



# Recommendations for the Port of Seattle Task Force on Policing and Civil Rights



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## I. INTRODUCTION

Early in their support of the Port of Seattle Commission (Commission) Task Force on Policing and Civil Rights (Task Force), 21CP Solution consultants (21CP) went for a ride-along with two Port of Seattle Police Department (POSPD) sergeants to gain perspective on the Port’s geographical layout and to learn more about POSPD officers’ daily work. At one of the POSPD outstations, an officer commented, “I am glad you are here. This is a great department and I think you will see that. I hope you don’t find anything broken; but I do hope you find things to fix.”

Unlike many of 21CP’s engagements, this assessment of the POSPD was not precipitated by any seminal event or community outrage directly involving POSPD. In fact, 21CP found that few outside the Port have much awareness of the POSPD, what they do, or how they differ from the many other law enforcement agencies – including the U.S. Transportation Security Administration (TSA), US Customs and Border Protection (CBP), Washington State Patrol (WSP), the Seattle Police Department (SPD) and others – that operate within and/or proximate to the Port’s jurisdiction. Instead, this review was inspired by the national moment of reflection about policing, and the Commission’s vision of a world-class police force that not only sets a high standard for performance and community service, but also centers equity and civil liberties as core values in its work.

After a thorough process that involved document review, listening sessions and interviews with many internal and external stakeholders, engagement with the Task Force and subcommittees, an internal POSPD climate study, engagement at training, and review of use of force incidents and misconduct complaint investigations, 21CP found ample evidence of a good department that can get even better with key changes.

On the positive side, POSPD regularly updates its policies and procedures to stay current with promising practices, supports a robust training program, and has a clear commitment to mission and goals. Use of force is infrequent and, with few exceptions, reasonable, necessary, and proportional. The relatively few POSPD misconduct complaints were investigated in a timely and objective manner. Forward thinking appears typical of POSPD leadership and was observed in supervisors and officers providing day-to-day policing services, the POSPD training program, and through participation in the work of the Task Force. Notably, the POSPD has taken on a regional leadership role in crafting new policies and procedures in response to recent Washington State legislation to ensure that agencies are operating from the same set of standards.

However, as with any organization, there is room for improvement. As such, this report aims to provide specific guidance, and practical recommendations, for POSPD and the Port based on its unique needs, values, and experiences, and drawing from the vast experience of the many volunteers that donated their time and energy to think through the questions posed to the Task Force. Overall, this report offers 52 discrete recommendations covering each of the nine areas of assessment outlined by the Commission; a majority of the recommendations capture feedback specifically provided by the members of the Task Force and subcommittees.

While this report provides many recommendations, some broad and some more discrete, three priority areas stood out in our analysis:

- 1) the need for the POSPD to focus on internal procedural justice to address a perception of inequity experienced by many, but particularly Non-White employees,
- 2) how increased organizational transparency can improve perceptions about the POSPD, and
- 3) supporting the POSPD's move away from a traditional police response on homelessness.

The first two priority areas – internal procedural justice and transparency – were highlighted during the subcommittee process and by the results of the climate survey and officer interviews, in which 21CP heard frequent concerns, most often expressed by employees of color, about fairness in departmental opportunities, even though most did not specifically attribute the perceived unfairness to race, ethnicity, or gender. In all, over 25% of 21CP's recommendations focus on increasing internal procedural justice and fairness<sup>1</sup>. The third – police response to homelessness – is the single most important step that will help reduce external disparities around uses of force.

The Port is not alone in confronting significant issues and concerns surrounding the role, actions, and performance of police in its community. 21CP has conducted similar reviews for other jurisdictions addressing many of the same issues and challenges, and in some cases offered similar recommendations to what is outlined here based on

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<sup>1</sup> See Recommendations 2, 7, 34 – 44, 49.

the same types of best and emerging, promising practices. Again, however, this set of recommendations was strongly shaped by the input of the Task Force and the subcommittees, as well as the unique nature of the POSPD, feedback from community members and direction from the Port Commission.

## **II. SCOPE & APPROACH**

### **A. Scope of the Assessment**

The Port of Seattle (“the Port”) engaged 21CP Solutions (“21CP”) to assess the Port of Seattle Police Department’s (“POSPD” or “the Department”) current “policies, practices and oversight” to ensure alignment with the Port’s Century Agenda goal to “Become a Model for Equity, Diversity, and Inclusion.” This engagement was framed by the July 14, 2020, Port Commission (“the Commission”) Motion to conduct a comprehensive assessment of the POSPD’s policies, protocols and procedures impacting issues of diversity, equity, and civil rights (Motion 2020-15).

In Motion 2020-15, the Commission authorized the creation of a Task Force on Port Policing and Civil Rights, with the scope of work comprising review of issues including: Diversity in Recruitment and Hiring, Training and Development, Equity, Use of Force, Oversight and Accountability, Police Union Participation, Budget, Roles, and Equipment, Mutual Aid, and Advocacy. As the Task Force leadership developed a structure and process for addressing issues identified in Motion 2020-15, it determined that police union representatives would be included in each subcommittee as a means to address the topic “Police Union Participation;” that the topic “Equity” would be addressed in the Oversight, Accountability, Racial Equity, and Civil Rights Subcommittee; and in conducting the assessment of all topics, each subcommittee was “to consider impacts on diversity, equity and civil rights.”

The overall assessment design was created by the Port and was divided into three phases, with considerable overlap, consisting of an initial assessment of the department; facilitation of the Task Force meetings and subcommittees; stakeholder outreach (internal and external to the Port); drafting of interim reports, updates, and this final assessment; and presentation to Port leadership, including the Commission and Executives.

Process and roles for Task Force staff and 21CP were discussed at length, and it was determined that 21CP would take the lead in suggesting areas of exploration to each committee, with the goal of focusing on the most critical issues and ensuring that any

“mission creep” be intentional and transparent. The Task Force recognized that inevitably, as this project progressed, there would be many areas that could be included in the assessment, but that the priority would be on depth, not width, in keeping with the areas outlined in Motion 2020-15 creating the Task Force.

To this end, 21CP worked in collaboration with subcommittee co-chairs to set the substance for subcommittee agendas, facilitated the subcommittee meetings, and created minutes reflecting the subcommittee work, while preserving the anonymity of subcommittee members to encourage open dialogue. Placing this body of work on 21CP ensured visibility across subcommittees, allowing 21CP to help deconflict any overlapping issues.

As is the case in most projects, the assessment required agility to explore additional related areas of the department as issues emerged. In some cases, additional areas for review were selected by the subcommittees; others were identified by 21CP or the Task Force leadership. Modifications to the project included:

- 21CP was asked to conduct an internal “climate survey” of the department to assess perceptions of equity and fairness.
- The Advocacy Subcommittee and associated legislative work evolved substantially during this project due to the large slate of police-related bills passed in the Washington State Legislature’s 2021 legislative session. As such, the Advocacy Subcommittee work was replaced by implementation of a “kitchen cabinet” of experts to provide Task Force support for the Port’s legislative engagement in real time.
- The Budget Subcommittee was subsumed within the other subcommittees as budgetary decisions regarding state law mandates from the 2020-2021 legislative session overlapped with 21CP recommendations. In short, it was determined that triaging the costs of legislation and recommendations could be done more efficiently outside a subcommittee structure.

## **B. Approach to this Assessment**

21CP’s assessment and recommendations are based on an analysis of three primary sources of information or raw “data”: paper, performance, and people.



First, 21CP requested and received an array of written materials and information about and relating to POSPD's operations. This included policies, procedures, protocols, training curricula, annual reports, and other similar materials. These were evaluated in light of an array of emerging and best practices and national standards and where relevant, presented to the subcommittees for consideration and discussion.

Second, 21CP endeavored to evaluate POSPD's performance in practice by examining how use of force and complaints were processed at the case level. Similarly, 21CP sought to understand the POSPD's performance in the aggregate and collected data around officer activities to better understand the volume and type of work the department engages in. 21CP also audited three days of training (one with the co-chairs of the Training and Development Subcommittee) to ensure that the training presentations supported the values and information set forth in the training curricula.

