

TECHNICAL ASSISTANCE REPORT

Investigation of the Harvey Police Department
United States Department of Justice
Civil Rights Division
Special Litigation Section

January 18, 2012

Introduction

This technical assistance report sets forth recommended remedial measures and technical assistance in the following areas of HPD's policy manual: (1) general provisions; (2) personnel practices; (3) operations; and (4) support services. For clarity, the recommendations are provided to address policies in the order in which they appear in the Operations Manual of the Harvey Police Department ("Manual"). We base our recommendations in this letter on the most recent policies that HPD provided to us, pursuant to our prior request for any policy updates. Any updates to HPD's policies that have been made since then should be consistent with the recommendations contained in this report.

The information contained in this technical assistance report is designed to assist HPD in meeting current policing practices. Implementation of these remedial measures and technical assistance would further HPD's management of its uses of force. The technical assistance provided, however, does not serve to replace the fundamental requirement that force use meet the Fourth Amendment's objective reasonableness standard. See Graham v. Connor, 490 U.S. 386, 388 (1989); Lanman v. Hinson, 529 F.3d 673, 680 (6th Cir. 2008) (citing Graham, 490 U.S. at 395).

A. GENERAL PROVISIONS

HPD should revise and update its policies and procedures to be consistent, comprehensive, and to reflect current best practices and should ensure its staff is aware of and understands those policies.

At the outset, we recommend that the Manual be organized with related provisions grouped together, so officers can be sure that they have obtained all of the information pertaining to a particular practice when they read a section. While the Manual is organized into the following sections – General Provisions, Personnel Practices, Operations, and Support Services – provisions that are related to particular orders are separated into different sections. For example, firearms information is contained under Personnel Practices (sections 2.51.01 (firearms training) and 2.51.02 (use of firearms training system)), but related information is contained under Operations (section 3.81.02 (use of force)), and under Support Services (sections 4.31.21 (use and maintenance of weapons) and 4.31.23 (care of weapons)).

Next, updates to policies and procedures must be effectively conveyed to HPD officers. Based on interviews conducted during our site visit, it appeared that many officers were unaware of basic information contained in the Manual. For example, staff responsible for conducting internal investigations had difficulty describing the distinction between cases closed as unfounded and those closed as exonerated. This is significant because there are only four classifications of closed investigations, according to the Manual, and the criterion for each classification is listed explicitly in the Manual. Furthermore, some officers were unable to explain HPD's policies, and some supervisors were unable to explain the contents of the policies even when those policies concerned areas of their own responsibility. As a result, we recommend:

- For policies discussing major changes and/or issues, such as use of force and complaint reporting, that all HPD officers should receive a substantive training session.
- All officers should provide a written acknowledgment of their receipt, review, and understanding of all HPD policies, and HPD should maintain this acknowledgment as part of the HPD officer's personnel file. Missing signatures should prompt a supervisor's review to determine the reason and correct the problem.
- HPD should designate a supervisor or training officer responsible for: (1) reviewing any revisions to new policies; (2) promptly notifying command staff regarding changes in substantive law, in consultation with HPD's legal counsel; and (3) ensuring that all HPD policies are consistent with each other (i.e., use of force policy and reporting uses of force). We recommend that this individual also be responsible for ensuring that all officers receive complete copies of policy manuals and policy revisions, and for maintaining copies of officers' signed acknowledgments.
- The "Table of Contents" should be revised, as it does not currently provide for ease of locating subject matter. Many items listed under "Operations," including the police facility exercise room, service information cards, receipt and disposition of service information cards, and release of public information, would be better placed in other sections. There is also no heading on any of the Operations Orders, except the policy number and the name of the policy. We recommend that this heading include the policy's issue date, effective date, and annual review date; the number of pages contained in the policy; any previous policies rescinded or amended; and the chief executive officer's signature (either in the heading or at the conclusion of the policy). With the chief's signature at the end of each order and a number of pages specified up front, officers will certify that they have read the entire order.

From our discussion with many officers, it is apparent that officers receive a Manual when they are initially hired. However, there is little or no indication that they are provided with updates to the Manual. Failure to document updates to officers' Manuals greatly diminishes HPD's ability to demand adherence to policy.

Development of policies, including chief executive officer approval, is only the first step to ensuring officer compliance with department rules. Distribution of policies should be accompanied by training. Without training, especially for supervisors, it is extremely difficult to initiate disciplinary action for unknowing or willful violations of policy. We recommend that a system be put into place to provide policy training and to document the date the training was provided. Although some policy training, such as use of force training, may require extensive and formal training, most policy training can be relatively short and provided at roll call. Six minutes of roll call training on a daily basis can account for approximately 25 hours of additional

annual training. We recommend the use of a database of policy training or an early intervention system, including a training section, to accomplish this.

As noted above, a supervisor's misunderstanding of policy makes compliance with the established policy almost impossible. When a supervisor fails to provide accurate information, a proper example, and an atmosphere of compliance with policy, the policy is more likely to be ignored. In that instance, common practice takes precedence regardless of written policy. Accordingly, it is important that supervisors are trained in the basic expectations of their new duties when they are promoted to a supervisory position. We recommend that they be the first personnel trained when new policy is distributed. We further recommend that a policy be developed to require that new supervisors receive training prior to or immediately upon their promotion, as well as upon distribution of a new policy. We recommend that these frontline supervisors be responsible for initiating appropriate action for policy infractions, and that failure to do so promptly should subject the supervisor to corrective action. As discussed more fully below, we further recommend the development of an early intervention system to track officers' and supervisors' corrective actions and disciplinary actions.

