Guidelines matrix. Currently, “rudeness/discourtesy” and “violation of other general orders or standard operating procedures” are covered by the matrix. While these provisions could be used to address the failure of an officer to apply de-escalation techniques as defined by General Order 303.04, it would be more effective to have a specific reference to that policy provision in the matrix. If de-escalation is the policy of the Department, the failure to have clear consequences for failing to follow the policy sends a message that it may be an aspiration but is not required.

Moreover, it appears that the reviews conducted by Internal Affairs focus exclusively on whether the force was authorized under *Graham v. Connor*, 490 U.S. 386 (1989), which defines the standard under the Fourth Amendment to the United States Constitution, as opposed to a review under the Department’s use of force policies, which takes others factors into account in authorizing force. Whether the use of force was lawful is not the only consideration in the policy or values of the Department or the City. A review of policy to ensure that these values are clearly articulated and that officers have sufficient guidance may be necessary. In our discussions with Fort Worth community members, we repeatedly heard that they expect that officers be held to a higher standard than simply the legality of their actions.

The focus on legality may be driven, in part, by the fact that the portion of the discipline matrix that addresses use of force proscribes discipline only for:

Any use by a police officer of more force than is appropriate under the circumstances could constitute a violation of a person's civil rights and subject that officer and the City to liability and the officer to criminal penalties.⁴⁶

Conduct that violates policy but does not violate the Constitution is not expressly subject to discipline or other corrective action.

⁴⁶ Disciplinary Guidelines at 8. The Matrix provides additional helpful explanatory text, however, it does not make clear that the Internal Affairs review should determine whether there was a policy violation, as opposed to a review exclusively for legality. As written, the question of whether there was a policy violation only applies to the level of discipline, not whether corrective action is appropriate in the first instance:

This violation does not include the allegation of “Rough Handling” and should not be used in conjunction with any other violations listed herein to address a single action or inaction. This violation includes allegations of excessive force. Factors to be considered in determining appropriate discipline for this violation include: 1. Was any force necessary under the circumstances? (yes or no) 2. Has the officer used a particular level of force when, under Departmental policy a lesser degree of force should have been used (yes or no) 3. Are the tactic(s) that were used specifically prohibited by the Department (yes or no) 4. Did serious bodily injury or death result or was there a strong likelihood that either would result from the use of unreasonable force?(yes or no) 5. Would a reasonable police officer, on the scene, under the same circumstances, have taken the same action? (yes or no) *These questions are intended to aid supervisors in determining the appropriate disciplinary option.*

The matrix and the Internal Affairs process should address whether the force was appropriate, within policy, and lawful. A review limited to legality may result in many uses of force that violate policy, are inconsistent with training, or that conflict with the Department's efforts to build trust in the community, going uncorrected.

c. De-escalation principles should be fully integrated into all use of force trainings.

The Review Panel requested all training information and documents on de-escalation. While the de-escalation specific materials appear to provide an adequate program on de-escalation, de-escalation was not fully integrated into the use-of-force curriculum. Strategies to avoid force and to minimize the use of force should be part of every component of training on force and the use of force continuum and it should be emphasized in every aspect of force related training. We were also advised that de-escalation was a part of the curriculum during the scenario-based training that every cadet receives. The Review Panel has not had a chance to review the use of force scenario-based training.

The Review Panel does recommend changes to the Basic Peace Officer Course (BPOC) with respect to use of force and de-escalation training. The panel recognizes this training is largely defined by the Texas Commission on Law Enforcement (TCOLE) and may not be easily modified, but makes these recommendations, nonetheless.

BPOC cadets are provided 51 hours of instruction in legal/use of force judgement: Force Options (29 hours), Mechanics of Arrest (14 hours) and De-Escalation (8 hours). Thus, cadets receive the Force Options 29 hours and then receive the de-escalation training separately as a distinct concept. The "Force Options" instruction is based on a TCOLE 27-page outline that includes no reference to de-escalation (the term "de-escalation" never appears in the outline). On page 20 of the outline there is a discussion of "redirecting someone's behavior using verbal persuasion." But the training is clearly dated and should be updated to include de-escalation. As currently taught, BPOC presents de-escalation as an independent "add-on" block, which gives cadets the impression that de-escalation is a concept separate and apart from the legal justification to use force. A much better approach is to make de-escalation a cornerstone training concept in the cadet's understanding of what Fourth Amendment use of force reasonableness is. The panel recommends that, like General Order 306.00, the training should include de-escalation as an integral part of this basic legal instruction on the use of force.

Next, all references to Texas Penal Codes 9.42 and 9.43, which address the use of deadly force to protect property and to prevent the escape of someone who has committed certain property crimes, should be removed from the "Force Options" outline. The United States Constitution does not permit an officer to use deadly force in all the circumstances included in

these state statutes.⁴⁷ While these statutes may be relevant to officers when investigating uses of force by civilians or officers not within the scope of their employment or under color of law, they should not be part of any law enforcement use of force training.

Finally, the Department should include community members in the development of de-escalation training materials and the delivery of training, especially people from the disability community, people with limited English language proficiency, and others who may respond atypically to officers' questions or commands, increasing the possibility that officers will use force to gain compliance.

d. The Department should implement robust policies for use of force reporting and supervisory review.