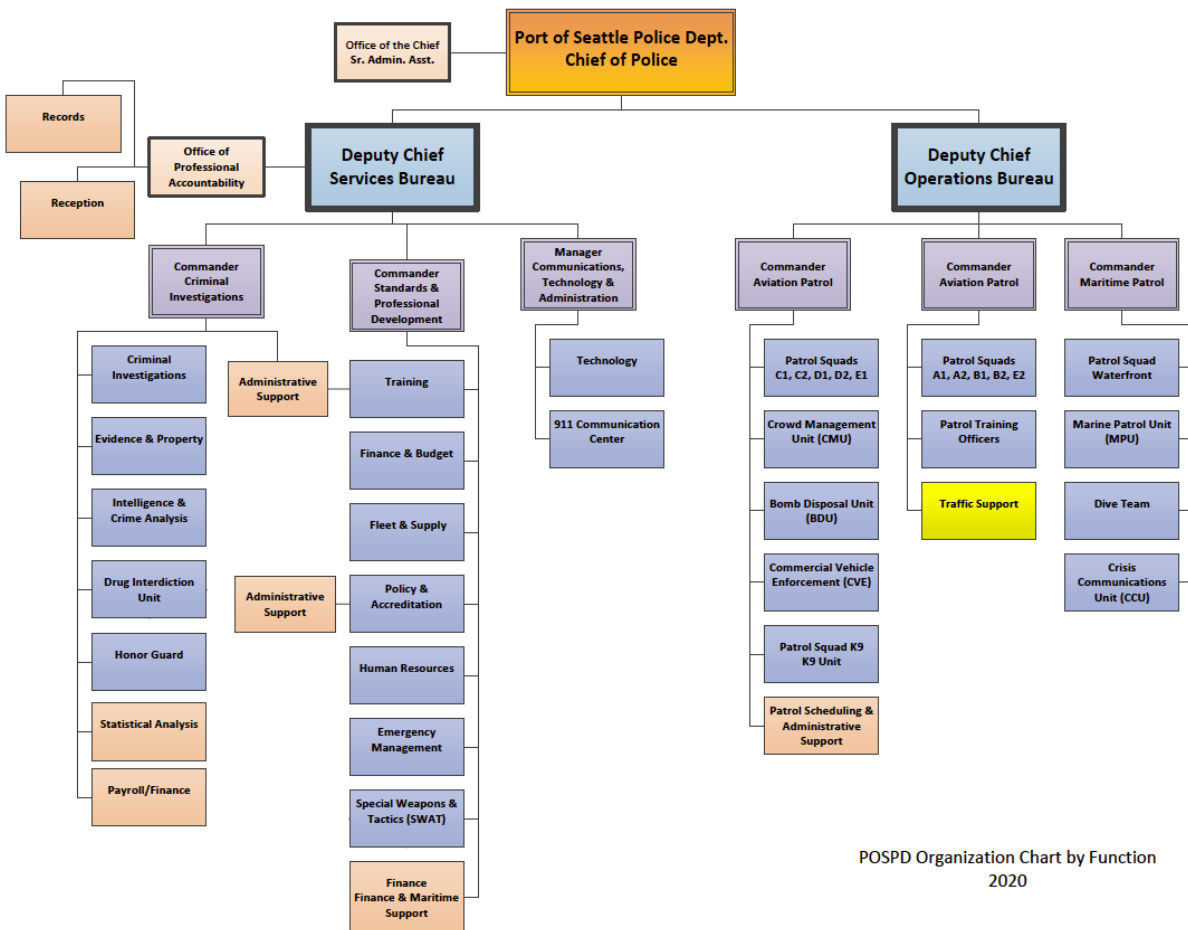
Third, and importantly, 21CP conducted conversations, focus groups, and interviews with stakeholders, both internal and external to the Port. In total, 21CP spoke with hundreds of people about the POSPD. At the heart of this engagement was the subcommittee work, which included many stakeholders, internal and external to the Port, who worked to deeply understand the complex issues in their assigned subtopics. If the subcommittee work alone was the sum total of work accomplished in this project, the project would still be valuable. Just the exchange of information and the education of stakeholders – especially those within the Port about their own police department – was important work. Reciprocally, the POSPD subcommittee members were likewise exposed to a wide range of perspectives.

We also approach this report, as we endeavored to approach our work at the Port and our interactions with stakeholders, with humility. Although we believe that our review of Department policies and protocols, examination of aggregate and specific types of POSPD performance, and engagement with community and Department stakeholders provides a sufficient and accurate foundation for recommendations grounded in best practices, the implementation of these recommendations will undoubtedly be “flavored” by the Port and the POSPD. Because of the ongoing public health situation, we were unable to spend the type of on-the-ground time with stakeholders from which we have typically derived tremendous benefit. It is possible that the limits of our approach, as with any approach of assessing the disparate functions of this organization, mean that this report overlooks some details, misses some nuance, or bypasses additional areas of importance.

### III. ABOUT THE POSPD

The Port of Seattle Police Department is a general authority law enforcement agency that provides specific policing services for the Port community and the communities the Port touches, spanning several jurisdictions. At the time of this writing, there were 151 POSPD employees (113 commissioned and 38 civilian).<sup>2</sup>

#### A. Organizational Chart



<sup>2</sup> Note that for the demographic data, which is available as of April 2020, there were 123 commissioned and 44 noncommissioned employees.

## B. Jurisdictional Map

The Port of Seattle jurisdictions are not contiguous and span a long corridor along Puget Sound.



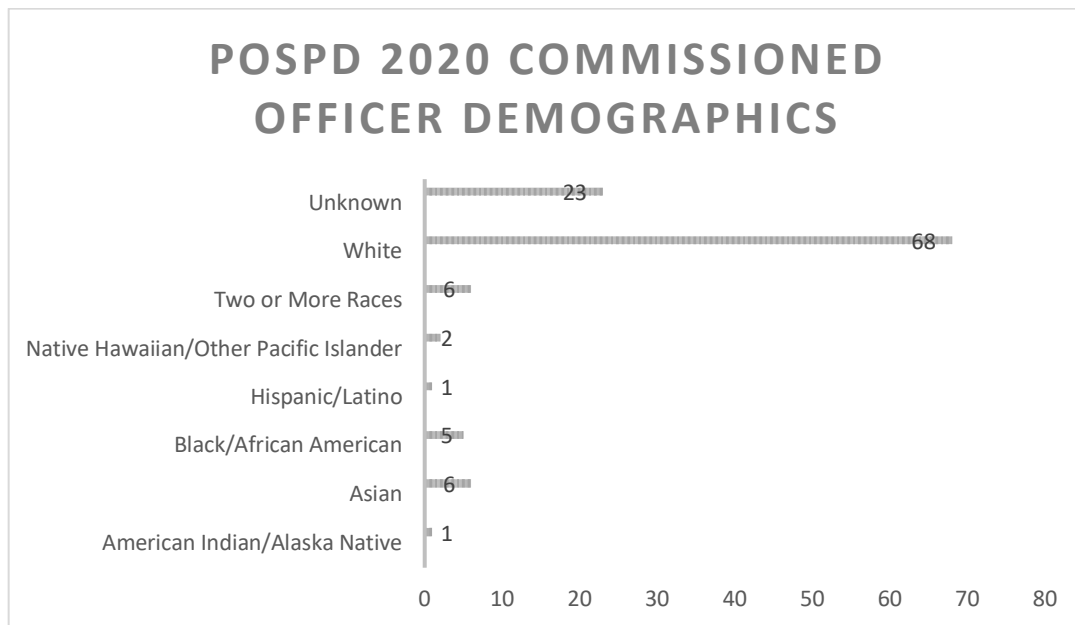
### C. Officer Activities

Through Computer Aided Dispatch (CAD) records and the Record Management System, basic information about POSPD officer activities is available and which are presented below.

Year	Calls for Service (CFS)	Case Reports	Arrests	Field Interview Reports (FIRs)	Traffic Stops
2018	90,098	3,147	712	1,200	4,618
2019	106,463	3,915	826	1,526	5,175
2020	92,186	2,257	454	683	1,652

### D. Demographics of Department

Based on April 2020 data, there were 123 commissioned and 44 noncommissioned POSPD employees.<sup>3</sup> Of the commissioned officers, there were 103 males (84%) and 20 females (16%). Racial/ethnic demographics for commissioned employees in 2020 are shown in the chart below.



<sup>3</sup> Note that the current number of commissioned employees at POSPD is 113, or 10 fewer than in 2020. Because officers have been hired while others retired or left POSPD for other reasons, the officer demographics represented in the chart above will have changed.



## E. CALEA Accreditation

POSPD has been accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) since 2011. The most recent published CALEA report online is from 2018, however the POSPD underwent a CALEA re-accreditation during the time period of this assessment. While CALEA is an excellent program for ensuring that policies and protocols in critical areas *are addressed*, the work of the Task Force and 21CP was focused on *how those areas are addressed*, with particular focus on national best practices and using an equity lens. In addition, CALEA does not provide an agency with policies, procedures, or protocols – instead, it provides a mechanism for the Department to assess itself along many dimensions and for CALEA representatives to verify compliance with standards. Many CALEA standards relate to organizational, managerial, and administrative concerns like “personnel administration,” “detainee and court-related services,” and “auxiliary and technical services.”<sup>4</sup>

Accreditation is not necessarily widespread across law enforcement. Departments must initiate the process, and they pay to proceed through accreditation. Consequently,

[o]nly 2 percent of police agencies across the country can claim CALEA bragging rights, and only eight of 269 public safety agencies in Washington have earned accreditation.<sup>5</sup>

While research studies have come to mixed conclusions about the benefits of CALEA<sup>6</sup>, CALEA accreditation is important to POSPD, with the Department’s Policy manual including running references beside various policy sections to the relevant CALEA

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<sup>4</sup> Jim Burch, National Police Foundation, “CALEA Accreditation – A Platform for Excellence and Reform,” <https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/> (last visited Mar. 8, 2021).

<sup>5</sup> “Should Tacoma Police Keep National Bragging Rights? You Have a Say In That,” *New Tribune* (June 16, 2020), <https://www.thenewtribune.com/opinion/editorials/article243566112.html>.