1. Introduction (1.01.01)

The current Introduction (Section 1.01.01(c)) requires only that members and employees of the Department "be familiar with the content of the Manual." We recommend that HPD adopt an express policy that all members and employees of the Department must comply with the policies, procedures, and rules set forth in the Manual.

2. Changes to Manual (1.01.03)

In general, this section creates a positive approach to updating policy. It provides every officer with the opportunity to make recommendations and to provide the basis for their recommendations. The policy states that officers should submit a form with recommendations to the Research and Development Officer. This policy is supported by Section 1.21.01(B)(1)(d), which sets out the responsibilities of the Research and Development Officer. It is also supported by Section 1.21.01(3), which outlines the Organizational Chart of HPD. However, we recommend that the forms submitted be tracked and evaluated in order to determine whether there is a divergence between Department practice and Department policy. In addition, we recommend that this section contain a statement that the Department will conduct a comprehensive review of the Manual annually and update it as necessary. We recommend that this statement assign responsibility for the review to a specific unit or individual of HPD.

Furthermore, it is apparent that the Manual we have been given to review is not up to date, as the organizational structure set out in section 1.21.01 is not the structure we found during our visit to HPD.

3. Department Organization (1.21.01)

We recommend that this section list job descriptions for each of the various ranks within the department. This will ensure that each individual knows what is expected of him or her and what falls within the responsibilities or duties of other officers. Currently, there is only one position for which there are duties and responsibilities listed, the “Duties and Responsibilities of the Watch Commander” (Section 1.51.01).

The confusion that can result from this lack of clarity in responsibility allocation was evident during our visit to HPD. For example, we learned there were two commanders assigned to internal affairs: however, neither of these two “commanders” supervised anyone, since no other personnel were assigned to that unit. In total, we found three commanders who appeared to have no command responsibilities. We also observed two personnel who appeared to be in charge of the lock-up operations, but it was impossible to ascertain who was in charge of which portion of the lock-up.

In order to rectify this kind of confusion about command and professional responsibilities, we recommend that each position have a full job description listed in the Manual. In addition, we recommend that general orders concerning job descriptions outline officers’ duties and responsibilities and that all job descriptions identify the person to whom the individual holding the position must report.

4. Duties and Responsibilities of the Watch Commander (1.51.01)

Under *General Responsibilities*, we recommend the addition of a paragraph that requires the Watch Commander to respond to the scene of any incident in which HPD officers use deadly force or any force that results in serious injury. We recommend that this provision also state that the Watch Commander, or a designee who is a supervisor, will take charge of the scene to ensure that all injured are provided care, that the scene is protected, and that a complete and thorough investigation is initiated. This information should be cross-referenced in the use of force policy (3.81.01) discussed *infra*, Part II(C)(5).

B. PERSONNEL PRACTICES

HPD should revise and update its Personnel Practices, particularly those relating to employee misconduct, to be comprehensive and to reflect current best practices.

1. Implementation of an Early Intervention System

We encourage quick adoption of an Early Intervention System (“EIS”) that is appropriate and applicable to HPD’s needs and size, as an integral part of its risk management program. Either a paper based or a computer based EIS will provide a useful assessment tool for each officer’s conduct and an overall assessment of HPD as a law enforcement agency.

An EIS is a data-based police management tool designated to identify potentially problematic behavior and allow early intervention to correct misconduct and assist in identifying deficiencies in supervision, management, and policies. Police departments typically use EIS data regularly and affirmatively to promote best professional police practices, accountability and proactive management; to manage the risk of police misconduct and potential liability; to evaluate and audit the performance of officers and units; and to identify, manage, and control at-risk officers, conduct, and situations.

We recommend that HPD implement policies and procedures to collect data on individual officers for the purpose of maintaining, integrating, and retrieving information necessary for effective supervision and management of HPD personnel. The EIS should contain information on all investigations and complaints, including non sustained complaints and complaints prior to final disposition, discipline and other supervisory corrective measures, uses of force, arrests and charges, searches and seizures, service calls, training, awards and commendations, sick leave, civil lawsuits, and other items relevant to an officer's or supervisor's conduct. The effective gathering of data will require the support of other City departments. The City of Harvey's legal counsel should report to HPD when an officer is named in a civil complaint relating to policing work. Similarly, the Harvey Corporation Counsel's office should report to HPD on any matters relating to an officer's integrity or credibility.

