



# **The Fort Worth Police Department Expert Review Report**

**Final Report: June 20, 2022**  
**Released: September 6, 2022**

## EXPERT PANEL LEADS

Dr. Alex del Carmen  
Dr. Theron Bowman

## EXPERT PANEL MEMBERS

Lynda Garcia  
Emily Gunston  
Thomas Petrowski  
Rashida Ogletree-George  
Jonathan M. Smith  
Marcia Thompson  
Dr. Rita J. Villareal-Watkins



**Fort Worth, Texas Police Department  
Expert Review Panel  
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**I. Executive Summary**

Law enforcement agencies across the country are facing a crisis regarding the use of force, accountability, and legitimacy in all of a jurisdiction's communities. The Fort Worth Police Department (Department) is facing a series of challenges aligning its practices of policing with its policies, procedures, and expressed values. Over the last decade, the Department has both invested in infrastructure and taken steps to increase its legitimacy in all Fort Worth communities, but the Expert Review Panel (Review Panel or Panel) observed that in many instances these steps are in form only and do not influence the behavior of officers on the street. The concerns identified in this report, though not unique, are serious and will require significant attention by the Department's leadership and the City. There is important learning from the reforms being undertaken by other agencies for Fort Worth as it continues its efforts to operate according to its stated values and policies.

The Department has many characteristics of a modern, professional police department. The leadership of the Department revised its policies and procedures in an effort to conform to nationally recognized best practices. In place are the basic structures, accountability committees, and review processes that one would expect in a department of its size. It has built a new academy and converted its training curriculum away from a military style boot camp to a scenario and classroom-based academic setting. Investments in technology have given managers the tools necessary to effectively and efficiently hold officers accountable to policy and law, as well as to identify and address gaps in policy, training, supervision, or widespread practices.

Both the Department's and the City's leadership have taken steps to create legitimacy in all of Fort Worth's communities. The Department publishes most of its policies online and has taken important steps to provide the public with more information on its activities. Two years ago, the City created the Office of the Police Oversight Monitor to enhance transparency and to serve as a conduit for the voices of the many communities that make up Fort Worth to be heard in the development of policies and practices.

However, the actual experience of some members of the community, especially people of color and those in low-income neighborhoods, is very different. Daily encounters are far too often characterized by a "command and control" approach to policing that leads to avoidable uses of force and creates tension with residents who encounter police officers. The failure to use effective de-escalation techniques continues to be a significant issue that has increased mistrust. Accountability for aggressive police tactics is frequently anemic or ineffective and can place form over substance, missing both individual and systemic problems. Compounding the issue, the Panel heard reports from supervisors in the Department that middle managers were discouraged from raising issues unless there had been a complaint or a public outcry.

The following is a summary of the Panel's conclusions and recommendations:

***Need for Cultural Change in the Department:*** Over the course of the review, one of the most significant conclusions is the divergence between the policies and expressed values of the Department and the conduct of officers in the field when performing their duties. Public safety requires a partnership between law enforcement, members of the community, and other public institutions. For low-income communities and communities of color, feeling safe from law enforcement is as essential to their public safety as the arrest and prosecution of persons who commit crimes. Communities that experience over policing and, at the same time, feel underserved, will continue to view police as much a part of the problem as the solution to crime.

This is not the first time that the issue of trust and legitimacy has been a concern to the City and that it has undertaken steps to identify and address issues. In 2014, the Department participated in the National Initiative for Building Community Trust and Justice.<sup>1</sup> In 2016, the Department created an internal Procedural Justice Initiative. 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. The Task Force completed its work and issued a final report on December 4, 2018.<sup>2</sup> Each of these efforts made recommendations and pursued initiatives to address community mistrust.

The Review Panel has concluded that the disconnect between policy and practice is driven, in large part, by mixed messages from Department leadership throughout the investigation, ineffective accountability systems, and a culture resistant to change. Good policy and training is not followed up with robust accountability. Officer conduct, including cursing, abusive language, the failure to de-escalate, unnecessary shows of force, and tactical mistakes that create dangers to the officer and the community, are at times not rebuffed by the chain of command or not investigated by Internal Affairs.

Addressing the culture of the Department should be a top priority for the City and the Department. It will take sustained effort over time to align behavior with policy and some necessary change may well receive resistance throughout the Department.

***Force Avoidance and De-Escalation.*** The policies of the Fort Worth Police Department require police officers to “use de-escalation techniques consistent with department training

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<sup>1</sup> National Initiative for Building Community Trust and Justice, <https://trustandjustice.org/pilot-sites/info/fort-worth-texas>.

<sup>2</sup> Fort Worth Task Force on Race and Culture (December 4, 2018), [https://fortworthgov.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=3103&meta\\_id=354950](https://fortworthgov.granicus.com/MetaViewer.php?view_id=2&clip_id=3103&meta_id=354950).

whenever possible and appropriate before resorting to force and to reduce the need for force.”<sup>3</sup> The policy requires officers to use “advisements, warnings, verbal persuasion, decision-making models pursuant to training, demonstrate empathy 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.”<sup>4</sup> Elsewhere in the General Orders, officers are instructed that “[u]nder no circumstances will the force used by an officer be greater than necessary . . . or longer than necessary.”<sup>5</sup> Importantly, in recent amendments to the General Orders, the Department made clear that “officers have a duty to use de-escalation techniques whenever possible.”<sup>6</sup>

We heard from 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 because they expected compliance simply because a police officer made the request. Video footage that we reviewed confirmed that true de-escalation was not the uniform practice.

In several cases reviewed by the Panel, officers cursed and yelled at the individual involved in the encounter, often at the initiation of the interaction and before any resistance was displayed. This immediately escalated the situation. The profane language was almost always noted by the chain of command review, but frequently excused because the officer “was excited,” the situation was “tense,” or for similar reasons. The failure to correct, and the after the fact justification of this aggressive conduct, sends a message to all officers that this approach is not only tolerated, but perhaps even expected.

Later in the report is a discussion of examples of cases reviewed by the panel. Although the uses of force in many of these cases was authorized under the legal standards of the Fourth Amendment to the Constitution, the tactics or conduct of officers contributed to the necessity of the force. Officers placed themselves unnecessarily in tactical positions that were dangerous and did not provide the opportunity for non-force options, such as disengagement, the use of time, and verbal engagement. The Panel observed a disturbing pattern of the display of Tasers, punching, and force against persons in handcuffs under circumstances in which no threat of resistance was present.

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<sup>3</sup> General Order 306.04 A.

<sup>4</sup> General Order 306.04 A 1 & 2.

<sup>5</sup> General Order 306.05.

<sup>6</sup> General Orders 306.04.

The Review Panel evaluated scores of use of force 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. In few of these cases, did the chain of command or Internal Affairs identify or address the failure to de-escalate. 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. Rather, the review focused on whether the ultimate use of force was “lawful” and did not extend to whether it was appropriate or avoidable.

Between the issuance of the Preliminary Report and this Final Report, the Review Panel observed improvement in the chain of command review and an increase in corrective action for failure to de-escalate. However, the Review Panel continued to observe cases in which the failure to de-escalate was not addressed.

***Excessive Use of No-Knock Warrants and Unnecessary SWAT Deployments.*** In recent years, the City has taken significant steps to change its no-knock and warrant execution practices. The data shows that the SWAT team executed 154 no-knock warrants with forceful entry and clearing in 2018 and 90 in 2019. As a result of these changes, no such warrants were executed in 2021.<sup>7</sup> The Panel encourages the City to continue these practices.

Prior practices included a large number of cases that were easily avoidable, or prematurely forwarded to the SWAT Team for execution, while at the same time placing community members and officers at risk, sometimes with tragic results. The Review Panel observed that probable cause to search was established in the affidavits reviewed. However, in a portion of the sampled warrants in which a no-knock entry was authorized, the Panel’s review of the justification calls into question whether the no-knock was legally justified. It appeared that no-knock warrants were routinely used as de facto training exercises for the SWAT Team, when safer alternatives were clearly available and should have been considered or applied.

Moreover, we reviewed training materials on the knock and announce requirement that were inadequate and incorrect, resulting in officers sidestepping the knock and announce requirements, including instructions that there is no requirement to “knock loudly” or wait any period of time after an announcement.

***Inadequate Response to Persons in Mental Health Crisis.*** A significant percentage of interactions between police and residents involve a person with mental illness or who is experiencing a behavioral health crisis. More than 12,000 calls for service each year involve a person with mental illness. In far too many cases, these calls resulted in the use of force, and in some cases lethal force, when what was needed was a mental health provider.

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<sup>7</sup> The last no-knock warrant with forceful entry and clearing (commonly referred to as a “dynamic entry”) was served by the Department SWAT Team on May 19, 2020.

The Department has taken steps to increase the training of officers to respond to these situations, but the design of the program lacks many of the characteristics of evidence-based practices. The resources available, while increased, are inadequate.

Later in the report is a discussion of the City's significant shortage of non-law enforcement options, including behavioral and mental health services, mobile crisis units, assertive community treatment teams or other services for addressing mental health crisis situations. The City should assess its mental health delivery system to ensure that there are adequate community-based, non-institutional resources to serve persons with mental illness or substance abuse disorders and to provide alternatives for seeking treatment, rather than arrest.

***A Lack of Diversity on the Force.*** The Fort Worth Police Department does not look like the community that it serves. Fort Worth's rich diversity of race, ethnicity, and gender is not reflected among the Department's officers and the more senior ranks are the least diverse. Of the more than 1700 officers in the Department, 58 percent are white, 26 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.<sup>8</sup> Of concern appears to be the failure of the Department to assign Black, Latinx, and female officers to specialized units. For example, the SWAT section has no Black officers, there is a single Black officer in the Tactical Operations Division, and there are few Black officers in most investigative sections. Specialized units provide an officer with greater visibility and a broader set of skills necessary for professional advancement. In order to address the lack of minority representation in the Department, there should be a serious focus on enhancing the capabilities of the current recruiting unit, which experiences limitations in personnel and budgetary constraints.

Despite that this has been an ongoing issue for some time, the Review Panel has seen little improvement over the two years that it has been engaged by the City. The Department has implemented an Equal Employment Opportunity Plan with specific steps to increase recruitment of officers of color. The effort is severely understaffed and the lack of visible officers of color in leadership are barriers to achieving the plan's goals. Significantly greater investment in increasing diversity at all ranks is necessary.

***Collection and Use of Data.*** The Department has invested in modern data systems that should aid in the day-to-day management of the Department, increase accountability, and provide transparency to the community. These data systems, however, are not being used to full effect. There is insufficient guidance to staff to ensure that data is entered in a uniform fashion and there are inadequate quality controls to ensure accuracy. Data that is collected is not effectively used to draft comprehensive multi-level analyses of data, specific to crime, patterns

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<sup>8</sup> See, Fort Worth Police Department Demographics as of December 31, 2021, available at <https://police.fortworthtexas.gov/UI/Resource.aspx?p=6d921fc0-63a7-48ab-bc61-1fcf3b5745ef>.

and practices of police officers and crime prevention initiatives. As a result, patterns of misconduct including the failure to de-escalate, rudeness, bad tactics, or other issues are sometimes missed and not addressed either in policy, accountability, or training. Specifically, despite the massive volume of data collected, the Panel's review found that only a few data points are analyzed and even fewer corrective actions and systems are put in place as a result of the data analysis. Thus, improved data gathering and analyses efforts have vast potential to better support police service delivery.

***Early Intervention System (EIS).*** 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. 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 Department began establishing its EIS in 2016. In the Panel's initial review, we noted that the program plan was in its infancy. Since that time, the Department took note of our observations and began to actively engage in the process to scientifically implement its EIS. That is, the Department established a baseline based on behavior exhibited by officers during the course of previous years, in order to establish a normative pattern in which they can identify officers at risk. Further, the Department established its EIS from a non-punitive perspective, thus, focusing on assisting the officer and preventing negative results that may arise from instances of non-intervention.

***Inadequate Accountability Systems.*** There are significant deficiencies in police accountability systems that have not been addressed during the period of our review. The Department has historically relied on a single officer to assess the appropriateness of the use of force, the chain of command review often excuses or justifies misconduct, Internal Affairs handles a very small percentage of cases that would ordinarily be expected to be subject to their jurisdiction, and there is no uniform supervision of the use of force accountability process. Basic issues are frequently missed. For example, rarely do officers who fail to activate body worn cameras experience any consequences, sending the message that the policy requiring their use is aspirational.

This is a critical factor contributing to the Department's culture. The Review Panel observed that officers who engage in aggressive or troubling conduct are free from any consequences except in the most extreme cases. This is bad for the Department, the community, and for officers. Effective accountability systems replete with robust accountability practices will

identify issues and address them in ways that increase trust and confidence, and save careers through early intervention. They also will promote partnerships with communities to increase public safety and hold significant consequences for supervisors and managers who fail to apply appropriate accountability measures.

***Police Monitor.*** The City created the Office of the Police Oversight Monitor in response to the Race and Justice Task Force recommendations. An experienced Monitor was hired. However, based on our conversation with community leaders, in key components of the City, the Police Monitor is not perceived as independent, but instead as an arm of the Police Department. One of the objectives the City identified when it created this position is to provide transparency to the community and to give the community confidence that there is effective civilian oversight. For the Monitor to be successful, it is critical that the City take the necessary steps to ensure independence and to communicate those steps to the public.

***Community Policing.*** The Department's Neighborhood Police Officer (NPO)<sup>9</sup> program delivers highly responsive community policing to residents and businesses throughout the city. They are deployed into Neighborhood Policing Districts and generally are not required to respond to patrol 911 calls for service. The 94 NPOs are hand-selected for their affinity to embrace relationship policing and NPOs are called upon to mentor new recruits in operationalizing community policing. Community affection for the program is indicated in the program's popularity.

Despite this program successes, the community policing philosophy and activity is almost exclusively the domain of the NPOs. Patrol officers are not expected to nor generally have the discretionary time to interact with community members as the NPOs. The Review Panel posits that every member of Field Operations and every other Department employee should understand and be able to articulate their community policing role. Effective community policing requires community members to experience the deferential trust, procedural justice, impartial policing and problem-solving in each and every interaction with officers, not just interactions with the NPOs. The Fort Worth community will be better served by reimagining how community policing is experienced by community members. The Department should redesign police service delivery systems around geography and create a resource deployment structure and strategy that supports neighborhood integrity and beat accountability. These are hallmarks of community policing, instead of being mostly driven by reactive calls for service.

In sum, while the Review Panel identified key reforms for the Department to consider in their implementation, the findings of our review suggest that the Fort Worth Police Department needs to change its core culture. As discussed in more detail in the report, there is no simple or

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<sup>9</sup> General Order 347.01 K 1 (NPOS are responsible for "promoting the concept of community policing through working in the neighborhoods, housing communities, recreational centers, businesses, and other community entities by providing a direct link between the community and the police.").



single step that can be taken, but instead, each aspect and corner of its work must be assessed to ensure that officer conduct is consistent with the values and goals of the Department and promotes community trust and public safety.

## **II. Final Report of the Expert Review Panel**

### **A. Review Panel Mandate**

On November 12, 2019, City Manager David Cook appointed the Expert Review Panel to conduct a comprehensive review of the Fort Worth Police Department. The panel was given 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.<sup>10</sup>

The Expert Review Panel consists of former local and federal law enforcement leaders, leading academics, and civil rights lawyers.<sup>11</sup>

### **B. July 2020 Preliminary Report**

In July of 2020, the Panel issued a Status Report of Preliminary Observations and Recommendations Regarding Use of Force, Internal Affairs and Community Oversight (Preliminary Report).<sup>12</sup> The Preliminary Report contained a series of conclusions and recommendations. In the Final Report, we assess what steps the Department has taken to address these concerns over the last two years.

The Preliminary Report summarized the Review Panel's conclusions as follows:

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<sup>10</sup> Fort Worth City Manager's Office, <https://fortworthtexas.gov/DepartmentReview/>.

<sup>11</sup> [Police review panels – Welcome to the City of Fort Worth \(fortworthtexas.gov\)](https://www.fortworthtexas.gov/police-review-panels).

<sup>12</sup> Available at [Interim-Report-Final.pdf \(washlaw.org\)](#).

***First, officers are not consistently adhering to policies and practices 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. Our review found that officers' conduct in the community does not uniformly adhere to these policies and practices. 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.<sup>13</sup>

Policy and training are not translating into practice 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."<sup>14</sup> 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

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<sup>13</sup> National Initiative for Building Community Trust and Justice, Fort Worth 2016 Community Survey Results 2 (Sept. 2016).

<sup>14</sup> General Order 220.03.

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.

***Third, the Department and the City have not made the necessary investments in de-escalation, crisis intervention, or social or public health programs or services.*** Based on our review of use of force files and interviews of Department officials, we have found that 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.<sup>15</sup> 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

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<sup>15</sup> Homeless Outreach Program & Enforcement Unit, Standard Operating Procedures (June 18, 2020).

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 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.<sup>16</sup>

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<sup>16</sup> The Preliminary Report is attached.

### **C. Interim Assessment**

Following the issuance of its Preliminary Report, the Panel continued to review the policies and practices of the Fort Worth Police Department with a special emphasis on the steps taken by the Department following the issuance of its preliminary recommendations. As part of this review, the Panel assessed use of force, Internal Affairs and other files, along with an assessment of policy or practice changes. The Review Panel provided the City with its interim assessment of the changes undertaken by the City in January of 2021. After that interim assessment, the Panel's contracts expired and were not renewed until August of 2021.

### **D. The Scope of the Final Report**

In the Final Report, the Review Panel provides an assessment of the steps taken by the City of Fort Worth since the initiation of its work with an emphasis on assessing the steps taken since its Preliminary Report.

It is important to note that COVID-19 materially limited the capacity of the Review Panel to complete its review. While we were able to conduct interviews and meetings remotely, since the issuance of the Preliminary Report, the Panel has not been able to meet in-person, observe training sessions, or conduct ride-alongs. The review has focused on documents, body-worn camera video, and interviews that could be conducted through video. Physical presence in Fort Worth to conduct interviews, engage with a greater number of officers and community members, both formally and informally, would have provided the panel with additional important information and insights.

Finally, in July of 2021, Chief Ed Krauss retired and was replaced by Chief Neil Noakes. Chief Noakes is a long-time member of the Fort Worth Police Department.

### **E. Fort Worth Police Department**

The Fort Worth Police Department has more than 1700 sworn officers and more than 450 civilian employees.<sup>17</sup> The Department is responsible for providing services to a 359 square mile area which is divided into six geographic divisions, Central, East, North, Northwest, South, and West.<sup>18</sup>

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<sup>17</sup> [Department Demographic Data, FY20 Q4, available at https://police.fortworthtexas.gov/UI/Resource.aspx?p=6d921fc0-63a7-48ab-bc61-1fcf3b5745ef.](https://police.fortworthtexas.gov/UI/Resource.aspx?p=6d921fc0-63a7-48ab-bc61-1fcf3b5745ef)

<sup>18</sup> [2019 Annual Report, available at https://online.flippingbook.com/view/192545/;](https://online.flippingbook.com/view/192545/)  
[https://police.fortworthtexas.gov/Patrol/.](https://police.fortworthtexas.gov/Patrol/)

Each Division is part of either the North Command or the South Command, each led by a deputy police chief. Fort Worth is a City of nearly one million people. It is the 13<sup>th</sup> largest city in the United States and is rapidly growing. 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.<sup>19</sup> Common to many cities, the legacy of residential housing segregation<sup>20</sup> still divides Fort Worth.<sup>21</sup>

## F. Methodology

The Expert Review Panel engaged in a comprehensive review of the topics addressed in the Preliminary Report. In order to ensure the presentation of a complete picture, the Panel relied on a variety of sources. The Panel reviewed all relevant Departmental policies and procedures and more than 200 use of force, warrant execution, Internal Affairs, and Critical Incident files.<sup>22</sup> In addition to reviewing relevant documents and materials, the Panel observed meetings of the Critical Incident and Use of Force Review Boards.

The Panel also interviewed members of the Fort Worth Police Department. Officers with a broad range of experience participated in these interviews, from line officers to senior command staff. The Panel gauged residents' perceptions of the Department by holding community meetings and individual interviews with members of the Fort Worth community. In order to assess the Department's training practices, the Panel reviewed training curricula and, as a result of COVID-19, observed a limited number of training sessions.

The objective of the assessment was to determine whether there are policies, practices, procedures, or patterns of conduct that led to, or were likely to lead to the violation of constitutional or state law rights, were inconsistent with Departmental policy, or that were inconsistent with best practices. Through file review, interviews with Department employees, interviews with community members, and reviews of policy and training materials, the Panel identified areas of concern for more intensive review. Since the goal of the project was to make recommendations to the Department on its practices, the Panel did not attempt a complete statistical analysis. Instead, the panel looked to determine whether there was repeated concerning

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<sup>19</sup> Census Quickfacts, Fort Worth (TX), <https://www.census.gov/quickfacts/fact/table/fortworthcitytexas/PST045219>.

<sup>20</sup> 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/>

<sup>21</sup> 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>.

<sup>22</sup> The Expert Panel did not review any matters in which there was an open criminal investigation or prosecution of an officer. This includes records related to the shooting death of Atatiana Jefferson.

conduct, whether the Department identified and corrected the conduct, and whether the pattern was facilitated by policy, training, supervision, or a lack of accountability. For use of force in particular, for the purposes of these recommendations, it does not matter whether concerning conduct occurred and was not addressed 5% or 50% of the time. Either is serious enough for urgent action by the Department.

The Panel assessed the practices of the Fort Worth Police Department against the governing law and emerging, evidenced-based best practices. The conclusions and recommendations are designed to assist the City of Fort Worth and its Police Department to achieve its objectives.

This report was shared with the City of Fort Worth before publication for the purpose of determining whether, in the course of its review, the Panel had incomplete information on any of the topics reviewed. The conclusions and recommendations of the report are those exclusively of the Review Panel and were not limited in any way by the City of Fort Worth.

### **G. Steps Taken By The Department Since The Issuance Of The Preliminary Report**

Since the Panel provided its 2020 Preliminary Report to the City, the Fort Worth Police Department has taken steps to address the Panel's initial recommendations. These steps include:

- Revised its use of force policy to emphasize the importance of de-escalation, enhance supervisor review, clarify the guidance on use of Tasers, and to provide further guidance on the use of lethal force.<sup>23</sup>
- Clarified the obligation of officers to intervene to prevent another officer from violating a resident's rights.<sup>24</sup>
- Revised its discipline matrix to clarify the penalty for the failure to de-escalate.
- Enhanced the duties of the Use of Force Coordinator and clarified the role of the Use of Force Review Board.<sup>25</sup>

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<sup>23</sup> General Order 306.01 et seq.