<sup>6</sup> See e.g., R.L. Snow, “Accreditation: A 21st Century Necessity?,” 40 *Law and Order* 84, 84 (1992); Manuel P. Teodoro & Adam J. Hughes, “Socializer or Signal?: How Agency Accreditation Affects Organizational Culture,” 72 *Public Administration Review* 583, 583 (2012); Stephen A. Baker, *Effects of Law Enforcement Accreditation: Officer Selection, Promotion, and Education* (1995); G.W. Cordner & G.L. Williams, “Community Policing and Accreditation: A Content Analysis of CALEA,” in *Quantifying Quality in Policing* (Larry T. Hoover, ed.) (1996)).

standards that the Department believes that the section satisfies. POSPD's takeaways from CALEA's mandates are significant and the values espoused are commendable. Additionally, to the extent that the CALEA framework and requirements help the Department focus and organize its operations, there is clear significance.

Ultimately, however, "CALEA provides agencies with a blueprint for 'what, not how'"<sup>7</sup> – leaving police departments to determine for themselves the best ways for *how* to precisely address issues for their communities. The body does not certify the *effectiveness* of what a department like POSPD is doing to realize the *outcomes* that its community wants. CALEA is a framework, not a prescription. A department's assertion that something has been "CALEA-certified" does not necessarily mean that it aligns with best practices; that it is effectively in realizing positive outcomes; or that it aligns with the values and needs of the community.

As such, while the accreditation process adds value, it is not a ceiling for POSPD's efforts to provide its community with just, fair effective, and equitable public safety services. Therefore, this report looks to best practices, the promising experiences of peer departments, research, evidence, data, and experiences in other communities, rather than assuming CALEA accreditation provides all of the answers.

## **F. LEXIPOL**

The POSPD and many of its neighboring departments<sup>8</sup> use the Lexipol policy subscription to keep current on changing mandates. Lexipol is a private subscription company that provides "a full library of customizable, state-specific law enforcement policies that are updated in response to new state and federal laws and court decisions."<sup>9</sup> The advantage to such a service is regular updates based on changing laws at the state and federal level, which can help smaller jurisdictions like the Port of Seattle keep current on policy. Lexipol has already started providing provided its subscribers with policies updated based on the Washington 2020-2021 legislation; given some of the concerns raised by WASPC and other agencies, the POSPD will need to examine the policies provided and refine them as needed. This

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<sup>7</sup> Jim Burch, National Police Foundation, "CALEA Accreditation – A Platform for Excellence and Reform," <https://www.policefoundation.org/calea-accreditation-a-platform-for-excellence-and-reform/> (last visited Mar. 8, 2021).

<sup>8</sup> Kent, Federal Way, Auburn, Tukwila, Des Moines, and Renton Police Departments appear to use Lexipol.

<sup>9</sup> <https://www.lexipol.com/industries/law-enforcement/>

service, combined with the CALEA mandates, undoubtedly focuses the department on developing and maintaining policies. Additionally, when other regional agencies subscribe to the service, as is the case here, mutual aid engagements and cooperation between agencies are improved due to the common operational policies.

In contrast, there are significant downsides to using Lexipol. Even though Lexipol purports to provide policies that accord with best practices, there has been developing scholarship identifying Lexipol as “a barrier to reform.”<sup>10</sup> Certainly, as discussed below, the fact that Lexipol did not update the Use of Force policy to include the concept of de-escalation *until 2020* drives home the point that the company is out of touch with modern policing practices. While an assessment of the overall policy manual is beyond the scope of this project, as a general note, 21CP finds Lexipol designed policies to be overly complex and technical, hard to comprehend, disjointed, and poor at providing clear guidance to officers.

However, this is not an “either-or” situation and many of the potentially deficient policies can be modified – and the POSPD reports that 45% of their policies *are* modified – to incorporate more progressive policing practices.

**Recommendation No. 1. POSPD should continue to scrutinize the intent and language of every Lexipol policy and modify the policies to ensure that they meet best practices and not just legal minimums.**

Additionally, as POSPD modifies its policies, the department should ensure that policies are clearly stated and easily accessible to the public, which will help to maintain transparency.

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<sup>10</sup> Lexipol’s Fight Against Police Reform, Ingrid V. Eagly and Joanna C. Schwartz, FORTHCOMING, 96 IND. L.J. (2021)(“Lexipol has refused to incorporate common reform proposals into the policies it writes for its subscribers, including a use-of-force matrix, policies requiring de-escalation, or bright-line rules prohibiting certain types of behavior—like chokeholds and shooting into cars. Lexipol has also taken an active advocacy role in opposition to proposed reforms of police use-of-force standards, pushing, instead, for departments to hew closely to *Graham v. Connor*’s ‘objectively reasonable’ standard. Finally, when use-of-force reforms have been enacted, Lexipol has attempted to minimize their impact.”); *Lexipol, the Privatization of Police Policymaking*, Eagly, Ingrid, Schwartz, Joanna C., Texas Law Review Volume 96, Issue 5.“

## G. POSPD Transparency and Critical Self-Analysis

### *Annual Biased Policing Reviews*

As noted in the 2020 Annual Biased Policing Review (dated April 5, 2021), the POSPD:

operates within a unique population demographic in that most of the population is transitory in nature...comprised of passengers arriving or departing through the airport or those assisting in this endeavor. However, the majority of our department's enforcement related citizen contacts are with citizens who are not part of our traveling public, but rather members of the local population that access our airport facility for reasons other than travel.

In the Review, the Department analyzed field contacts, citations, and arrests in the context of City of SeaTac and King County demographics, finding no evidence of biased policing on the part of POSPD officers.

**Recommendation No. 2. As the POSPD gathers more data on officer activity, the department should continue to scrutinize that data for any disparities in use of force and work to ensure that POSPD's deployment strategies and approach to policing minimize those disparities.**

### *Annual Use of Force Reviews*

Similarly, in the 2018 Use of Force Review<sup>11</sup>, the POSPD grappled with the issue of disparity in use of force applications. Noting that "42% of the subjects on which our officers used force were black appears to be disproportionate when compared to our State and County population demographics," "a 2012 King County study described SeaTac as 'Among the county's most diverse cities, with 61% persons-of-color and 31% foreign-born.'" Additionally, "[t]he 2010 census indicates that some neighborhoods near the entrances of the airport consist of black populations ranging from 25% to 49%."<sup>12</sup> This same information is repeated in the 2019 Use of Force Review; in 2020, while racial characteristics were presented, there was no analysis.<sup>13</sup>

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<sup>11</sup> <https://www.portseattle.org/documents?tid=191&primary=191>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*



The struggle in finding meaning in a disparity between the police activity, in this case use of force rates, and the representation of any group in the population is widespread.<sup>14</sup> As noted by the Center for Policing Equity:

Population benchmarks provide only a crude method for estimating disproportionality. They allow for an inference that force is being used in a manner that is disproportionate to presence in the general population, but do not allow for a clear inference as to whether the force is disproportionate to presence in any particular area or to legitimately provocative behavior.<sup>15</sup>

Additionally, the POSPD sample is small, with approximately 30 uses of force annually. As such, every use of force carries an outsized impact on the overall percentages that can be compared to representation in the population. Looking at 2019, the department reports that 30% of its force was on Black subjects, 60% on White subjects, and 10% Other. The department noted that the percentage of force on Black subjects decreased from 42% in 2018 to 30% in 2019. However, the raw numbers show that in 2018, force was used on 14 Black suspects; in 2019, force was used on nine Black suspects. Each Black subject of force in both 2018 and 2019 counted for approximately three percent of the total.

The primary recommendation to reduce racial disparity in use of force is modifying the approach to homelessness at the Port, which has already begun and is discussed in more detail throughout this report.

### ***Communication with Port Community***

Motion 2020-15 required the POSPD to post their policies publicly and during this process there have been requests for information and data relating to use of force, bias, and general police activities from the Port Commission.

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<sup>14</sup> *The Science of Justice: Race, Arrests, and Police Use of Force*, The Center for Policing Equity, 2016. (“Despite an elaborated literature on how to assess racial bias in police stops, there has been relatively little research on the appropriate distribution of coercive force by law enforcement (Bayley, 1994).”) [https://policingequity.org/images/pdfs-doc/CPE\\_SoJ\\_Race-Arrests-UoF\\_2016-07-08-1130.pdf](https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf)

<sup>15</sup> *Id.* at 16-17.

As discussed throughout this report, the “community” of the POSPD is primarily the Port itself. Many of the Port staff who participated in the subcommittee work commented that they learned a lot about their Police Department and that previously they had not really understood what the POSPD police did. Additionally, several mentioned that they were able to gain a better understanding of policing generally by hearing from the POSPD presenters.

**Recommendation No. 3. The Port should consider creating a quarterly Port Safety Committee to bring interested stakeholders together.**

An internal Port Safety committee could serve as an idea generator, a backstop to vet police innovations, and a forum for the POSPD to present reports and information updates. It could also serve as an on-going forum to continue the work of cross-educating Port employees on the work of the POSPD. Additionally, there are several recommendations in this report suggesting that different aspects of the Port collaborate with the POSPD to provide better service – for example in the area of homelessness and crisis – and those interests could be accomplished here. 21CP is *not* suggesting that a civilian oversight entity is needed or would be advantageous at the Port. Rather, to capitalize on the work of Port employees over the past year as they have learned about POSPD policing services and have become invested in the POSPD’s success, and to continue that effort with other Port employees, a Port Safety Committee that is advisory in nature is recommended. While this recommendation envisions an internal Port committee, if there are other stakeholders that wish to participate – such as homelessness advocates – that should be welcomed. Finally, a Port Safety Committee provides an opportunity to involve and educate representatives of Port Employee Resource Groups (ERGs), facilitating the identification of ERG representatives who would be interested in participating on hiring or promotion oral boards or in other capacities when Port employee input is sought.