According to our interviews and the force files we reviewed, for most incidents of force (those reviewed only by the chain of command, as opposed to by Internal Affairs), the individual against whom force was used is never interviewed, nor are any witnesses. Officers do not provide a first-person account of the basis for the use of force or the amount of force they used. While supervisors generally respond to the scene of the use of force, their documentation of the incident consists of a summary of the incident in Blue Team. We observed that this summary does not document the investigation process, attribute statements to specific officers, or include the perspective of the individual against whom officers used force or any witnesses. The nature of this summary means that any discrepancy among accounts cannot be identified or resolved. Subsequent reviews of the use of force by supervisors higher in the chain of command relied primarily on the Blue Team report, photos of the individuals and officers, and video footage. And while the review of video footage is a critical component of adequate reviews of use of force incidents, sometimes officers did not activate their cameras or only recorded short clips of the interactions.

We observed instances in which officers did not activate his or her camera or in which the footage did not capture the entire incident and, supervisors still did not interview the person against whom officers used force. Even with camera footage, without an account of the incident from the perspective of the individual, it is impossible for supervisors to get a full picture of a use of force incident and whether it was justified. Similarly, a first-person account from each involved officer about the amount of force used and why is necessary for an accurate evaluation of the appropriateness of the use of force. Critically, the supervisors' determination of whether the force used was appropriate or should be referred to Internal Affairs for a complete investigation is based on these inadequate reviews. These incomplete investigations likely fail to uncover force that is unreasonable or against policy and leave the Department blind to the full activities of its officers. The Department should require each officer who uses or observes force

⁴⁷ In *Tennessee vs. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court ruled the use of deadly force by police officers to prevent the escape of an unarmed nighttime burglar was unconstitutional. Texas Penal Codes 9.42 and 9.43 expressly allows the use of deadly force to prevent a subject who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property.

to report the level of resistance encountered and the justification for the use of force. Supervisors should be required to interview the person against whom force was used and witnesses.⁴⁸

e. Policies and training are needed to curtail officers' over-reliance on Tasers and to limit their use against.

Taser is a painful and sometimes dangerous use of force. Moreover, displaying a Taser can escalate a confrontation when verbal interaction might more effectively achieve control of the situation. Fort Worth officers would benefit from additional policy guidance that defines the appropriate circumstances for displaying and or using a Taser in either mode of operation. It is important that policy and training focus on when a Taser should be used and displayed and not just how it is used. In addition, supervisors should routinely review body-worn camera video of incidents where Tasers were drawn and displayed to determine whether it was appropriate under policy.

In addition, the prohibition in General Orders 306.05 D.3.g. on the use of Tasers should be broadened to include people with disabilities, people in mental health crisis, and people with substance use disorders.⁴⁹ As with other high-risk populations, the dangers associated with Tasers for person with disabilities increases significantly.

B. Crisis Intervention

1. The Department does not have an effective program to serve persons in mental health crisis.

One of the largest challenges facing police officers today are interactions with people in mental health crisis. These encounters are frequent and pose threats to the individual and to the officer. Police are, far too often, the first responders when a family or community member calls because a loved one is in crisis. While we have not completed a review of deadly force incidents, at least one involved a person in mental health crises.

The Department currently has a six-person Crisis Intervention Team (CIT) that often operates with fewer positions due to promotions or vacancies. The members of the team generally work from nine to five on weekdays, although they are available to assist officers on off hours by telephone. Typically, crisis intervention officers are not called to the scene

⁴⁸ This is a common practice. See, e.g., consent decree between Newark, New Jersey and the Department of Justice at pages 28 et.seq..<https://www.justice.gov/crt/file/868131/download>.

⁴⁹ Police. Executive Research Forum & Office of Community Oriented Policing Services., Electronic Control Weapon Guidelines (2011), https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf.

involving a person in crisis. Instead, they intervene following the interaction between the person and the responding officer.

All officers receive some training on crisis intervention and several hundred officers have been certified as Mental Health Peace Officers through TCOLE after receiving 40 hours of training. The Department maintains a record of the officers who are designated as Mental Health Peace Officers and the certification. Other than assignment to the HOPE Unit, certification plays no role in assignments or duties.

Working with people in crisis is difficult and unpredictable. Crisis intervention programs have been effective in other communities to reduce the need for force and improve outcomes. Moreover, force incidents involving persons with mental illness or other disabilities are of great concern to the community and reducing the use of force in these circumstances must be a high priority.

2. Recommendations regarding crisis intervention model with input from the community.

The Fort Worth Police Department's program for responding to persons in mental health crisis is wholly inadequate. There are strong models of crisis intervention that have been implemented by departments around the country. The HOPE Unit is one such promising model. It incorporates partnerships with healthcare professionals and liaisons that ride with an officer daily to address service needs in underserved populations. The new Unit shows promise, but needs to be expanded, add additional cross-trained staff, and hours expanded for weekends, and nights.

The Review Panel urges the City and the Department to immediately engage in a process to identify and implement an effective model for Fort Worth. Any crisis intervention program adopted by the City of Fort Worth should include the following elements:

- A 911 system to send a mental health professional, rather than a police officer, to calls that involve persons in crisis; ideally, independent service providers would be charged with handling these calls and providing services to the individuals involved.
- A sufficient number of crisis intervention officers should be trained to ensure there are several officers on duty who are CIT designated for every district and every shift; even where CIT officers respond, they should have co-responders who are social workers or mental health professionals to apply a public health approach to the situation. This co-responder should be the primary person in charge.