HPD should then use EIS data regularly and proactively to: (1) promote best professional police practices; (2) improve accountability and management; (3) manage the risk of police misconduct and potential liability; (4) evaluate and audit the performance of all levels of HPD, its members, and its units on an ongoing basis; and (5) evaluate and assess the effectiveness of training and policy. We recommend that HPD require supervisors, including command staff, to review this data for every officer they supervise on a regular, predetermined basis, such as on a quarterly basis. When supervisors review their subordinates' data, we recommend that HPD utilize comparisons to peers. Supervisors should compare their subordinates' data concerning complaints, use of force reports, and other pertinent information about a particular officer with the same categories of information from other officers on the same patrol team or shift. Similarly, command staff should review the data for the units they command and compare these data with peer units. In addition, the policy should provide explicit guidance to supervisory officers reviewing reports to ensure that patterns of possible misconduct are identified, analyzed, and addressed properly by command staff. The aim of this process is to give supervisors valuable information that, if received early, could identify potential problem officers before misconduct actually occurs. In addition, the process can be used to promote, commend, or otherwise recognize outstanding officer performance.

To use the EIS effectively as a predictive model tool, the EIS must have defined triggers for management intervention. The policy implementing these recommendations should also establish guidelines regarding specific events that will trigger an additional supervisory review, such as a specific number of uses of force or citizen complaints within a discrete period. Once an officer has been selected for this additional review, a report should be prepared for his or her supervisor that details all use of force reports, formal and informal complaints, calls for service, sick leave, counseling reports, civil lawsuits, and commendations pertaining to the officer over

an appropriate time of review. The officer's immediate supervisor and command staff should then meet to discuss the report and determine if any corrective action is warranted. The supervisor's and command staff's recommendations should then be forwarded to the appropriate Deputy Chief for his or her timely review and implementation. The effectiveness of the implemented recommendations should be determined by monitoring the officer and drafting written reports on the officer's conduct on a monthly basis. The officer's supervisor should retain the supervisory recommendations and the written monthly report in his or her supervisory file.

2. Internal Investigation Procedures (2.31.01)

This section of the Manual gives little information on how an internal affairs investigation should be handled. This is such an integral part of a police department's operations that it should be as specific as possible. In this Manual, there are far more extensive details provided in other policies that are not as critical as this section, including specific information regarding the operations of a Firearms Training System by the instructor (2.51.02), specific block-by-block instructions to completing incident reports (4.01.02), and very specific information concerning uniforms and equipment (4.31.11). For example, there is only one paragraph in this section that addresses the internal affairs investigation procedure. It condenses the entire procedure into this statement: "While such investigations shall be considered administrative in nature, rather than criminal, they shall conform to the same rules of procedure which apply to criminal investigations with regard to statements of concerned parties, evidence collection and handling, and reporting." The remainder of the current policy outlines various aids to be used such as polygraph, breathalyzer, urine analysis, blood analysis, and other investigative aids.

We recommend that section A (*Policy*) include a statement indicating that it is the policy of the police department to accept complaints from any source, including anonymous sources, by phone, in person, by email, etc. We also recommend that the Manual assign responsibility for investigations into allegations of excessive force or of use of deadly force. We understand that HPD is served by the Cook County Public Integrity Task Force, an entity made up of Illinois State Police, Cook County Sheriff's Department investigators and members of the Bureau of Investigations of the Cook County State's Attorney's office, which was established to conduct impartial investigations into police shootings and other uses of force that result in serious injury. The Task Force focuses on serious use of force, and on whether involved officers violated any laws, but it does not conduct investigations of injury to prisoners or allegations of excessive force not involving firearms or serious injury. It also does not investigate whether an officer violated Department rules. We recommend that responsibility for those investigations be assigned to the Internal Affairs Division. We recommend that the Investigative Division play a supportive role even when the Task Force becomes involved in an investigation.

Section C (*Procedures Paragraph 1*) as written does not comport with current law. See Garrity v. New Jersey, 385 U.S. 493 (1967) (ruling that officers must be adequately apprised of rights against self-incrimination to preserve the integrity of any potential criminal investigation). The current policy indicates that internal investigations are not performed when there is an

ongoing criminal investigation when, in fact, an officer who is subject to a criminal investigation should also be subjected to an internal affairs investigation for the matter. Although a criminal investigation may not lead to criminal charges against an officer, the officer's conduct may violate a Department policy and as a result may lead to departmental charges. We recommend that this policy be rewritten to provide for internal investigations in conjunction with criminal investigations (unless it would jeopardize a potential criminal indictment), and that it should include actions available to the Police Chief according to the category in which the case was closed.

To ensure that Garrity-compelled statements do not taint the criminal investigation, we urge HPD to develop thoughtful procedures to carefully manage these investigations so as not to compromise the integrity of the criminal investigation. HPD should work closely with the prosecuting agency involved so that the prosecutor can provide advice about how best to protect the interests of both investigations. HPD policy should provide guidance on when a compelled statement can be taken and who is authorized to approve the taking of a compelled statement during the course of an investigation. It should also provide adequate information concerning the reception of complaints, proper investigation techniques and authorization, and proper conclusion of cases. While witness interviews and evidence review can all occur simultaneously so that efforts are not duplicated, HPD must take special care in conducting interviews of the involved officers. HPD should ensure that compelled interviews of the subject officer do not occur until the end of the investigation.¹

3. Allegations of Employee Misconduct (2.31.10)

Although this section does provide some information concerning the process of handling a citizen complaint against an officer, it does not provide adequate information. At a minimum, we recommend that this policy refer the reader to an Internal Affairs Manual that includes more specific information on all aspects of those investigations. We recommend that this policy include information on: how investigators are assigned to a case; who is not permitted to investigate a case (e.g., a relative or friend of the complainant of officer); the forms used during the investigation; contact methods for investigating officers (with complainants, witnesses, officers and the accused officer(s)); how to obtain relevant documents (including hospital records, arrest records, prior complaints against the officer); a definition of the possible findings; and the Police Chief's actions to be taken in regard to the findings.