<sup>24</sup> General Order 306.02

<sup>25</sup> General Orders 306 & 505.01

- Expanded the Internal Affairs Unit.
- Is in the process of creating a Force Analysis Unit which will review all uses of force short of critical incidents.
- Created a requirement that all search warrants be reviewed by the SWAT Commander to determine the appropriate unit to serve the warrant, reduced the use of the SWAT Team, as well as added policy language regarding limitations on the use of dynamic entries and no-knock warrants.<sup>26</sup>
- Strengthened the documentation requirements for officers to complete offense and supplemental reports.<sup>27</sup>
- Increased obligations on supervisors to ensure that officers properly use body-worn cameras and that the cameras record officer conduct pursuant to the policy.<sup>28</sup>
- Strengthened and clarified the role of the Crisis Intervention Team<sup>29</sup> and clarified the procedures for taking a person who is in mental health crisis into custody.<sup>30</sup>
- Issued a communications plan so that the Department provides appropriate information to the public in a timely manner following an officer involved shooting or an in-custody death.<sup>31</sup>

Finally, the Department increased the size of its Crisis Intervention Team and launched the initial phase of its Early Intervention System, a predictive database on officer conduct to assist in identifying training, supervision or other needs and addressing them before an officer engages in serious misconduct. The Department reported that this system has been in the planning and design phase for the past several years.

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<sup>26</sup> General Order 321.05.

<sup>27</sup> General Order 344.01 & 344.02.

<sup>28</sup> General Order 506.03.

<sup>29</sup> General Order 412.01 & 412.02.

<sup>30</sup> General Order 330.00.

<sup>31</sup> Directive 2020 – 01.



### III. Conclusions and Recommendations

#### A. Use of Force, De-Escalation, and Force Avoidance Practices

##### 1. Preliminary Report Conclusions and Recommendations:

The Review Panel made the following observations in its July 2020 Preliminary report:

***De-Escalation:*** Among the Panel’s most significant conclusions was the failure of officers to engage in de-escalation. The Report concluded:

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.” 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.” 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.”

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. 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.<sup>32</sup>

***Use of Tasers:*** The Panel also observed a concerning pattern of overreliance on Tasers, when no force or lesser force options might have been appropriate:

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

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<sup>32</sup> Preliminary Report at 11.

resorted to a Tasers without attempting de-escalation techniques that might have proved more effective than threatening to use a Taser.<sup>33</sup>

The Review Panel made the following recommendations in our Preliminary Report:

***Additional Policy Guidance on Use of Force:*** The Review Panel recommended that the General Orders be revised to:

include 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. 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.<sup>34</sup>

***Additional Training on De-Escalation:*** The Panel recommended additional training to be certain that de-escalation became “ingrained and a natural default.”<sup>35</sup>

***Policy Guidance and Training Regarding Discretion to Disengage:*** Public safety is not always served by an arrest or a use of force. The Panel recommended that:

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 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. 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

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<sup>33</sup> Preliminary Report at 16.

<sup>34</sup> Preliminary Report at 18.

<sup>35</sup> Preliminary Report at 18.

actively review and assess each encounter and when appropriate refer personnel for corrective action.<sup>36</sup>

**Adopt LEED:** The Panel recommended that an effective method to achieve the Departments' goal of prioritizing de-escalation and increasing legitimacy is to adopt the Listen and Explain with Equity and Dignity (LEED) framework.<sup>37</sup> LEED has been widely recognized as an evidenced-based best practice.

## 2. Use of Force – Legal Backdrop

The use of force by law enforcement has come under increasing public attention and is amongst the most controversial aspects of policing. While legislatures and courts have given police officers wide latitude to use force, communities expect that it will be minimized, avoided when possible, and applied without bias or prejudice. Officers engaging in conduct that increases the likelihood that force will be necessary impacts community trust and legitimacy, negatively impacts the ability of officers to partner with communities to create public safety and creates unnecessary dangers for the officer.

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.<sup>38</sup> Force, to be constitutional, must be objectively reasonable.<sup>39</sup> Objective reasonableness is determined by a series of factors, including: “the severity of the crime at issue, whether the subject 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.”<sup>40</sup> 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.”<sup>41</sup>

The Court first meaningfully addressed the appropriate amount of force when it examined the circumstances in which an officer could use deadly force in *Tennessee v. Garner*.<sup>42</sup> Garner, an unarmed teenager, was shot while running away from a Memphis, Tennessee, police officer who was called to the scene of a suspected burglary. Deadly force, the Court held, is authorized

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<sup>36</sup> Preliminary Report at 19.

<sup>37</sup> Preliminary Report at 14.

<sup>38</sup> *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

<sup>39</sup> *Graham v. Connor*, 490 US 386 (1989).

<sup>40</sup> *Id.* at 396.

<sup>41</sup> *Id.*

<sup>42</sup> 471 U.S. 1, 11 (1985).

only when “the officer has probable cause to believe that the subject poses a threat of serious physical harm, either to the officer or to others.”<sup>43</sup> The *Garner* Court concluded that the question of how much force is permitted requires a balancing of the harm to the individual against the interests of the state.<sup>44</sup>

*Graham v. Connor*<sup>45</sup> extended the analysis developed in *Garner* to all uses of force, not just to circumstances involving deadly force and fleeing subjects but to all police encounters. The Court clarified that the Fourth Amendment limits the circumstances that justify a police officer’s use of force and the amount of force that is reasonable in a particular circumstance. Referencing its decision in *Garner*, the Court explained that the “‘reasonableness’ of a particular seizure depends not only on when it is made, but on how it is carried out.”<sup>46</sup> The Court concluded that the balancing of the individual and governmental interests was not subject to a “mechanical” application, but rather must take into account all of the relevant facts and circumstances and be viewed “from the perspective of a ‘reasonable officer.’”<sup>47</sup> In articulating what have become known as the Graham factors, the Court created a nonexclusive list of considerations: “the severity of the crime at issue, whether the subject 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.”<sup>48</sup>

In determining whether force was reasonable, a court will review whether it is reasonable at the moment that force was applied.<sup>49</sup> Police officers must calibrate their use of force to the actual resistance or threat they are experiencing and as the level of resistance or threat increases or decreases, the level of force authorized will increase or decrease as well. Use of force best practices call for a continuous decision-making model that requires officers to constantly evaluate any situation in order to justify any proportional increase or decrease in the type and level of force being used – often called a critical incident decision-making model.<sup>50</sup> An officer

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<sup>43</sup> *Id.* at 11-12

<sup>44</sup> *Id.* at 8.

<sup>45</sup> 490 U.S. 386, 395 (1989).

<sup>46</sup> *Id.* at 395 (emphasis in original).

<sup>47</sup> *Id.* at 398.

<sup>48</sup> *Id.*

<sup>49</sup> *County of Los Angeles v. Mendez*, 137 S. Ct. 1539 (2017).

<sup>50</sup> A widely used training on the process of continuous assessment is offered by the Police Executive Research Forum. See, Critical Incident Decision-Making Model, available at [https://www.policeforum.org/assets/ICAT/module%202\\_cdm\\_dec16.pdf](https://www.policeforum.org/assets/ICAT/module%202_cdm_dec16.pdf).

must consider changing factors such as the presence of weapons, the demeanor of the subject, the number of officers present, and the threat of injury to officers or others if force is not applied. The critical incident decision-making model “offers an alternative to officers who in the past have been trained to immediately ‘move in and take control,’ even when those responses are not appropriate or safe given the circumstances.”<sup>51</sup>

### **3. Conclusions Regarding Use of Force and De-escalation**

The Review Panel assessed more than 200 incidents in which officers used force, including incidents examined for the Preliminary Report, the interim assessment, and for this Final Report. Over the two years of the Panel’s review, patterns of failure to de-escalate or escalation by officers and force used when not necessary remained consistent.

The Expert Review panel concludes that there are concerning patterns of use of force that include:

**First**, the Panel’s review of files revealed significant cases of officers failing to de-escalate under circumstances in which de-escalation may have made the use of force unnecessary. In these cases, force may have been legally authorized at the moment it was used, but the officer failed to attempt to de-escalate the encounter, or, in some cases, the officer’s conduct was the cause of the escalation;

**Second**, the Panel observed a smaller number of force incidents that were not authorized by law or policy; and

**Third**, the Panel reviewed cases in which tactical errors by officers made force more likely to be necessary, including lethal force, and limited the availability of de-escalation and lesser force options.

These concerning indicators of patterns were identified by the Panel in its Preliminary Report and the interim assessment. While the City has taken important and meaningful steps to address these issues in training, policy, and supervision, significant concerns persist. The formal actions have not resulted in the necessary changes to the Department’s culture.

It is important to note that the Review Panel’s observations are based on a broad range of sources, including members of the Department, members of the community, and in the documents that were reviewed. There was a high degree of consistency in the information reported to the Panel.

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<sup>51</sup> PERF, Guiding Principles on Use of Force at 86; <https://www.policeforum.org/assets/guidingprinciples1.pdf>.

Excessive force can create tension between police officers and members of the community. While high profile incidents are often the catalysts for demonstrations and media coverage, it is the daily, often low-level encounters that shape community perception and create the environment of mistrust and illegitimacy. Avoidable, but lawfully authorized uses of force may not be appropriate and may well be contrary to public safety if they undermine the ability of the police department and other public institutions to partner with the community to determine what their safety needs are and how to achieve them.<sup>52</sup> Community members who express fear in calling police for help because they are afraid of the violence that police will bring into their community, are not rare and pose a critical challenge for the Department and the City.

#### **4. Use of Force – Fort Worth Police Department Policy**

The Department provides its officers with policy guidance and training on the appropriateness of the use of force.<sup>53</sup> 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 under the Department's guidelines and training.

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.<sup>54</sup>

Following the City's receipt of the Review Panel's Preliminary Report, the Department has made changes to its use of force policies to address some of the concerns raised by the Panel. The policy reinforced the *Graham* objectively reasonable standard and provided more specific guidance on how that standard was to be applied.

Significantly, the General Order was amended to add the following guidance:

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<sup>52</sup> American Bar Association, Lawful but Awful: High burden for prosecution of bad police actions (February 2020), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/\\_lawful-but-awful--high-burden-for-prosecution-of-bad-police-act/](https://www.americanbar.org/news/abanews/aba-news-archives/2020/02/_lawful-but-awful--high-burden-for-prosecution-of-bad-police-act/).

<sup>53</sup> General Orders 306.00 et seq.

<sup>54</sup> General Order 306.01 A.

There may be many reasons why an individual may be resisting arrest or be nonresponsive (medical, developmental, language barrier, drug reaction, emotional crises). Officers should not engage in unreasonable actions that precipitate the need to use force.<sup>55</sup>

In addition, amendments to the General Order require that efforts to de-escalate be documented in use of force reports<sup>56</sup> and that de-escalation attempts be evaluated by a supervisor as part of the force review process.<sup>57</sup> The General Order now instructs officers:

De-escalation is intended to increase safety, reduce liability, and improve the quality of service provided by officers to the community. De-escalation along with practicing procedural justice and treating others with dignity and respect are foundational for reducing the need to use force, achieving positive police-community interactions and internal employee relations.<sup>58</sup>

The General Order was also amended to expand and formalize the Use of Force Review Board to ensure that it reviews all uses of force by Department officers and that the Board include the Training Division, Criminal Investigations Division, Patrol Division, SWAT, and the Fort Worth Police Monitor.<sup>59</sup>

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.”<sup>60</sup> The policy requires officers to use “advisements, warnings, verbal persuasion, decision-making models pursuant to training, demonstrate empathy 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.”<sup>61</sup> Elsewhere in the General Orders, officers are instructed that “[u]nder no circumstances will the force used by an officer be greater than

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<sup>55</sup> General Order 306.02 D.

<sup>56</sup> General Order 306.07 A.1.

<sup>57</sup> General Order 306.07 A.2.c.

<sup>58</sup> General Order 306.04.

<sup>59</sup> General Order 306.09.

<sup>60</sup> General Order 306.04 A.

<sup>61</sup> General Order 306.04 A 1 & 2.

necessary . . . or longer than necessary.”<sup>62</sup> Importantly, in recent amendments to the General Orders, the Department made clear that “officers have a duty to use de-escalation techniques whenever possible.”<sup>63</sup>

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 observed the scenario-based de-escalation training because of COVID-19, 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.

The Review Panel notes that de-escalation is taught as a stand-alone session at the academy. While we were advised that de-escalation is integrated into all use of force training, we did not see evidence of that in our review of the curricula.

During the Panel’s interviews and review of files, a wide range of activities were characterized as de-escalation by officers and chain of command that fell well outside the generally accepted practices. For example, senior officers confirmed the belief that displaying a Taser could constitute de-escalation and we observed files in which shouting at the subject or yelling to “stop” was considered de-escalation. The Review Panel notes that intimidation does not constitute de-escalation. We did not observe that the Department, in those cases, required officers to implement procedural justice principles, use time and distance, or to slow down the encounter to allow for compliance.<sup>64</sup>

Finally, following the issuance of the Preliminary report, the Department modified its discipline matrix to clarify that the failure to de-escalate is a violation of policy for which there

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<sup>62</sup> General Order 306.05.

<sup>63</sup> General Orders 306.04.

<sup>64</sup> The Review Panel was advised that the Department uses training materials from the Force Science Institute. We are concerned about the Department’s continued reliance on the training and principles of force science, a controversial program. Increasingly, communities are rejecting its teachings as a set of practices that encourage excessive force. See, eg, <https://www.latimes.com/politics/story/2020-06-19/minnesota-company-trains-police-and-the-attorneys-that-defend-them-in-court>; <https://www.thelantern.com/2020/02/ohio-state-cancels-force-science-training-after-community-criticism/>; <https://www.scientificamerican.com/article/is-the-psychology-of-deadly-force-ready-for-the-courts/>; and <https://www.nytimes.com/2015/08/02/us/training-officers-to-shoot-first-and-he-will-answer-questions-later.html>. The Panel recommends LEED as a model that is more effective in increasing de-escalation, improving community confidence, and decreasing the unnecessary uses of force.



will be consequences. The consequences identified on the matrix range from a verbal warning for the first offense, to up to a 15-day suspension for the fourth or more offenses. This modification of the discipline matrix is an important statement to the force about the necessity of using de-escalation strategies in all cases.

### **5. Uses of Force Observed by the Review Panel – Continued Concerns Regarding the Failure to De-escalate**

These changes to policy guidance, however, have not yet modified the behavior of officers on the street or the experience of residents encountering Fort Worth Police. The Panel requested that the Department identify all cases in which an officer was subject to a consequence for failing to de-escalate. The Department directed us to eighteen cases since January of 2020. In that two-year period, only eight cases were deemed to be out of policy with regard to de-escalation.

In the files reviewed by the Panel, the failure to de-escalate was much more common and frequently missed by supervisors upon their review. For example:

- Officers responding to a domestic violence call enter an apartment. Body worn camera video shows a man is in a room just off the entrance on the phone and his hands are clearly visible. A woman, later identified as the victim, was in the room, bent over and crying. She was between the officers and the man. One of the officers has his Taser drawn and the other has drawn his handgun. The officers tell the man to “show me your hands” (which are visible) and to “get on the ground.” Four seconds after the first command, and less than one second after the man is told he will be tased, the officer discharges the Taser and the man collapses. There is nothing in the record that identifies any threat that the man posed to the officers or any other person at the moment force was used. The officers justified the force because “he gave facial clues that he had no intention of following the officers’ commands,” that he might barricade himself in another room, or continue to harm the victim. The victim had a path of egress and the man’s hands were held at chest height in compliance with the officers’ instructions. Nevertheless, the officer’s conduct was deemed within law and policy by the chain of command.
- Officer responding to an assault call grabbed a subject and then “attempted to de-escalate” the situation by forcefully telling the subject to “calm down,” in hopes of “gaining willful compliance.” No one in the chain of command noted that telling someone to “calm down” after seizing them is not a meaningful effort to de-escalate.

- Officers approached a group of motorcyclists that had stopped in an intersection to take photos. They approached two individuals and asked for identification. One replied that he was going to get his motorcycle out of the street first. Officers then used force to “stop him from evading detention.” It was unclear the basis for the detention in the first place. Officers handcuffed the person. He attempted to converse with officers which included turning towards them. Officers aggressively pushed him into a police vehicle and then violently took him to the ground. The man was arrested for “Evading Detention.” The justification for the force was that the individual was turning towards the officers. The use of force was deemed authorized, although the tactics were questioned by the Use of Force Coordinator.
- In another case, in which officers were attempting to take a woman into custody for a mental health application, and after having tased her border collie, the officer chased her in her own back yard and tased her, despite that she posed a threat to no one. The reviewing supervisors referred to the officers’ attempts to de-escalate by yelling “stop” and “put your hands behind your back.” Again, the failure to de-escalate was not noted by the chain of command and their comments indicated a lack of understanding of what true de-escalation is.

Despite the new policy obligation to document de-escalation and the requirement that the chain of command assess whether the efforts were appropriate, the Panel has seen little meaningful movement on this issue. We are concerned that this policy change is yet another example of form over substance.

Even in cases in which the supervisory review identified the failure to de-escalate, corrective action was insufficient to address significant unnecessary uses of force. For example: two officers approach a man standing by a car who is suspected of attempting to enter the car without permission. The man lifts his hands to his chest. His hands remain visible on the body worn camera. One officer quickly approaches the man, grabs his hand and flips him violently to the ground. The man offered no resistance nor was he given any time to comply with the officer’s commands. The man was handcuffed and while on the ground they cut the straps of his backpack. This conduct is found to be a violation of policy, but the officer received only supervisory coaching, despite the unnecessary use of force.

Current Fort Worth policy also includes several review and investigation requirements that, while appropriate, are not consistently enforced in practice. The General Order requires supervisors to interview the individual upon whom force was used and civilian witnesses to the

use of force.<sup>65</sup> If the supervisor is unable to complete these interviews, “the supervisor shall indicate the reason for not completing the interviews and provide any information they collect so the interviews can be completed at a later time.” This information is particularly critical when supervisors are reviewing use of force incidents where officers failed to activate their body-worn cameras. Yet, in most of the files the Panel reviewed, the supervisor did not interview the person upon whom force was used or civilian witnesses and failed to provide a justification.

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.

Some of the officers we interviewed noted 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.

In our Preliminary and Final Reports, the Panel observed a fundamental use of force problem in the culture of the Department that will require sustained leadership and efforts to address the issue root and branch. The Review Panel report is not the first time that force avoidance and de-escalation was identified as an issue in the Department. The need to enhance de-escalation practices was an issue raised during the Department’s participation in the National Initiative for Building Community Trust and Justice.<sup>66</sup> The Department has policies in line with modern police departments, an appropriate amount of training, and a public commitment to the issue. But officers on the street are not behaving consistent with that policy and training and supervisors are not holding them to account.

In our interview with the Use of Force Coordinator in 2020, he advised the Review Panel that de-escalation had only recently been emphasized in the training curriculum. He stated that the Department is “in transition” on the issue. While the Review Panel notes that there have been important policy changes over the last two years, we did not observe material changes to training, the conduct of officers, or in the review of force incidents.

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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<sup>65</sup> General Order 306.07 A(2)(b).

<sup>66</sup> National Initiative, available at <https://police.fortworthtexas.gov/About/national-initiative>.

## 6. Force Against Persons in Crisis

The Review Panel examined encounters that resulted in the use of force that involved persons in a mental health crisis. Among these cases were unnecessary or avoidable uses of force. Specifically, in one case discussed below, officers responded to a man with mental health disabilities who was in his bedroom with a hatchet. Because of poor tactical position and a failure to use de-escalation techniques, the officers, which included a sergeant, created the circumstances where force became necessary. In another case, officers responded to a call involving a young woman in distress. The officers made no attempt to engage the woman and resorted to force from the first instance, dragging her out of a car and pushing her to the ground, and pepper spraying her four times directly in the face.

According to the Department's study of 2019 calls for services, more than 12,200 involved a person in crisis.<sup>67</sup> As is discussed below in this report, law enforcement alone is not the optimal response to many of these calls. The Review Panel learned from Department staff, and it is reported in the press, that mental health services are inadequate to meet the needs of the community.<sup>68</sup> In fact, Texas is ranked last in the nation for availability of mental health care<sup>69</sup> with more than 700,000 Texans without health insurance coverage for mental and behavior health services.<sup>70</sup> The burden placed on the Police Department demonstrates the need for the City to strengthen its behavioral health system. Additional services are necessary to help prevent persons from going into crisis, create non-law enforcement resources for family and loved ones to call when an individual goes into crisis, significantly increase resources for mental health to respond with law enforcement, and expand the Crisis Intervention Unit. We commend the City for expanding its crisis unit from six to 20 persons. That increase is an important investment, but insufficient for there to be at least one crisis intervention trained officer in each District each day and each shift.

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<sup>67</sup> Crisis Intervention Calls for Service, Intelligence Exchange Section, September 30, 2020.

<sup>68</sup> See, eg, "If you need mental health therapy in Dallas-Fort Worth, get in line. A very long line," The Dallas Morning News, (October 22, 2021), available at <https://www.dallasnews.com/news/watchdog/2021/10/22/if-you-need-mental-health-therapy-in-dallas-fort-worth-get-in-line-a-very-long-line/#:~:text=Finding%20a%20therapist,%3A%20214%2D828%2D1000>.

<sup>69</sup> See eg, Mental Health America, Access to Care Data 2022, available at <https://mhanational.org/issues/2022/mental-health-america-access-care-data>.

<sup>70</sup> See, eg, Hogg Foundation, Health Care Access and Medicaid (September 25, 2020), [2371affd-636e-484e-bb9a-5007766f31b2.PDF](https://www.hoggfoundation.org/wp-content/uploads/2020/09/2371affd-636e-484e-bb9a-5007766f31b2.PDF) (texas.gov); Texas and the ACA's Medicaid Expansion, HealthInsurance.org, (December 21, 2021), available at <https://www.healthinsurance.org/medicaid/texas/>; [To Improve Behavioral Health. Start by Closing the Medicare Coverage Gap, Center on Budget and Policy Priorities](https://www.cbpp.org/research/health/to-improve-behavioral-health-start-by-closing-the-medicare-coverage-gap) (October 4, 2021), available at <https://www.cbpp.org/research/health/to-improve-behavioral-health-start-by-closing-the-medicare-coverage-gap>.