- Clear policies and training are necessary to ensure all officers and dispatch know when to send a CIT trained officer to a scene or to call a CIT officer for assistance.
- All non-CIT officers should receive training on an annual basis on basic skills for working with people in crisis; every officer will invariably encounter a person in crisis and should have the basic skills to stabilize a situation until a mental health or other professional arrives.
- Not all officers have the temperament to work with people in crisis. CIT officers should be volunteers and selected based on their skills and abilities to be effective. To encourage officers to undertake the additional training and responsibility, officers who are selected should receive additional compensation.
- Mental health consumers and providers should be an integral part of the development of the program and part of the training of CIT officers.
- The Department should track officers who have received the Mental Health Police Officer training and take that certification into account in making duty assignments.
- All incidents in which force is used against a person in mental health crisis should be reviewed after the fact to determine whether the use of force could have been avoided, including to identify training or policy deficiencies that contributed to the need to use force.

C. Internal Affairs

Internal Affairs is an essential element of ensuring individual and agency accountability, ensuring compliance with department policy, promoting public confidence, and protecting the due process and procedural justice interests of officers.

The internal affairs function in the Fort Worth Police Department is spread across a broad range of entities and individuals. While we commend the Department for its recent efforts to monitor and assess uses of force and its reinvigoration of the Use of Force Review Board and the Critical Incident Review Board, these efforts are not well integrated or coordinated. The diffusion of these functions can reduce accountability, makes it more difficult to ensure consistency, and interferes with the ability of the agency to use the internal affairs, use of force,

and critical incident review processes to identify needed changes in policy, training, tactics, supervision, or hiring practices.

The following individuals and entities have responsibility for Internal Affairs or accountability:

Internal Affairs Section: The detectives in the Internal Affairs Section are responsible for investigating allegations of serious officer misconduct, including excessive use of force, dishonesty, and racial or sexual discrimination or harassment. Regarding officer use of force, Internal Affairs only investigates incidents for which there was an external complaint, incidents that are flagged by the chain of command as possibly excessive, and critical police incidents. As noted above, the chain of command does not conduct a full investigation of uses of force before it makes its determination of excessive force. As a result, most incidents of force are never fully investigated by the Department. For incidents it does investigate, Internal Affairs conducts the administrative investigation only. The investigation of any potential criminal charges is investigated by the Special Investigations Unit (SIU), except for critical police incidents, which are investigated by the Major Case Unit. The Internal Affairs investigation is limited to findings of facts. The Section does not recommend discipline or make determinations as to whether particular actions violated policy or the law. The results of the investigation are sent to the officer's chain of command to determine whether the actions violated policy and, if so, what corrective action or discipline shall be applied.⁵⁰

Major Case: The Major Case Unit conducts the criminal investigation of any officer use of force that falls within the definition of "Critical Police Incident." Although detectives from Internal Affairs also respond to the scene of the use of force, Major Case leads and conducts the investigation. At the conclusion of its investigation, Major Case provides its investigation (minus the interview with the involved officer) to Internal Affairs for it to review as part of its administrative investigation of the use of force. Internal Affairs typically does not begin the administrative investigation until Major Case has completed its criminal investigation.

Chain of Command: The findings of Internal Affairs are reviewed by the officer's chain of command beginning with her or his immediate supervisor. Each level, up to and including the Chief in appropriate circumstances, indicates concurrence or rejection with the findings and recommends corrective action or discipline. If an unpaid day off or more is imposed, Internal Affairs is notified for the purposes of completing the paperwork for human resources. Otherwise, Internal Affairs is not advised of the outcome of the case, including whether the chain of command agreed with or rejected the findings of Internal Affairs. There is no data collection or

⁵⁰ We were surprised to learn that Internal Affairs has a relatively small caseload. We understand that the Section handles approximately 60 investigations each year. Thirty are purely administrative and 30 are criminal. The Section also screens more than 200 complaints from members of the community. Most are not pursued or are sent to the chain of command to resolve because the Internal Affairs Detective determined that the facts as alleged did not rise to the level of seriousness necessary to conduct an investigation. We have not completed our assessment of the reasons why the number of investigations is much lower than one would expect for an agency of this size.

tracking of outcomes to identify whether Internal Affairs and the chain of command are viewing cases similarly, whether discipline is being applied consistently, or whether potential patterns of policy violations are localized or widespread. The chain of command also reviews each use of force of officers within the chain to determine whether the force was within policy. If a supervisor determines that it was not within policy, Internal Affairs will investigate the use of force. As noted above, this chain of command determination is based on limited information. Other than for critical police incidents, there is no automatic Internal Affairs investigation or review of any category of force.

Special Investigation Unit (SIU): If an officer is investigated for a potential criminal prosecution, the investigation is conducted by the SIU. Internal Affairs can conduct a parallel administrative investigation, but it typically waits until the SIU completes its work to begin interviews. Internal Affairs must complete its investigation within 180 days, but if the SIU investigation will delay the administrative investigation past that deadline, the time can be extended. SIU shares all its investigative files with Internal Affairs with the exception of the interview of the subject officer.