The provisions of Paragraph B, as currently written, would allow the chain of command to investigate serious allegations as long as they were lodged by a Department member. We recommend that allegations of serious misconduct, whether involving force or not, be investigated by the Internal Affairs Division rather than by supervising officers, and that this provision be revised to reflect that change.

¹ See Technical Assistance Letter on Garrity Issues, United States' Investigation of the Seattle Police Department (Nov. 23, 2011), available at www.justice.gov/crt/about/spl/seattlepd.php.

We recommend that paragraph C (*Registering Complaints*) require any member of the Department who is not a supervisor to summon a supervisor whenever approached by anyone making an allegation of misconduct against an officer. The member, or supervisor if immediately available, should then interview the complainant and record the information obtained on the appropriate complaint form. The member or supervisor should also be required to obtain a unique control number for the complaint, and to do so within an hour of being contacted by the complainant. The control number should be affixed to all reports prepared by the member or supervisor receiving the complaint.

In addition to the formulation of these procedural requirements, we recommend elimination of restrictions on the acceptance of anonymous complaints, and elimination of language in the policy that would permit Department employees to disregard complaints from intoxicated or mentally ill persons. As it is currently worded, this policy would allow a supervisor to avoid taking a complaint by later justifying his or her actions with a statement that he or she believed the person to be mentally ill, intoxicated, or senile at the time, a determination that he or she is likely not qualified or properly trained to make. In addition, section C(2) permits an officer to refuse to accept a complaint if the matter is considered minor in nature. This provision is vague and gives too much discretion to officers receiving complaints. In addition, in instances where the officer determines that a complaint is too minor in nature to initiate an investigation, section C(2) requires the officer to complete a report to the Police Chief. It is impractical to require an officer to complete such a lengthy report when the policy explicitly authorizes the officer to make a determination about the validity or nature of the complaint. As a result, this policy will be difficult to enforce. Because of these issues, this section dilutes the serious nature of accepting citizen complaints. The International Association of Chiefs of Police (“IACP”) model policy on citizen complaints recommends accepting all complaints, and this paragraph should be updated to reflect that recommendation.

IACP also outlines information that is critical to include in every investigation into citizen complaints. Some of the subject matter that we recommend including in the updated policy is as follows:

- Core principals of the complaint process
 - Comprehensiveness - Complaints should be accepted from at least the following sources:
 - Citizen complaints
 - Complaints from other officers
 - Civil proceedings against officers (including off-duty)
 - Criminal Proceedings against officers (including off-duty)
 - Accessibility - Complaints should be accepted through the following methods and under the following guidelines:
 - All complaints are accepted and investigated at some level, including anonymous complaints

- Complaints are accepted by mail, telephone, e-mail, fax submission, and web-based applications
 - Information concerning complaint filing procedures is posted on a department website
 - Complaint forms are available in multiple languages
 - Transparency - Complainants will be notified:
 - When complaints are received
 - Periodically during the investigation
 - At the conclusion of the investigation
 - Fairness - Investigations will be:
 - Thorough
 - Rigorous
 - Unbiased
 - Timely
- Handling of complaints
 - Filing of complaints
 - Officers are required to provide name and badge numbers
 - Officers are required to provide complaint procedure
 - Officers/supervisors are required to have complaint forms
 - Complaints can be filed in locations other than a police facility
 - Investigation of complaints
 - Complaints should be categorized by seriousness of the allegation, such as:
 - Class 1 – Serious misconduct
 - Class 2 – Minor misconduct
 - Class 3 – Policy infraction
 - Investigations should be thorough by requiring:
 - Officers to appear
 - Taped statements
 - Canvasses of the scene for additional information from witnesses or gathering of additional evidence
 - Investigations should adhere to rigorous legal standards:

- The findings of the investigation should be determined by a preponderance of the evidence
 - The guilt of a complainant's criminal charges should not be weighed against the complainant
 - An investigation should continue regardless of the complainant's withdrawal of the complaint
 - A complainant should be informed that he/she will not waive a right to sue by withdrawal of the complaint
- Investigations should be unbiased:
 - An officer's statement does not receive automatic preference
 - Group interviews are prohibited
 - Named officers do not participate in the investigation
 - The supervisors of the officers do not participate in the investigation
- Resolution of complaints
 - Resolutions of investigations should list the full range of possible findings with a description of each finding, usually including:
 - Sustained
 - Unfounded
 - Exonerated
 - Not resolved
 - Resolutions of investigations should list the disposition and the actions to be taken in regard to the findings. These actions should include:
 - No action for unfounded or exonerated cases that require no follow-up action
 - Training
 - Counseling
 - Reassignment if available
 - Discipline
- Methods of selection and training of investigators
- Methods of tracking and analysis of complaints and investigations to assess overall performance and needs arising from that analysis (such as policy and/or

training needs), including the publication of a summary of reports of data to the public.