## 7. Conducted Electrical Weapon (CEW or Taser)

Tasers are an important less-lethal force option, but the overuse of Tasers is inconsistent with de-escalation. 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. The display of a Taser is escalation, rather than de-escalation, of the incident.

- The Panel reviewed one case in which officers responded to a call involving a suicidal person. When the two responding officers arrived, the man's family member told them that he was in the back yard with a knife and warned them that he comes from a military family and has problems with authority. The officers proceeded to the backyard where the man was kneeling, faced away from them, apparently cradling the knife. The officers maintained a far distance and called his name. He was unresponsive but did not move or threaten the officers verbally or physically. The officers spent only 90 seconds talking to him before one called "let's do it" and they tased him. While the officers did not use aggressive language or physical threat, they did not permit the time or use calming language to resolve the situation without the use of force. At no point was a CIT officer or MHMR<sup>71</sup> called to respond to and lead the interaction.
- In another case, while attempting to arrest a drunk subject who had left a restaurant without paying, the officer immediately engaged the subject with forceful threatening language and "displayed his conductive energy weapon and threatened to use it if he didn't comply." The situation deteriorated and the subject was eventually tased. No one in the chain of command noted the failure to de-escalate. The only criticism of the event was the officer's failure to tell the subject why he was being arrested.
- Officers used the Taser in drive-stun mode at least 15 times while attempting to arrest a man, even after it appears that the man was attempting to comply. The chain of command review suggests that the officers "attempted to de-escalate several times" which is not apparent on

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<sup>71</sup> My Health My Resources of Tarrant County (MHMR) provides mental health and intellectual and developmental disability services to residents of Tarrant County, <https://www.mhmrtarrant.org/About-Us/About-Us>.

the video. The officer was coached because the tactic of using the Taser in drive stun was “not effective” but there were no concerns raised or corrective action regarding the use of force.

## **8. Closed Fist Strikes to the Head and Face**

The Review Panel reviewed uses of force in which officers punched people in the face as a “distraction technique.” In some of these cases, force became necessary because the officer failed to de-escalate or engaged in poor tactical choices.

Closed fist strikes to the head or face are significant less-lethal, or potentially lethal, force options that must be justified under the circumstances.<sup>72</sup> The risk of major injury or death requires a higher level of justification than the Panel observed in the files it reviewed. In addition to the potential trauma from a punch to the head, that level of use of force is an escalation and increases the potential for increasing levels of violence between the officer and the subject. If used as a “distraction” as opposed to self-defense, it is counterproductive.

Punching a person who is on the ground enhances the danger of a serious injury from the strike because it might impact the person’s head on a hard surface and carries some of the same risks as a baton strike to the head, which is considered lethal force.<sup>73</sup> Closed fist strikes to the head and face should only be used in self-defense or defense of a third person, never to gain compliance in handcuffing.<sup>74</sup> The Department’s training counsels against, but does not prohibit,

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<sup>72</sup> See *When a Cop Throws a Punch to the Face*, Police1 (2010): “Knowing that purposely striking a person in the face with a fist . . . may cause serious injury, the governmental interests . . . must be of a more serious nature. . .” <https://www.police1.com/use-of-force/articles/when-a-cop-throws-a-punch-to-the-face-KxysTODNGzdrWNkI/>; see also *Measuring the Amount of Force Used By and Against the Police in Six Jurisdictions* (a DOJ Office of Justice Programs study measuring the amount of force used by and against police in six jurisdictions found subjects are more likely to suffer injury if struck with a fist (an 81% injury rate) than with a police baton (a 64% injury rate)), available at <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/176330-2.pdf>.

<sup>73</sup> *United States v. Ruiz*, 213 F. App’x 345 (5th Cir. 2007) (Appeal of the conviction of Ruben Ruiz, a FWPD patrol officer found guilty in a federal civil rights prosecution illustrating that force applied to the head of a person in custody while on the ground and being handcuffed can constitute a criminal violation of the Fourth Amendment).

<sup>74</sup> For an example of this explicitly in policy, see paragraph 3.5 (h) of the 2020 Use of Force Policy of the Office of the Attorney General for New Jersey (“officers shall only use striking techniques directed at a subject’s face as a means of self-defense, or in the defense of others. Striking at a subject’s face using fists, elbows, knees, and feet, shall not be used as a means of pain compliance.”), available at <https://www.nj.gov/oag/force/docs/UOF-2020-1221-Use-of-Force-Policy.pdf>.

the use of a closed fist strike while a person is on the ground out of concern for officer safety, as opposed to the safety of the person being arrested:<sup>75</sup>

With subject on the ground, facedown, with hands under the body, ensure cover is provided and establish leg control. If necessary, deliver personal weapon strike to disrupt subject's focus and give loud verbal commands. **It is recommended to avoid the use of closed fist strikes to the subject's head due to the increased risk of injury to the officer, and the limited effectiveness of the strike.**<sup>76</sup>

In another part of the Control Tactics manual, the Department notes: "Head and face — Normally targeted with hand/arm (weaponless) techniques. The eyes, nose, temples, ears, lips, and chin are vulnerable. **Officers should realize that some personal weapons strikes to the head and face have a higher potential of injury to suspect.**"<sup>77</sup>

In one case, an off-duty officer working at a bar ejected a drunk patron. The patron was so intoxicated that he was having trouble standing and fell several times. After removing the drunken patron from the property, the officer made the decision to arrest him when he would not walk away and made "terroristic threats" to the officer. The terroristic threat consisted of the man pointing his finger at the officer and saying "bang." It should be noted that the subject was outside the bar in what appeared to be an alley. The subject was not on the bar property at that time and likely not trespassing when arrested. The highly intoxicated subject was six to eight feet away from the officer and the officer abruptly closed upon him and took him to the ground and punched him.<sup>78</sup>

The General Orders require supervisors to "closely review" instances where officers strike someone who is on the ground "to ensure the reasonableness is explained."<sup>79</sup> The incidents reviewed by the Panel where officers used a closed fist strike to the head or face while

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<sup>75</sup> The Denver Police Department, for example, allows the use of a "personal body weapon," which includes punching, only if the person is engaged in active aggression, defined as "An overt act or threat of an assault, coupled with the present ability to carry out the action, which reasonably indicates that an assault or injury to a person is likely." Denver Police Department Operations manual section 105.00 and 105.02, available at [https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM\\_Book.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf).

<sup>76</sup> Fort Worth Police Department Control Tactics Manual at 46 (emphasis in the original).

<sup>77</sup> *Id.* at 31 (emphasis in the original).

<sup>78</sup> It is important to note that the officer failed to turn on his body worn camera, but there was video from security cameras that are inconsistent with the officer's written report. The inconsistency was not addressed.

<sup>79</sup> General order 306.07(A)(2).

a person was on the ground did not appear to receive any additional scrutiny. We recommend that the City of Fort Worth modify its General Orders to deem a closed fist strike to the head for a person on the ground to be considered lethal force and prohibited except under circumstances when lethal force is authorized.

### **9. Retaliatory Uses of Force**

The Review Panel observed cases where, after a foot chase or where officers meet resistance, they appear to lose their temper. Often the officers curse and yell, but also engage in force that appears to be retaliatory. In some cases, the force was deemed authorized upon review by the chain of command.

- In one case, after a vehicle and then a foot chase, while a man was prone on the ground, an officer pointed his gun at the man's head and yelled at the man and then hit him with the barrel of the gun. While this conduct was deemed out of policy, it was a very concerning use of force.
- In another instance, an officer, after having lost control of a drunk woman who he was trying to arrest, got kicked in the face by another woman who was standing nearby and partially restrained by a security guard. In response, he punched the second woman in the face several times. When he was discussing the incident with a corporal, the body worn camera video reveals him saying "I let her have it. I punched her several times." In response, the corporal laughed and asked the officer if he was okay.
- In another case, a detainee who was compliant with all instructions, called the officer a "racist" and the officer immediately shoved the handcuffed detainee into the back of an SUV. The officer justified the shove claiming that the man hesitated, which is not apparent from the body worn camera video. Even if he had, the hesitation would have been very brief before force was used.
- While investigating a stranded car on the side of the road, an officer engaged in an increasingly hostile encounter with the motorist. The officer admitted that he was disrespectful and belittling of the motorist. After the motorist called the officer a "moron," the officer told the other officers on the scene to arrest him. When the man asked why, the arresting officer responds: "I don't know. He will tell you." The encounter continued to escalate resulting in a violent takedown.



The apparent inability of some officers to control their anger, combined with what appears to be the frequent use of closed fist punches, cursing, and offensive language, raises concerns about officer training to control their behavior. The fact that the behavior was tolerated in many of the cases, enhanced a culture of non-compliance with Departmental policy and use of force training.

## 10. Lethal Force

The authority to use force, while broad, is not unlimited. Force, to be constitutional, must be objectively reasonable.<sup>80</sup> Objective reasonableness is determined by a series of factors, including: “the severity of the crime at issue, whether the subject 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.”<sup>81</sup> 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.”<sup>82</sup>

In *Graham v. Connor*, the Court explained that the “‘reasonableness’ of a particular seizure depends not only on when it is made, but on how it is carried out.”<sup>83</sup> The Court concluded that the balancing of the individual and governmental interests was not subject to a “mechanical” application, but rather must take into account all of the relevant facts and circumstances and be viewed “from the perspective of a reasonable officer.”<sup>84</sup> The use of lethal force requires that the subject poses a risk to the life or safety of the officer or a third party.<sup>85</sup>

The Panel did not review any use of lethal force cases in which there was an open criminal or administrative review underway so as to not interfere with the ongoing investigations. As a result, our ability to assess current uses of lethal force was limited. It is important to note that Internal Affairs and the Critical Police Incident (CPI) process has been stalled in recent months due to a significant slowdown in the review of cases by the District Attorney. Internal Affairs advised the Review Panel that cases are awaiting decision from the District Attorney for months and up to a year. Despite the delays with the District Attorney, the

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<sup>80</sup> *Id.* at 397.

<sup>81</sup> *Id.* at 396.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 395.

<sup>84</sup> *Id.* at 396.

<sup>85</sup> *City and County of San Francisco v. Sheehan*, 743 F. 3d 1211 (2015).

Review Panel notes that there are at least two CPI matters for which the District Attorney has declined prosecution and the CPI did not convene for the entire year of 2021.

In our assessment of cases that the internal process had either been completed or was never initiated, we found concerning trends. First, officers engaged in tactical errors that placed themselves in danger and made the use of force inevitable. For example, officers were called because an adult son was alleged to have threatened to harm his father. He was found in his room. Several officers entered his room and refused to leave. Within reach of the subject was an assault rifle that the officers failed to remove. After the officers left him in the room by himself for a moment, he grabbed the assault weapon and slammed the bedroom door shut prompting the officers to run out of the house. After many hours barricaded in his house he came out after dark with a light holding it like it was a gun. A SWAT Officer believed it to be a firearm and fatally shot the subject.

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. In one case an officer tased a subject sitting on the curb when he moved too slowly to remove his backpack. The Taser did not incapacitate the subject and prompted him to attack the officer resulting in the officer shooting the subject. Prior to the application of the Taser, the officer was not in immediate danger, was deftly de-escalating the encounter, the subject had complied – although reluctantly – with all prior commands, the officer could maintain a reasonable distance from the subject, no one else was around, and backup was just moments away.

The Review Panel assessed files in which officers unholstered their firearms and failed to reholster them before engaging in a physical altercation with the person being arrested. In two of the cases, the officer struck the person in the head with their gun. In only one of those cases was corrective action taken. The risk of an accidental discharge under these circumstances is very high and the officer is at a disadvantage in securing a subject if one hand is holding a gun.

The Review Panel also observed lethal force cases involving persons in mental health crisis that should have been addressed by a mental health provider. In one case officers were called to a home in response to a 911 call by his mother because an adult son was lying in his bed chopping at the frame with an ax. She reported that he had mental illness. The Mother told the 911 operator, and then later the police, that she did not think he would harm her or his father. Three officers crowded into the narrow doorway of his bedroom with Tasers drawn. After a brief confrontation in which he asked the officers to leave and they declined, he showed a knife and made like he was going throw it. The officers stumbled over each other in retreat and shot blindly around the door jamb because they could no longer see the subject in the ensuing chaos.

Third, reckless behavior by officers endangered themselves and others. For example, during a high-speed chase, an officer ignored the lead officer's instructions to stay back. This incident also included two officers firing through their windshields at the subject and one officer

who fired 58 rounds in fast succession (emptying three large capacity magazines), some of which occurred after the threat by the subject was clearly no longer present, and firing with total disregard to innocent third parties clearly in or near the backdrop. When the officer was firing rapidly with one hand through his windshield while driving in a high-speed pursuit, there was another vehicle driving past the subject and the officers in the opposite direction.

These tactical errors contribute to our assessment that the conduct of officers regularly varies from the training and policy of the Department in the use of less lethal force options before resorting to lethal force. Far too frequently, the tactical issues were not identified or addressed, nor was the failure to de-escalate subject to meaningful review. We conclude that it reflects a culture of policing that has not caught up to modern practices and a view by officers that policy and training are aspirational, rather than mandatory.

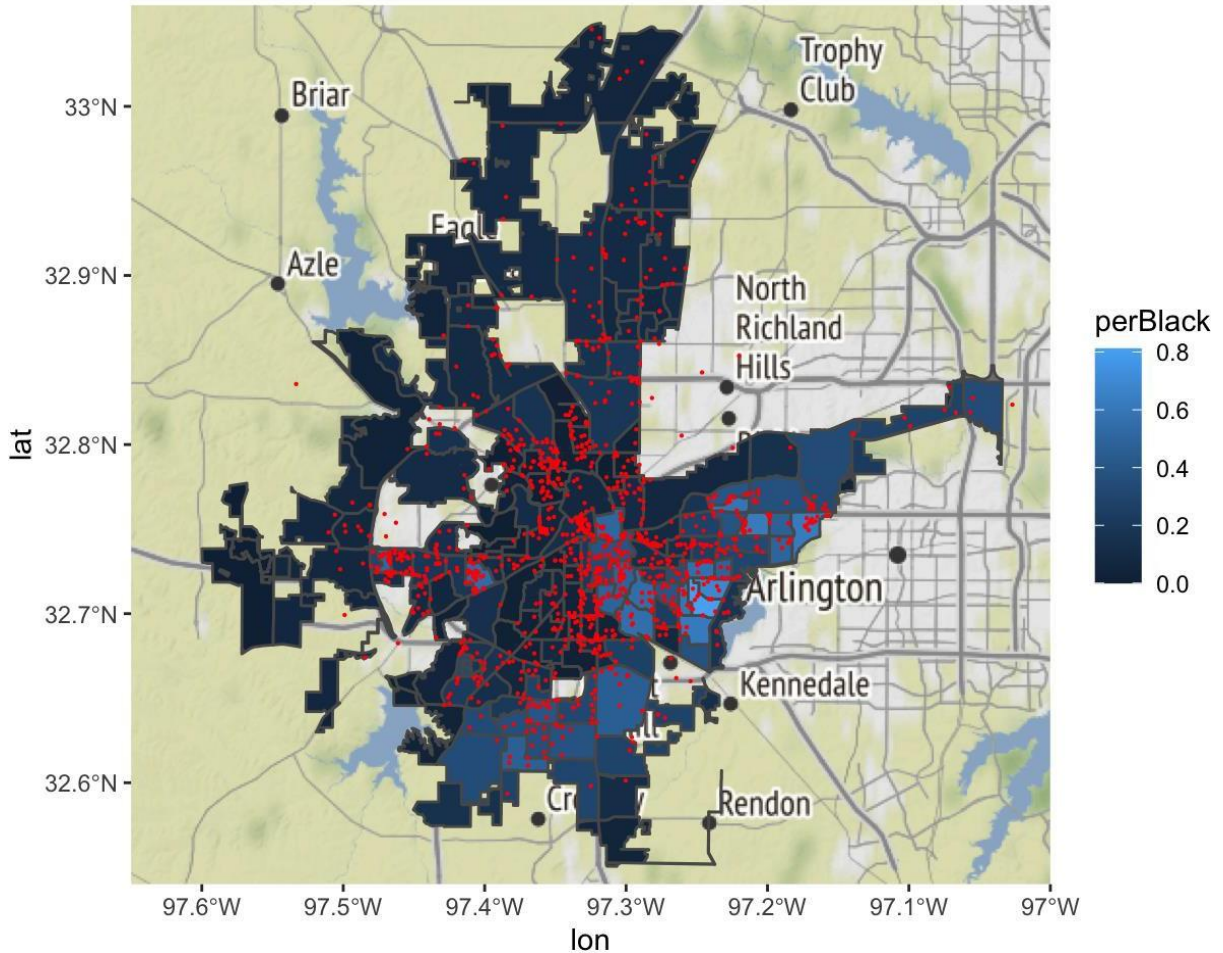
### **11. Indicators of Racial Bias in the Use of Force and Failure to De-Escalate**

In its Preliminary Report, the Panel found that force was much more prevalent in communities of color. Sixty five percent of the uses of force were in either the South, West, or Central Districts, which are predominantly African American or Latinx.<sup>86</sup> The map below shows the uses of force for 2016 through 2020. This map demonstrates that force is most often used against African Americans and in those locations that are at the edges of the African American community where interaction with whites is most likely.

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<sup>86</sup> *Id.*



The use of force dataset contains 5,621 use of force rows for 1,620 unique incident numbers. Each incident number has a single address so we plot unique incidents rather than rows (note: 89 incidents were unable to be geocoded).

The Panel did not repeat the demographic study of uses of force for this Final Report. However, we note that in its most recent statistical report, while Black people make of 18% of the community, they receive 36% of the uses of force.<sup>87</sup>

Moreover, during the Panel’s review of use of force incidents, we did observe troubling indications of racial bias during interactions between officers and members of the public.

*First*, there was a marked contrast in the amount of patience that officers displayed, and efforts to de-escalate between white persons and persons of color who had a police interaction.

<sup>87</sup> Internal Affairs Annual Report, at 13, 2020file:///C:/Users/jonathan\_smith/Downloads/Internal%20Affairs%20Section%20Annual%20Report.pdf

We observed encounters with white arrestees in which officers tolerated belligerence and refusal to comply with instructions of white persons, without resulting to force. Very brief hesitation or verbal resistance met with force for many Black or Latinx arrestees. Our sample size was too small to reach a definitive finding, but there was enough of a pattern to raise this as an area of concern.

*Second*, officers frequently cursed and shouted at arrestees of color and used racially tinged terms. In many of the cases reviewed, for example, a white officer called a Black or Latinx man “bro.” That term was not used for white arrestees in the cases the Panel reviewed who were more frequently called “sir” or “ma’am.”

## **12. Recommendations Concerning Use of Force**

The Panel repeats its recommendations from its Preliminary Report and summarizes them in the following.

### **a. Adopt the LEED Model (Listen and Explain with Equity and Dignity).**

There is a need for culture change regarding the use of force in the Department. The LEED model provides a framework<sup>88</sup> for the Department to address the issue. It is being used by similar departments around the country. The Panel renews this recommendation from its Preliminary Report.

### **b. Implement a formal bystander intervention program.**

The Fort Worth Police Department requires officers to intervene:

(D) Officers have the duty to intervene and take appropriate action when observing another officer using force that is beyond that which is objectively reasonable under the circumstances<sup>89</sup>

The Review Panel did observe incidents of officers who intervened to prevent or mitigate an unnecessary use of force. However, that practice was not uniform and we did not observe any

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<sup>88</sup> 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](https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf):

<sup>89</sup> 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.

instances of officers reporting the violation in writing to a supervisor as required by policy. Departments around the country are developing formal bystander intervention programs. These efforts train officers to identify when a colleague is engaging in misconduct, provide tools to stop them, and incentives to report and participate in corrective conduct.<sup>90</sup>

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

While the recent changes to policy are important, given the cultural issues in the Department, they may still not be enough. We recognize that the Department's policy is consistent with that of other large urban police departments, and reflects the best practices advanced by the National Initiative. 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.<sup>91</sup> 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 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 the better course is to withdraw. This is especially true in the context of minor offenses that do not threaten public safety.<sup>92</sup>

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

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<sup>90</sup> See, eg, "'We Have to Police Ourselves': DC Program Trains Officers to Intervene and Prevent Harm," (October 14, 2020), available at <https://www.nbcwashington.com/news/local/we-have-to-police-ourselves-dc-program-trains-officers-to-intervene-and-prevent-harm/2444012/>; Ethical Policing is Courageous program in New Orleans, <http://epic.nola.gov/home/>.

<sup>91</sup> 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. See <https://www.seattle.gov/police-manual/title-8---use-of-force/8100--de-escalation>.

<sup>92</sup> See, for example, the Tactical Disengagement policy of the Saint Paul Minnesota Police Department, available at <https://www.stpaul.gov/books/40400-tactical-disengagement>.

experience and judgment of a supervisor may well have made the use of force avoidable or unnecessary and changed the outcome.

**d. The Department should frequently audit implementation of policies on reporting and review of uses of force and de-escalation.**

The recent changes to policy are too new to fully evaluate their impact. Requiring supervisor and use of force review of de-escalation efforts is important, but it must be meaningful. Form language, or check-box review will not make a meaningful difference. In our observations of chain of command review, far too often errors or misconduct is overlooked or excused. If the policy of de-escalation continues to be treated in this fashion, it will not have the intended impact.

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 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.<sup>93</sup>

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<sup>93</sup> 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/usao-nj/file/849316/download>.

As we noted in the Preliminary Report, Internal Affairs only investigates 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 investigation. Internal Affairs should determine (1) whether de-escalation was used, (2) whether de-escalation efforts were documented, and (3) whether the incident was properly reviewed by a supervisor. To the extent these issues were ever considered, they were 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.

To ensure that the reporting and review policies are being effective, there should be an independent periodic audit of a statistically significant set of force reports and internal affairs files to ensure that supervisors and Internal Affairs detectives are properly assessing and addressing policy violations.

**e. Changes to the Discipline Matrix should be enforced.**

Since the July 2020 Preliminary Report, the Department modified its discipline matrix to include:

Use of Force Violations G.O. 306.04 (A) Failure to Deescalate. De-escalation is defined as taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, to reduce or eliminate the necessity to use physical force.

- 1st Verbal Warning - Captain Coaching Per Training Division
- 2nd Captain Coaching - 2 Day Suspension Per Training Division
- 3rd 1 Day - 5 Day Suspension Per Training Division
- 4th or more 2 Day - 15 Day Suspension Per Training Division

G.O. 306.00 Tactical Violation - Use of force is justified but misapplied as trained. When a tactical violation is sustained, training/retraining must always be a component of the corrective discipline. Under this section the performance period for consideration of the disciplinary range for repeat of like or similar violations is two (2) years.