**Recommendation No. 4. The Port should conduct a study of the internal organizational structure and communications involving the POSPD to determine how to best accomplish the goal of enhancing POSPD transparency through regular engagement with Port leadership.**

As is discussed throughout this report, it is vital that POSPD leadership be proactive and transparent in keeping the Commission, the Executive Leadership Team, the Port community, and other key stakeholders informed about its activities. To this end, the 2020 Annual Report includes a goal to increase POSPD transparency in 2021

and several steps are taking place towards that end, which is in line with other police agencies recognizing the value of communicating more proactively with the public on a more expansive set of issues.<sup>16</sup>

Fostering organizational transparency involves more than simply an increase in public information, however. “Transparency refers to the degree to which decisions are being made in a manner that is visible to those inside and outside the organization. The focus is not simply on seeing the decision that was made but having an understanding of the process by which it was reached and the rationale for that choice. Transparency encompasses the extent to which decisions that have been made are subject to scrutiny and review by others.”<sup>17</sup> This level of transparency develops through on-going exchanges of information, a mutual appreciation of factors important to decision-making, and relationship building which fosters trust. The study that is recommended should consider how the Port organizational structure and communication protocols foster or inhibit transparency between the POSPD and Port leadership.

Given the many ways the role of policing at the Port has been elevated over the past year – including the Task Force process itself that involved so many individuals from throughout the Port which has resulted in a Port community that is better educated about policing and more committed to positive outcomes for the POSPD; the complexity of police operations; the ever-present potential for a high-profile policing event; and the commitment to support POSPD’s efforts to continually improve in the changing law enforcement environment – it is recommended that a study be conducted to determine what changes might foster greater transparency.

As recommendations growing out of the assessment are considered, it will be important to have direct communication between the POSPD and Port leadership to ensure that the POSPD incorporates the interests of other Port components and to provide a forum for the POSPD to routinely share information on implementation. Regular involvement with the Executive Leadership Team could facilitate communications and decision making when significant events involving the POSPD arise, though other changes to the reporting structure and communications might serve similar purposes.

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<sup>16</sup> Chanin, J. & Espinosa, S. (2015). Examining the Determinants of Police Department Transparency: the view of Police Executives. *Criminal Justice Policy Review*, 1-22, citing Chermak, S. & Weiss, A. (2005). Maintaining Legitimacy Using External Communication Strategies: An Analysis of Police-media Relations. *Journal of Criminal Justice*, 33, 501-512.

<sup>17</sup> *Id.*, at 133.

## **IV. ENGAGEMENT**

Identifying and speaking with communities that come into contact with the POSPD on a day-to-day basis was challenging. In fact, many of those that 21CP contacted could not identify the POSPD, complained specifically and only about other law enforcement agencies, or simply did not want to spend time meeting to discuss the POSPD, presumably because they had no specific issues with the POSPD.

Additionally, the views of participants in community conversations may or may not be reflective of the POSPD community as a whole.

Finally, this report cites, characterizes, and sometimes quotes stakeholder and subcommittee participants. To ensure candid discussions and to preserve the confidentiality of participants who sometimes shared sensitive experiences, 21CP did not log the identities of who said what during the stakeholder engagement process – only their affiliations and the specific contents of what they said. Accordingly, this report refers to particular stakeholders in generic ways – such as “a POSPD officer,” “a community member,” or the like.

### **A. External Stakeholders**

21CP appreciates the importance of getting input from the range of stakeholders who have interactions with the Port Police and a potential interest in providing input to the assessment. The Task Force structure itself was predicated on the value of stakeholder inclusion, with Port employees, Police Department Officers, union representatives, and subject matter experts involved in the work of the subcommittees throughout the engagement. Because Port policing services are provided in the airport, on the waterfront, and in cities surrounding these and other Port properties through mutual aid agreements, seeking input from stakeholders external to the Port was a priority goal of the Task Force and 21CP.

Task Force leaders introduced the 21CP consultants to the Port’s Community Engagement Department for help in identifying external community groups and others who might have experience with the POSPD they could share. The Community Engagement Team created an initial list of ten entities across all of the communities where the Team is engaged that potentially had involvement with the Port Police Department, and then refined that list to those groups most likely to have experiences relevant to the assessment.



21CP conducted listening sessions with the following:

- **Drayage Truck Drivers:** Drayage truck drivers are independent truck owners who convey cargo to and from the Port of Seattle. To help facilitate meetings with these truck drivers, a Community Engagement Team member introduced 21CP to the African Chamber of Commerce President/CEO and a regional operations manager who hires independent drayage drivers up and down the west coast, who were instrumental in setting up these meetings. Two meetings were held, with about eight drivers in each group. As the drivers spoke, it became clear that their concerns were not with the Port Police so much as with Port Terminal Security and the Washington State Patrol<sup>18</sup>. Examples of complaints raised include:
  - There is no scale to weigh trucks before leaving the terminal and drivers incur a \$500 fine if the truck is overweight. The problem could be avoided with scales in Terminal 18 and 30 loading areas.
  - Private security personnel at the Terminals are disrespectful, curse, and need communications training. Fear of retaliation for complaining was expressed, particularly for being banned from operating in the Terminals.
  - Rules, including those that could result in being banned if violated, are not clearly articulated and there is no process to appeal.
  - There are too many trucks at Terminals 18 and 30.
  - In the one incident in which the Port of Seattle Police<sup>19</sup> may have been involved, a driver was in an accident with a longshoreman and felt that the officer who responded sided with the Terminal.
- **Georgetown Open Space Committee:** The Georgetown Open Space Committee (GOSC) works to provide greenspace access for the Duwamish Valley, including on Port property. One member commented that the Port Police should have an outreach engagement plan and coordinate efforts. The GOSC helped clear out a homeless encampment and would not want the Port Police to do the clearing but would like help keeping it clear. While fencing has been put up, it's not clear if it's to keep the area clear or for a construction project. While the group noted the Port Police could help address drug dealing

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<sup>18</sup> Specifically, the drivers complained that the Commercial Vehicle Enforcement by the Washington State Patrol was overzealous and that a policy of issuing violations, not tickets, meant that there was no apparent due process to fight the violation.

<sup>19</sup> The driver was not sure whether Seattle Police or Port of Seattle Police responded.

taking place near the Duwamish River and the Port, they did not want police intervention for the prostitution activity also occurring. Finally, one person said she'd been told that the police are responsive to fights in the South Park area and de-escalate well.

- Local Government Relations:** Discussions took place with the Port of Seattle's Government Relations Department and one of the four surrounding cities where the Port has property – SeaTac, Burien, Des Moines, and Auburn. The two primary ways the Port Police interface with these four cities is in mutual aid incidents (through the Valley SWAT or Valley Civil Disturbance Unit) and around homelessness or other similar concerns. While King County Sheriff's Office has contracts to provide policing services in many of these South King County cities, a King County Charter amendment in 2020 was predicted to potentially change local control in the contracting relationship. As such, there also could be impacts when the Port engages in mutual aid on Port property or elsewhere. For example, the City of SeaTac voted to end its King County contract, and the Port pays a mitigation fee for using SeaTac property, which funds seven Officers.

## B. External Stakeholders Identified through the Port of Seattle Customer Service Bureau

In exploring avenues for getting external stakeholder feedback about interactions with the POSPD, 21CP contacted the airport's Customer Service Department, which provided a demonstration of their Salesforce system (which they use to manage and track contacts), including how matters are categorized, whether a potential threat is involved, whether the incident was reported to the POSPD or other responder, whether a complaint is involved, and the like. The chart below provides a summary of contacts made with Customer Service in 2019, 2020, and through mid-April 2021.

	Commis..	Email	Facebo..	Instagr..	Letter	Phone	SEA Employee	Text	Twitter	Voicem..	Web Chat	Web Form	Grand Total
Positive		124	370	124	3	51	68	2	3,138	4		490	4,374
Negative	41	731	761	52	5	607	76	15	7,626	57		1,042	11,013
Question	4	2,011	600	18		744	35	205	886	575	2	3,085	8,165
Neutral	1	1,904	48	5		40	18	9	265	20	2	13	2,325
Grand Total	46	4,770	1,779	199	8	1,442	197	231	11,915	656	4	4,630	25,877

These contacts received by Customer Service are categorized in a variety of ways and 21CP was provided a compilation of customer comments/questions that had a nexus to the Department during the same time. There were 246 entries with an apparent

nexus to the POSPD, less than 1%, out of a total of 25,877 contacts.<sup>20</sup> Comments and questions originated in a variety of ways, such as by email, voicemail, or over social media. The entries referenced a variety of topics, with some very general and others more specific. Examples include:

- Questions that might best be handled by POSPD, such as:
  - Can a person fly to another state to take care of an outstanding warrant?
  - How can someone get a copy of any security video footage in parking area that might have recorded a break-in or car damage?
  - How can someone get a copy of an incident report?
- Requests for help that may or may not be something where the POSPD can help, such as:
  - Missing person last seen at airport or expected to arrive at airport
  - Help enforcing custody agreement or protective order
  - Lost/stolen items discovered after going through TSA security or from shipped luggage
- General complaints not involving an immediate incident, such as:
  - Panhandling
  - Homeless camping out
  - Cell lot parking and shoulder parking
  - Traffic enforcement, including that there was not enough enforcement or too much enforcement
  - People not wearing masks
  - Police officers carrying rifles/AR-15s
  - Not providing public information when part of the airport is closed for security purposes
  - Rowdy passengers returning from January 6 attack on the Capitol
  - Too many dogs
  - Bikes not a good idea in large crowds
- Compliments about POSPD officers:
  - Officers helping locate misplaced handbags
  - Officers helping after car hit by bus on Airport Expressway

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<sup>20</sup> The relatively low number of Customer Service contacts with a nexus to the POSPD and the even smaller number of complaints is consistent with customer satisfaction surveys done on the POSPD. Respondents indicated an “Excellent” or “Above Average” experience as follows: 89% in 2018, 92% in 2019, and 84% in 2020.