Use of Force Coordinator: The Department recently created the position of Use of Force Coordinator to monitor patterns of force used by officers and make recommendations concerning changes to policy and training. The Use of Force Coordinator issues annual reports, chairs the Use of Force Review Board and sits on the Critical Incident Review Board. In addition, the Use of Force Coordinator reviews most or all use of force investigations conducted by Internal Affairs detectives and, consults with the Training Division. The Coordinator is considered the in-house expert on force.

Critical Incident Review Board: The Critical Incident Review Board meets to discuss the most serious incidents for policy, training, supervision, and tactical recommendations. The Board is not involved in corrective action or discipline. The Board was on hiatus for several years and recently began meeting again. Its membership includes most major divisions, although, significantly, the Training Division did not participate in the last Board meeting, despite that it was defined as an integral part of the Board.

Use of Force Review Board: The Use of Force review Board reviews force incidents identified by the Use of Force Coordinator for policy, training, supervision, and tactical recommendations. The Board is relatively new and has started meeting within the last year.

1. Recommendations Regarding Internal Affairs

a. Strengthen departmental accountability mechanisms.

The Department has in place many elements of strong and effective Internal Affairs and accountability systems. The Department has implemented good automated data collection systems and leadership throughout the Department are engaged in accountability functions. A

few policy changes and increased coordination would, however, significantly improve the ability of the Department to ensure that officers are acting within policy and that systemic concerns are identified and appropriately and addressed in a timely manner.

There is no single individual or entity that coordinates the Department's accountability functions. Data collection is inconsistent, information sharing informal, and there are no structures to ensure that policy recommendations are considered or implemented. The Review Panel recommends centralized and coordinated leadership of these functions under a single Deputy Chief. The Deputy Chief would be responsible to ensure the effectiveness and consistency of discipline throughout the Department and that needed changes to policy, training, or supervision that are identified as individual instances of conduct are reviewed and implemented.

The outcome of all cases is entered into the data-base IAPRO. Although this information is available to the Department, no individual is responsible analyze the information to ensure effectiveness and consistency. The Department should establish a mechanism for reporting and analysis of the outcome of Internal Affairs cases and the corrective action or discipline imposed by the chain of command. It should be reviewed periodically by members of the command staff to determine alignment between Internal Affairs and the chain of command, consistency, proportionality of corrective action or discipline, and other patterns and greater authority over the discipline process given to the Assistant Chief responsible for personnel actions.

In addition, the Internal Affairs Division should have greater independence within the Department. This includes reduced dependence on the chain of command to identify incidents for review and increased capacity to initiate investigations. Moreover, in addition to referrals from supervisors, Internal Affairs should review all intermediate uses of force incidents, including Taser.

Finally, SWAT officers are frequently involved in use of force incidents and their force use is highly visible to the community. SWAT's absence from the Use of Force Review Board diminishes the Board's effectiveness and the overall accountability structure of the Department.

b. Require the Special Investigation Unit to share the interviews of officers under investigation with Internal Affairs.

When an officer is being investigated for potential criminal conduct, the criminal and administrative investigations are appropriately kept separate. Internal Affairs conducts the administrative investigation and the SIU or Major Case Unit investigates the potential crime. To ensure that the administrative investigation does not contaminate the work of the SIU/Major Case Unit or interfere with the constitutional rights of the officer under investigation, none of the information collected by Internal Affairs is shared with SIU or Major Case Unit. However, SIU/Major Case Unit, upon completion of its investigation, will provide the entire record of its

investigation to Internal Affairs with the exception of any statement provided by the suspect officer.

As a result, if the officer investigated provides a different description of the incident or explanation of her or his conduct to Internal Affairs and to SIU/Major Case Unit, those statements will never be compared and the potential false statement never discovered. This creates several potential problems:

First, a review by Internal Affairs of all prior statements by the officer before they are interviewed will make the interview more effective and more likely to get to the truth. Under no other circumstances would a police investigator not use prior statements as part of an interrogation.

Second, the provision of a false statement is a serious policy violation and calls into question the officer's suitability. This structure functions to conceal circumstances where an officer might have lied.

Third, if the Department has information that an officer has been dishonest, it has an obligation to disclose that information to criminal defendants in cases in which the officer is a witness. See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972) (dishonesty of officer must be disclosed). By keeping the statements apart, the City may be failing to meet its *Brady* obligations.

The City will need to work with the officer's union to address the concerns over the investigative processes in the Meet and Confer Labor Agreement.⁵¹

c. Reduce the over-reliance on Use of Force Coordinator's assessment of use of force incidents.

We recognize the Department's renewed focus on the use of force by its officers. The Department recently created the position of Use of Force Coordinator and charged the Coordinator to monitor force used by officers, identify deficiencies in policy, and coordinate the Department's response. In addition, the Use of Force Coordinator collects and analyzes data, which is provided to Department leadership to facilitate effective planning and policymaking. The Coordinator also engages in community outreach and other public facing activities, which

⁵¹ Personnel Rules and Regulations for Commissioned Police Officers, <https://fortworthtexas.gov/hr/prt/prt-police.pdf>; Meet And Confer Labor Agreement Between City Of Fort Worth, Texas And Fort Worth Police Officers Association, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKFwjlnvW1rP_pAhVsaDABHRDLDeoQFjAAegQIAxAB&url=https%3A%2F%2Fapps.fortworthtexas.gov%2Fcouncil_packet%2Frender_file.asp%3Ffilename%3D24652%2FMCA%2B2017%252D2020%2BChanges%2BMade%2B2%2Bwith%2BSalary%2BSchedule%252Epdf&usg=AOvVaw3aOj2HW2sNtx0anSAv-9li.

are important to ensure that the public understands the Departments policies and practices. Significantly, the position was given the rank of lieutenant to ensure sufficient authority to carry out its functions.