The current section 3 includes an exclusionary provision, exempting certain complaints from the requirement that a case number be obtained from the Misconduct Complaint Register. However, there is no explanation of the type of case that would qualify for this exemption or of the reason for this exemption. Furthermore, there is an internal inconsistency of terms in this section: this is the first time that the Office of Professional Standards (“OPS”) appears in the Manual, and OPS does not show up in the organizational chart or in the section on Internal Investigation Procedures. As a result, we recommend eliminating this section entirely, or correcting the inconsistency.

The current paragraph E (*Investigating Complaints*) does not include a time requirement for completion of investigations initiated under this section. HPD’s Union Contract incorporates Illinois’ Uniform Peace Officers’ Disciplinary Act, which mandates that charges be formally filed within 120 calendar days of the date an investigation is initiated. Though this four-month window provides sufficient time to complete most investigations, we recommend that the Department place time limits on each phase of the disciplinary investigation and adjudication processes to ensure that investigations are conducted and resolved promptly. It would be reasonable to require that the investigation be completed within 21 days of receipt by the assigned investigator.

Furthermore, either in paragraph E or in a separate SOP for investigating allegations of misconduct, we recommend that a more detailed description of the investigative steps be provided. For example, requirements should detail:

- How interviews are to be documented (e.g., those permitted to be present, prohibition on leading questions, whether tape recorded or written statements are permitted, prohibition on group interviews, etc.);
- How and when investigative steps are to be documented (e.g., dates of attempts to contact witnesses and whether the attempts were successful, a requirement that reports be submitted for the investigative file within 24 hours of action, etc.);
- What documentation must be included in the completed investigation packet (e.g., communications tapes, copies of certified letters sent to witnesses, tapes of interviews, photos of scene and injured parties, etc.); and
- How copies of reports are to be safe guarded during the investigation (e.g., originals kept in working file, copies to be forwarded to the Internal Affairs Division, copies maintained in a centralized Internal Affairs Division file, etc.).

We recommend that this section state that the investigative finding will be based upon a “preponderance of evidence standard,” and that this section include an explanation of that term.

We further recommend creating a thorough policy manual for use by personnel assigned to conduct internal investigations that includes even more detail than the revised policies in the Manual. We recommend training for officers and supervisors assigned to Internal Affairs that is specific to their particular duties, and thorough documentation that those personnel have been tested and successfully passed an examination of Internal Affairs Division policy.

4. Disciplinary Policies and Procedures (2.31.11)

This section, as currently worded, allows a first line supervisor to issue an oral reprimand for misconduct that warrants more stern disciplinary action, thereby preventing the administration of appropriate corrective action by a higher authority. We recommend that some restrictions be placed on the circumstances in which lower levels of discipline can be administered at the first line supervisory level, in order to eliminate unnecessary and excessive discretionary judgments.

Furthermore, there is no example of the disciplinary form mentioned in this section anywhere in the Manual. We recommend that references to discipline to be initiated by a supervisor also contain the number of the form the supervisor is expected to complete. If no form currently exists, HPD should develop and utilize a form to specifically deal with that particular type of discipline. In addition, we recommend that every supervisor receive instruction as to the proper method of completing each form and the information it should contain. We recommend that information contained in the report include a narrative of the incident, the sections of the Manual that were violated during the incident, and how the actions listed in the narrative correspond to the orders violated.

Paragraph F (*Recording disciplinary actions*) gives significant discretion to the Police Chief to remove any record of discipline from an officer's personnel file. We recommend that the Chief only be permitted to remove disciplinary files from an officer's personnel file when required by law, court order, collective bargaining agreement, or per other lawful direction.

5. Rules of Conduct (2.41.00)

The current policy contains no rules against abuse of force, excessive force, or violation of citizens' rights. The Department would have to charge an officer who engages in such misconduct with a violation of one of the catch-all rules, such as *Unbecoming Conduct* or *Abuse of Authority*. We recommend that the policy be amended to contain specific rules against these particular actions.

Furthermore, the current policies appear to be fragmented in structure. For example, the following sections concern an officer's conduct:

- 2.41.30: Conduct toward the public
- 2.41.43: Conduct toward other employees
- 2.41.62: Conduct toward superiors

- 2.41.63: Conduct toward subordinates

We recommend that these sections be made consecutive for ease of understanding.

Finally, there are some sections that are listed as rules for which the Manual also includes a separate policy explaining related procedures. As a result, we recommend that the following sections be amended to eliminate this redundancy:

- 2.41.61: Disciplinary responsibilities
- 2.41.29: Citizen Complaints
- 2.41.37: Court appearances
- 2.41.38: Custody and Control of Property
- 2.41.57: Care and custody of prisoners

6. Firearms Training (2.51.01)

During our visit to HPD, we learned that this policy was basically unknown to or disregarded by Department personnel. Specific failures to comply with the provisions of this policy include the following:

- There is no record that officers actually reported for firearms training as required by policy;
- There is no record of specialty units qualifying on a monthly basis as required;
- There is no record of officers reporting for Firearms Training Simulator (“FATS”) sessions as required; and
- Statements indicated that no officers have been suspended for failure to qualify as policy demands.

We recommend that more stringent monitoring mechanisms be enacted to ensure adequate documentation of compliance with the provisions of this policy.