- Officer M.'s "extraordinary service"
- Traffic support: 6 compliments for Officer T.
- Returned lost cell phone
- Officers helped elderly person
  
- Complaints about POSPD officers:
  - Officers accused mother of having tracking device on phone that had been stolen; they were rude and did not apologize
  - Assault by someone in "parking department"
  - 3 Officers and sergeant claimed narcotics in bags – officers were disrespectful, rude, searched bags in front of everyone
  - Sexual assault by police
  - Told to limit time in meditation room
  - Discriminated against in traffic enforcement
  - Harassment by traffic control
  - Officer not informed about service animals, though acknowledge trespassing and officers were respectful
  - White officers profiling and harassing a black in Muslim gear (sic)
  - Traffic enforcement officer did not make white people in nice cars move but yelled at us

The data compilation provided to 21CP did not include information on how matters were handled, and it's disconcerting to not have confirmation that the most serious complaints, such as the claim of sexual assault or racial/religious profiling, were handled appropriately. However, Customer Service staff indicated that they follow up with the customer if more information is needed and will use Port resources to check into relevant details. There are protocols staff follow when a safety threat is involved or when other matters call for an immediate response from police, fire, or others. On occasion, the Customer Service staff person will consult with the Sergeant heading up the Office of Professional Accountability (OPA), to confer on a comment or question received. But staff indicated that there was a lot of individual discretion involved with their work and there are no written protocols about how to handle complaints involving POSPD officers.

**Recommendation No. 5. Customer Services and the POSPD should develop or refine protocols on the handling of complaints and compliments about Port Police officers.**

After initially drafting this report, 21CP was provided a document titled, “Reporting Practices for Customer Complaints,” dated July 27, 2021, that may address some of the concerns raised. As 21CP did not have capacity at that point to assess the procedures captured in the document, the Task Force should be aware of the document when it is considering implementation of recommendations.

Ultimately, the OPA Sergeant and others at the Department are in the best position to judge whether a complaint should be fully investigated or can be resolved through other means. Conducting intake assessment on complaints involving alleged police misconduct can be complicated by factors such as the need to preserve perishable evidence, and the OPA Sergeant has the expertise and resources to handle such cases. Further, where an officer’s name has not been provided in the message left for Customer Services, the OPA Sergeant has the means to identify the person more readily, provided enough other detail is available. Finally, the POSPD tracks all commendations and complaints it receives, including non-meritorious misconduct allegations. Regularly receiving information from Customer Service on contacts that involve Port Police officers will promote department-wide accountability.

The best course of action would be to automatically and immediately refer all complaints received by Customer Services to OPA. Regardless of the threshold used, however, all information on compliments and complaints should regularly be shared with the POSPD. This recommendation is included below in the discussion on the need for developing protocols with Human Resources and Workplace Responsibility on handling complaints involving the POSPD.

Finally, Customer Service has begun tagging terms associated with human trafficking as part of the Port’s anti-human trafficking initiative and there was a discussion about the advantages of capturing whether a comment or question raises a concern related to discrimination. Regardless of whether the contact involves the POSPD, having the means to query how often comments or questions raise issues of race or other discrimination would help in identifying potential problems of prejudice or unfairness in Port operations, facilitate an intentional approach to tracking such issues, and serve the Port’s interest in promoting equity, diversity, and inclusion.

## C. External and Internal Stakeholders Working on Issues of Homelessness

Individuals who do not have business at Seattle-Tacoma International Airport (SEA) but are in the facility and appear to be homeless are regularly reported to POSPD Officers, who make contact to clarify the person’s reason for being in a Port facility.<sup>21</sup> If the Officer confirms that the person does not have any legitimate airport business, the Officer provides information on social services available and may or may not issue a Criminal Trespass Admonishment, depending on the individual’s willingness to leave voluntarily and their history of prior contacts by the Port Police<sup>22</sup>. The resources compiled for the Task Force were reviewed and prioritized by 21CP and listening sessions were arranged with representatives of a Homelessness Coalition and a mental health expert working with the homeless and training first responders on effective interactions, including Port Police Officers.

The Homelessness Coalition representatives indicated that, during the pandemic, more people sought shelter at the airport because libraries and other facilities had closed and there was public transportation available for an easy trip to SEA. They reported that POSPD Officers were not giving citations to these individuals and that the airport had provided office space and was coordinating with the mobile crisis team to provide alternative resources to those seeking shelter. It apparently is difficult to discern a reliable estimate of the numbers of homeless persons at the airport or seaport, though the mobile crisis team that responds on-site has had “very positive” outcomes. From a racial equity in policing perspective, the Seattle waterfront is key, because shelters have been closed and there is lack of public restrooms. However, the Seattle Police Department is more likely to be involved on the waterfront, rather than POSPD. Finally, the Homelessness Coalition representatives noted they were impressed with a recent presentation on the POSPD response to homelessness issues given by Acting Chief Villa and Commander Minnehan.

The licensed mental health professional who provided input to 21CP is someone who has worked extensively with law enforcement around the Puget Sound area, both to co-respond to people in crisis and to train police on appropriate and helpful ways to interact during these incidents. She teaches at the Criminal Justice Training Academy and does ride-alongs with officers to role model effective response

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<sup>21</sup> 21CP was informed that the POSPD currently does not track whether individuals who are contacted in these circumstances are “homeless,” though are considering such tracking moving forward.

<sup>22</sup> As reported in the Use of Force review, 58% of POSPD uses of force are in trespass cases.



approaches. She has had POSPD members in her Training Academy classes and has done presentations and been present on-site at the airport to observe officers' interactions with the homeless. It is important to integrate classroom and online training with field experience and she noted that POSPD Officers reliably know what resources are available and how to transfer someone to the hospital if needed, and that some POSPD Sergeants have good insight on the complexity of issues involved.

The mental health professional observed that individuals experiencing homelessness often have mental health and substance abuse problems, and sometimes demonstrate extreme psychological stress that also can turn volatile. In such situations, handcuffing the individual might be necessary for the safety of everyone, even if they are to be transported to a hospital. She noted that they demonstrate "incredible survival skills" in finding shelter and other resources and believes that with proper training, law enforcement can respond to some of the most challenging behaviors and not use force.

Government Relations for the Port was involved in discussions with the Homelessness Coalition representatives and researched the possibility of 21CP meeting with individuals from the Lived Experience Coalition (LEC) to learn more from those who personally had encountered homelessness and sought shelter at the airport. However, because SEA has been piloting a coordinated effort to prevent non-traveling visitors to the airport and 21CP could not identify a time when they would likely encounter a person seeking shelter at SEA Airport, meeting with someone with lived experience of homelessness who had previous interactions with the Port Police would have been very difficult to arrange.

**Recommendation No. 6. Port leadership should support the POSPD by developing first responder alternatives to incidents involving the homeless that do not involve armed POSPD officers and increase access to holistic resources.**

POSPD launched a six-month pilot Crisis Coordinator position on August 1, 2021, with an officer who has extensive training and experience in crisis response serving in the unarmed role. The job description notes that the Crisis Coordinator will be the point of contact internally and externally for issues relating to crisis, will be familiar with outreach services, have an understanding of mental illness manifestations, track crisis services and laws, build and maintain necessary relationships, and generally serve as a focused resource on this issue.

Running a six-month trial of the Crisis Coordinator position is appropriate, allowing the POSPD to assess whether the position as described meets the needs of the Port and whether the Coordinator acting as the first responder in most instances will have positive impacts, such as reducing the need for trespass citations and frequency of use of force. Whether a permanent Crisis Coordinator or similar position ultimately is recommended, homelessness should not be approached primarily as a policing problem.

In addition, the SEA Cares Steering Committee – composed of airport staff and other stakeholders – has been working to identify additional Port Resources or external partners to supplement the Port’s capacity to address homelessness. In discussions with 21CP, the Committee identified the very real concerns around assigning untrained, unprepared, and especially unwilling staff to handle interactions with homeless people in the airport, especially given the potential for hostile or violent encounters. Additionally, the committee is working with the developing King County Regional Homelessness Authority and is attempting to identify available homelessness resources in the South Sound Region.

Ultimately, the Committee identified the very same problems that other jurisdictions are encountering despite the interest and the will to engage with alternative response models - the lack of identified resources to address crisis and homelessness issues presents a very real barrier. However, Port should not simply default to a police response to homelessness and crisis interactions but bring together other aspects of the Port to bear on the issue. That appears to be happening. And, as discussed elsewhere, a Port Safety Committee could help support this effort.