While not part of the Internal Affairs Section, the Use of Force Coordinator plays a very large role in the investigation of allegations of the excessive use of force. We were advised that the Use of Force Coordinator is asked to provide an opinion on most or all use of force cases. Internal Affairs detectives give the Use of Force Coordinator's opinion great deference and follow the Coordinator's recommendation in every case, even if prior to their consultation, the detective had a concern about the use of force. Every Internal Affairs employee we spoke with, including the Lieutenant who oversees the unit, told us that they will almost always defer to the Use of Force Coordinator where there is any question of the propriety of the use of force. Based on the Review Panel's interviews, we learned that the focus of the Use of Force Coordinator's review was on the legality of the force, not on its compliance with policy.

This amount of influence by a single Lieutenant, especially one outside the Internal Affairs Section, is inappropriate and an impediment to accountability. The decision whether a policy violation has occurred should rest with the Internal Affairs detectives and their supervisors. Complete deference to a single in-house expert discourages dialogue and risks undermining the kind of critical inquiry that a fact-finding process can bring. This is not a comment on the performance of the current coordinator, however, the dialogue and interactions of a range of Department leadership on these issues is an important part of any use of force review. As the United States Department of Justice noted in guidance:

A serious use of force rigorously and candidly examined as a confidential self-critical analysis can be viewed as a research project with the aim of determining agency best practices throughout its systems, policies, and personnel by studying successes and failures in their real-world implementation. A serious use of force is a real-world test not only of that agency's organizational rules and systems, but can be a test of the theories and principles underlying them. There are few opportunities like officers' serious uses of force where so much can be learned from the exhaustive investigations typically conducted and expected.⁵²

⁵² United States Department of Justice, Community Oriented Policing Service, Standards and Guidelines for Internal Affairs: Recommendation from a Community of Practice 41, <https://static1.squarespace.com/static/5498b74ce4b01fe317ef2575/t/54affb83e4b066a5a28ad527/1420819331714/cops-p164-pub.pdf>

d. Provide specialized training for Internal Affairs detectives.

Detectives receive on the job training when they first join internal affairs. They are assigned to shadow another detective until they personally believe that they can undertake their duties and responsibilities on their own. We were told that this on-the-job training lasts between days and months depending on the officer. In addition, when available, the Department sends internal affairs detectives to training offered by an external provider. We were advised by internal affairs detectives that this training is optional.

The Department seeks experienced detectives for Internal Affairs and the detectives we met had significant and relevant investigative experience prior to joining the Section. However, Internal Affairs has, in many ways, a unique function in any department and specialized training should be required.

The lack of training was apparent in our interviews with Internal Affairs detectives. Two examples are illustrative. First, we asked two detectives what standard of review they apply to determine whether there has been a policy violation. One officer told us that they use a preponderance of the evidence standard. The other told us that they apply a reasonable doubt standard.

Additionally, Internal Affairs detectives reported that they have received no specialized training on laws effecting civil rights or discrimination in the workplace. This raises concerns because Internal Affairs is principally responsible for the investigation claims of race or gender discrimination in the workplace or by police in the course of their work. These are complex and specialized areas of the law that officers would not ordinarily be expected to know absent targeted training.

e. Eliminate the use of contact numbers or “CON” and require that all external complaints be investigated.

When a person contacts Internal Affairs, the matter is screened for whether the allegations are serious enough to warrant an investigation by an Internal Affairs detective. This determination is at the reviewer’s discretion; they do not conduct any investigation beyond a cursory review of the complaint. Less serious allegations are given a contact or “con” number and referred to the officer’s supervisor to handle. No further tracking of these complaints is done.

All external complaints from community members should receive some investigation and the complaint, investigation, and outcome should be tracked and made public. This is essential to monitor whether there is a pattern of complaints related to an individual officer that would suggest some form of early intervention warranted. Tracking the complaints could also be used to identify whether there is a pattern of conduct across the Department that should be addressed by leadership.

f. End the over-use of *Garrity* warnings.

Internal Affairs Section detectives issue a *Garrity*⁵³ warning to every officer interviewed, whether the officer is a subject or witness, and whether there is a potential for criminal prosecution or that potential is nonexistent or remote. This over-use of *Garrity* warnings is unnecessary and may interfere with the investigative process. We recommend that the Department limit its *Garrity* advisements to those cases in which a criminal prosecution is contemplated and only to the subject officer and never to witnesses.