Furthermore, there is no guidance on consequences for Deputy Marshals who fail to qualify under the provisions of this policy. Though Department officials report that they have eliminated the position of Deputy Marshal, there are still indications that they have not done so. There is also no guidance on the procedure to be followed when an officer fails to qualify with a backup or off-duty weapon. It is generally accepted that officers who fail to qualify with a service weapon be placed on administrative duties (or relieved of their weapon for multiple failures) until they qualify. We recommend that these two provisions be clarified and updated to reflect current policy.

C. OPERATIONS

HPD should revise and update its Operations procedures and policies to be comprehensive, consistent, compliant with current constitutional and legal standards, and to reflect current best practices.

1. Tactical Unit Operations (3.01.06)

During our visit to HPD, it was indicated that the tactical unit is no longer in existence. However, if it were to be reinstated, certain changes to this policy would be in order. We recommend that this section contain guidance on the selection criteria and process for assignment to the tactical unit. The daily mission that the unit is assigned should be approved by command-level personnel and should be made known to the on-duty watch commander. Any special operations, such as high risk warrant service or stakeouts, should be coordinated with the on-duty watch commander, who should be fully briefed on the operation and who should have the power to overrule the decisions of tactical unit peer supervisors. We recommend that these changes be made in the event that a Tactical Unit is recreated.

2. Preliminary and Follow-Up Investigation (3.01.31)

Overall, this policy offers considerable information to officers and supervisors and is well-constructed. However, we recommend the addition of an advisory to this section that states the following explicitly: when an officer assigned to conduct a preliminary investigation receives information that the alleged offender may be a police officer, she or he should summon a supervisor to the scene. Guidance for the supervisor's response should also be included. We recommend that when there is an indication of involvement by a police officer, *Paragraph 6* should include a requirement that a witness canvass be conducted whenever possible. This is a good practice in all preliminary investigations, but is particularly important if there are allegations that the offender was a police officer.

We also recommend that Section 3.01.31(F)(1)(a) be gender neutral.

3. Investigative Procedures (3.11.00)

As discussed above regarding section 2.31.01, HPD is served by the Cook County Public Integrity Task Force, which conducts investigations into police shootings and other uses of force that result in serious injury. However, the Task Force focuses on serious uses of force and whether the officers violated any laws, but does not focus on administrative rule violations. It also does not conduct investigations of injuries to prisoners or allegations of excessive force that do not involve the use of firearms or serious injuries. We recommend that those responsibilities be assigned specifically to the Internal Affairs Division. Because every allegation of excessive force could potentially lead to criminal charges, we recommend that the Investigative Division play a supportive role in all use of force investigations.

Furthermore, this policy provides job descriptions for Investigations personnel. We

recommend that this information be divided among general job descriptions for investigators in the Manual, or deleted from the Manual and located in a separate manual used only by personnel assigned to the Investigations Bureau. The job descriptions of Investigations Bureau personnel need not occupy a complete section of the Manual for review by all department officers.

4. Receipt and Disposition of Service Information Cards (3.51.02)

If properly administered and implemented, this program could offer an opportunity for HPD to collect information that could lead to early identification of problem employees (see discussion of EIS in Section B(1) above). It requires the Police Chief to review and process the service information cards, but based on our visit to HPD, it appears that this policy is largely ignored. Section 3.51.02(C)(3) dictates: “When unfavorable comments concerning an officer or officers are received, the Chief of Police will determine whether follow-up action is required and may order an investigation to be conducted to determine the authenticity of the allegations. In such cases, the provisions of Sections 2.31.01 and Sections 2.31.10 will apply.” During our visit in December 2009, we found that there were only two registered complaints received by Internal Affairs during the entire year. From reviewing the complaints received, it does not appear that either of them originated from the Office of the Police Chief or were initiated through the service information card process.

If the Department does not ensure that officers issue the service information cards or that internal affairs investigations are initiated when negative comments are received, we recommend that this policy be abandoned. Having a policy that is ignored is a more serious problem than not having the policy at all, as lack of enforcement creates a culture where officers are not required to comply with policy. Disciplining officers for failure to comply with Operational Orders will be difficult to sustain when a culture of flouting policy exists and is well-known.

This policy would be beneficial if it is truly enforced. We recommend that this policy either be very stringently enforced or abandoned altogether.

5. Use of Force (3.81.01)

Use of force policies and procedures must clearly set forth standards for the appropriate use of force that is in accordance with constitutional standards. We base our review on HPD’s “Use of Force” policy, Section 3.81.01 of the Manual. There are a number of positive subsections in the use of force policy, including (D)(4) (on not firing warning shots) and (D)(5) (on not firing at or from moving vehicles). However, there are some sections that require revision in order to be compliant with constitutional standards, and we recommend that HPD make the following changes to this section of the Manual.

First and foremost, there are no prohibitions against the use of excessive force, unwarranted physical force, or verbal abuse by a Department member in this policy. In addition, it does not cover enough information related to the various levels of force. In fact, the policy does not include a continuum of control (a continuum of force). A continuum of control should dictate which level of force is authorized in accordance with the level of the subject’s resistance.

We recommend that once a continuum of control is established that defines various levels of force, officers should receive direction as to each weapon and where its use fits on the continuum.