#### **D. Internal Stakeholder Engagement and Equity**

##### ***POSPD Engagement***

To get input on perspectives and concerns of those working at the POSPD, 21CP spoke with POSPD employees and conducted a “climate survey” in the Department to gather information anonymously. 21CP conducted listening sessions with over 25 commissioned and noncommissioned members of the POSPD, hearing from individuals of all ranks, and a variety of positions and assignments. Sessions were held both virtually and, as the state of the pandemic allowed, ultimately in-person. The survey and listening sessions focused primarily on issues of equity – whether employees experienced themselves and observed for others a level playing field when it came to assignments, promotions, and other workplace events. Highlights from the

survey are summarized below, including instances where similar themes were heard in the listening sessions. However, before discussing these themes and to put the survey and listening sessions in perspective, it is important to understand the various ways that equity in policing has been approached.

### ***Equity***

While the term “racial equity” can be ascribed different meanings in the context of policing, the term often focuses on whether police enforcement activities are fair, impartial, and objective. The Center for Policing Equity exemplifies this approach, with research scientists and others working with law enforcement organizations to identify activities that produce inequity by collecting and analyzing operational data.<sup>23</sup> For example, traffic stops, arrests, use of force incidents, and other police contacts might be analyzed to determine if there is evidence that Blacks or other racial/ethnic groups are the subjects of police enforcement at a disproportionate rate given their representation in the relevant population. Where activities resulting in disproportionate impacts are identified, police agencies can adopt strategies to lessen inequitable results, such as seen when New York City Police Department stop-and-frisk practices were challenged as being unconstitutional.<sup>24</sup>

Although disparate impact and treatment may stem from explicit bias and racism, not all disparities necessarily arise from intentional or conscious bias. Research has increasingly confirmed that, even among individuals with an express commitment to treating people equally, “attitudes or stereotypes . . . [may] affect our understanding, actions, and decisions . . . involuntarily and without an individual’s awareness or intentional control.” Indeed, everyone – from lawyers and judges to physicians and teachers – appears to have implicit, or subconscious, biases to some extent because, in the same way that the brain is hard-wired to identify patterns and associate certain characteristics with certain phenomena.<sup>25</sup>

Research into implicit bias, or our unconscious associations about groups of people based on their culture, identity, and larger societal biases, has increased for law enforcement and in many other arenas. However, while many police departments are offering implicit bias training, evidence that it reduces biased behavior in police activities with the public is lacking.<sup>26</sup> Nonetheless, even those who criticize implicit

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<sup>23</sup> <https://policingequity.org>

<sup>24</sup> <https://ccrjustice.org/home/what-we-do/issues/discriminatory-policing>

<sup>26</sup> <https://counciloncj.foleon.com/policing/assessing-the-evidence/vii-implicit-bias/>

bias training conclude that if it helps law enforcement to begin thinking about the role of bias, such training is still worthwhile.<sup>27</sup> Also, it has been observed that implicit bias training might pair well with duty to intervene and mandatory reporting policies, both of which are required by recently enacted Washington State legislation and help to address the underlying culture of policing.<sup>28</sup>

It may also be the case that some explanation for disparity with respect to law enforcement activity is related to disparities across the criminal justice system and broader social life. Systemic racism and enduring bias in education, housing, employment, the courts, public health, and other foundational areas of American life may be reflected in data on those with whom police departments interact, arrest, and the like.

Regardless of the web of reasons for why there are disparities, police departments occupy a singular place in helping to consider and implement solutions that might address and affect disparate outcomes. A critical part of addressing disparities in law enforcement is ensuring that a department has the policies, procedures, training, and processes for critical self-analysis in place that can identify disparities and work with the community to determine if it might adopt different approaches that would reduce disparity.

Policing equity also is used by some to focus on aspects of the police-civilian interaction that are tied up in social and cultural norms about authority, politeness, and body language that guide how both the officer and the citizen should interact.<sup>29</sup> Inequities can manifest in how officers communicate, which can undermine community members' perceptions of procedural justice and police legitimacy.<sup>30</sup> For example, one study found that Blacks were more likely involved with stops where officers communicated indifference, were dismissive, or showed an air of superiority.<sup>31</sup> Given the racial and ethnic diversity of many jurisdictions, the challenge is for police officers to be "both professional with each community member they encounter, 'blindfolded' like Lady Justice, and simultaneously to see every

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<sup>27</sup> <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior>

<sup>28</sup> *Id.*

<sup>29</sup> Charles M. Katz and Edward R. Maguire, editors, *Transforming the Police – Thirteen Key Reforms* (Waveland Press: 2020), p. 97 (citations omitted).

<sup>30</sup> *Id.*

<sup>31</sup> Travis L. Dixon, Terry L Schell, Howard Giles, and Kristin L. Drogos, "The Influence of Race in Police-Civilian Interactions: A Content Analysis of Videotaped Interactions Taken During Cincinnati Police Traffic Stops," *Journal of Communication* 58, no.3 (2008): 530-549.

person as an individual with clear, current cultural expectations of law enforcement.”<sup>32</sup>

In assessing matters of racial equity at the Port of Seattle Police Department, 21CP reviewed POSPD contact and subject demographic data, reviewed the Department’s reports on biased policing complaints, and learned about POSPD’s approach to implicit bias and other training that is intended to reduce any unintended inequities. 21CP also facilitated discussions in each of the subcommittees on equity in the context of the subcommittee’s topic focus. In addition, equity in the Police Department’s workplace was assessed through employee listening sessions and a climate survey of employees. Of the various approaches to assessing racial equity in policing, the focus on internal stakeholder experiences yielded the greatest concerns 21CP has regarding equity and the POSPD.

**Recommendation No. 7. The POSPD should commence a campaign of internal procedural justice training for all levels of the department to help address the broad-based sense of inequity, especially with employees of color.**

Procedural justice training can be effective in improving the attitudes and behaviors of officers and may result in reductions in arrests and the use of force.<sup>33</sup> The four practices of procedural justice also cultivate legitimacy across cultures: treating people in the intercultural environment with dignity and respect, listening and giving voice to subjects of enforcement activities, displaying transparency in decision-making, and conveying trustworthiness in motives.<sup>34</sup>

While much of the procedural justice focus has been on the officer/civilian interaction, researchers also have looked at the internal climate and culture of police departments to assess the degree of transparency and equity within an agency as perceived by its

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<sup>32</sup> Marcus Paxton and Robert Strauss, “Cultural Diversity and Cultural Competency for Law Enforcement,” *Police Chief Magazine*, <https://www.policechiefmagazine.org/cultural-diversity-and-competency/>

<sup>33</sup> CCJ Task Force on Policing. Procedural Justice Training. *Policy Assessment* (March 2021), <https://counciloncj.foleon.com/policing/assessing-the-evidence/vi-procedural-justice-training/>

<sup>34</sup> Captain Marcus Paxton and Robert Strauss, PhD. Cultural Diversity and Cultural Competency for Law Enforcement. *Police Chief Magazine*, <https://www.policechiefmagazine.org/cultural-diversity-and-competency/>

officers, using the term “internal procedural justice.”<sup>35</sup> Studies have found a close relationship between officer perceptions of organizational justice and their commitment to their department, compliance with departmental policies, and adherence to community policing principles.<sup>36</sup> “Internal procedural justice refers to officers’ perceptions that their colleagues’ actions – particularly those of their supervisors – are fair and understandable, which demonstrates a key level of respect....officers who feel respected by their supervisors are more likely to understand why decisions were made; more likely to accept, support, and voluntarily comply with those decisions, including departmental policies; and less likely to challenge the decisions.”<sup>37</sup>

As discussed in detail throughout the next section, drawing clear conclusions based on the climate survey to “prove” or “disprove” bias at the department proved difficult due to insufficient data and conflicting narratives. Importantly, the survey data shows that in all measured categories, Non-White respondents were generally less satisfied - they felt less valued,<sup>38</sup> said they had less access to opportunities<sup>39</sup>, felt less heard<sup>40</sup>, and were more concerned about fairness at the department.<sup>41</sup> On the other hand, when narrative survey responses identified inequities and unfairness, all but one respondent explained their concerns as being based on cronyism<sup>42</sup> or being part of an “in-group,” rather than pointing to race, ethnicity, or gender as the root cause. This is the same theme we heard throughout our interviews with employees – while the so-called “in-group” was predominantly white, most employees essentially said that racial disparity is the *effect* of the cronyism but stopped short of saying that racial bias was the *cause*.

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<sup>35</sup> See, e.g., R. Trinkner, T.R. Tyler, & P.A. Goff. Justice from Within: The Relations Between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being. *Psychology, Public Policy, and Law*, 22(2), 158 (2016).

<sup>36</sup> See Footnote 12, p. 3 (citations omitted).

<sup>37</sup> Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors. *The E-Newsletter of the COPS Office*, Vol. 8, Issue 4, April 2015, p. 1-2, *citing*, Nicole Haas, Maarten Van Craen, Wesley, Skogan, and Diego Fleitas. Explaining Officer Compliance: The Importance of Procedural Justice and Trust Inside a Police Organization. *Criminology and Criminal Justice* (January 2015).

<sup>38</sup> 8/23 Non-White vs. 6/63 White Respondents.

<sup>39</sup> 11/23 Non-White vs. 8/63 White Respondents.

<sup>40</sup> 10/24 Non-White vs. 6/63 White Respondents.

<sup>41</sup> 8/23 Non-White vs. 2/63 White Respondents.