- 1st Supervisor Coaching - 1 Day Suspension Per Training Division
- 2nd Written Reprimand - 5 Day Suspension Per Training Division
- 3rd 1 Day - 10 Day Suspension Per Training Division

Since this change, despite widespread failures to de-escalate, few officers have experienced a consequence.

**f. Additional policy changes should be adopted and implemented.**

***Greater clarity on when force is appropriate:*** General Orders 306.01(C) requires that “The use of reasonable force, when warranted, is permitted by law and is an affirmative duty and responsibility of police officers.” The Review Panel Recommends that “warranted” be replaced with “necessary.” Otherwise, this language suggests that officers have an affirmative duty to use force when justified or warranted by law or policy. The potential confusion is exacerbated by the fact that the first mention of “necessary” force is section 306.05. In its training, the Department should emphasize that force should be used only when non-force options are not available.

In addition, General Order 306.04 references procedural justice as a principle for de-escalation. Procedural justice is not defined in the General Orders. It is an important concept for which officers need guidance.

***Greater policy guidance on the use of Tasers:*** The Panel renews its recommendations regarding Taser policies. 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 deploying a Taser in either mode of operation. It is important that policy and training focus on when a Taser should be deployed 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.h. on the use of Tasers should be broadened to include people with disabilities, people in mental health crisis, and people with substance use disorders.<sup>94</sup> As with other high-risk populations, the dangers associated with Tasers for person with disabilities increases significantly.

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<sup>94</sup> Police. Executive Research Forum & Office of Community Oriented Policing Services., Electronic Control Weapon Guidelines (2011), available at <https://www.policeforum.org/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf>.

Fort Worth's use of force policy should include additional guidance on multiple deployments of the Taser. If a person is exposed to a Taser for longer than 15 seconds or subjected to more than three cycles, there's a risk of serious injury.<sup>95</sup> General Order 306.05 does not explicitly require officers to assess whether multiple cycles of the Taser are necessary and would be effective. Given the significant risk of injury, more than three cycles of the Taser should be reviewed and investigated as deadly force.<sup>96</sup>

Finally, we renew our recommendation from the Preliminary Report to revisit the policies and training on using Tasers in the drive stun mode. 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.<sup>97</sup>

***Clarity that all officer witnesses be interviewed:*** Fort Worth's use of force policy would be strengthened by additional reporting and investigation requirements and greater enforcement of existing requirements. For example, the responding supervisor should be required to interview officers who witnessed the use of force. A witness officer should also be required to submit a report documenting his or her observations.<sup>98</sup>

***Greater policy guidance on persons in restraint:*** General Order 306.05 appropriately prohibits officers from deploying the 40mm launcher on a handcuffed person "except in extreme circumstances such as placing the officer, subject, or another person in imminent danger of serious injury or death." However, officers are not prohibited from using other types of force on

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<sup>95</sup> *Id.* at 20 (recommending that, after the initial cycle, officers should "evaluate the situation to determine if subsequent cycles are necessary" and warning that "multiple applications or continuous cycling of an ECW resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided.")

<sup>96</sup> See, for example, the Intermediate Weapons policy from the Cleveland Division of Police, [https://www.clevelandohio.gov/sites/default/files/forms\\_publications/01.10.2018IntermediateWeapons.pdf?id=12399](https://www.clevelandohio.gov/sites/default/files/forms_publications/01.10.2018IntermediateWeapons.pdf?id=12399) (each Taser application is "a separate use of force that officers shall individually justify and report as objectively reasonable, necessary, and proportional" and requiring that more than three cycles of the Taser be reported and investigated as a serious use of force); see also, the Use of Force policy from the New Orleans Police Department, <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/#:~:text=USE%20OF%20FORCE%20POLICY%20STATEMENT&text=Therefore%2C%20officers%20of%20the%20New,of%20the%20member%20or%20others>.

<sup>97</sup> See, e.g., Electronic Control Weapons Guidelines, Community Oriented Policing Service, United States Department of Justice.

<sup>98</sup> See, for example, the Use of Force Reporting, Review, and Assessment policy from Baltimore Police Department, <https://public.powerdms.com/BALTIMOREMD/documents/68102> (requiring supervisors to ensure that all officers "who observed the Use of Force incident accurately, thoroughly, and in a timely fashion, report the Use of Force.").

persons who are already handcuffed or restrained. The use of force on a handcuffed person should only be permitted under very limited circumstances and these incidents should be reported and investigated as serious uses of force.<sup>99</sup>

***Additional Legal Review of Policies:*** General Order 306.01(B), for example cites an Eighth Amendment case involving use of force in a prison to support the proposition that officers must assess “the relationship between the need and the amount of force used.” There are Fourth Amendment cases that support the principle being addressed.

## **B. Accountability Systems**

### **1. Preliminary Report Conclusions and Recommendations**

In its Preliminary Report, the Review Panel concluded that the Department had in place the policies, technology, internal review structure, and interdisciplinary systems to have an effective internal affairs and chain of command accountability system. The Review Panel described the accountability systems in its Preliminary Report at length and we do not repeat that description here.<sup>100</sup>

The Review Panel concluded, however, that these processes did not, in all cases, function effectively to ensure that Fort Worth police officers conducted themselves within policy or law.

The Review Panel concluded that this was, in part, the result of the fact that:

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.<sup>101</sup>

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<sup>99</sup> See, for example, the Use of Force Policy of the New Orleans Police Department (“Members shall not use force against persons who are handcuffed or otherwise restrained, except in exceptional circumstances where the Totality of Circumstances makes it Reasonable and Necessary to prevent injury or escape. Members are cautioned that force that may be Proportional against an unrestrained person may not be Proportional when used on a restrained person.”)

<sup>100</sup> Preliminary Report at 25 et seq.

<sup>101</sup> Preliminary report at 26.

In addition, the Review Panel heard reports from supervisors in the Department that they were discouraged from addressing certain misconduct, particularly regarding the use of force, if there had not been a complaint or public outcry. The Review Panel observed that this lack of accountability contributed to a departmental culture in which the breach of certain policies regarding use of force, de-escalation, and other behaviors are tolerated and, in some cases, excused.

The Review Panel made the following recommendations in the Preliminary Report:

- Empower a single individual or entity to coordinate the Department's accountability functions. This will ensure that data collection is consistent, information is shared, and policy recommendations are considered and implemented. The Review Panel recommended empowering a Deputy Chief to have responsibility over all accountability measures.<sup>102</sup>
- 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.<sup>103</sup>
- 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.<sup>104</sup>
- Require the Special Investigation Unit to share the interviews of officers under investigation with Internal Affairs.<sup>105</sup>
- Reduce the over-reliance on Use of Force Coordinator's assessment of use of force incidents.<sup>106</sup>

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<sup>102</sup> Preliminary Report at 28.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Preliminary Report at 29.

- Provide specialized training for Internal Affairs detectives.<sup>107</sup>
- Eliminate the use of contact numbers or “CON” and require that all external complaints be investigated.<sup>108</sup>
- End the use of *Garrity* warnings for every officer interview regardless of whether the officer is a subject or witness or there is any reasonable contemplation of criminal litigation.<sup>109</sup>

The Review Panel also recommended the creation of an office of legal advisor or have dedicated legal staff to provide internal review of all critical operational functions, particularly proactive SWAT deployments, all search warrants not reviewed by a prosecutor, policies and policy revisions, training curricula, and other functions. In addition to the risk management function, legal review facilitates additional levels of accountability, proactively mitigates legal but inappropriate actions, brings an objective oversight, and improves community confidence and public perceptions.<sup>110</sup>

## 2. Changes Since the Preliminary Report

The Department has undertaken significant measures consistent with the Review Panel’s recommendations. These initiatives were either recently implemented or are still in development, and thus cannot be fully evaluated. The Review Panel notes, however, that these are positive developments and present an opportunity for the Department to more closely align its practices to its policies and values.

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<sup>107</sup> Preliminary Report at 31.

<sup>108</sup> *Id.*

<sup>109</sup> Preliminary Report at 32.

<sup>110</sup> See Carol A. Archbold, “*Police Legal Advisors in the USA: Past, Present, and Future*,” *Police Practice and Research*, Vol. 7, No. 1, March 2006, pp. 61–76, [https://www.researchgate.net/publication/230814739\\_Police\\_Legal\\_Advisors\\_in\\_the\\_USA\\_Past\\_Present\\_and\\_Future](https://www.researchgate.net/publication/230814739_Police_Legal_Advisors_in_the_USA_Past_Present_and_Future); Plano Police Department, <https://www.teamplano.us/directory.aspx?EID=3130>; Houston Police Department, [https://www.houstontx.gov/police/divisions/legal\\_services/index.htm](https://www.houstontx.gov/police/divisions/legal_services/index.htm); Dallas Police Department, <http://www.dallascityattorney.com/CriminalLaw-Police.html>. A review of the assignments of the Fort Worth City Attorney staff of 32 attorneys indicates no direct responsibility for police oversight assigned. See <https://www.fortworthtexas.gov/departments/cityattorney/staff>.

### **3. Creation of the Force Analysis Unit**

The Fort Worth Police Department is currently in the process of creating the Force Analysis Unit. The Unit will consist of five Lieutenants who will report to the Use of Force Coordinator. The creation of the Force Analysis Unit will significantly change the Department's practices with regard to the review of uses of force.

*First*, all uses of force short of critical incidents will be reviewed by the Force Analysis Unit for compliance with Fort Worth Police Department policy and with the law. Prior to the creation of the Unit, uses of force were reviewed by the chain of command to determine whether the force was within policy. Once operationalized, all reports of pointing of a firearm, takedowns without injury, and intermediate uses of force will be assessed by the Force Analysis Unit before being reviewed by the officer's supervisor or other Departmental officials.

*Second*, the Force Analysis Unit will be charged with the responsibility of making the determination of whether the use of force is within policy. This is a departure from past practice in which that function was left to the chain of command. All pointing of a firearm and takedown without injury cases deemed out of policy and all intermediate uses of force will be sent back to the chain of command after a review and recommendation of the Force Analysis Unit. The recommendations are not binding, but will provide an independent assessment that will benefit the review process and ensure consistency.

*Third*, the Force Analysis Unit will not replace the Critical Incident Review Board or Internal Affairs and will not decide discipline. The most serious uses of force will continue to be reviewed the Critical Incident Review Board and allegations of excessive force will continue to be sent to Internal Affairs. Any corrective action will remain the responsibility of the Department's leadership.

*Fourth*, the Use of Force Review Board will continue to meet and consider use of force files, but will focus on patterns and necessary changes to policy, tactics, or training. The Force Analysis Unit will be responsible to track trends regarding the use of force and provide those data to the Force Review Board.

The Review Panel recommended consolidation of the use of force review process to provide greater scrutiny and consistency. The Force Analysis Unit is an opportunity for the Department to assess the practices of its officers in a consistent manner, have the review performed by specially trained Lieutenants, and identify and address trends. The success of the Unit will, to some degree, depend on whether it is more effective at identifying excessive force and the failure to de-escalate than the current review process. The fact that it is independent of an officer's chain of command gives the Unit greater independence and the ability to assess uses of force with greater objectivity.

#### **4. Expansion of Internal Affairs**

In the Review Panel's preliminary report, it found that not all complaints to the Department about officer misconduct were subject to an investigation. Instead, many were designated "contacts" and sent to an officer's supervisor to address. The Review Panel concluded, specifically:

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.<sup>111</sup>

Following the issuance of the Preliminary Report, the Fort Worth Police Department eliminated the designation of "contact" and all complaints are now investigated by Internal Affairs. To meet the increased requirements, the Department has increased Internal Affairs Division staffing in recent months. The Unit is now comprised of 13 personnel. It is unclear whether the current staffing is sufficient for its new responsibilities. According to the Internal Affairs section leadership, it is responsible to investigate approximately 480 complaints each year.

The Review Panel was advised that Internal Affairs continues to have the Use of Force Coordinator review every excessive force allegation. As noted in the Preliminary Report, this places too much authority in a single individual and resulted in questionable uses of force being deemed within policy. The Force Analysis Unit will, hopefully, address this continuing concern.

Internal Affairs has also recently begun to present each case to the City Attorney and the Police Monitor during a bi-weekly meeting. The Review Panel was advised that the purpose of these meetings was to ensure that the City legal department had notice of any potential employment or legal action and to seek legal advice on complex cases. While legal review is important, there is a tension between the obligation of Internal Affairs to ensure that officers act with fidelity to policy and the City's legal department to protect the City from civil liability. In response to this tension, the Review Panel recommends a dedicated legal advisor.

Internal Affairs continues its practice of compelling statements from every officer interviewed, regardless of whether the officer is a subject or witness and regardless of whether there is any reasonable basis to contemplate criminal litigation. As discussed in the Review Panel's Preliminary report, this practice is both unnecessary and contrary to the accountability

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<sup>111</sup> Review Panel Preliminary Report at 31.

function of Internal Affairs. We renew our recommendations that the use of a *Garrity* warning be restricted to those circumstances in which the risk of criminal prosecution is “substantial and real.”<sup>112</sup>

Finally, in its preliminary Report, the Review Panel identified gaps in training for Internal Affairs investigators.<sup>113</sup> The Department has not changed its practices or addressed this recommendation. New Internal Affairs members receive a 40-hour training from an external vendor when it is available. It is a single training session that covers a broad range of topics, some of which address risk management as opposed to internal affairs functions. All other training is on-the-job. There is no special in-service or annual training that focusses on the unique duties and responsibilities of internal affairs.

## **5. Ongoing Concerns with Internal Affairs and Chain of Command Review**

### **a. Meaningful Supervisory Review of Force Remains a Serious Issue**

The Review Panel evaluated a large volume of use of force 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. In few of these cases, did the chain of command review or Internal Affairs identify or address the failure to de-escalate. As discussed above, the Department is in the process of creating a Force Analysis Unit. The Force Analysis Unit is an important innovation if it provides a more rigorous and substantive review.

In the cases reviewed, officers cursed and yelled at the individual involved in the encounter, often at the initiation of the interaction. This appears to have escalated the situation. The profane language was almost always noted by the chain of command, but frequently excused because the officer “was excited,” the situation was “tense,” or for similar reasons. The failure to correct, and the after the fact justification of this aggressive conduct sends a message to officers that this approach is not only tolerated but expected.

There was little indication that these incidents were analyzed by the chain of command 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, most of the reviews we observed were limited to whether force was “lawful” and did not extend to whether it was avoidable, necessary, or appropriate.

The following illustrates the inadequate supervisory review:

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<sup>112</sup> Preliminary Report at 32.

<sup>113</sup> Preliminary Report at 31.



- During the execution of a warrant five officers approached a man and a woman on their back porch. They identified the man as the person in the warrant, had him stand up and face the wall to be handcuffed. When he looked over his shoulder during handcuffing, one officer punched him in the face and another officer tased him. The officers claimed that he had “tensed” during the handcuffing and they thought that by looking at the officers over his shoulder, he was looking to strike an officer with his elbow. There is no evidence of resistance to justify this level of force, especially given that the officers outnumbered the arrestee. After he was handcuffed, the woman approached the officers making the arrest. She was grabbed and thrown across the porch. The force used was deemed justified and there was no questioning of whether de-escalation might have made the force unnecessary.

The following are cases in which the unnecessary use of force was not identified or addressed by superior officers during their review:

- In one case, an officer observed a subject riding a bike in a parking lot at night without a light. For this minor violation, he took chase in his car and when the chain came off the bike, the officer tackled him. In the struggle the officer struck the bike rider in the face with an elbow strike. The reviewing Lieutenant noted: “It appears that all policies and procedures were followed, and minimal amount of force was used to accomplish a legitimate police objective.” The panel notes that conducting stops and arrests “necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.”<sup>114</sup> The authority to use force, while broad, is not unlimited. Force, to be constitutional, must be objectively reasonable.<sup>115</sup> Objective reasonableness is determined by a series of factors, including: “the severity of the crime at issue” and “whether the subject poses an immediate threat to the safety of the officers or others”<sup>116</sup> The use of force here was disproportionate in the context of apprehending someone riding a bike without a light.

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<sup>114</sup> *Graham v. Connor*, 490 U.S. 386, 396 (1989).

<sup>115</sup> *Id.* at 397.

<sup>116</sup> *Id.* at 396.

- In another case in which an officer punched a man so drunk he could barely stand in the face as many as five times, only one of many witnesses were interviewed, and that witness did not see the use of force. The officer's justification for using force to arrest the man was that he pointed his finger at the officer and said "bang." The officer deemed this drunken gesture to be a "terroristic threat." Neither the officer's supervisors nor the Use of Force Review Board had concerns about this use of force against a drunk man or the justification for the arrest.

#### **b. Non-Force Conduct Issues Continue to Not Be Addressed**

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." Some of the increase was attributed by Internal Affairs to increased protest and "cop watch" activity, but it does not account for all of the complaints. The Panel concludes that greater training on procedural justice and for officers to control their temper is required.

Generally, supervisors noted the use of foul language as a 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 widespread 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. We also heard from several Department officials that the Department or its officers have a "para-military" mindset, which would involve more aggressive tactics when interacting with community members.

#### **c. Potential Retaliatory Arrests Not Addressed by Internal Affairs or Chain of Command Review**

The 2020 Internal Affairs Annual Report identified 334 uses of force that had been reviewed by the section. Arising out of those force incidents, 530 charges were brought against individuals.<sup>117</sup> Some of the incidents resulted in multiple charges. Of those 530 charges, 38 were for a "mental App" or taking a person into custody for evaluation, 82 for a felony, 45 for public intoxication, 72 for a misdemeanor, 42 described only as "other," and one for a DWI.

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<sup>117</sup> Internal Affairs Section Annual Report 2020, available at <https://police.fortworthtexas.gov/Public/use-of-force-report>.

Thus, of the 344 incidents in which force was used to make an arrest, only 187 resulted in a substantive charge. The other charges all resulted from the arrest process – resisting arrest, hindering apprehension, evading arrest, assault on a public servant, etc. Thus, in almost 150 cases, force was used to effectuate an arrest, the person was not charged with any offense other than from conduct that occurred during the arrest process. This raises serious concerns about whether the arrests were justified initially or were the result of retaliation. When the Review Panel asked Internal Affairs about these numbers and this discrepancy, we were told that they had not reviewed the issue and that their concern was, instead, to learn why everyone who was arrested after a use of force was not charged with resisting arrest.

## 6. Recommendations

The Review Panel renews its recommendations from the Preliminary report and emphasizes the following measures to improve accountability:

**First**, the Department should create an office of Auditor or Inspector General. The role of this office would be to investigate fraud, waste and abuse, but significantly, to conduct program audits. The Office of the Inspector General (OIG) for Los Angeles is a good model. In Los Angeles, the OIG “support[s] the Board of Police Commissioners, a five-member civilian panel, and the public by providing information and analysis regarding the conduct and performance of the Los Angeles Police Department (LAPD).”<sup>118</sup> Importantly, the OIG is “separate and independent from the Department. The OIG also reviews investigations specific to all officer-involved shootings and significant uses of force that result in death or hospitalization, as well as complaint investigations of police officer misconduct. The OIG conducts its own performance-related audits, as well as other reviews.”<sup>119</sup> The OIG’s audits result in public reports on a broad range of issues that provide additional accountability.<sup>120</sup> Unlike the current Office of the Police Oversight Monitor, an inspector general would be independent, have the power to compel testimony and document production, and have a staff dedicated to the audit function.

**Second**, the Department should create the position of police legal advisor. The legal advisor’s role would be distinct from the City Attorney who is responsible to defend the City from civil liability. The Advisor would be engaged on a day-to-day basis ensuring compliance with legal standards in the application and execution of warrants, planned actions, First Amendment protected activity, and other areas. In this way, the police advisor would proactively assure the Department’s compliance with legal standards, as opposed to defending the Department from claims of misconduct.

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<sup>118</sup> Office of the Inspector General Los Angeles Police Commission, available at <https://www.oig.lacity.org/>.

<sup>119</sup> *Id.*

<sup>120</sup> See <https://www.oig.lacity.org/audit-and-complaint-reports>.

Discussed elsewhere in this report are additional key accountability mechanisms, including:

- Implementation of an Early Identification System;
- Reporting and review of de-escalation efforts and use of force;
- The role and function of the Police Monitor.

As noted throughout, the Department has in place modern policies and procedures that should provide guidance to officers and ensure that their conduct aligns with the values and objectives of the Department. However, the Department culture and the experience of many people who encounter officers diverges from policy and training. Functioning, robust, and effective accountability systems will be essential to changing that culture. The Department has taken some important steps, but there is much work left to be done.

## **C. Crisis Intervention**

### **1. Behavioral Health Responses in Fort Worth**

Police have become the first responders for a spectrum of social issues: mental illness, substance use, lack of housing and employment, and poverty. Fort Worth is no exception – the Department handles an astoundingly high volume of calls for people in distress. In 2019, the Department received 12,244 mental health-related calls for service – an average of 34 per day – to which 24,999 units responded.<sup>121</sup> These calls drain officer time and resources and fail to provide residents the appropriate services for unmet mental health needs. They also increase the likelihood for use of force that endangers both residents and officers – in Fort Worth, 21% of mental-health related calls for service have a use of force component. Moreover, police-responses create unnecessary involvement with the criminal-legal system for people with disabilities and confers little public safety benefit. In our recommendations below, we encourage the Department to update its analysis of mental health related calls for service.

The Review Panel's Preliminary Report focused on the assessment of Department's Crisis Intervention Team (CIT) unit.<sup>122</sup> We found that Department does not have a functioning Crisis Intervention Unit. Specifically, while officers respond to a high volume of calls for services with people with unmet mental health needs, homelessness, or with substance use disorders, there are no protocols for adequate referrals to service providers. Many of the cases reviewed at the time that involved a person in mental health crisis showed no indication that a CIT officer was called or consulted to assist the person experiencing mental health crisis. Body-worn camera video of these interactions also revealed that officers failed to employ de-escalation techniques that may have avoided the need to use force. Our report identified the need for the

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<sup>121</sup> Department CIT Call Volume Audit, Sept. 3, 2020. The Department has not conducted a more recent CIT Call Volume Audit.

<sup>122</sup> Preliminary Report at 7.

City to develop and invest in non-police, community-based services for people with unmet mental and behavioral health needs and a reduction in the use of police to fulfill that role.