Second, the “Use of Force” policy is listed in the “Operations” section of the Manual, and is numbered 3.81.01. Other sections including facility exercise room, receipt and disposition of service information cards, and release of public information are more prominently located in the Manual. This section is too important for all officers to be located this far to the rear of the Manual, and we recommend that it be relocated accordingly.

Third, we find the use of force policy difficult to follow as written. The overall structure of the policy statement does not follow a common format, nor does it include all of the elements found in well-crafted policy statements. An acceptable use of force policy statement should include sections on purpose or background; definitions; the policy itself; rules, regulations, and guidelines; and procedures. Instead of following this structure, the policy is found in three different sections of the directive. Policies should be written in simple, clear language, allowing any officer to quickly consult them and consistently understand what they say. Alternatively, they should paraphrase or quote legal precedent. We recommend that either this policy be greatly expanded or be divided into separate policies to include at least the following sections: use of force, continuum of control, deadly force, less lethal weapons, electronic control weapons (if used), impact weapons, blade weapons, pepper spray, and canines.

Fourth, to ensure consistency in the application of the use of force, a successful use of force policy should define key terms such as lethal force, less lethal force, force, and other such terms where lack of clarity could lead to confusion. HPD policies fail to do this. For example, the following terms are used throughout Section 3.81.01, but are not defined: non-deadly force, serious use of force, lethal force, less lethal force, physical force, impact force, injury, serious injury, and hospitalization. We recommend that HPD define “lethal force” to include any use of force that creates a substantial risk of death or serious bodily injury in accordance with Tennessee v. Garner, 471 U.S. 1(1985). We also recommend that the number of terms be limited to avoid confusion about the standard for each use of force and to keep the policy consistent with legally-established definitions. Furthermore, the order uses the term “non-lethal weapon” when referring to such weapons as the baton. This term is misleading and is being replaced by many police departments with the more accurate label of “less lethal.” A baton strike, properly administered, has a very low likelihood of resulting in a fatality. However, a strike to the head is considered by most agencies as deadly force, and we recommend that the definitions in this section reflect this reality.

Fifth, the current policy in paragraph A attempts to modify Illinois law. Paragraph A (*Policy*) states that “Illinois law, Chapter 38, Article 7, outlines the conditions under which a peace officer may use force, including deadly force, in connections with their duties. It is the policy of this Department, however, to limit this use of deadly force to those situations in which no other reasonable alternative is available.” The referenced section has been relabeled by the Illinois General Assembly as 720 ILCS 5/7-5, and reads:

Peace officer's use of force in making arrest.

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

(b) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.

The Manual attempts to modify Illinois law by inserting the sentence: "It is the policy of this Department, however, to limit this use of deadly force to those situations in which no other reasonable alternative is available." This will confuse officers as to the legal limits of what they may do, and we recommend that it be rewritten to more accurately reflect current applicable law.

Sixth, paragraphs D(1) and D(3) state that: "Deadly force shall be restricted to the apprehension of perpetrators who threaten the use of deadly force by words or actions: and who exhibit or create a logical belief that they have such a weapon and intend to use it," and "Officers shall not fire at felony suspects when lesser force could be used; when the officer reasonably believes that a suspect can be apprehended reasonably soon thereafter without the use of deadly force; or when there is any danger to innocent bystanders." These paragraphs arguably expand the circumstances under which deadly force may be used from those enunciated by the accepted legal standards. The way in which the rules are written here fails to explain what constitutes a "reasonable alternative," and may be interpreted to permit shooting at a fleeing burglar who is outrunning the officer. Accordingly, we recommend that they be rewritten to more accurately reflect current constitutional standards.

Seventh, paragraph C(1) limits application of this policy to use of a Department-owned firearm, leaving out off-duty or back-up weapons that are the property of the individual officer. We recommend that this policy be expanded to include non-Department-owned weapons.

Eighth, there is no requirement to document or investigate a use of force resulting in serious injury, other than those involving the use of a firearm, or to document and investigate use of non-lethal force. Since Harvey is served by the Cook County Public Integrity Task Force, which is responsible for conducting investigations into police shootings and other uses of force that result in serious injury, we recommend that there be procedures set forth here for notifying the Task Force when an officer is involved in such an incident. We further recommend that the responsibilities of the on-duty supervisors, Internal Affairs Division and Investigative Division personnel, who will likely arrive at the scene long before members of the Task Force arrive, be clearly stated. We recommend that the procedures anticipate the investigative steps the Task Force will take and ensure that investigative actions that are time sensitive, such as securing the scene, preserving physical evidence like the officer's weapon, and conducting a canvass to identify witnesses, are initiated by the responding Internal Affairs Division and Investigative Division personnel. We also recommend that the policy prohibit activities that might interfere with the impartial investigation by the Task Force, such as taking statements from witnesses.

Ninth, Section I(1) states: "An officer may be placed on administrative leave by the Chief of Police." If it complies with HPD's bargaining agreement, we recommend that the word "may" be replaced with the word "shall." The administrative leave should extend at least until a Department psychologist clears the officer following an initial meeting. Mandating administrative leave prevents an officer from returning to duty prior to initial determinations as to the validity of the shooting and the determination of the psychological status of the officer.

