

To: Fire and Police Commissioners & Executive Director

Re: FPC19214 – Resolution to amend Standard Operating Procedure 460 Use of Force

From: Paul Mozina

[Wisconsin State Statutes §62.50\(1m\)](#) (1m) Policy review. The board shall conduct at least once each year a policy review of **all aspects of the operations** of the police and fire departments of the city.

Please consider the following as you review the proposed changes to SOP 460 Use of Force.

Execution of a no-knock, forced entry, search warrant is a Use of Force and this SOP should be updated to reflect that.

By any definition of the word *force*, the execution of a no-knock forced entry search warrant is a Use of Force. The Approach Considerations, Intervention Options and Follow-Through Considerations outlined in 460.10 Disturbance Resolution Model, should be integrated into SOP 970 Search Warrants, or that SOP should explicitly reference 460.10 and require compliance with these procedures.

460.45.B When to File should require a Use of Force Report be filed for all forced entry search warrants executed.

#### Use of Force Reports

460.10.2 Disturbance Resolution Model authorizes the use of less lethal weapons by the Tactical Enforcement Unit, but the descriptions of these weapons are redacted. Members of the TEU are not required to file a Use of Force Report when they use these ~~redacted weapons~~. The people have a right to know what weapons can and will be used against them. This information should be un-redacted, Use of Force reports should be required when they are used, and the details of their usage should be in the FPC's annual Use of Force Report.

Every year from 2009-2018 the FPC's annual Use of Force Report shows that approximately 76% of the Use of Force was against Black people. This is more than a trend and needs to be investigated to see if there is racial bias in the use of force. Also, the level of the use of force and the extent of injury suffered is not broken down by race and this should be done.

460.45.F Internal Affairs Division – Risk Management Responsibilities stipulates that Use of Force data will be analyzed / audited on a regular basis by the Internal Affairs Division – Risk Management. Does the FPC participate in these audits and does the Board review the results? If not, why not? If yes, please integrate the results of these audits into the annual Use of Force reports the FPC currently produces.

460.50 Use of Force Committee specifies that a Use of Force Committee shall conduct periodic comprehensive reviews of all use of force issues affecting the department and that the committee shall prepare a quarterly written report of the committee's findings and/or recommendations. Does the FPC participate on this committee? Does the FPC review the findings and/or

recommendations of this committee? If not, why not? The FPC's annual Use of Force Report does not even mention the Use of Force Committee or its reports. Why not?

The 2018 Use of Force report shows that in 19 cases where the MPD used force it did not arrest the target of that force. What happened? Did these incidents result in complaints or lawsuits? How can the MPD avoid using force against people who have not committed a criminal offense?

Since 2014 the percent of arrests that involved a Use of Force has steadily increased from 2.6% to 3.4%. The 2018 Use of Force report explains: "As noted in Figure 1, the number of force incidents has been quite stable since 2014. However, because of a decline in the number of arrests made from 2014 to 2018, the *percentage* of arrests that involved force during those years has increased." Why has the number of UOF incidences remained relatively stable even though arrests are declining?

The annual Use of Force report does not inform us of whether the use of force was justified or resulted in complaints or lawsuits.

The 2018 Use of Force report highlights that one member had 24 incidents where they used force, as opposed to the preceding 10 years where the average maximum for any individual was approximately 10. The FPC and MPD should implement an early intervention alert similar to that used for complaints to become aware of this excessive use of force.

[DOJ Collaborative Reform Initiative Findings and Recommendations.](#)

## RECOMMENDATION 17

**MPD should develop a policy and checklist for use of force and deadly force investigations that outline best practices for the investigation and mandate all investigators attempt to gather a complete picture of available information in a consistent manner.**

Current:

All supervisors are given a "Use of Force Documentation Checklist" which contains specific guidelines for conducting use of force investigations, including background information, approach considerations, intervention options, follow-thru considerations and investigative findings.

Future:

MPD agrees that SOP 460 – Use of Force can be updated to reference the Use of Force Documentation Checklist.

## RECOMMENDATION 18.1

**IAD investigations should be more proactive and be conducted in parallel fashion to the criminal investigation of a critical incident.**

Current:

IAD supervisors respond to the scene of critical incidents, but do not conduct interviews at the scene so they do not interfere with or otherwise jeopardize the criminal investigation. The criminal investigation is to determine whether or not a crime has been committed. The administrative investigation is to determine whether or not a violation of the department Code of Conduct or standard operating procedures has occurred, which includes, but also goes beyond whether or not a crime has been committed.

Some evidence gathered during the IAD investigation often cannot be used in the criminal investigation, which is required by law under [\*\*Wis. Stat. § 164 \(Law Enforcement Officers' Bill of Rights\)\*\*](#), and MPD makes every effort to comply with this requirement by having a clear separation between the criminal and administrative process. (This is not an accurate interpretation of what the statute says. It makes no reference to the withholding of information gleaned from interrogating the officer in a corresponding criminal case). Also, [\*\*Wis. Stat. § 175.47\*\*](#) requires that an outside investigator conduct the criminal investigation into all police-related deaths (except for the death of a member). Consequently, MPD often does not have access to all of the necessary information for our internal administrative review until the criminal case is completed and reviewed by the Milwaukee County District Attorney's Office. We are in agreement with the concept of concurrent criminal and administrative investigations and we do initiate both investigations at the same time, but we find that legal as well as procedural barriers often slow down the internal case. While [\*\*Wis. Stat. § 175.47\(3\)\(c\)\*\*](#) does allow for an internal investigation to be conducted, it cannot interfere with the outside agencies investigation.

Future:

A best practice review would be helpful in this area and the department would require technical assistance for this review.