<sup>42</sup> We note that allegations of cronyism and favoritism are not unique to the POSPD.



What is clear, however, is that there are a significant number of employees – and especially employees of color – who perceive unfairness in opportunities and outcomes at the POSPD. POSPD needs to respond to both employee perceptions of inequity, whatever the root cause, and all ways disparity is manifested. This is likely best accomplished globally through comprehensive procedural justice training. Additionally, a quarter of all recommendations in this report are designed to address fairness and equity – both real and perceived – in a variety of targeted areas.

## **E. Climate Survey**

### ***Introduction***

An organization’s capacity to evolve depends in large part on the “health” of the organization as reflected in the perspectives of its most important assets – its personnel. “Climate surveys” are tools frequently used to measure the range of employees’ experiences, attitudes, and concerns in order to better understand the workplace culture and identify any areas for leadership to focus attention in working towards change. As part of its overall assessment of the Port of Seattle Police Department, 21CP Solutions was asked to conduct a climate survey of POSPD employees, highlighting perceptions of equity in the department.

The survey instrument was designed in collaboration with the Task Force and was reviewed by members of the Port executive and legal departments and POSPD command staff. The questions were designed to explore fairness and procedural justice as experienced by POSPD employees and to identify additional steps that the POSPD might take to maximize equity and inclusion at the POSPD.

First, as we attempt analysis by race/ethnicity in the report, we are limited by not knowing the complete demographics of our sample. Thirty percent of respondents did not provide demographic information. This gap in information is compounded by the 25 percent of POSPD employees that did not identify race in human resources records. This means that any percentages presented are a percentage of the known sample, not the total samples. As such, we are careful to present the number of responses and the “N,” or sample size to provide context. Furthermore, as the number of respondents in some categories is very low, comparing percentages for those categories against the overall results to test for disparities is challenging and we only use percentages sparingly and intentionally.

Similarly, while 21CP identifies and discusses potential disparities at a higher level of generality – White vs. Non-White; Male v. Female/Other; Supervisor v. Non-Supervisor – they are provided for purposes of noting areas for additional study, rather than suggesting calculated findings supported by any level of statistical confidence. That being said, this limitation should in no way serve to undermine the importance of these observations.

Second, this survey tested perceptions of equity during a complicated time in the POSPD's history. There are several publicly known Equal Employment Opportunity (EEO) processes currently underway that challenge issues of equity that were explored in the survey.<sup>43</sup> Additionally, the full-time Chief has been on administrative leave for over a year, which undoubtedly influences employee perceptions of fairness and equity. Many employees commented during listening sessions and in the survey that they did not understand how Chief Covey could be on leave for such a long time without any explanation or expected timeline from Port leadership.<sup>44</sup> While the actual impact of these issues is unknown, they are important to note as part of the atmosphere in which this survey and listening sessions were conducted and in the overall context of this report.

Last, there is no current data to clarify whether these results are unique to the POSPD or reflect instead a microcosm of the overall Port culture. Additional work is underway to conduct a comprehensive climate survey of the Port, in whole, which may provide further insight on this point.

### ***Demographic Information for Survey Respondents***

To account for the low number of respondents who identified within several of the racial/ethnic categories and the difficulty in providing meaningful comparison between very different sample sizes, respondents are grouped as either White or Non-white for purposes of many analyses in this report. After controlling for the duplication of multiple responses (*i.e.*, the double count that would result when

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<sup>43</sup> POSPD employees have filed nine EEO complaints since 2017 based on allegations of race discrimination, disability discrimination, retaliation, and employee ethics, as outlined in Section VII, and it is unclear which of these employees participated in the survey or listening sessions and the impact of a substantiated or unsubstantiated finding on their current experiences in the department also is unknown.

<sup>44</sup> 21CP did not have any access to the investigation into the Chief or the results that recently have been the focus of media attention. As such, none of the information relating to that investigation could be incorporated into this analysis.

respondents selected more than one race), there were 27 respondents that identified as Non-white. Sixty-eight respondents identified as White; the remainder were “Other” or did not respond.

The identified gender breakdown of respondents was 63 male, 28 female, and three Other.

Seventy-three respondents were commissioned employees; twenty-five were non-commissioned. This breakdown is almost precisely representative of the department as a whole.

Seventy-two respondents were non-supervisory and 24 holding a supervisory position up to and including the command or executive level.

### ***Respect for Individual Differences***

Twelve of the survey questions were designed to examine the culture of respect around individual employee differences. These questions were intended to elicit perceptions of fairness, respect, the extent to which employees feel valued as individuals, and the department’s overall commitment to diversity, equity, and inclusion. In addition to the low number of responses on some questions making it difficult to draw firm conclusions, there also were competing narratives throughout, with examples provided from open-ended responses to the survey and listening sessions with POSPD employees.

Consistent with the Task Force focus on equity, we frame the survey results as best we can from the perspective of Non-White respondents first as compared to the majority. Fundamentally, across every category, Non-White employees had more concerns and these disparities call for further exploration by the Port and the POSPD. Additionally, while we do provide some results about gender, commission and supervisory status that help to provide context, those categories did not drive recommendations in the same way as racial differences in perception.<sup>45</sup>

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<sup>45</sup> One employee expressed direct criticism of the survey instrument and the survey itself:

If the intent of this survey is, in fact, to learn more about the experiences and perspectives of those working at this department, it is poorly constructed. This survey is filled with leading questions designed to illicit a particular response from participants which will serve the apparent personal agendas of those leading this task force.

**Non-White employees had far more concerns about fairness, but survey narratives and interviews did not consistently attribute these issues to race.**

Eleven percent of the survey participants (10 respondents) indicated a concern about racial fairness and equity inside the POSPD. Of those 10 respondents, eight identified as Non-White. Perhaps more importantly, eight of all 27 Non-White respondents identified concerns as opposed to 2/63 of the total White respondents.

However, while ten respondents indicated there is unfairness related to race, their written comments in the survey provided a different narrative. For example, one employee stated: “There does seem to be special treatment within our walls but not what may you think...cronyism runs deep. This cronyism is not race or gender related but is all about picking your buddy.” This sentiment was echoed by another employee, who said: “[t]here is an inequity issue. Can't say that the inequity is based on race, gender, sexual orientation, etc., but it exists.” This narrative – that fairness is an issue but is not necessarily driven by racial or other bias - is consistent with what officers said during the employee interviews. For example, an employee told us that “some people can do and say what they want, and others get in trouble...might not be race or gender, but it’s still an equity issue.”

**Half (11/22) of Non-White respondents reported not feeling valued as an individual by the Department.**

Of the sixteen respondents who indicated they did not believe the department valued them as an individual, 11 were Non-White. Importantly, half of all Non-White respondents (11/22) reported not feeling valued by the department.

There were no comments in the survey related directly to “feeling valued,” although some of the comments regarding fairness and opportunity likely relate. During listening sessions, comments regarding alleged mistreatment in other areas, such as training, might also tie into whether employees felt valued or not.

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While we clearly do not share the perspective that the survey was biased or leading, this criticism misses the point of the work 21CP was asked to do. Of course, there were questions in a climate survey directed at determining perceptions based on race and gender – that is an important part of ascertaining climate. Additionally, as should be apparent, we take great pains to explain the limits of the data and the conflicting narratives to help prevent an over-focus on apparent disparities that we do not fully understand.

**Of the 13 respondents that did not feel treated with respect by Command Staff, the majority were Non-White.**

Fifteen percent (13/88) of respondents reported that the treatment of employees with respect by command staff is a problem. Of the thirteen who expressed concerns with respectful treatment by command staff, eight identified as Non-White and six as White. Another way to consider responses to this question is that 8 Non-White respondents out of a total of 27 said they did not feel treated with respect by Command Staff. Of the 13 total Non-White and White respondents indicating concern, three quarters were male, with one quarter female/other.

One respondent claimed direct retaliation by the Chief and command staff; another noted that “under Chiefs Covey and Villa, I can honestly say our agency has never been healthier.” Some respondents complained about double standards or, as one respondent noted, that some “commanders can do and say whatever they want.” Several spoke of cronyism, including command staff “holding vacant spots in their special teams for their like-minded friends.”

The issue of special teams assignments also came up during listening sessions with some commissioned employees and this issue is addressed in detail below in the Training and Development section.

**Ninety-three percent of the department did not identify concern with the system for hiring new employees.**

Seven percent (6 respondents) expressed concern with the system for hiring new employees. Of the six respondents who expressed concern, four were Non-White.

One respondent noted a fairness issue related to hiring lateral officers in particular: “[t]his department is focused on hiring lateral officers from other agencies. Instead of hiring lateral officers, internal [Port] employees should be given the opportunity to get hired as an Entry-level.” While not contradictory to the previous statement, others spoke highly of the hiring standards: “[t]he Port of Seattle Police Department has the highest background standards I have seen in the area and is committed to recruiting officers who have a shared commitment to its core values, regardless of their background and experience” and “[i]n my experience we also have one of the most difficult background checks in law enforcement. I believe this high standard has protected the department from troubles that other departments have experienced.”

Hiring issues are discussed in more detail in the section on Diversity in Recruitment and Hiring.

**More than half of respondents (8/15) that indicated concerns with the promotions process were employees of color.**

Seventeen percent (15/88) of respondents indicated concerns with the promotions process. Of the 15 concerned employees, eight were Non-White and seven were white. Twelve were commissioned employees and only one respondent was a supervisor.