Law enforcement officers do not lose their constitutional rights when they join the force, including the right against self-incrimination and the right to due process. Given the importance of the interests at stake, a law enforcement agency cannot put an officer “between a rock and a whirlpool,” *id.* at 498., by forcing the officer to choose whether to make an incriminating statement or be terminated from his or her job for invoking the Fifth Amendment. *United States v. Cook*, 526 F. Supp. 2d 1, 6-7 (D.D.C. 2007). Nor can an officer be terminated solely for failing to waive her or his right against self-incrimination. *Gardner v. Broderick*, 329 U.S. 273 (1968).

To accommodate these important interests in the context of a law enforcement agency’s interest in public safety and in officer accountability, the United States Supreme Court fashioned a delicately balanced regime. The *Garrity* Court held that an incriminating statement made by a police officer is inadmissible against the officer in a criminal trial if the officer made the statement under the threat that the officer would lose her or his job for invoking the constitutional right to remain silent. The Court concluded that, under those narrow circumstances, the statement would be considered coerced because the threat of job loss for failing to give a statement deprived the officer of any meaningful opportunity to assert her or his Fifth Amendment rights against self-incrimination. *Id.* at 499-500.

Not every required statement made by an officer, however, is protected by *Garrity*. A critical component of the job of a police officer is to observe, report, and testify. Requiring officers to comply with these essential job functions does not, except in very narrow circumstances, create a constitutional concern.

Critical to the *Garrity* analysis is the threat of criminal prosecution: “public employees, subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to waive their constitutional rights.” *Uniform Sanitation Men Ass’n v. Commissioner of Sanitation*, 392 U.S. 280, 285 (1968); *see also, Lefkowitz v. Turley*, 414 U.S. 70, 78-79 (1973). Officers may be compelled to provide a statement if it will not to be used in a subsequent criminal proceeding. *Gardner* at 275. The Fifth Amendment privilege should only apply where “the claimant is

⁵³ *Garrity v. New Jersey*, 385 U.S. 49 (1967).

confronted by substantial and ‘real,’ and not merely trifling or imaginary, hazards of incrimination.” *Marchetti v. United States*, 390 U.S. 39, 53 (1968); *see also Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*. 542 U.S. 177, 190 (2004) (defendant may invoke the Fifth Amendment privilege where there is “reasonable cause to apprehend danger from a direct answer”).

Witnesses need never be given a *Garrity* warning. The duty to provide a statement about what they observed in another officer’s conduct is a routine part of their job. *United States v. Camacho*, 739 F. Supp. 1504, 1516 (S.D. Fla. 1990) (declining to find that “the mere existence of a departmental policy of disciplining those officers who refuse to give statements always operates as a matter of law to render officer statements involuntary”); *United States v. Tsou*, 1993 WL 14872, at *4-5 (5th Cir. Jan. 18, 1993) (unpublished) (holding that an FBI agent’s statement was not compelled, despite an FBI policy requiring agents to cooperate with any administrative investigation).

D. Community Engagement and Civilian Oversight

1. Office of Police Monitor and Civilian Oversight Board

The City recently established the Office of the Independent Police Monitor and is in the process of determining the most appropriate Civilian Oversight Model to implement. The Police Monitor and Civilian Oversight were key recommendations of the Fort Worth Task Force on Race and Culture.

For these entities to be effective and to give the City the kind of benefit it seeks, it is important that these bodies have credibility within the Department, among elected officials, and within the community. The City should be commended for its efforts to be transparent in the selection process of the Monitor. The City is continuing to define the role of the Monitor and its authority..

Civilian oversight will be a critical part of addressing the issues in the Department and to strengthening its relationship with certain communities. The following are key threshold questions that the City needs to address:

a. The Police Monitor’s *authority* should be clearly set out.

The authority of the Police Monitor is unclear. Can they compel the production of records and witnesses? Can they give *Garrity* warnings? Do they issue public reports, or does the work of the office remain internal to the Department or City officials? Can they talk to the press and under what circumstances? Here again, the City should engage community members to structure the authority and responsibilities of the monitor.

b. Confidentiality and other concerns should be clearly addressed.

The Police Monitor will have access to a great deal of confidential information about officers and complainants. In addition, they may learn about police procedures or practices that the Department legitimately might want to keep secret (e.g., certain investigative procedures, the identity of confidential informants, etc.) There needs to be clarity about how this information is handled in order to protect privacy interests but also to have clarity as to what may be made public.

c. Independence should be assured.

The job description clearly indicates that the Police Monitor will be independent, but there is nothing that describes how independence will be assured. It is important that the Police Monitor have both actual independence and the appearance of independence. To assure that the public understands that the Monitor is acting without political interference, guard rails on the ability of the Assistant City Manager, the Chief or others to interfere with the work of the Police Monitor or to influence the results of that work should be explicitly established and made known to the public. Independence can take many forms and will be guided, to some degree, but the decisions the City makes regarding the scope and authority of the Monitor.⁵⁴

d. The Police Monitor should serve a term or be removed only for cause.

One of the best ways to ensure independence is to provide the Police Monitor with job security. Other jurisdictions have addressed the issue by giving Monitor's a specific term – for example five years – or severely limiting the circumstances under which a Police Monitor can be terminated or replaced.

e. The Budget for the Police Monitor Should be Sufficient for Its Function needs an adequate budget.