Since August 2020, the Department has undertaken several measures to address the deficiencies and problems in its response to and interactions with residents in crisis or need of behavioral health services. Key among them is the expansion of the CIT Unit and 40-hour crisis intervention training for all officers, which are discussed below.

The Department also convened a Behavioral Health Advisory Board (Advisory Board) to help develop the City's behavioral health programs and services, with the objective of increasing non-police responses to people in crisis. The Board has only met three times as of the writing of this report, in October 2020, January 2021, and August 2021, but among its recommendations thus far are crisis call taking training for all call takers and dispatchers; hiring a behavioral health expert to work in communications to ensure quality of service, oversee training, triage mental health calls, and send non-police calls for service to the MHMR call center. The Department is currently working with the director of MHMR to see if those calls can be directed to its call center. The Department is looking to call diversion models in Austin (TX) and Denver (CO) where there is a behavioral health expert assigned to communications to fulfill the functions outlined in the preceding recommendations.<sup>123</sup>

The current Advisory Board members are primarily representatives from mental health organizations or providers.<sup>124</sup> The Board does not include any members who are themselves consumers of behavioral health services or their families, or whom have had interactions with police in the context of or during a mental health related incident.

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<sup>123</sup> In 2020, the City of Austin began a program whereby call dispatchers are trained to determine whether calls can be diverted to non-police alternatives and has integrated mental health clinicians to assist crisis calls; it more recently added questions to the dispatch call script to better identify calls that can be diverted to mental health service providers. City of Austin Memorandum from Assistant City Manager to Mayor and City Council Members, Feb. 5, 2021, available at <http://www.austintexas.gov/edims/pio/document.cfm?id=354470>. Denver launched its STAR (Support Team Assisted Response) pilot program in June 2020 to divert certain emergency dispatch calls away from police and toward behavioral health services. In its first 6 months, STAR responded to 748 calls without police assistance, and none resulted in an arrest. David Sachs, In the first six months of health care professionals replacing police officers, no one they encountered was arrested, Denverite, Feb. 2, 2021, <https://denverite.com/2021/02/02/in-the-first-six-months-of-health-care-professionals-replacing-police-officers-no-one-they-encountered-was-arrested/>.

<sup>124</sup> Current Advisory Board members include Ramey Heddins, Chief of Behavioral Health Services, Tarrant County MHMR; Zelia Baugh, Executive Vice President, Behavioral Health, John Paul Stevens Hospital; Artie Williams, Fort Worth Veteran Affairs office; Wendy Vopelak, Director of Business Services, Perimeter Behavioral Health facility; and Athena Trentin, Executive Director for NAMI North Texas.

We commend the Department for taking steps to address the deficiencies in its policies and training, however, we continue to have concerns that the measures taken thus far are inadequate for changing officer behavior toward people in mental or behavioral health crisis, reducing the use of force, and providing the community-based services to address the mental and behavioral health needs of residents.

The changes the Department has implemented focus on officer training and responses to crisis, particularly through the expanded CIT Unit. We caution against overinvesting in and overestimating the efficacy of these policies and programs. CIT training alone is not a panacea – recent research reviews have not found evidence that CIT training affects outcomes such as use of force or arrests.<sup>125</sup> We encourage the City to focus its efforts on its work with the Advisory Board. The Department reported that, due to COVID-19, the Advisory Board has not convened in 2022. At the Board's most recent meeting, in August 2021, only three members attended, and no new recommendations were made. The Department should renew its efforts to work with the Advisory Board to develop community-based alternatives and responses in collaboration with consumers of mental health services and their families, and subject matter experts.

## **2. Crisis intervention, de-escalation, and bias-based policing policies to improve Department relationships with residents with behavioral health disabilities.**

Since our Preliminary Report, the Department has made significant changes to several policies related to crisis responses and de-escalation, including the use of force policy, de-escalation policy, and Crisis Intervention Team policy. The amended policies reflect the goals of crisis intervention, de-escalation, and reduction of involvement with the criminal-legal system for people with mental and behavioral health disabilities.<sup>126</sup> The Department now also requires an officer to annotate the efforts made to de-escalate the situation and the individual's actions that precipitated the use of force in the force report.<sup>127</sup> This is critical for analyzing use of force incidents and identifying individual patterns of unnecessary or excessive force.

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<sup>125</sup> Michael S. Rogers, MD et al., Effectiveness of Police Crisis Intervention Training Programs, *Amer. Academy of Psychiatry and the Law*, Vol. 7, No. 4, 2019 (finding little peer-reviewed evidence of CIT's benefits on objective measures of arrests, officer injury, citizen injury, or use of force); Amy C. Watson et al., The crisis intervention team (CIT) model: an evidence based policing practice?, *Behavioral Sciences & the Law*, Aug. 30, 2017 (finding CIT an evidence-based practice for positive officer perceptions and attitude change toward people with mental health disabilities but that additional study is needed to establish CIT as an evidence-based practices for other outcomes such as use of force decreases).

<sup>126</sup> See, e.g., Use of Force General Order 306.02 B.

<sup>127</sup> G.O. 306.07 Reporting Use of Force Incidents.

The new Crisis Intervention policy reflects the shift toward non-police responses and embraces approaches to prevent the unnecessary criminalization of people with disabilities. The policy establishes the Unit's express purpose as "facilitating communication between the police department and the behavioral health community; developing a foundation that promotes effective solutions for assisting those in mental health crisis or with behavioral health challenges; and reducing the need for individuals in crisis to have further involvement with the criminal justice system."<sup>128</sup> This approach is consistent with the goal of reducing the use of law enforcement resources to respond to mental health crisis.

The Department also updated its general order for interactions with people in mental health crisis when it implemented the Crisis Intervention Team policy. While the mental health policy states that a CIT officer "shall take a primary [role]" when responding to mental health-related calls, it does not provide guidance for when officers or dispatchers must request a CIT officer and merely encourages officers to call MHMR "if safe and prudent."<sup>129</sup> Department officials reported that non-CIT officers are calling CIT officers to mental health related calls and that dispatchers are sending them as well. However, because the policies, training, and implementation are in the nascent stage and because dispatchers are not yet formally trained to ask questions to identify calls that do not need a police response and could be routed to the MHMR call center, the Review Panel cannot fully assess the current practices or efficacy of policies.

To this end, the Department should collect comprehensive data to evaluate the outcomes of the trainings, including whether the training improves officer attitudes and perceptions of people with mental illness, whether there is a decrease in arrests of or use of force against people in crisis, and whether there is an increase in referrals to community-based services.<sup>130</sup>

### **3. Crisis intervention training should focus on de-escalation to minimize the use of force.**

While the panel was unable to observe a training due to COVID-19 restrictions, we conducted interviews with Department personnel and reviewed the crisis intervention training lesson plan and other training documents. Our review found that the Department has not developed a new crisis training curriculum but instead uses a 2013 lesson plan and trainings scenarios that focus on exigency and when to make an entry when responding to barricaded persons and hostage situations. While training for such high-risk situations is important, the

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<sup>128</sup> G.O. 412.01 Crisis Intervention Team Purpose.

<sup>129</sup> G.O. 330.01 Persons in Mental Health Crisis.

<sup>130</sup> Data should be both quantitative (e.g., number of calls for service, number of incidents handled by CIT, and number of referrals to MHMR) and qualitative (e.g., officer and other stakeholder surveys, community perceptions).

training provides scenarios limited to these encounters and tactical responses without providing instruction on first assessing a situation for the threat potential and how to manage encounters with people with behavioral health disabilities that do not rise to barricade or hostage situations.

Indeed, the training frames crisis incidents as us-versus-them militarized situations rather than incidents that require consideration and accommodation of the person's disabilities or emotional state.<sup>131</sup> The paramilitary mindset we identified in other areas of training and practices animates the crisis intervention training. For example, the section of the plan that instructs officers on tactical positioning describes crisis incident scenes as "the urban battlefield."

The documents the Department provided the Review Panel do not present educational information about behavioral health disabilities or provide criteria for assessing officers' performance in the scenario-based exercises. In response to the Panel's request for updated crisis intervention training materials, the Department provided a single sheet titled "Building Rapport with a Veteran" and a link to a brief video clip. Furthermore, the trainings do not include first-hand presentations by mental health providers, subject matter experts, and people with mental or behavioral health needs or their family members, a core element of crisis intervention training.<sup>132</sup>

We discuss several cases in the Force Section of this report that involve the avoidable use of force against people in crisis.

The videos we observed, coupled with the policies and trainings reviewed, reveal a culture that does not adequately emphasize cooperation and resolving incidents with minimal force as a guiding value. A Department member observed that often "an officer shows up and the person is agitated, and officers starts barking orders but [they] raise the paranoia and when [the person] refuses to follow orders, the officer uses force." This pattern of behavior contravenes Department policy that establishes the duty for "officers . . . to use de-escalation techniques whenever possible."<sup>133</sup> And it contravenes the overarching goals of crisis intervention: to reduce injury to community members and officers and improve community trust.<sup>134</sup>

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<sup>131</sup> General Order 306.02 B; G.O. 347.03.

<sup>132</sup> Randolph Dupont et al., Crisis Intervention Team Core Elements, Univ. of Memphis, Sept. 2007, [http://www.cit.memphis.edu/information\\_files/CoreElements.pdf](http://www.cit.memphis.edu/information_files/CoreElements.pdf); Justice Center, Council of State Governments, Police-Mental Health Collaborations, A Framework for Implementing Effective Law Enforcement for People Who Have Mental Health Needs 13, April 2019, <https://csgjusticecenter.org/wp-content/uploads/2020/02/Police-Mental-Health-Collaborations-Framework.pdf>.

<sup>133</sup> General Orders 306.04.

<sup>134</sup> Randolph Dupont et al., Crisis Intervention Team Core Elements, Univ. of Memphis 3, Sept. 2007, [http://www.cit.memphis.edu/information\\_files/CoreElements.pdf](http://www.cit.memphis.edu/information_files/CoreElements.pdf).



#### **4. The Crisis Intervention Unit's role.**

Before the recent policy and training changes, the Department CIT Unit had six positions and had operated with fewer officers due to promotions or vacancies. The CIT members generally worked from nine to five on weekdays, although they were available to assist officers on off hours by telephone. When dispatched, CIT officers are accompanied by licensed social workers, or "law liaison," from My Health My Resources of Tarrant County (MHMR), in a co-responder model. In the Preliminary Report and interim assessment, the Review Panel found that CIT is rarely called to mental health incidents, the law liaisons played a minimal role in crisis incidents, and the unit does not provide patrol officers assistance because of understaffing and unavailability evenings and weekends.<sup>135</sup> While the expanded unit has more capacity to respond to calls, the more urgent need in Fort Worth is to develop a robust system of community-based services to address the root causes of calls to law enforcement.

##### **a. High volume of mental health related calls for service.**

Based on the available data, it appears the crisis intervention program is woefully inadequate and cannot fill the demand. The data for 2019 reveal that the CIT unit spent most of its time (96.2%) conducting mental health follow-ups. The unit handled a mere 2.2% of mental health calls for service: CIT officers responded to 172 calls while other units handled 7,650 calls.<sup>136</sup>

In August 2020, the Department announced that it would be increasing the CIT unit to 20 officers and extending the hours of service to 8:00 am to 12:00 am, with callback 24/7. However, prior to October 2020, the Department had five co-responder teams from 8:00 am to 4:00 pm and fewer or no CIT officers with no social worker from 4:00 pm to 12:00 am. The evening CIT team is only able to consult with social workers over the phone to diagnose the person from the scene of the incident. In October 2020, CIT was expanded to cover two shifts, 8:00am to 4:00 pm and 12:00 pm to 10:00 pm, 7 days a week. Each team has a sergeant, corporal, and 8 officer positions. The Department has five social workers assigned to the day shift and two assigned to the evening shift.

While the recent expansion to 20 officers is a significant improvement from 6 officers, several department officials expressed concern that the increase alone will not meet the need of a city of 900,000 people. The Department has not audited CIT calls for service since its assessment on 2019 data. The Department should evaluate 2020 and 2021 data to determine if

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<sup>135</sup> Preliminary Report at 23-24.

<sup>136</sup> Fort Worth Police Department, Crisis Intervention Calls for Service 01/01/2019-12/31/2019, Sept. 3, 2020. Most of the mental health related calls in 2019 involved a person who is suicidal (3,138) or has attempted suicide (3,923). Suicide related mental health calls in which the person was *violent or armed* totaled six.

the CIT Unit's staffing changes have significantly increased the percentage of mental health calls for service handled by the Unit.

### **b. Existing community-based services**

While crisis intervention training and co-responses are important elements for police departments to manage crisis situations, they must be part of a robust behavioral health system and resources that provide preventive services and non-police responses to crisis. Fort Worth/Tarrant County has many crisis services and programs that make up an effective behavioral health system. However, they are limited in their ability to meet the demand and are not adequately integrated into the City's behavioral health system, including through law enforcement, to provide the care residents need.

Existing crisis services in Fort Worth include MHMR's crisis hotline, a mobile crisis team (MCT), and an assertive community treatment (ACT) team. The crisis hotline offers mental health and substance use disorders emergency support 24/7. The MCT is also available 24/7 and conducts emergency assessments for treatment, crisis follow-up, and relapse prevention. The PACT (Program for Assertive Community Treatment) team in Tarrant County provides consumers treatment, rehabilitation, and support needs in the community.<sup>137</sup> MHMR also partners with Mental Health America of Greater Tarrant County (MHA), which provides crisis services including peer programs and a warm line for people who need support but do not need a crisis hotline.

However, from our interviews with Department personnel, the Review Panel has concerns about the volume and adequacy of Fort Worth's behavioral health system needed to deliver preventative and responsive services to Fort Worth's behavioral health service consumers. For example, ACT, is an evidence-based practice that provides wrap-around support services, such as 24-hour crisis assessment, medication prescription and administration, and peer support, to people with mental health illness.<sup>138</sup> Tarrant County only has two such teams, one of which is a Forensic Assertive Community Treatment (FACT) team dedicated to assisting individuals already involved with the criminal-legal system.<sup>139</sup> ACT support systems would

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<sup>137</sup> Tarrant Cares, PACT, <https://tarrant.tx.networkofcare.org/dv/library/article.aspx?id=311>.

<sup>138</sup> Treatment Advocacy Center, 21<sup>st</sup> Century Cures Act (Dec. 2016), <https://www.treatmentadvocacycenter.org/storage/documents/21st-century-cures-act-summary.pdf>.

<sup>139</sup> For a description of FACT programs, see SAMHSA, Forensic Assertive Community Treatment (FACT): A Service Delivery Model for Individuals With Serious Mental Illness Involved With the Criminal Justice System (June 2019), <https://store.samhsa.gov/product/Forensic-Assertive-Community-Treatment-FACT-A-Service-Delivery-Model-for-Individuals-With-Serious-Mental-Illness-Involved-With-the-Criminal-Justice-System/PEP19-FACT-BR>.

provide individuals services for unmet mental health needs that could prevent crisis and potential contact with the criminal-legal system and police.

Indeed, department officials told us there is a need for increasing funding for more mental health treatment options in community, substance use disorder treatment, telehealth services for medication, and housing/beds for unhoused residents. They also noted that one PACT team for the entire county is insufficient to meet the need.

## 5. Recommendations

The Review Panel renews its recommendations from the Preliminary report and emphasizes the following measures to improve the Department's crisis responses:

**a. Crisis intervention training should focus on de-escalation and minimizing force.**

The Department's new training should focus on educating officers about mental health and other disabilities so they can better understand and interact with people with unmet or behavioral health needs or in crisis. Part of understanding the lived experiences of individuals with behavioral health issues requires hearing directly from them and their families about their lived experiences, and they should be part of the development of the training, neither of which Department has done.

**b. The Crisis Intervention Unit alone cannot and *should not* handle all mental health related calls in Fort Worth and the City should expand its behavioral health system to reduce police responses to crisis.**

The City should develop and increase services that promote public safety and avoid the unnecessary involvement with the criminal-legal system for people with disabilities. Fort Worth has many of the components necessary for an effective behavioral health system, however, Department officials told us that there is a need to expand these services. The Panel urges the City to focus its efforts here while it simultaneously improves the CIT program. Even with the recent expansion of the CIT unit, the Department will not have enough CIT officers and law liaisons to respond to the volume of mental-health related calls the City receives. Developing services to divert some of these calls serves the dual-purpose of helping residents receive the treatment and support they need while freeing up officers for other calls.

The Department has begun to take steps to develop community-based non-police responses and the City should unequivocally provide the support and dedicate the resources to build a robust system to reduce the reliance on police.

The Panel is encouraged by the Department's efforts to address the deficiencies in crises responses, including its partnership with MHMR and the creation of the Behavioral Health Advisory Board. As the City and Department work to develop its behavioral health system and crisis responses, it should look to approaches other cities have taken to shift crisis responses from law enforcement to community-based services. Many jurisdictions are following Eugene, Oregon's CAHOOTS crisis response. Established in 1989, Crisis Assistance Helping Out On The Streets (CAHOOTS) is a community-based public safety system. The police department diverts certain calls for mental health crisis to the program staffed with behavioral health employees or social workers. The program has proven that many calls to police do not, in fact, require a police response. In 2019, the Eugene Police Department diverted 24,000 calls to the CAHOOTS program and only 150 required police backup.<sup>140</sup>

Cities across the country have begun to develop programs to reduce armed police interventions for mental health, substance use, and other crisis-related calls modeled on the CAHOOTS program. For example, San Francisco announced it is developing a systematic response to divert non-violent calls for service away from its police department.<sup>141</sup> Albuquerque is creating an unarmed public safety department to respond to mental health, substance use, and homelessness related calls.<sup>142</sup> Denver launched the Support Team Assistance Response (STAR) pilot program under which dispatchers send mental health professionals and paramedics to some 911 calls. The STAR team responded to 350 calls in 3 months without once calling for police backup.<sup>143</sup>

While we do not endorse a specific program, we offer these examples as model behavioral health programs that better serve people with unmet needs, reduce negative police-community interactions, and improve community trust, that the Department should consider.

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<sup>140</sup> White Bird Clinic, What is CAHOOTS?, <https://whitebirdclinic.org/what-is-cahoots/>.

<sup>141</sup> City and County of San Francisco New Release, Mayor London Breed Announces Roadmap for New Police Reform, June 11, 2020, <https://sfmayor.org/article/mayor-london-breed-announces-roadmap-new-police-reforms>.

<sup>142</sup> City of Albuquerque Press Release, Mayor Tim Keller to Refocus Millions in Public Safety Resources with First-of-Its-Kind Civilian Response Department, June 15, 2020, <https://www.cabq.gov/mayor/news/mayor-tim-keller-to-refocus-millions-in-public-safety-resources-with-first-of-its-kind-civilian-response-department>.

<sup>143</sup> Elise Schmelzer, Call police for a woman who is changing clothes in an alley? A new program in Denver sends mental health professionals instead, Denver Post, Sept. 7, 2020, <https://www.denverpost.com/2020/09/06/denver-star-program-mental-health-police/>.

**c. The City should conduct a gap analysis to identify what behavioral health services are most needed.**

To develop a system that offers effective non-police responses to crisis and the services to prevent people from falling into crisis in the first place, the City must identify what service providers there are, their current capacity, the extent of the need, and how to best build up its behavioral health system. To this end, the City should conduct a formal assessment to identify gaps in its behavioral health system and determine what services it needs to expand or create. This assessment should include interviews of consumers of behavioral health services and other stakeholders, analysis of the current response systems, and recommendations for improving crisis responses in Fort Worth. Under a consent decree with the U.S. Department of Justice, the City of Baltimore conducted a gap analysis in 2019 that may serve as a model for Fort Worth.<sup>144</sup>

**d. 911 dispatchers should be trained to identify calls that should be diverted to community-based services.**

We support the recommendation of the Behavioral Health Advisory Board to develop a call taking/dispatch program to divert mental health related calls to behavioral health service providers. The City should continue the process to develop a dispatch process that involves behavioral health professionals and a decision-tree for dispatchers to identify calls that do not require police to respond and that can instead be routed to other services. The City should work with mental health professionals to determine which calls can be attended to by a CIT officer and which can be diverted to other community-based services.

Additionally, the City should create non-emergency numbers that go directly to service providers such as MHMR so that people do not have to dial 911 when in need of assistance or in crisis.

**e. Assign a CIT Unit member to the Use of Force Review Board.**

As discussed earlier, the Department amended its General Orders to expand the Use of Force Review Board to ensure that the Board includes the Training Division, Criminal Investigations Division, Patrol Division, SWAT, and the Fort Worth Police Monitor.<sup>145</sup> However, the CIT Unit is not currently represented on the Board. The CIT Unit members are specially trained to intervene in situations involving people in crisis. This training affords them a level of experience and expertise to identify issues in the handling of crisis situations that non-CIT personnel do not have. For this reason, the Department should assign at least one member of

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<sup>144</sup> Baltimore Public Behavioral Health System Gap Analysis, Dec. 2019, <https://www.powerdms.com/public/BALTIMOREMD/documents/623350>.

<sup>145</sup> General Order 306.09.

the CIT unit to the Use of Force Review Board. It is important that the Board have such a member in order to ensure that its CIT and de-escalation trainings are effective and that officers are applying the skills and techniques taught to resolve incidents without using force.

## **D. Community Policing**

### **1. Community Policing – Background on Community Policing in Fort Worth**

Fort Worth has struggled with its relationship with communities of color. High profile incidents have eroded trust and legitimacy and prior efforts at reform have failed to fully address community concerns. The October 12, 2019, shooting death of Atatiana Jefferson was the seventh officer involved shooting between June 1 and October 12, 2019. Of those, she was the sixth death; only one person survived.

Two years earlier, in June of 2017, the City Council created the Fort Worth Task Force on Race and Culture (Task Force) in response to community concerns. 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.<sup>146</sup>

Prior to the Task Force, in 2014, the City participated in the Department of Justice's National Initiative for Building Community Trust and Justice (National Initiative).<sup>147</sup> 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."<sup>148</sup>

The Department received a detailed three-year implementation plan for reforms in 2015. By this time, Joel Fitzgerald had become the Department's chief. As part of the National Initiative, the Department established a Chief's Advisory Board (CAB) to "provide a public

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<sup>146</sup> Fort Worth Task Force on Race and Culture (December 4, 2018), <https://www.documentcloud.org/documents/5396783-Race-and-Culture-Task-Force-Final-Recommendation>.

<sup>147</sup> National Initiative for Building Community Trust and Justice, <https://trustandjustice.org/pilot-sites/info/fort-worth-texas>.