Tenth, Section I(2) states: "The officer(s) involved in a police shooting may be required to undergo a debriefing with a Department appointed psychologist." If it complies with HPD's bargaining agreement, we recommend that the word "may" be replaced with the word "shall." The use of deadly force may cause an officer considerable emotional stress that is not readily apparent. Having an officer contend with post-traumatic stress disorder without the assistance of a psychologist may result in dire consequences for the officer, the Department, and for those confronted with the officer's delayed stress.

Finally, because of the intersection with uses of force, we recommend that the following other matters be addressed in this policy: training on use of force, including proper documentation of use of force incidents, bias-based policing, dealing with deaf and hearing-impaired individuals, dealing with individuals with mental illness, dealing with individuals with limited English proficiency, dealing with individuals with physical disabilities, arrests of officers, domestic violence (including officer-involved incidents of domestic violence), court appearances, searches and seizures, traffic stops, lawsuits and other claims filed against an officer, and field training (including the use of field training manuals).

6. Municipal Ordinance Complaint Citation Policy and Procedure (3.91.02)

Complaint citation practices like this one have been used by many police departments and may serve several useful purposes: they allow officers to initiate judicial review of quasi-criminal offenses, they avoid the problems associated with transporting and booking the violator,

they minimize inconvenience to the violator when there is a low likelihood that the courts will do more than levy a fine, and they save officers' time and Department resources. Policies like this one can be abused, however, and therefore require close supervisory oversight because they give significant discretion to the officer. The practice of limiting use of the citation to specific offenses is a positive way to ensure proper administration of this policy. We recommend that the discretion of the officer also be limited by making use of the citation mandatory unless certain conditions exist. As the policy is currently written, the officer can decide whether he or she wants to arrest or issue a citation, which could lead to unfair or discriminatory application of the policy.

7. Medical Treatment of Crime Suspects (3.91.03)

Policies and procedures like this one were widely adopted after passage of a law that made police departments responsible for medical treatment costs incurred by persons in their custody. As the Manual states, they are intended to relieve the City of an unnecessary financial burden. The current policy is acceptable, but we recommend that if the injury to the suspect occurred at the hands of a police officer or after the individual is taken into custody, the provisions of this policy should not apply. We further recommend that the policy state explicitly that if force was used, the use of force reporting and investigation procedures should be initiated.

D. Support Services

HPD should revise and update its policies and procedures on Support Services to be consistent, comprehensive, and to reflect current best practices.

1. Incident Reports (4.01.02)

This policy provides for a basic form that will give good information to the Department if it is completed as directed. However, none of the Department reports contain Department form numbers or revision dates. We recommend that Department forms have some indication that they are legitimate forms. Providing each form with a form number and a revision date allows the user or reader to recognize it as an authorized form and to know if the form is current. In order to accomplish this, we recommend a section located on some part of the form (such as the bottom, right side) that lists the authorized Department form number and revision date. We further recommend the placement of a box on the report to capture information about whether the arrestee resisted or was injured.

2. Medical Incident Reports (4.01.04)

Much like the Incident Reports, this policy provides for a basic form that will give good information to the Department if it is completed as directed. However, none of the Department reports contain Department form numbers or revision dates. For the same reasons given above regarding incident reports, we recommend that Department forms have a form number and a revision date.

A Medical Incident Report is intended to capture information about incidents to which officers are assigned that involve injured citizens. It is not the proper form to complete if an arrestee or prisoner is injured during the arrest or imprisonment. We recommend that an Injury to Prisoner Report format ask for more information about the offense for which the individual was arrested, the nature of his or her actions that contributed to his or her injury, the actions of the officer in response to the behavior of the arrestee, the times of significant events such as summoning of paramedics and transportation to the hospital, and treating physician and medical reports.

3. Use and Maintenance of Weapons (4.31.21)

This policy is clearly outdated, as the Department no longer issues revolvers. We recommend that it be updated to reflect current operational practices.

Furthermore, we recommend that this section include limits on the type of ammunition and number of rounds that can be carried by each officer. This will facilitate reviews of uses of force, as well as investigations into firearm discharges. Differences based on the nature of the officer's assignment are permissible; however, there should be consistency between officers with similar duties.

We further recommend that under the section on shotguns, there should be a requirement that the officer submit a report when he points the shotgun at an individual, as this constitutes a use of force.

Finally, section C(4) of this policy states that "Shotguns will only be assigned to officers and deputy marshals with the approval of the individual's immediate supervisor or commanding officer, and shall only be issued to, and used by, members who have been properly trained in their use during the last quarter, as provided in Section 2.51.01 of this Manual." Section D(1) of this policy states: "No weapon shall be issued to, or used by, any member of the Department who has not received Department-approved training in the use of that weapon during the preceding six months." These provisions should use the same language regarding the time requirement that officers to be trained in the use of shotguns and other specialty weapons in order to be permitted to use them – either every six months or quarterly. Further, the policy does not explain how supervisors will be notified that officers received the necessary training and are properly qualified with the weapon. We recommend that this policy provide direction as to how the officers and supervisors can access training information to determine who is qualified to carry specific weapons. We recommend that this be accomplished through a department database, monthly reports distributed with qualified officers, or through an early intervention system (see section B(1) above).