The budget for the Police Monitor should be adequate for the tasks assigned. Once the duties and responsibilities are clarified, the City should review the funds allocated to the office. Based on our interviews with the Police Monitor, the Review Panel understands that the budget for the Office is limited to the salary for the Police Monitor, the Assistant Monitor and a person to provide administrative support. Our experience with reviews of independent police monitors in other jurisdiction suggests that additional staff may be required to meet its mandate. To serve the interests of the community, the City should evaluate Department spending to identify areas from which money can be reallocated to fund the Police Monitor's office.

⁵⁴ Examples can be found at the web page of the National Association for Civilian Oversight of Law Enforcement offers examples. https://www.nacole.org/police_oversight_by_jurisdiction_usa.

E. Community Engagement

The Department lacks a meaningful plan for community engagement. As discussed at the outset, in 2015, Fort Worth was selected to participate in the National Initiative for Building Community Trust and Justice.⁵⁵ The United States Department of Justice funded the project. Through the National Initiative, the Department engaged in extensive community outreach, convened internal focus groups, and developed the Office of Procedural Justice. After the project ended, the Department disbanded the Procedural Justice Unit that was developed during that time and the staff were reassigned. Currently, one officer within the academy is solely responsible for training of the Procedural Justice curriculum.

Community engagement is a two-way street. The Department should use engagement strategies to provide residents of the City with information about its policies and practices. But it is also essential for the Department to learn from individuals and leaders throughout the City about their experiences with police officers, their values for their communities and for the Department, and effective approaches to co-producing public safety. Community members should be engaged in the development of policy – especially critical policies like use of force and de-escalation – and engaged in the development and implementation of training. We are aware of larger community meetings that the Department had held at the beginning of the year. We recommend that the Department consider location and whether it is accessible by public transport; whether it is physically accessible for people with disabilities; going to places in the diverse communities of Fort Worth; and holding meetings at different times and days of the week to accommodate for school, work, or caregiving obligations. We would also recommend that officers and leaders attend community meetings out of uniform, in plain clothes. The meetings should be an effort to connect directly with communities the Department serves. For many of their members, uniforms can be symbols of negative experiences they may have had with law enforcement.

In 2016, the Department embarked on an effort to create a comprehensive strategic plan⁵⁶ that projected and planned community engagement and implementation of other programs to promote diversity and inclusion and other strategic initiatives for community outreach and internal improvements. Many of those initiatives as written reflect concepts the Review Panel would encourage, and as the review continues, those initiatives will be validated and assessed to determine if any of the objectives were completed and what, if any of those are still viable from that strategic plan. Aside from the existence of the comprehensive plan, it appears that community engagement is now conducted largely through Neighborhood Police Officers

⁵⁵ Fort Worth Police Department, National Initiative, <https://police.fortworthtexas.gov/About/national-initiative>.

⁵⁶ Fort Worth Police Department Five Year Strategic Plan FY17 – FY21.

(NPOs). NPOs are assigned to each division and serve as the liaison between the community and Department. There is no Department-wide policy on what is expected from NPOs; no uniform training on how they are supposed to operate; and no centralized tracking of NPO activities or accomplishments. Each engages the community in their own unique ways.

During interviews, the Review Panel observed that some NPOs are skilled and thoughtful in their approach to community engagement and take the role seriously. Their efforts to community engagement can be nuanced and flexible. Others seem to lack strategy or focus and have inadequate guidance.

Moreover, the NPO program is not well integrated with the rest of the force. The learning from the community and relationships with community members and leaders stay with the NPO and do not appear to influence command decisions or individual officer conduct. This disconnect is a lost opportunity to build trust and legitimacy.

Finally, concerns were raised to the Review Panel about the criteria for the selection of NPOs. Focus should be given to identify officers with the skills and temperament for the position as well as diversity.

The Review Panel recommends that the Department engage in an assessment of the NPO program to ensure that it has clear goals and objectives, that NPOs have appropriate guidance and training, and that the Department is capturing data to measure its success. The assessment should include a review of:

- whether the Department has an adequate number of NPOs;
- training needs;
- selection process and the diversity of the NPOs and alignment with the communities they serve;
- guidance to create uniformity in purpose, roles, and output measures for successful community engagement; and
- enhanced work within the community to include outreach to schools and youth.

Furthermore, the Department should consider adopting a policing philosophy that commits every district officer and detective to co-produce public safety, community engagement, and to know the unique characteristics of their districts.

F. Recruitment and Training

Recruiting and hiring are essential to sustaining a force that can effectively deliver police services to the community of Fort Worth. Not everyone is suitable for the very difficult job of policing and departments across the country are facing challenges in hiring and retaining officers. As was noted by the 21st Century Expert Review Panel on Policing:

To build a police force capable of dealing with the complexity of the 21st century, it is imperative that agencies place value on both educational achievements and socialization skills when making hiring decisions. Hiring officers who reflect the community they serve is important not only to external relations, but also to increasing understanding within the agency.⁵⁷

While the City has invested heavily in its training program and created a modern and new training facility, its investment in recruitment is lagging. There is only one officer assigned full time to the recruitment function. Given the importance and complexity of the project, additional resources will be critical.