<sup>148</sup> National Initiative for Building Community Trust and Justice Implementation Plan 3 (2015), [https://uploads.trustandjustice.org/misc/Ft\\_Worth\\_Implementation2015.pdf](https://uploads.trustandjustice.org/misc/Ft_Worth_Implementation2015.pdf).

forum for police-community engagement around public safety.”<sup>149</sup> It is unclear how long the CAB was in existence, but it was reestablished in 2017 as a forum to hear community concerns.<sup>150</sup> The Department also trained officers in procedural justice and implicit bias and began the reconciliation process with communities historically impacted by police misconduct.<sup>151</sup>

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.<sup>152</sup> 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 behavior of officers in all encounters with community members is critical to building that community trust.

## 2. Key Components of Community Policing

Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.<sup>153</sup> According to the Community Oriented Policing Services (COPS) office of the U.S. Department of Justice, community policing comprises three key components: community partnerships, organizational transformation and problem solving.<sup>154</sup> Community partnerships allow police and community to solve problems and increase trust. Problem solving encourages agencies to develop proactive solutions to the underlying problems that cause crime. Organizational transformation requires alignment of agency management, organizational

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<sup>149</sup> National Initiative for Building Community Trust and Justice, <https://trustandjustice.org/pilot-sites/info/fort-worth-texas>.

<sup>150</sup> Fort Worth Police Department, Chief’s Advisory Board, <https://police.fortworthtexas.gov/About/Chief-Advisory-Board#:~:text=The%20E2%80%9CNew%E2%80%9D%20Police%20Chief’s%20Advisory,concepts%20and%20increasing%20public%20awareness>.

<sup>151</sup> 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](https://s3.trustandjustice.org/misc/National_Initiative_2018_Interim_Status_Report_Fort_Worth.pdf).

<sup>152</sup> Fort Worth Police Department, First Quarter Crime Report, January – March 2020, <https://online.flippingbook.com/view/529863/>.

<sup>153</sup> “Community Policing Defined,” Community Oriented Policing Services, U.S. Department of Justice, Washington, DC (2012, revised 2014), page 1. Accessed at <https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf>, February 8, 2021.

<sup>154</sup> Ibid.

structure, personnel and information systems to support community partnerships and proactive problem solving.<sup>155</sup>

According to the COPS office, community policing focuses organizational transformation on department organization and management that is structured to support an agency-wide adoption of the community policing philosophy. “Community policing emphasizes changes in organizational structures to institutionalize its adoption and infuse it throughout the entire department, including the way it is managed and organized, its personnel and its technology.”<sup>156</sup> Under this model, “Police management infuses community policing ideals throughout the agency by making a number of critical changes in climate and culture, leadership, formal labor relations, decentralized decision making and accountability, strategic planning, policing and procedures, organizational evaluations, and increased transparency.”<sup>157</sup>

The decentralization of decision making allows patrol officers to take responsibility for their role in community policing. They are provided authority to coordinate problem-solving resources and autonomy to establish community relationships. The organizational structure ensures that patrol officers have decision-making authority and accountability by assigning and deploying them geographically into beats (beat accountability) and developing officers who are generalists. The long-term assignment of patrol officers into specific neighborhoods can enhance customer service, establish stronger police community relations and mutual accountability. Beat boundaries should correspond to neighborhood boundaries. According to COPS, “community policing encourages its adoption adopted agency-wide, not just by special units, although there may be some specialists who identify and solve particularly complex problems or manage complex partnerships.”<sup>158</sup> Specifically, “The principles of community policing should be infused throughout the entire personnel system of an agency, including recruitment, hiring, selection and retention of all law enforcement agency staff, from sworn officers to civilians and volunteers. Personnel evaluations, supervision, and training must also be aligned with the agencies’ community policing views.”<sup>159</sup>

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<sup>155</sup> Ibid, page 4.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid, page 5.

<sup>158</sup> Ibid, pages 5-7.

<sup>159</sup> Ibid.



### **3. Fort Worth Police Department's Policies and Operations Regarding Community Policing**

Fort Worth Police Department's policies and operations reveal the Department embraces community partnerships and, to some extent, problem solving in principle, but not necessarily in practice. The Department's community partnerships historically are primarily structured through the Support and Patrol Bureaus. When our review began, we found the Investigative and Support Command of the Support Bureau houses most of the community-facing programs and functions in that bureau. Those programs and functions include the School Resource Unit and Youth Services, Code Blue, Citizens Police Academies, Police/Clergy programs, Cadet program and the Community Emergency Response program. All are managed within the Support Services Division and covered by sections (C)(1) and (C)(3) of General Orders 102.03, "Investigative and Support Command Support Services Division."<sup>160</sup> Patrol Bureau community-facing programs are managed within the Community Operations Section of each patrol division. Those programs and functions include the Neighborhood Police Officer (NPO) program and Crime Prevention Unit. Additionally, a Crisis Intervention/Homeless Outreach Program Enforcement (HOPE) Unit is deployed in the Central Division. Subparagraphs (A)(2), (A)(3), and (B)(4) of General Orders 103.02, "Patrol Command," are the policy directives for these community policing functions. The Review Panel was notified that community-facing programs were transferred to the Personnel and Finance Bureau as of February 26, 2022. The Review Panel has not received and reviewed an updated General Order reflecting that change.

The Fort Worth Police Department has also chosen to document their Community Policing Strategies in General Order 347. This General Order describes "Police and Community Relations," "Racial Profiling," "Bias-free Policing," and "Nuisance Abatement."<sup>161</sup> According to the General Order "It is the duty of every employee of the Department to build an open relationship and dialog with the community served. This is accomplished through a variety of means to include, but not limited to, community forums and meetings, open house, citizen advisory committees, and specifically targeted programs."<sup>162</sup> The General Order gives Command staff responsibility for evaluating department community relations programs and plans plus outlining expectations of community trust building for all personnel.<sup>163</sup> The General Order

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<sup>160</sup> The Support Services Division is responsible for providing general support services for the department, crime prevention and interaction with the community through the Crime Intervention Services, and the technical support for detectives and officers on all offenses investigated involving child actors. Community-facing entities include the Youth Section's School Resource Unit (SRU) and Youth Services.

<sup>161</sup> General Order 347.01, 347.02, 347.03, and 347.04.

<sup>162</sup> General Order 347.01 (I).

<sup>163</sup> General Order 347.01 (J).

covering “Specialized Units and Department Programs directed to the Community,” outlines special units and programs’ community engagement responsibilities.<sup>164</sup> Units and programs identified in this subparagraph include the Neighborhood Police Officer, Public Information Programs, Crime Prevention Programs, Community Volunteer Programs, Chief’s and Policy Advisory Boards, Ride-In Program and Procedural Justice Unit.

#### **4. Conclusions Regarding Community Policing**

General Order chapters 347, 102 and 103 all very strongly and clearly articulate the City’s commitment to community partnerships and the problem-solving tenets of community policing but do not declare community policing as the Department’s chief operational philosophy. While some aspects of community policing exist, the Department does not culturally embrace many of the foundational elements of organizational transformation established by the architects of community policing.

The Review Panel reviewed the Department’s policies to understand its community policing policy orientation. The Review Panel also interviewed police officers to understand how the department operationalizes Community Policing. Our understanding of community perspectives on, perceptions of, and experiences with the Department’s community policing were informed by in person and virtual individual and group interviews.

Our review of community policing policies and activities reveal the following:

- a. There is a disconnect between what policies prescribe, what officers do, and what the community expects and experiences. Therefore, Department does not truly embrace a community policing philosophy.**

The General Orders depict the Department as an agency that embraces community policing. A multitude of special units and programs are directed toward developing and sustaining community partnerships. Policy 347.01 establishes the mandate for all employees to build an open relationship and dialog with the community served. Uniformed patrol is considered the “backbone” of most police departments, yet patrol officers are not directed by Department policy, processes, or systems to routinely engage in community policing. Informal police leaders and other police officials indicated their belief that patrol officers are not held accountable for community policing activities. Community members can often identify and name their NPO but not other officers who patrol in their neighborhood. While most residents we spoke with expressed favorable opinions of the NPOs, they expressed concerns about

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<sup>164</sup> General Order 347.01 (K).

disrespectful officers, recruits not integrating into the community, and a general lack of accountability.

**b. Community Policing is primarily the domain of the NPOs.**

Section 3 of the Fort Worth Police Department Neighborhood Police Officer Standard Operating Procedure outlines NPO responsibilities. Sections 3.01, “Identify Problems,” 3.02, Establish Community Leadership, and 3.03 (A-N) “NPO Objectives,” lists multiple activities in which community police officers may typically engage. For example, 3.03(c) says “NPOs shall identify and address neighborhood problems.” 3.03(H) requires NPOs to coordinate proactive field activities with patrol officers and other available resources. The General Order declares that “Foremost in the duties of the Neighborhood Police Officer is the responsibility of promoting the concept of community policing through working in the neighborhoods, housing communities, recreational centers, businesses, and other community entities by providing a direct link between the community and the police.”<sup>165</sup> General Order 103.02(A)(2) defines the NPO “patrol” role as one that incorporates “non-traditional methods of crime prevention aimed at the inclusion of neighborhoods and the community, promoting an open channel of communication between the police department and the community to effectively eliminate or reduce crime.” The more than 40 NPOs we surveyed and interviewed, as well as community members and Fort Worth police officers we spoke with, all agreed that the NPOs are the Department’s primary community policing resource.

**c. Other specialized units outside of patrol perform community policing roles. Their placement in the organizational structure may impact the perception of their relative importance to the organization.**

The Investigative and Support Command of the Support Bureau houses most of the community-facing programs and functions in that bureau. Those programs and functions include the School Resource Unit and Youth Services, Code Blue Citizens on Patrol, Spanish-speaking Citizens on Patrol, Citizens Police Academy, Spanish-Speaking Citizens Police Academy, Citizens Police Academy Alumni Program, Ministers Against Crime and Clergy and Police Alliance Police/Clergy programs, Cadet program and the Community Emergency Response program. All are managed within the Support Services Division and covered by sections (C)(1) and (C)(3) of General Orders 102.03, “Investigative and Support Command Support Services Division.”<sup>166</sup> These community policing special units typically are located on lower tiers in the

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<sup>165</sup> General Order 347.01(K)(1).

<sup>166</sup> The Support Services Division is responsible for providing general support services for the department, crime prevention and interaction with the community through the Crime Intervention Services, and the technical support for detectives and officers on all offenses investigated involving child actors. Community-facing entities include the Youth Section’s School Resource Unit (SRU) and Youth Services.

organizational structure. Their placement in the organizational structure may impact the perception of their relative importance to the organization.

**d. The Department’s patrol operations are decentralized geographically but officers are not assigned long-term to individual beats. The Department does not employ beat accountability, a hallmark of community policing.**

According to the Department’s Neighborhood Police Officer Standard Operating Procedure 2.0.2, “The Patrol Bureau is comprised of two geographic commands, North and South. Each command is further geographically divided into Divisions; Central, North, West, South, East, and Northwest. Six of the Divisions, Central, North, West, South, East, and Northwest are commanded by captains or commanders. Each division is further divided into separate beats. The lieutenants are responsible for directing the patrol officers, detectives, and neighborhood police officers and for the reduction of crime within their divisions and zones. This enables the department to provide neighborhood-based service to the citizens.” Police officers and commanders advised the Review Panel that NPOs are held accountable for police service delivery activities that occur in their assigned areas (beat accountability). However, patrol officers are not provided beat accountability in their patrol assignments. They instead may be assigned to multiple different beats within any given work week. Patrol staffing is based upon calls for service workload.

**e. Contrary to community policing standards, patrol officers are not community policing generalists.**

The Review Panel interviewed formal and informal police leaders, NPOs, and officers who informed us that patrol officers are not afforded beat accountability nor held accountable for community policing activities. Because community policing services are primarily delivered through the Department’s specialized units, patrol officers’ primary job is to “fight crime” and respond to calls for service. Patrol officers are not community policing generalists. This appears to reinforce and perpetuate a patrol culture and ethos fixated on “crime fighting” and reactive policing that is antithetical to community policing and building community trust.

**f. Patrol officers are reactive “specialists” whose job descriptions and performance evaluations do not hold them accountable for community policing.**

The Review Panel reviewed the job descriptions for police officer, police sergeant and police lieutenant.<sup>167</sup> The police officer job description indicates they are required to “patrol,” “arrest,” “subdue,” “enforce,” “respond,” “issue,” and “investigate.” They also are required to

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<sup>167</sup> <https://www.fortworthtexas.gov/files/assets/public/hr/documents/job-descriptions/police-officer.pdf>

“interact with community to establish rapport.” Sergeants and lieutenants are required to establish and maintain “a positive working relationship with fellow employees and the community.” There is no other mention of or reference to community policing as required knowledge, skills, or abilities for any of these police positions.

**g. Additional observations and conclusions regarding community policing.**

The Review Panel draws the following additional conclusions as a result of our review:

- The Fort Worth Police Department has community programs but does not fully embrace community policing philosophy;
- The Department has strong community policing policies that stop short of declaring it the Department’s primary operating philosophy;
- Failure to fully embrace a community guardian philosophy perpetuates an aggressive, crime fighting, “warrior” ethos that is antithetical to community policing and building community trust;
- Community members see the NPO program as a positive community policing effort. They want all patrol officers to provide NPO type community service;
- Assigning community policing responsibilities mostly to specialist positions in lower-level units and sections reinforces Community Policing is not a core philosophy of the Department.

The Review Panel offers the following recommendations to enhance the Department’s approach to Community Policing:

- The Department should consider developing and executing a Geographical Patrol deployment scheme that provides 24-hour accountability for each patrol beat, pushed down to at least the patrol sergeant level;
- Provide beat accountability to generalist patrol officers by designating beat officers and deploying them in the same beat long term;
- Push community policing accountability down to the lowest levels to all personnel in the organization;

- Revise management, performance and accountability systems around a robust community policing philosophy;
- Examine how recruitment, hiring, selection, promotions, retention and even disciplinary efforts, standards and requirements support community policing;
- Consider full implementation of the new geographic policing strategy initially as a patrol pilot project then grow outward to the entire agency over time;
- Adjust policies and training to align with community policing operational expectations.

## **E. Search Warrants**

### **1. Preliminary Report Conclusions and Recommendations**

In its previous reports, the Review Panel evaluated practices of the Department in executing search warrants and identified issues in the use, acquisition and execution of no-knock warrants by the Department SWAT Team and the policies and training regarding the constitutional obligations to knock and announce generally. The Panel found that the Department had made important changes that significantly mitigated the identified issues and commended the Department for those changes. In the course of our review to date, we have identified improvements but also significant ongoing concerns.

### **2. Background and legal overview**

The execution of an arrest or search warrant at the residence<sup>168</sup> of a community member, is one of the most impactful and conspicuous events a police department can perform. This is particularly true when the execution of the search warrant is done without knocking and announcing first (a “no-knock” entry) and followed by government agents forcefully and quickly moving through the residence. The practices of a police department in using this powerful tool reveals volumes about a department’s culture and genuine concern for developing a partnership

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<sup>168</sup> “The Fourth Amendment provides that ‘[t]he right of the people to be secure in their ... houses ... shall not be violated.’ We have recognized that the ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’” *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

with its community to create public safety. Review of warrant executions has thus been a critical assessment vector of police departments and a vehicle for reform.<sup>169</sup>

Under current law defining the Fourth Amendment requirements for search and arrest warrant service, police officers executing an arrest or search warrant generally may not make a forced entry into a residence or other structure where a reasonable expectation of privacy exists, without first knocking, announcing their identify and the purpose of the entry, and waiting a reasonable amount of time for the occupants to admit the officers.<sup>170</sup> In 1997, the Supreme Court held that an officer is not required to knock and announce if doing so would be unreasonable.<sup>171</sup> This includes situations in which officers reasonably suspect that announcing their presence would be dangerous, futile, or result in the destruction of evidence. While the caselaw defining when officers do not need to knock and announce primarily focuses on exigent circumstances incident to a warrant being executed, a practice in the American Law Enforcement Community has been to get court approval of the practice by having the search warrant include a provision allowing officers to dispense with the knock and announce requirement because one or more of the justifications exist and can be articulated when the warrant is requested.<sup>172</sup>

In reviewing the use of no-knock warrants by the Department for the 2021 interim assessment, the Review Panel found that the vast majority of no-knock warrants were for drug investigations and were executed by the SWAT Team. This mirrors the practice in the American law enforcement community. The Panel recognized the need for most law enforcement agencies today to have enhanced tactical capabilities and certainly the need for a department the size of the Fort Worth Police Department to have a dedicated full-time SWAT Team. SWAT teams are critical to address situations where traditional police methods and weapons are inadequate. These include barricaded subjects, hostage situations, or heavily armed assailants that must be responded to in a timely manner. It is clearly unrealistic to task non-SWAT police with such missions. The Review Panel also recognized the distinction between the reactive SWAT examples noted above, and the proactive use of SWAT in support of investigative activity such as the execution of search warrants. The Department has tremendous discretion in the use of the

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<sup>169</sup> For a more thorough example, see the Report of the Search Warrant Task Force created by the Kentucky Attorney General in 2021: <https://ag.ky.gov/Documents/SWTF%20FINAL%20REPORT.pdf>.

<sup>170</sup> *Wilson v. Arkansas*, 514 U.S. 927 (1995).

<sup>171</sup> In *Richards v. Wisconsin*, 520 U.S. 385 (1997), the U.S. Supreme Court ruled “[i]n order to justify a ‘no-knock’ entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence.

<sup>172</sup> In *Hudson v. Michigan*, 547 U.S. 586, (2006), the Court held that a violation of the Fourth Amendment knock and announce requirement does not require evidence found in the ensuing search be suppressed. With suppression of evidence not being a deterrent, it is critical that police management are particularly mindful of possible overuse of no-knock warrants or the exigency exceptions during regular search or arrest warrant executions.

SWAT proactively and must exercise that discretion wisely to avoid the use of the SWAT Team when not clearly needed.

Any deployment of the SWAT Team carries with it significant potential for negative impact on community relations and confidence. The clearly unnecessary use of a SWAT Team directly and adversely impacts community perceptions, is a grossly inefficient use of Department resources, creates a potentially violent encounter which is avoidable, and unnecessarily exposes the City to liability. As a matter of practice, the deployment of a SWAT Team to conduct a law enforcement action should only be done when necessary and when no safer alternative exists.

The use of no-knock warrants by the SWAT Team were particularly concerning because of the negative impact on community perceptions of the legitimacy of law enforcement and procedural justice. The Review Panel examination of search warrant files and interviews of management over the SWAT program indicated that only the SWAT Team executed no-knock warrants. In the 2000's the SWAT Team was doing as many as 300 no-knock search warrants annually. In 2018 and 2019, the SWAT Team conducted 154 no-knock warrants with dynamic entry<sup>173</sup> (81% of all SWAT warrant executions) and 90 no-knock warrants with dynamic entry (68% of all SWAT warrant executions), respectively. In 2020, after there was a review of no-knock warrants, all no-knock warrants with dynamic entry ceased.<sup>174</sup> From mid-2020 through early 2021, the SWAT Team occasionally made a no-knock breach as part of the execution of a search warrant where the Team then surrounded the residence and called out all occupants before slowly clearing the premises. In March 2021, the SWAT Team ceased all no-knock entries absent extreme justification, to include even breaching incident to surrounding a residence and calling out occupants.<sup>175</sup>

### **3. Previous Observations on no-knock SWAT warrant executions**

Specific observations of the Review Panel included:

- The sample search warrants had adequate legal justification in terms of there being probable cause to believe that evidence would be present at the locations to be searched.

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<sup>173</sup> The Department defines a "Dynamic Entry" as a "rapid entry and movement through a target location with the intent of quickly overwhelming any potential threats and/or preventing the destruction of contraband." The Department further mandates that only the SWAT Team shall serve search warrants where a dynamic entry is employed. General Order 321.05 B.5.a.

<sup>174</sup> The last no-knock warrant with dynamic entry served by the SWAT Team was on May 19, 2020.

<sup>175</sup> The last no-knock warrant served with a no-knock breach but with no dynamic entry of personnel was March 10, 2021.



- Some no-knock provisions in the sampled warrants generated by the narcotics units were not legally justified. Some were patently unconstitutional and contrary to specific Texas and Supreme Court guidance.<sup>176</sup> It was clearly the practice of the narcotics section to routinely request no-knock warrants.
- The SWAT Team was using no-knock warrants as de facto training. It was known to the chain-of-command that most of the no-knock search warrant executions by the SWAT Team were essentially done to provide the Team with real missions to augment the established training.
- The use of the SWAT Team in the cases reviewed by the Panel were often easily avoidable. Most of the drug related search warrants were forwarded to the SWAT Team prematurely when there had been very little investigative work done on the case.
- All search warrants generated by substantive investigative units were referred to the SWAT Team for the unilateral decision of who would execute the warrant.
- In early 2020, apparently after the well-publicized shooting death of Breonna Taylor in Louisville on March 13, 2020, the Department initiated an internal review of its use of no-knock search warrants. As noted above, the use of no-knock search warrants in the years 2018 and 2019 averaged approximately 2.3 per week, but by mid-2020 the practice became limited. Additionally, new policy language was added to the General Orders<sup>177</sup> which defined no-knock warrants and provided this as the standard for use<sup>178</sup>:

No-Knock Warrant – A no-knock warrant is a search warrant authorizing police officers to enter certain premises without first

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<sup>176</sup> The Court in *Richards* specifically ruled that the justification for not knocking and announcing must be fact specific – that under the particular circumstances of the case there is a reasonable suspicion that knocking and announcing their presence would trigger one of the justifications. Texas decisions include *Stokes v. State*, 978 S.W.2d 674 (Tex. App.— Eastland 1998); *Robinett v. Carlisle*, 928 S.W.2d 623 (Tex. App.—Fort Worth 1996); *Ballard v. State*, 104 S.W.3d 372, 383 (Tex. App.— Beaumont 2003); *Brown v. State*, 115 S.W.3d 633, 639 (Tex. App.—Waco 2003).

<sup>177</sup> General Order 321.05 B.5.

<sup>178</sup> General Order 321.05 B.5.b.(1) (emphasis in original).

knocking and announcing their presence or purpose prior to entering the premises. Such warrants are issued where an entry pursuant to making an announcement prior to entry would lead to the destruction of the objects for which the police are searching or would compromise the safety of the police or another individual.

No-knock warrants shall only be utilized for **extreme situations** where the tactic suggests that it is the safest way for the situation to be handled. The SWAT commander will make the tactical consideration for service of the no-knock warrant and obtain final approval from the Deputy Chief over the Tactical Command. All approved no-knock warrants shall be executed by the SWAT Section. (Emphasis in original).