## RECOMMENDATION 21

**MPD should transcribe and include the complete involved officers' administrative interviews in the IAD file and reference them in the case summary.**

### Current:

Implementation of this recommendation would be dependent on budgetary authority. MPD does not currently have the technical capabilities or personnel necessary to transcribe entire interviews.

All officer interviews are recorded and a CD is created with the recording of each statement. IAD supervisors summarize officer involved interviews in their written reports.

Note: The estimated cost for the transcription software or service is \$250,000.

## RECOMMENDATION 25

**MPD should require audio or video recordings of involved and witnessing officers to improve the quality and transparency of the investigation.**

### Current:

The practice of not video or audio recording officer statements is in part due to the recognition that officers have a legal right (where is the citation to document this?) to decline any voluntary interview and will very often choose not to make a statement in the criminal case if it is recorded. The department has not made this a requirement because each officer has the right to consult with an attorney and many attorneys will advise against giving a recorded statement. (This is a not a valid reason not require audio and video recordings of involved and witnessing officers)

The department's policy with citizen witnesses is to inform them that MPD would like to take a recorded statement, and if they decline, the department will conduct an unrecorded interview. It should be noted SOP 453 (Officer-Involved Deaths and Other Critical Incidents) is currently in the process of being revised and one of the revisions will remove the requirement that citizen interviews must be recorded. The policy will specifically remind sworn personnel that citizen interviews are consensual in nature and that citizens have the right to refuse to be recorded.

The department also acknowledges that the state law requiring an outside agency to conduct an investigation into police-involved deaths takes this decision out of the department's hands as MPD, by law, cannot control the investigative process of any outside agency if they require the interviews to be recorded.

## RECOMMENDATION 28

**MPD should update its Administrative Investigations Management system to allow for more space to keep all documentation in one location or consider one physical file location for documents, photographs, audio, video, and other document evidence.**

### Current:

Implementation of these recommendations would be dependent on budgetary authority. At this time internal investigation/complaint files are not contained within the Administration Investigation Management (AIM) system as this system does not have the capability to contain all of the investigative files. However, there are paper files maintained at IAD. MPD has multiple stand-alone systems and this is currently being addressed with the purchase and implementation of the new TriTech RMS system. The Office of Police Information System Services will need to follow up with On Target Performance Systems to see if the AIM software can be integrated with the new TriTech RMS System, which will require funding and technical assistance.

## RECOMMENDATION 29.1

**MPD should capture additional standardized data fields that capture information, including level of resistance that an offender is using during an encounter, the type of weapon an offender used or displayed, mental illness history, and if contraband was seized.**

## RECOMMENDATION 29.2

**MPD should increase the quantity and quality of data collected around use of force reports, including contextual information such as deployment data, crime data, calls for service data, targeted enforcement priorities, and community perception information, which is imperative for fulling understanding the issue.**

### Current:

Implementation of these recommendations would be dependent on budgetary authority. Steven Brandl, Ph.D., of the University of Wisconsin – Milwaukee Helen Bader School of Social Welfare is provided MPD data to author a bi-annual report on officer use of force. Since 2009, this report has been published and is available on the Fire and Police Commission’s public website. Analysis on Use of Force reports includes type of force, subject of force, actions that generated the incident, broken down by police and aldermanic districts. Dr. Brandl also provides a bi-annual presentation to the Fire and Police Commission. In the 2015 annual report Dr. Brandl states, “The AIM system is not particularly well suited for the analysis of data. The process of converting the AIM system data to a format for statistical analysis is labor intensive and time consuming.” MPD would require funding and technical assistance with this recommendation as it may result in the department having to utilize a different software to capture use of force data. Funding would be required to obtain new software and conduct user training for all members.

## RECOMMENDATION 31

**MPD should require that non-fatal officer-involved shooting incidents are also investigated by an external agency.**

### Current:

The implementation of this recommendation would require Criminal Justice System participation and an intergovernmental agreement with surrounding agencies. MPD is part of the Milwaukee County Law Enforcement Executives Association Memorandum of Understanding (including Wisconsin DOJ) which dictates Investigation of Law Enforcement Involved Fatalities/Great Bodily Harm. However, suburban jurisdictions do not have the

capacity to investigate all MPD officer involved non-fatal shooting incidents. MPD cannot require that outside agencies comply with this proposed recommendation. This MOU with surrounding municipal agencies will alleviate concerns about response times, as historically Wisconsin DOJ has taken hours to respond to critical incidents. This new regional approach will also address the concern and perception of using retired MPD personnel, who are employed by the Wisconsin DOJ to investigate fatal officer-involved shooting incidents.

## RECOMMENDATION 32

### MPD should work with community stakeholders to develop a policy on critical incident information sharing and public release.

#### Current:

The department currently does not release any detailed information, including any applicable video, until the Milwaukee County District Attorney's Office has reviewed the incident and presented its finding to the department and victim's family. Every incident is unique and requires weighing the facts to balance the public's expectation to know with the integrity of the investigation. MPD needs to consider best practice such as San Diego Police Department's policy regarding the release of video, which was crafted with input from attorneys, community members, elected officials and representatives from civil rights and media organizations. This policy allows for the video to be released as soon as it is appropriate to do so, but not until the district attorney has reviewed the critical incident and presented its findings to the agency involved. They also will not release video if the officer is criminally charged.

#### Data Recommendation

During the past ten years, various recommendations have been made with regard to how MPD use of force reporting can be made more informative. One recommendation is provided here. Within the AIM system, a data field should be created to record the existence (or not) of body-worn camera (BWC) video of the use of force in the incident. Whether BWC video is available in the incident is already regularly noted in the narrative report of the incident. The availability of this information in AIMS would facilitate analysis and reporting of this issue.