1. Improve diversity in the Department.

The need for greater diversity in the Fort Worth Police Department has been a significant community concern.⁵⁸ Of the more than 1700 members of the Department, 60 percent are white, 23 percent Latinx, and 12 percent African American compared to a city population that is 40 percent white, 35 percent Latinx and 20 percent African American.⁵⁹ In addition, officers of color are under-represented in specialized units and command positions. The Review Panel recognizes that this issue is a priority for the City and the Department, however, more resources need to be invested in effective recruitment. The concern for diversity in the Department is not a new phenomenon. There previously was an investigation conducted because of several allegations of race-based harassment that impacted promotions and created a hostile work environment.⁶⁰ That report made several findings to mitigate and minimize the impact of race-based harassment. We have not completed our assessment to determine if all the

⁵⁷ Final Report of The President's Task Force on 21st Century Policing (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁵⁸ See, e.g., Fort Worth Task Force on Race and Culture.

⁵⁹ Fort Worth Police Department, FWPD Demographics/Diversity Report, <https://police.fortworthtexas.gov/Public/fwpd-demographics-diversity-report>.

⁶⁰ Coleman and Associates Investigative Report (City of Fort Worth Police Department: Report of Findings & Recommendations, Complaint Investigations) conducted in September 2014.

recommendations were implemented and sustained. In addition, we have not completed our review of equity in promotion and discipline practices and may have further recommendations in our final report.

2. Correct deficiencies in background checks/screening/hiring.

Background screening is an essential part of the hiring process and not only to identify derogatory or disqualifying information. “Police agencies need to use the hiring process to do more than simply disqualify the negative. Agencies need to use that process to proactively identify and hire the positive—the candidates who possess the values, character traits, and capabilities that agencies are looking for in their employees.”⁶¹

The Review Panel’s investigation has revealed several concerns with the Department’s recruiting process:

First, the recruitment process needs to be expanded and there is no overall strategy for recruitment. There has been targeted recruitment in the past. However, there are differing opinions on what approach the Department should take: state-wide or national recruiting and which schools should be approached for partnerships and creating a pipeline. The Department mentioned that Latinx recruitment had increased but noted a deficit of African American recruits in the last few classes and historically.

Second, deficiencies in the background checking process were reported in several interviews. Multiple parties discussed how the entire process had been neglected for at least two prior classes. The new commander over the division undertook a review of the background files of the previous two recruit classes and found several candidates who ultimately were hired would have not been eligible for hire if properly checked. The Commander has made significant changes in all the areas under his command to include personnel changes and process changes to ensure that the immediate areas are addressed particularly the area of background checks.

Third, despite a large limited English proficient, Spanish-speaking community, there is no mechanism to assign Spanish-speaking officers to the beats in which they are most likely to use their language skills. Moreover, the Department should have the capability to serve all language communities in Fort Worth, including the deaf community. This includes the legally required interpreter and translation services necessary to adequately communicate with all of residents. All new officers receive training in working with deaf and hard of hearing residents and 19 hours of basic communication in Spanish.

⁶¹ Hiring for the 21st Century Law Enforcement Officer Challenges, Opportunities, and Strategies for Success, available at <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>

Finally, it is critical that the Department focus on the range of diversity that will make the Department reflect the community it serves. In addition to race and ethnicity, special efforts should be made to recruit women, LGBTQ persons, and persons of all faiths and backgrounds.

G. Implement an Early Intervention System.

Although the Department was working to implement an early intervention system (EIS) in 2018,⁶² it has yet to adopt one. The Department has represented that it is in the process of developing an early intervention system. An early intervention system is essential to identify conduct by officers that may be an indicator of a training deficiency, a pattern of uncorrected misconduct, or a personal issue that might impact the ability of the officer to perform her or his duties.⁶³ The identification of risky and problematic trends in officer behavior before a serious incident occurs can prevent harm to community members, avoid erosion of community trust, and protect the Department from liability. An early intervention system is a tool used to track officer activities, including uses of force, external community member complaints, stops, and arrests, domestic violence allegations, missed court appearances and other conduct. While the system is not designed to impose discipline, it can often identify training needs or the need for other interventions, including to promote officer wellness.

The implementation of the early intervention system should be amongst the Department's highest priorities.

V. Conclusion

The Fort Worth Police Department's practices and policies have been under public scrutiny for several years because of highly visible critical incidents. This scrutiny heightened after the death of Ms. Jefferson and has again increased as the nation's attention turns to equity public safety and policing. The recommendations in the report are designed to help the Department take steps that will increase confidence and legitimacy within the community. While critical, many of the recommendations are first steps in a long process of building trust, improving internal accountability, and ensuring that police services are delivered in a manner that reflects the community's values.

Increasing trust and accountability will improve the ability of Fort Worth police to work with residents to produce public safety, will reduce the use of force and will make the job of

⁶² Center for Policing Equity, National Justice Database, Policy Review 9 (July 8, 2018).

⁶³ Best Practices in Early Intervention Systems, available at <https://www.policefoundation.org/publication/best-practices-in-early-intervention-system-implementation-and-use-in-law-enforcement-agencies/>.

police officers safer and more satisfying. Fort Worth is not alone in needing to examine its practices and make changes. It joins police agencies large and small throughout the country. Most importantly, the City must engage its diverse communities throughout this entire process; they must be given their rightful seat at the table when making policy decisions and developing a plan for change going forward.

VI. Conduct of the Investigation

The Review Panel engaged in document review, interviews with Department officials and community members. The agendas of our site visits, a list of the documents requested and received, and a list of community engagements are attached.