- Search warrant executions should be limited to daytime hours unless an articulated operational need is established and approved. This was another point often noted in the national commentary on the Breonna Taylor shooting.<sup>179</sup> Sample policy language was provided in the interim assessment.

It should be noted that the Review Panel had no concerns regarding the operational aspects of SWAT and recognizes how active they are (the Team conducted 275 operations in 2021). Our review indicated that when SWAT deployed, it performed the SWAT functional extremely well. Our concerns were regarding the decision and timing to use SWAT – not what SWAT actually did on the scene. The Panel reviewed notable examples of SWAT officers taking significant risks to avoid the use of force. In one case, SWAT officers used non-lethal force options to arrest an armed subject in mental health crisis posing a deadly threat to them. In another case involving a high-risk rescue of several hostages (including several children), SWAT officers accessed a residence and put themselves in extreme danger by not engaging the subject, who was in close proximity to several hostages, until they were very close to him. In the operations reviewed by the Panel, SWAT Team members consistently showed tremendous competence, courage and selfless professionalism.

#### **4. Previous Recommendations**

The Panel made the following recommendations regarding the Department policies and practices related to SWAT and the execution of search warrants in 2021:

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<sup>179</sup> The fatal shooting of Breonna Taylor occurred incident to Louisville, Kentucky, police officers executing a search warrant at her residence just after midnight, apparently with no operational need identified for such a late execution.

- SWAT management must immediately and permanently cease the practice of using avoidable deployments as de facto training.
- Substantive investigative units should not be referring warrants to the SWAT Team prematurely. Investigations should only be referred to SWAT by a substantive investigative unit with approval by the substantive unit management that all logical investigation has been conducted and no unaddressed investigative work remains which could indicate options other than the use of the SWAT Team.
- Do not give the SWAT Team management unilateral discretion as to who in the Department executes any search warrant.
- The Department should adopt a policy that defines the constitutional requirement to knock and announce incident to the execution of search and arrest warrants. Such a policy is necessary generally, but also to provide needed context for no-knock entries. That is, a no-knock entry is an exception to the knock and announce rule. This is particularly important in light of the grossly inadequate training on this point (see Training Section).
- The no-knock warrant policy should be more consistent with relevant caselaw and reflect the legal standard.
- The Department should create a policy limiting search warrant execution to the daytime barring an articulated operational need.

## **5. Conclusions Regarding Search Warrants**

The Panel reviewed operations of the SWAT Team in 2020 and 2021 to include logs and other SWAT files, and thoroughly reviewed 24 search warrants executed by the SWAT Team and case files relevant to those search warrants. The Panel recognizes that the SWAT Team has significantly changed its practices in terms of reviewing search warrants referred to them. In 2021, the Team had 117 search warrants referred to them for review of which they executed 92 and provided advice on the remaining 25. The following are conclusions regarding the Department policies and practices related to SWAT and the execution of search warrants:

### **a. The SWAT program has made significant changes to its practices.**

As noted above, the SWAT Program has made significant changes in its practices regarding the execution of search warrants, particularly no-knock warrants and dynamic

entries.<sup>180</sup> The practice of SWAT management using avoidable deployments as de facto training appears to have completely ceased. Additionally, the practice of substantive investigative units referring warrants to the SWAT Team very early in a case when other investigation was warranted appears to have abated. Review of a sample of narcotics case files with search warrants executed by the SWAT Team indicated extensive, thorough, and well documented investigative work product. While these two developments are commendable, the Panel strongly encourages the Department to evaluate how these related practices developed to such a significant and conspicuous level in the past and establish policy and management practices that ensure this can never recur.

The policy<sup>181</sup> regarding the SWAT Team management having discretion as to who in the Department executes search warrants was modified and limits this to search warrants requiring entry into an occupied structure. The Review Panel agrees with this revision to policy.

**b. The Department has not adopted some important policy changes.**

Of significant concern, the Panel notes that there has been no addition to policy regarding the constitutional requirement to knock and announce incident to the execution of search and arrest warrants. Again, such a policy is necessary generally, but is critical to provide needed context for no-knock entries, which are exceptions to the knock and announce rule. An officer cannot understand the exception without first understanding the rule. Again, this is particularly important in light of the current inaccurate and inadequate training on this point.

The Review Panel notes the no-knock warrant policy<sup>182</sup> remains unchanged and again recommends that it be updated to be consistent with relevant caselaw and reflect the legal standard. The panel renews its 2021 recommendation:

The no-knock warrant policy should be more consistent with relevant caselaw. The Review Panel commends the Department's recent policy change now stating that "no-knock warrants shall only be utilized for

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<sup>180</sup> The practices regarding no-knock warrants instituted by the Department over a year ago are consistent with the recommendations made by the National Tactical Officers Association on February 25, 2022. See: <https://www.ntoa.org/ntoa-releases-position-statement-on-no-knock-warrant-service/>.

<sup>181</sup> General Order 321.05 B.5.

<sup>182</sup> General Order 321.05 B.5b.(5).

**extreme situations** where the tactic suggests that it is the safest way for the situation to be handled” (emphasis in original). Additionally, the Panel recommends the Department make the predication for using a no-knock warrant more closely mirror relevant caselaw defining the Constitutional constraints on no-knock warrants. While an accurate and well-intentioned characterization of the use of no-knock warrants, “extreme situations” is not the legal standard. Specifically, there needs to be facts particular to the current case which justify not knocking and announcing. This was the essence of the decision in the *Richards* case. There, the Court held that the 4<sup>th</sup> Amendment does not permit a blanket exception to the knock-and-announce requirement for felony drug investigations and that adequate and particular facts and circumstances unique to the case be present.

The policy should make clear that while uncommon, no-knock entries are sometimes the least dangerous way for officers to make entry. The Department needs a policy which restricts the use of this invasive practice but is instructive, allowing its use when appropriate.

In addition to having a well written policy grounded in law, it is critical that policy be augmented with adequate training on the knock and announce requirement and its exceptions, and sound management practices in place to make the legal and tactical call as to when a no-knock entry is appropriate. Further, it should be emphasized that on-scene SWAT leadership needs to be particularly well trained on this point as they will inevitably need to make the on-scene immediate decision to enter a location without knocking and announcing while executing a traditional (knock and announce) search warrant.

### **c. Additional observations and recommendations.**

The Review Panel thoroughly reviewed files for 24 of the 92 search warrants which were referred to the SWAT Team for execution in 2021. Our findings and recommendations include:

- Narcotics units still routinely submit affidavits for search warrants with a request for a no-knock warrant and usually get one.
- Many narcotics search warrants were approved as no-knock warrants, but the SWAT Team chose to knock and announce and then surround and callout, as

opposed to making a dynamic entry.<sup>183</sup> The Panel commends the Department on moving to the widespread practice of surrounding and calling out individuals present at a search site instead of a dynamic entering and clearing. Even when no-knock entries were made, the practice of the Team is now to be breach and then callout all occupants followed by a slow non-forceful clearing of the residence.

- The panel found that while pre-mission and after-action reporting made clear when no-knock breach was employed, SWAT logs and other search warrant data did not reference the no-knock. The significant reduction in the use of no-knock warrants is laudable, but the Panel strongly recommends that the use of no-knock warrants be carefully tracked by the Department and documented appropriately. Further, approval by senior management, as required in the policy, is a sound practice and should absolutely be followed and documented.
- The Panel also recommends that no investigative unit should request a no-knock warrant unless the SWAT Team requests it with the approval of their Deputy Chief.
- The Panel renews its strong recommendation to limit search warrant executions to the daytime barring an articulated operational need. Examples were provided in 2021 of unnecessary late night warrant executions which included some with tragic results. The unnecessary execution of search warrants at night increases risk to the participating officers and the members of the public they will encounter, as well as exacerbates negative community sentiment.

## **F. Training**

### **1. Background**

As noted in the interim assessment, the COVID-19 pandemic limited the ability of the Review Panel to observe much of the training program in person. The Review Panel found that the training plans were generally professional based on the limited ability to observe academy training and conduct interviews. While training was observed and materials were reviewed, these limitations prevented the Review Panel from conducting an exhaustive review of the substance of actual training.

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<sup>183</sup> In 2021, the Narcotics Section brought 18 no-knock warrants to the SWAT Team for execution. The SWAT Team executed five of these warrants as no-knock breach and callouts and 13 as conventional knock and announce/surround and callout operations.

It is again noted that all Department training per Legislative Mandates, as set forth by the Occupations and Texas Administrative Codes regarding all Peace Officer Training, follows training directions from the Texas Commission on Law Enforcement (TCOLE).<sup>184</sup> The significant inadequacies and inaccuracies noted by the Review Panel were mostly with TCOLE generated materials than with Department materials.

The Review Panel noted in interviews of Department management over the Training Division and in review of the Department's strategic plan that there was very limited annual review of training from a substantive perspective. While there was clear leadership and organization over the process and logistics of training, there was no review of training gaps in terms of topics or a specific training focus which needed to be bolstered.<sup>185</sup> The Panel again recommends some recurring review of training for the purpose of identifying gaps and needs.

## **2. Observations and Conclusions Regarding Training**

### **a. Basic Peace Officer Course (BPOC)**

The Panel recognizes that the academy is in transition and continues to work to fully implement the change from a military boot-camp style setting to a more academic classroom approach. As noted in the Preliminary Report, aside from providing substantive instruction, Basic training also shapes the culture and ethos of the Department. This paradigm shift will have a positive effect in transitioning the Department's culture from a "Warrior" mindset to a more "Guardian" or "Ethical Protector" role. We believe this new teaching climate will bolster parallel efforts to make de-escalation, force avoidance, CIT usage, and mental health response concepts ingrained in the Department culture. In addition, the Panel commended the Department on providing 1520 of training for new recruits while TCOLE only requires 696 hours of basic training.

A particular focus of the Panel was scenario-based training. It is a critical element of the training of a police officer, especially use of force training, as it provides the needed segue from classroom instruction to the Field Training Program, allowing a logical progression in tempo and content. The Panel observed scenarios in the Officer Survival training in the latter part of the academy which it found appropriate,

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<sup>184</sup> [www.tcole.texas.gov](http://www.tcole.texas.gov).

<sup>185</sup> For examples of department training needs assessments, see the Portland Police Bureau Training Division Annual Training Needs Assessment 2015, available at <https://www.portlandoregon.gov/police/article/635139>; see also New Orleans Police Department Education and Training Division 2017 Annual Master Training Plan, available at [https://www.nola.gov/nopd/consent-decree/documents/2017-annual-master-training-plan-\(superintendent-a/](https://www.nola.gov/nopd/consent-decree/documents/2017-annual-master-training-plan-(superintendent-a/)

incorporated de-escalation in every scenario observed by Panel members, and effectively reflected likely future encounters the trainees will have. Scenario based training also incorporated a Department/Community engagement entity called Beyond the Badge in which citizen volunteers from various areas of the community participate in the training.

#### **b. Inaccuracies and Inadequacies in Substantive Training Materials**

As noted in the interim assessment, the Review Panel recommended changes to the BPOC, Intermediate TCOLE Certification and in-service training with respect to Arrest, Search and Seizure, Use of Force and De-escalation training. The panel recognizes this training is largely defined by the Texas Commission on Law Enforcement (TCOLE); however, this training should be modified and added to. The Review Panel made several recommendations which included:

- The BPOC cadets are given dated<sup>186</sup> use of force materials which 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 again 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.
- The Panel recommended that 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 as these statutes are patently inconsistent with established caselaw.<sup>187</sup> 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. The Review Panel recognizes that this training is mandated by

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<sup>186</sup> For example, as noted in the interim assessment, 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 a core use of force component.

<sup>187</sup> 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.



TCOLE but again strongly recommends this change to all deadly force training.

- The Review Panel noted the BPOC training materials addressing the constitutional requirements to knock and announce incident to the execution of an arrest or search warrants were grossly inadequate and substantively incorrect. The PowerPoint presentation titled *Arrest, Search and Seizure* included, and continues to include, slides purporting to distinguish no-knock entries and entries in which law enforcement knock and announce. The critical slide states:

“There is little difference in how carried out: in knock and announce officers have to knock on door, but does not specify how loud knock and announcement is to be, nor how long need to wait for response. So difference of just a few seconds.”

- This sole slide was the only training material speaking to the knock and announce requirement, and as previously noted, this characterization of the law related to the knock and announce constitutional requirement is absolutely incorrect. There is a profound difference between police officers knocking and announcing properly and a no-knock forcible entry. The Review Panel notes there has been no change in the training materials other than the overall PowerPoint presentations being significantly shorter. The training on this critical point remains extremely brief and substantively incorrect. The panel recognizes that this slide represents, verbatim, the lesson plan TCOLE requires be followed,<sup>188</sup> and that apparently every peace officer in the state of Texas is provided this inadequate and inaccurate training.<sup>189</sup>
- The Review Panel further notes that this void remains in the in-service training and the training for the TCOLE Intermediate Proficiency Certificate.<sup>190</sup> Further, we reiterate our concern that the Department having no policy defining the requirements to knock and announce

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<sup>188</sup> See course number 1000720 at [Course Curriculum Materials and Updates | Texas Commission on Law Enforcement](#).

<sup>189</sup> The Review Panel finds it inexplicable that TCOLE continues to provide this patently inaccurate training in the wake of the national attention no-knock warrants have received.

<sup>190</sup> Intermediate Training is now done online by PoliceOne.com, an outside vendor. Training materials by this vendor do not address the knock and announce requirement.

incident to the execution of arrest and search warrants (see above section on SWAT/no-knock warrants) exacerbates this training void and virtually guarantees Constitutional violations by Department officers in the execution of search and arrest warrants. The Review Panel again strongly recommends that thorough and accurate training be added to BPOC, the TCOLE Intermediate training, and advanced in-service training on this topic.

### **c. Field Training Officer (FTO) Training Unit**

The Panel was still unable to thoroughly review the quality or effectiveness of the FTO program because of COVID-19. We renew the recommendations we made in our interim assessment:

- In the FTO selection process, candidates are to participate in a 360-degree evaluation process. However, currently there is no consistent use of the 360-degree evaluation of an FTO candidate. Some Divisions use this evaluation method and others do not. The Panel found this to be an effective approach and recommends consistent use of this evaluative tool in the FTO selection process.
- The training requirements for initial appointment as an FTO require the successful completion of a 40-hour FTO course, which meets TCOLE standards. After selection and before being assigned a trainee the FTO attends training. The FTO training is taught by internal trainers of the department. Informal mentoring does occur for FTO's with other FTO's, however there is nothing structured or required for that to occur. The panel recommends a formal mentoring process be developed and coordinated by a FTO coordinator in order to facilitate the exploration of new teaching ideas, to garner advice on developing any new teaching processes.
- The Panel again recommends more incentives to encourage participation in the FTO Program, as we found that only 5-10 percent eligible officers put in to be an FTO.
- The Panel again notes the change circa early 2019 where officers in the FTO program completed all their field training in one geographic Division (usually the Division they are ultimately assigned to). We noted the profound differences between geographic Divisions in terms of the community demographics, the crime problem, and the overall operational tempo and law enforcement experience, resulting in an extremely disparate experience among officers in their FTO program.

We note officer trainees do change districts within the Division, but again strongly recommend that officer trainees in the FTO program rotate Divisions as they proceed through the various phases of the FTO program to make a more consistent and equitable FTO experience.

- In the Preliminary Report, the Panel noted the entire management of the FTO program was being done as a collateral duty to a geographic Division's administrative Sergeant and recommended a full time FTO coordinator assigned to manage the department FTO process. In early 2021, the duties of the FTO program were assigned to a full-time FTO Sergeant. The Panel commends the Department for establishing this position – it will significantly enhance this critical training period.

#### **d. Training in Bias, Cultural Diversity, and Community Policing**

As noted herein and in the interim assessment, the Panel has expressed concern regarding issues related to a failure to de-escalate, bias by officers, issues related to procedural justice and understanding the needs of diverse communities. The Panel did not review the content or quality of the bias, cultural diversity or community policing training because of COVID-19. The Panel confirmed that there have been no significant changes to the training outlined in the Preliminary Report, again largely due to COVID-19. This includes some training we identified in the interim assessment as being cancelled.<sup>191</sup>

The Panel again commends the efforts of the Department to provide ad hoc training to all employees, but we note that these topics have still not become part of the recurring in-service training of every officer as we previously recommended. It is particularly important that these topics are presented concurrently with and accompany use of force training to further reinforce the critical point that these subjects are all inextricably interrelated.

#### **G. Early Intervention System (EIS) to Identify Potential Problem Behavior**

An early intervention system (EIS) is an accountability tool used to track officer activities, including uses of force, external community member complaints, stops and arrests, domestic violence allegations, sick days, missed court appearances, and other conduct to notify supervisors about potential personal or professional issues. As the name indicates, EISs are designed to reveal potential problems early, or before it happens. These systems are non-punitive and offer officers assistance separate from the disciplinary system; supervisors can intervene through coaching, recommending retraining, or referring officers to an employee assistance program (EAP) when there might be performance or wellness issues. Indeed, the International

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<sup>191</sup> For example, there was a grant provided by the Morris Foundation funding the officers to obtain TCOLE CIT/MHPO certification. That training was cancelled due to the pandemic.

Association of Chiefs of Police (IACP) recommends the use of EISs, explaining that these systems “serve to improve employee health, promote community-police relations, encourage positive behavior, and reduce public complaints.”<sup>192</sup>

Although the Department had begun researching EISs in 2018, it had not implemented one when the Panel began its review in early 2020. We recommended the implementation of such a system in our Preliminary Report in July 2020, and this was a priority reform for many of the community members that we spoke with.<sup>193</sup> Soon after, the command staff began discussions about implementing an EIS, consulted with a software programmer to manage the Early Intervention data, and created General Orders to guide its system. As described below, this implementation plan materialized recently when the Fort Worth Police Department implemented the first phase of its Early Warning System.

### **1. Observations regarding Phase I of the implementation of the Department’s EIS**

The Department incorporated the following Significant Event Reporting into its EIS. For example, the CIT Unit is called-in and subsequently responds to a location of a potentially traumatic event (i.e., a shooting, death of an officer, large-scale traffic accidents/fatalities, officer held hostage, etc). CIT reports these incidents through Blue Team and the information is forwarded to the City’s EAP Coordinator and to the Medical Records Custodian. This serves the dual purpose of reporting the exposure to an event that is potentially traumatic such as PTSD (for workers comp purposes), as well as the referral of the officer to a counseling session. Note that this takes place in addition to the required days off that are rendered given after a particular traumatic incident. It should also be noted that this process is currently being tracked for compliance purposes by a police supervisor directly overseeing the EIS.

EIPro is a read-only dashboard for IAPro that allows the chain of command to periodically view incidents involving the officers they supervise. There is a component within EIPro which is titled “peer analytics.” This function allows supervisors to see, at a glance, the officers whose behavior falls outside of the norm (i.e., outliers) within their individual units. This also allows a more in-depth review of the cases that are already closed and not readily available in IAPro (viewing videos and chain review) without requiring an Internal Affairs investigator to provide a “work-up” on an officer.

Incident-based thresholds were established in order to generate an alert on an officer after they are involved in a certain amount and type of incidents. Once generated, the alert is then forwarded to a Deputy Chief and forwarded to the chain to be reviewed

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<sup>192</sup> Int’l Ass’n of Chiefs of Police, Early Intervention Systems (May 2020), <https://www.theiacp.org/sites/default/files/2020-05/EarlyIdentificationSystems%2005-19-2020-to%20publish.pdf>.

<sup>193</sup> Preliminary Report at 39.

by a supervisor. As per the EIS policy, the Alert requires the supervisor to check-in with the identified officer; this serves as a point of supervisor accountability. There are two possible outcomes as a result of this exchange:

- No Action Needed – the supervisor finds no issue with all the incidents in question and forwards the Alert through the chain of command to inform them that the Alert is now closed.
- EI Referral – if a supervisor identifies an issue with the officer, the supervisor briefly documents the issue and recommends a course of action in the Alert. This is then forwarded through the chain of command. Then they create or duplicate the alert into an “Early Intervention Referral” where the supervisor (typically a sergeant) and officer determine together what course of action to take in order to improve performance. These types of referrals only require a one “level-up” review. This type of review is necessary in order to ensure (and confirm) that the Department is trying to solve a repeating issue with a similar approach or solution. It also affords the officer confidentiality since the EI Referral does not move through the entire chain of command. For instance, if an officer elects counseling, this type of assistance would not be announced or made known to the officer’s chain of command.

All supervisors have been trained through Critical Incident Stress Management (CISM) in order to provide them with the necessary tools in order to identify and assist an officer in crisis.

The EIS also includes suicide prevention functions. When an officer experiences a crisis, CIT responds to the scene in order to assess the officer. If it is deemed by CIT that the officer is not a danger to themselves or others, the officer is placed under an Emergency Detention Order and then transported to a particular medical facility. The officer is then assigned to an administrative component within CIT in order to focus on obtaining counseling and to complete the Fitness for Duty, in a confidential manner. The goal of this process is to reduce or eliminate the stigma often associated with seeking counseling while encouraging officers to ask for assistance when needed.

#### **a. Recommendations for Phase II of the implementation of the Department’s EIS**

The Panel notes the significant progress made, since the Preliminary Report, on the implementation of Phase I of the EIS. The implementation of EIS by the Department appears to have followed the recommended steps or best practices of other EIS models, including the guidelines referenced earlier by the IACP. However, there are additional steps (Phase II) of the

implementation process, which need to take place. That is, the Police Department should refine the current EIS and consider the following components:

- Currently, the incident thresholds do not include administrative case/personnel Complaints and Sworn incidents. At the time IAPro was initially implemented at the Department, it contained three “levels” of complaints. These included: (1) “CON,” citizen complaints that didn’t amount to any violation; (2) “TK,” complaints tracked out to the field to review and investigate because there was some sense of validity to the complaint; and (3) Internal Affairs cases, the most serious complaints that were investigated and generally resulted in discipline. In 2020, all these three incident types were combined into the single incident type of “Personnel Complaint – Sworn.” At the incident level, the current system has no way to discern or include the context of the complaint. For instance, the system cannot differentiate between a complaint filed for officer rudeness and a complaint on an officer using a racial slur. Context is important as it is often related to gravity of the event. It is crucial for the IAPro system to be configured to include the “nature” and “context” of the complaint.
- Once the nature or context of the complaints is incorporated, it is important to establish threshold limits for specific allegations.
- Provide all officers and their emergency contacts (i.e., family members) with a list of resources available to officers and their families in need of emotional (or related) assistance.
- The Department should promote frequent mental health check-ins within the department and perhaps even provide incentives.
- Provide frequent updates to the EIS system in order to re-establish the thresholds in “real time.” At a time in history when the pressures and issues that affect police officers may change often, it is important that the threshold or baseline is adjusted accordingly in real time in order to always ensure direct and immediate responses to address the officer needs.

## **H. Recruiting, Staffing, and Promotions**

Having a department that recruits, hires, selects and promotes officers who are qualified to meet the increasingly complex needs of law enforcement and that reflects a broad cross section of the Fort Worth community in which it serves is critical to accomplishing the following

goals: running a professional police force; building community trust and confidence; increasing legitimacy and acceptance of the Department’s supervision and accountability systems; and reducing perceptions of bias.

Department policies and practices should be designed to ensure that it attracts, hires, retains, and promotes individuals who are equipped to perform their jobs safely, effectively, and in accordance with the law departmental policy. The Department should be fully committed to promoting individuals who are capable of providing effective supervision, guiding officers under their command on lawful, safe, and effective policing, and holding officers accountable for misconduct. Best practice recruitment, hiring, and promotions policies and practices show a commitment to attracting, hiring, and promoting qualified candidates at all ranks that reflect a broad cross section of the community the Department serves.

### **1. Background on relevant law and policies**

The Fort Worth City Charter requires the city council to establish a system of human resources management based upon merit principles. This “merit system” provides the “means to recruit, select, develop and maintain an effective and responsive work force.”<sup>194</sup> Police employees are further subject to civil service personnel requirements specified in Texas Local Government Code (TLGC) Chapter 143,<sup>195</sup> Police General Orders, Texas Commission on Law Enforcement standards and other rules including local Personnel Rules and Regulations.<sup>196</sup>

According to the Fort Worth City Charter § 2-179, *Merit Principles*:

- (a) Recruitment shall be from qualified individuals from all appropriate sources and, after fair and open competition. Selection shall be on the basis of job-related ability, knowledge and skills.
- (b) All persons applying for employment and all employees shall receive fair and equitable treatment in all aspects of human resource management without regard to race, color, religion, national original, sex, marital status, age, disability or political affiliation and with proper regard for their privacy and their constitutional rights.
- (c) Employee advancement shall be based on demonstrated ability and quality of performance.

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<sup>194</sup> Fort Worth, TX Code Part I, Chapter XXIII § 1, and Part II, Chapter 2, Article V, §§ 2-178, 2-179, and 2-180, available at [https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth\\_tx/0-0-0-1](https://codelibrary.amlegal.com/codes/ftworth/latest/ftworth_tx/0-0-0-1).

<sup>195</sup> Texas Local Government Code (TLGC) Chapter 143, available at <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.143.htm>.

<sup>196</sup> Fort Worth, TX Code Part I, Chapter XXIII § 1, and Part II, Chapter 2, Article V, § 2-184.

(d) Equitable compensation shall be provided for equivalent work, and incentives may be provided for excellence in performance.

(e) Employees shall be retained on the basis of their performance; training and development opportunities may be provided; inadequate performance shall be corrected; employees shall be dismissed who cannot or will not improve their performance to meet established standards.

(f) High standards of integrity and conduct shall be established which shall be maintained by all employees.

Recruitment, hiring, selection, and promotions processes are jointly managed and facilitated by the City's Human Resource Department and the Police Department. The City has a centralized HR Department and separate Civil Service Commission. TLGC Chapter 143 specifies many of the conditions of employment for sworn police personnel and provides guidance unless preempted by a "then-applicable labor agreement or the Fort Worth Civil Service Commission Rules."<sup>197</sup> A labor contract entered into under TLGC Chapter 143, Subchapter I, "Firefighter and Police Officer Employment Matters in Certain Municipalities," preempts any contrary personnel rule or regulation unless provided for in that contract.<sup>198</sup> This contract is commonly referred to as the "Meet and Confer Agreement."

According to the PDPRR, "further under TLGC Chapter 143, the City of Fort Worth maintains a Civil Service Commission. In accordance with section 143.008, the Commission promulgates its own rules which can be found on the City's Human Resources website. These rules are controlling regarding many aspects of hiring, promotion, and discipline when not in conflict with any then-applicable labor agreement."<sup>199</sup> In layman's terms, specifications in the Meet and Confer Agreement preempt or supersede other state or local civil service or personnel hiring, selection or promotional regulations.<sup>200</sup>

Much of Fort Worth Police Department's hiring, selection, and promotion criteria appear to be consistent with TLGC Chapter 143 requirements. However, the Meet and Confer agreement specifically addresses entry level requirements and promotional criteria. Notwithstanding, the Department's General Order says "All transfers and assignments are the sole prerogative of the Chief of Police."<sup>201</sup>

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<sup>197</sup> Police Department Personnel Rules and Regulations (PDPRR), page 3.

<sup>198</sup> Ibid. See also Meet and Confer Labor Agreement Between City of Fort Worth Texas and Fort Worth Police Officers Association, Expires September 30, 2024, Article 25, Section 3.

<sup>199</sup> PDPRR, page 4.

<sup>200</sup> Ibid. See also the definitions of "preempt" and "supersede," provided in the Meet and Confer Labor Agreement Between City of Fort Worth Texas and Fort Worth Police Officers Association, Expires September 30, 2024, page 6.

<sup>201</sup> General Orders 428.01.



Phase I of the review process involved a modest examination of recruiting, hiring, selection, and promotional processes. The Review Panel interviewed an Assistant Chief, Deputy Chief, training and recruitment supervisors, and Fort Worth Police Department Human Resources representatives. Our knowledge was further informed by an informational communique sent by an Assistant Director of the City's Human Resources department. The Panel also examined the governing policies, applicable laws, and rules associated with these functions.

## **2. Observations Regarding the Need For Diversity**

The Equal Employment Opportunity (EEO) Plan and Report is a combined two-year plan and report that outlines recommended objectives for 2021-2023.<sup>202</sup> The document is intended as an informational resource, providing a department-wide overview and report of programs, initiatives, and plans aimed at promoting diversity and inclusion in the Fort Worth Police Department. The Department's EEO Advisory Committee developed the plan to affirm their commitment and outline their goals and actions to provide a more diverse and inclusive workforce by examining employment practices, police programs, and service delivery models. The EEO Advisory Committee advises and recommends courses of action in the sections of the EEO plan on diversity and inclusion initiatives, efforts, and programs. In addition, they develop solutions and best practices to address and improve policies and practices.

Section II of the EEO Plan cites policies on Equal Employment Opportunity, language diversity, discrimination, harassment, retaliation, reasonable accommodations, responsibilities, and complaint resolution procedures. The Police Department Equal Employment Opportunity Manager is tasked with monitoring the effectiveness of the Plan through statistical and other means but responsibility for enforcement of the Plan is widely distributed across the Police and Human Resources Enterprises.

Workforce analysis data as of December 31, 2020, shows females, Blacks, Hispanics, and Asians are under-represented in the Department's sworn workforce. These disparities are evidenced in promotions, transfers, disciplinary actions, hiring and terminations. The Department's sworn workforce racial and gender makeup is 64% white, 10% Black, and 22% Hispanic. The report format makes it difficult to discern total sworn representation by gender.

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<sup>202</sup> City of Fort Worth-Police Department Equal Employment Opportunity Plan 2021-2023, available at <https://police.fortworthtexas.gov/Public/equal-employment-opportunity-plan>.

The Fort Worth Police Department publishes a quarterly demographic report as recommended by the City of Fort Worth’s Race and Culture Task Force. This data shows the demographic breakdown of the entire department as well as each unit.<sup>203</sup>

The Department Demographics/Diversity Report (as of December 31, 2021) denotes several notable unit, section, and division demographics. Much of the information is graphically depicted and does not lend itself to further analysis. It shows police trainees’ race and ethnicity to be 30% White, 47% Hispanic/Latinx, 8% 2 or more races, 3% Asian, and 9% African American/Black. It shows the total sworn demographics to be 62% white, 23% Hispanic/Latinx, 10% Black/African American, 2.2% Asian, 1.1% 2 or more races, 0.9% American Indian and 0.1% Native Hawaiian/Pacific Islander. Some of the less diverse units and sections are depicted in the table below.

<b>Unit (4 or more sworn)</b>	<b>White</b>	<b>Hispanic/Latinx</b>	<b>African-American/Black</b>	<b>Asian</b>	<b>Other</b>
Tactical Medic	6 (67%)	2 (22%)	1 (11%)	0	0
Air Support	3 (100%)	0	0	0	0
Community Outreach Section	19 (70%)	4 (15%)	3 (11%)	1 (4%)	0
Special Response Team	29 (76%)	7 (18%)	1 (3%)	1 (3%)	0
Bike Patrol Unit	24(71%)	8 (24%)	1 (3%)	0	1 (3%)
Tactical Operations Division	34 (71%)	9 (19%)	1 (2%)	2 (4%)	2 (4%)
SWAT Section	18 (72%)	4 (16%)	0	2 (8%)	1 (4%)
Special Events and Emergency Response Unit	4 (80%)	1 (20%)	0	0	0
Forensic/Economic Crimes Section	26 (76%)	5 (15%)	0	2 (6%)	1 (3%)

<sup>203</sup> <https://police.fortworthtexas.gov/Public/fwpd-demographics-diversity-report>

Commercial Auto Theft	7 (100%)	0	0	0	0
Digital Forensic Lab	5 (83%)	0	0	1 (17%)	0
Homicide Unit	12 (86%)	2 (14%)	0	0	0
Robbery Unit	13 (81%)	2 (13%)	1 (6%)	0	0
Sexual Assault Unit	5 (71%)	2 (29%)	0	0	0
Domestic Violence Unit	13 (72%)	2 (12%)	1 (6%)	0	1 (6%)
Enhanced Skills Section	13 (87%)	2 (13%)	0	0	0
Weapons Training Unit	11 (92%)	1 (8%)	0	0	0
Internal Affairs Section	14 (82%)	1 (6%)	1 (6%)	1 (6%)	
Gun Violence Investigation Team	5 (100%)	0	0	0	0

Demographic data indicates that the Fort Worth Police Department’s attention to diversity in its recruitment, hiring, selection and promotion processes should rightfully be very high priorities. Although the department has documents and data to substantiate the need, the actual actions the department has taken to close representation gaps and hold itself accountable is less clear. There has been a small increase in Latinx representation during the course of the Panel review.

### 3. Observations regarding the Department’s recruitment efforts

The Review Panel requested Fort Worth Produce documents that detail their recent recruitment activities. The police department produced the following documents:

- Department Recruiting Unit Standard Operating Procedures
- Fort Worth Police Department Recruitment Action Plan
- Diversity Journal for Strategic Plan
- FWPD Diversity and Problems with Recruiting

- Job Fairs
- Police LEO- Request 51714 Diversity Statistics.pdf

Additionally, the Meet and Confer Agreement provides additional guidance on recruiting. Section 4 indicates, “Recruitment for police Officer candidates shall be a cooperative effort between the Department and the Human Resources Department. Recruitment methods shall be based on the needs of the Department to maintain full staffing to the extent possible. Recruitment efforts will be publicized, using methods and locations the Department deems are appropriate, and recruitment notices will be posted on the City’s Job Announcement web page. Recruitment may be conducted on a continuous or periodic basis depending on the staffing needs of the Department, in addition to other places the Department deems are appropriate.”

The Department has developed a recruiting for diversity plan which outlines the purpose and steps to increase minority participation. The plan lists several areas that need improvement to achieve the Department’s outlined diversity goals. The Fort Worth Police Department utilizes both traditional and non-traditional methods for recruiting a more diverse pool of applicants. The recruiting department has made recommendations to streamline the recruiting process, making it more attractive to today’s applicant. These recommendations include shortening the length of the hiring process, increasing the number of background investigators, partnering with Black Police Officers and Latino Police Officers Associations to develop workable recruiting strategies, as well as offering a signing bonus, student loan forgiveness program, childcare reimbursement, and moving expenses for out-of-town hires. It is unclear if any of the recommendations have been instituted.

In 2019, the Department examined ten police departments to compare agency demographics and recruiting strategies to their own.<sup>204</sup> Their stated main goal was “to consider ways of increasing diversity in the police department while continuing to uphold high professional standards.” They have additionally published secondary research on diversity and problems with recruiting, reasons why police departments are having problems recruiting minority officers, and ideas to improve recruiting.<sup>205</sup>

The Review Panel offers the following conclusions as a result of our review of the Department’s recruitment efforts.

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<sup>204</sup> Fort Worth Police Department Recruiting Unit SOP, pages 9-14.

<sup>205</sup> “FWPD Diversity and Problems with Recruiting,” produced to the Review Panel on January 23, 2020.

#### **4. Recruitment Is More Aspiration than Action**

Reports substantiating recruitment activities were not produced despite the Panel’s request for substantive recruitment data. The Panel was advised the Police Department dedicates one sergeant and one officer to recruitment, yet the effectiveness of these efforts is not apparent. The Department is underrepresented in several demographic categories and appears to be losing some racial and ethnic diversity. Notwithstanding, the Department has indicated that as part of an ongoing recruitment effort, it will take the following steps: representatives will periodically attend career fairs, where they can expect to target minority applicants; encourage minority employees to participate in highly visible roles within the agency and within the recruitment function to attract other minority recruits; identify and target minority applicant needs based on assessments of the minority population as well as past minority applicants within Fort Worth; create a program to identify and recruit minority applicants at the officer position; and review the recruitment plan annually for effectiveness and needed revisions.<sup>206</sup>

#### **5. Diversity efforts are a mixed bag**

The Department has improved its representation of Latinx police officers. However, African American representation as a percentage of total officers has declined. African American and White female officer participation has markedly declined since 1999. Recruiting efforts are not tracking community diversity. According to data provided by the Department, from 1999 to 2020, there has been a decline in its overall percentage representation of African American males (7%) and African American females (45%), White females (34%), and White males (11%). There have been corresponding representation increases in Hispanic males (84%), and Hispanic females (117%).

The Review Panel offers the following recommendations as a result of our review of the Department’s recruitment efforts.

#### **6. The Department should invest in continuous recruitment**

While the Department has produced documents demonstrating an awareness of what other successful agencies are doing to effectively recruit, it is not apparent that the Department’s recruitment effort is coherent or robust. The Department should be in an “always recruiting” mode, even when not anticipating an approaching entry level hiring process. Sworn recruiters should be used to recruit sworn officers. The one sergeant and one police officer assigned to recruitment duties in Fort Worth are fewer than resources deployed at other major city agencies, especially when enhancing diversity and quality are goals.

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<sup>206</sup> Fort Worth Police Department Recruitment Action Plan

Targeted recruiting efforts to enhance minority and female participation should be a high priority.

## **7. Consider barriers-removing programs**

Police agencies like the Chicago Police Department have implemented candidate assistance programs such as a phone-a-thon to remove potential barriers to the hiring process, improve the candidate's chances of success, and improve show up rates and candidate assistance programs. Some departments have created workshops to prepare candidates for the entrance exam process. Examples of these workshops include credit education and repair, exam prep and physical agility workout sessions. The City advised the Review Team that it has since 2019 conducted physical agility test workshops. The City's recruiting website's Physical Agility Page provides a "PAT" training video, but workshop information was not visible on that page nor elsewhere on the recruiting website.<sup>207</sup>

## **8. Data-drive the recruiting process**

The Department's recruitment efforts are reactive. Other departments such as New Orleans, LA and Louisville, KY have deployed data-driven recruitment dashboard that provide ready access to recruiting statistics, analyses and projections. These agencies go a step further and have "Recruitstat" meetings where they analyze, discuss and correct every measurable component of their recruitment and hiring processes to achieve optimal results. These data-driven processes allow recruiters, background investigators and other personnel officers and supervisors to track the length of time each segment of the recruitment and hiring process consumes, what areas are impacting candidate pools and, ultimately, what corrective actions can be applied to optimize diversity and quality outcomes.

### **I. Office of Police Monitor**

In the Preliminary Report, the Expert Review Panel provided observations and recommendations regarding the recently established Office of the Police Oversight Monitor (Police Monitor or Monitor). In particular, the Panel raised concerns that:

- ***The Police Monitor's authority should be clearly established.*** There is significant confusion in the community and the Department of the duties and role of the Monitor on critical issues, including whether reports are public, whether the Monitor can compel testimony, and its relationship with internal affairs and the chain of command;

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<sup>207</sup> <https://www.fortworthtexas.gov/departments/hr/careers/policerecruitment/pat>, accessed on 12 June 2022.

- ***The independence of the Monitor.*** For the Police Monitor to be effective, the office and staff requires protection from risk of consequences or loss of employment when reporting on issues that may be controversial or have consequences for command staff or elected officials.
- ***Clarity on the treatment of confidential information from civilians or officers.*** The Police Monitor will have access to a great deal of confidential information about officers and complainants. Unless the Monitor can assure confidentiality, there will be a reluctance from key witnesses to come forward.
- ***Adequate Budget.*** The Review Panel questioned whether the Police Monitor has adequate resources to perform the assigned tasks.

The urgency to address these issues was underscored during our outreach in 2020 to a broad swath of the Fort Worth community. Many members of the community expressed a “wait and see” attitude with regard to the Police Monitor. Others, however, expressed outright distrust. A third or more of the community members to whom we spoke felt that the Police Monitor was part of the Department and lacked independence.

There continues to be ambiguity and a lack of clear guidance on the Police Monitor’s independence. For example, the City has yet to determine whether the Police Monitor can issue reports or findings without departmental review; while the Police Monitor has been given unrestricted access to the Department and its personnel, that access is not reflected in policy, procedure, or any other writing; and the Police Monitor has not been assured that removal can be for cause only and the Monitor continues to serve at the pleasure of the Assistant City Manager.

The independence of the Monitor is further undermined by the position’s apparent integration into the Department, rather than as a free-standing entity. For example, the Monitor currently serves on the Use of Force Review Board, an internal part of the Department’s accountability structure.<sup>208</sup> Assessment of the Department’s review and correction of force practices is an essential part of the Monitor’s role. Being so deeply imbedded in the process affects the appearance of independence and potentially impacts the Monitor’s objectivity. Arguably, the Monitor cannot fairly judge its own work. The Monitor reports that its role is to monitor the Board’s activities. However, the relevant General Order does not make this distinction and describes the Monitor’s representative as a member of the Use of Force Review Board.<sup>209</sup>

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<sup>208</sup> General Order 306.09 D.7.

<sup>209</sup> General Order 306.09 D.

Finally, the Review Panel renews its call on the City to review the Police Monitor's budget. The Police Monitor has been given a large and important task, but provided a lean staff to perform the assigned duties. The benefits to the City of a Police Monitor with adequate resources and legitimacy in the community will outweigh the costs, and may well save the City money in tort claims.

We strongly urge the City to review the structure and independence of the Office of Police Monitor to ensure that it is in compliance with evidence-based best practices. The development of an effective agency requires concrete and deliberate steps. The National Association of Civilian Oversight in Law Enforcement, leaders in the field, have provided detailed guidance on putting a program in place which the City could use as it continues to strengthen the Monitor's office.<sup>210</sup> By having hired and opened the Police Monitor office

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<sup>210</sup> NACOLE Recommends'

- I. Goal Setting What outcomes do you hope to achieve by establishing an oversight mechanism?
- II. Coalition Building Who will I need to bring together in my community to begin this process?
- III. Engagement of community and government actors From whom do I gather input and how will I ensure that I have all of the information needed to recommend the appropriate oversight mechanism that addresses the needs of my community?
- IV. Making Decisions Regarding the Model of Oversight Used a. Structure (i.e., function of the executive or legislative branch, model type, relationship or access to law enforcement agency) b. Duties, Powers, Authority c. Funding Mechanism/Budget What information will I need to determine the appropriate accountability model for my community?
- V. Crafting the Ordinance or Legislation Establishing Oversight What are the things that I will need to include in the city ordinance or enabling legislation to establish an effective oversight mechanism? Do examples exist?
- VI. Oversight personnel profiles and standards Who will fill your staff and volunteer positions within the oversight agency? What background or qualifications should they have?
- VII. Establishment of Policies and Procedures How will you carry out the day-to-day operations of the agency? Do the policies and procedures help to achieve the goals outlined in Section I?
- VIII. Gathering and Analyzing Data What information can/should you gather and analyze that will allow you to better understand the police misconduct and need for continued accountability measures in your community? How can I use this data to make recommendations for effective changes?
- IX. Goal Measurement What information can/should you gather and analyze that will allow you to measure your agency's impact (e.g., complaint sustain rates, levels of community satisfaction, levels of community trust, lawsuits, settlements, uses of deadly force, policy changes, compliance rates, or early warning system indicators)?



without having first visited and addressed each of these steps, the City lost an opportunity to create strong community support and maximize the benefits of the monitor program.

## J. Conclusion

The Review Panel members recognize that many police departments around the country are facing various challenges. The Review Panel commends the City for undertaking this review and its other efforts to create an effective police department with legitimacy in all communities. It is our hope that these observations, conclusions, and recommendations will assist in that effort.

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- X. Writing Reports What reports will your agency produce to sustain a level of transparency regarding police misconduct and the work being done by the oversight agency?
  - XI. Conducting Outreach and Communicating with the Public What steps will be taken to communicate and engage with the community that will allow your continued understanding of their needs AND allow them to know what work is being done by the oversight agency?
  - XII. Building Relationships with Key Stakeholders a. Law enforcement agency that is being overseen b. Local government c. Police unions d. Public What steps will be taken to continue to build the relationships necessary for effective oversight?
  - XIII. Ongoing Training and Professional Development What steps will be taken to build on and enhance staff and volunteer skills, knowledge, and abilities? Will training be required? Who will provide the training and how often?
  - XIV. Identifying and Addressing Challenges and Opportunities What challenges will the new or improved agency need to address right now? What challenges will there be in the near-term or will they be ongoing? What opportunities exist for the agency to advance its mission and provide effective oversight of the police

Guidebook for the Implementation of New or Revitalized Police Oversight, [available at https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/175/attachments/original/1534263107/Guidebook\\_for\\_the\\_Implementation\\_of\\_New\\_or\\_Revitalized\\_Police\\_Oversight\\_2016\\_FINAL.pdf?1534263107](https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/175/attachments/original/1534263107/Guidebook_for_the_Implementation_of_New_or_Revitalized_Police_Oversight_2016_FINAL.pdf?1534263107).