While no comments were directed specifically at promotions, as discussed elsewhere, a few spoke to cronyism in the selection of special teams, and the lack of opportunity in joining special teams. One noted: “certain people are allowed to stay in highly regarded and prestigious specialty assignments (SWAT, K9, BDU, Detectives) for 20 years or more, hoarding specialty training, assignments, schedules, and incentives like pay and days off.” Others said that the selection process for special teams was not fair as: “[w]e do the assessment and rank the applicants and then pick from a ‘pool’. I’ve personally heard Command Staff say I don’t like (fill in the blank) and pick another person.”

**Again, almost half (11/23) of Non-White respondents indicated that they did not have the opportunity to grow and develop as much as their peers.**

Those that said that they did not have the opportunity to grow and develop as much as their peers included 11/23 Non-White employees and 8/63 White employees. Fourteen commissioned employees and four non-commissioned employees saw this as an issue. Additionally, some supervisors (4) and non-supervisors (14) said there was a problem with growth and development. These results would seem to fit with the perception discussed above that there is unfairness, though it’s difficult to say if it’s based on race, gender, or “being part of the in-crowd.”

**Ninety-one percent of respondents said the department has a strong commitment to diversity, equity, and inclusion, although that perception is less strong among Non-White employees.**

The vast majority of respondents (91%) reported that they believe POSPD has a strong commitment to diversity, equity, and inclusion, including 17/24 Non-White respondents and 61/63 White respondents. This perspective was consistent across gender categories.



In contrast, however, twenty-three respondents felt the department places *too much* emphasis on diversity, equity, and inclusion.

Of those indicating that the POSPD places too much emphasis on diversity, equity, and inclusion, 17/62 were White, 6/23 were Non-White, and all were commissioned.

There were few comments in the survey about this topic, but one respondent expressed concern for favoritism of protected classes: “[a]t POSPD and the port of Seattle as a whole, more favoritism is reserved for non-white, female, and/or LGBT employees. It creates an environment where it seems like the value of white male employees is less.” While this perception was expressed and is reported here, it does not seem to coincide with any other data.

In officer interviews, we did hear allegations that more progressive Human Resources policies, such as not allowing discipline for officers being late because it wasn’t “culturally accommodating,” was undermining the department’s ability to maintain order in the ranks. We do not know whether these perceptions help explain the number of people who are concerned with too much emphasis in this area, but it seems plausible.

### ***Accountability***

A separate set of questions focused on issues relating to accountability and whether employees knew how to file a complaint, believed that complaints were taken seriously, or feared retaliation when making complaints about race discrimination, gender discrimination, filing union grievances, or taking job-protected leave. Additionally, the survey and listening sessions with employees explored perceptions of fairness in the disciplinary system and consistency at the supervisory level. White and Non-White employees alike expressed concern about uneven accountability, though some indicated they thought people of color were targeted for discipline more often.

As discussed below in Section VII., a sample of misconduct complaints filed against POSPD officers were reviewed to determine if investigations appeared to be handled in an objective, thorough, and timely manner. However, it was beyond the scope of this assessment to examine whether these complaints and any discipline that resulted demonstrated uneven treatment between officers for the same behavior. Further, the complaints reviewed did not necessarily capture all incidents of counseling, training, or other less formal interventions by supervisors with officers,

nor all the specifics involved with EEO complaints that have been filed regarding alleged unequal treatment. Rather, the survey and listening session feedback noted below speaks to perceptions of uneven accountability.

**The vast majority – ninety-five percent – of respondents say they know their options with respect to bringing complaints about working conditions, but half of all Non-White respondents (11/23) indicated concern that those complaints were not treated seriously.**

Respondents overall indicated they were knowledgeable about complaint filing options. However, fourteen respondents out of a total of 87, with the majority (11) being Non-White, said complaints about working conditions were not treated seriously. Thus, considering all Non-White respondents, 11/23 had concerns in this area. Nearly all White and Non-White respondents who expressed concern about whether working condition complaints were treated seriously were Commissioned employees. Perhaps unsurprisingly, all supervisors believed that complaints are taken seriously.

**Respondents overall were most fearful of retaliation for filing a union grievance, with half of those concerned identified as Non-White, and Non-Whites also expressed more concern for retaliation following a race or sex discrimination complaint.**

Respondents (27/87) were most concerned with potential retaliation for filing a union grievance. Of the 27 who feared retaliation for filing a union grievance, half were Non-White (13), which also represents about half of total Non-White respondents. Men (21/58) were far more concerned than women (3/26), with the majority of respondents indicating a concern being commissioned.

Overall, 14 out of sixty-six (14/66) respondents (all but one being commissioned) reported fears about retaliation in response to a complaint of race discrimination. Nine of the fourteen with these concerns were Non-White, representing over a third (9/23) of all Non-White respondents. No supervisors reported concern about fear of retaliation for filing a race discrimination complaint.<sup>46</sup>

Only five respondents said fear of retaliation for filing a complaint about sex discrimination was a concern, though no respondent indicated this concern was

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<sup>46</sup> As noted previously, one respondent complained vigorously about retaliation and victimization by the command staff and supervisors.

strongly felt. Of the five, three identified as male and two as female, while four out of the five were Non-White.

**More Non-White respondents (7/24) than White respondents (4/63) feared retaliation for taking job-protected leave; all were commissioned personnel.**

Overall, fourteen percent of all respondents (11/87) did not trust that they would not encounter retaliation from higher ups in the department if they took job-protected leave for any reason. Again, the majority of those concerned (7/11) were respondents of color.

**Over a quarter (22/85) of all respondents and well over a half of Non-White respondents (13/23) did not believe discipline was applied fairly.**

A significant number of all respondents, regardless of whether White or Non-White, indicated they did not believe discipline was applied fairly. Looking just at Non-White respondents, over half (13/23) expressed concern. Men were more likely to perceive discipline as unfair (17/58) than women/other (4/25).

As with matters of equity discussed above, during listening sessions, some employees thought Non-Whites were targeted for discipline more than Whites, while most indicated nepotism or being part of a favored group was most significant in discipline matters.

Some supervisors expressed fear of having a retaliation complaint filed against them for imposing discipline, while others thought Human Resources was interfering with their ability to correct performance issues. For example, one respondent indicated that this perceived unfairness was not at the department level, but at the Port level:

“I chose "disagree" on the question if a misconduct complaint results in discipline is it applied fairly. This is because the Port HR will not allow the department to discipline officers who are lazy, don't handle their calls appropriately, fail to qualify or who have substandard work performance.”

As is seen in other jurisdictions where the Human Resources function is located outside the police department, misunderstandings related to roles and process between the department and Human Resources can arise. A recommendation for clarifying protocols between the POSPD, Human

Resources, and other components involved in complaint processing is included below in Section VII.

**Over a third of all respondents (30/83) indicated that some supervisors in the department do not handle employee complaints according to policy expectations, while 19 respondents said supervisors were not consistent in enforcing POSPD standards of conduct.**

Over a third of respondents (30/83) said that some supervisors in the department do not handle employee complaints according to policy expectations. Of those, equal proportions of White respondents (22/59) and Non-White (7/23) had concerns. All who reported such concern were commissioned employees. Nineteen out of 83 respondents indicated supervisors are not consistent in enforcing standards of conduct, with 11 Non-Whites in that group, representing nearly half (11/23) of all Non-White respondents.

One respondent noted: “[o]ne set of rules apply to the majority of the department, while for a small group of ‘people’, those rules don't apply. Those ‘people’ are protected. When things are brought up to the chain of command, things are not addressed and appear to be swept under the rug.” Another said, “Accountability is selective and does not seem to go above a certain level.”

Another respondent placed concern at the Port level: “certain individuals are allowed to break policy or safety procedures time and time again because their speed dial connects to HR.”

### ***Supervision***

The supervision questions in the survey were designed to explore perceptions of supervision and leadership by asking about integrity, relationships, support, and performance evaluations. Overwhelmingly, respondents reported high praise for supervisors and mostly for supervision as a whole. This is clearly very encouraging and empirically rare in any organization. Still, the slight dissatisfaction in this area was primarily with respondents of color.

Regarding supervisors:

- All respondents reported that their supervisor treats them with respect and treats them fairly.

- All but one respondent (White) said their supervisor has personal integrity.
- All but one respondent (Non-White) said they have a good relationship with their supervisor.

**Most (81/86) respondents said their performance evaluations accurately reflect their performance.**

Of these five, two were White and two Non-White; three were commissioned and two non-commissioned; all were non-supervisory. With a sample this small, there is little to discern here, but, unlike other organizations in our experience, this does not seem to be a significant issue at the POSPD.

**Only three respondents indicated that their supervisor does not help them be successful in their job, but all were Non-White.**

Despite the disparity, the concerns are still very few.

**Only one respondent (Non-White) reported that their supervisor does not encourage them to take initiative in performing their job duties.**

One employee disagreed; no one strongly disagreed.

### ***Work Climate***

The last section of the survey was designed to query the overall work climate, including how employees work collaboratively, whether there is a culture of excellence at POSPD, whether there is departmental pride, and how internal communications are perceived.

**Opinions about co-workers were remarkably positive.**

Ninety-eight percent of respondents liked the people they work with and reported that the people with whom they work most closely are committed to producing top quality work; out of all respondents, only one White male and one Non-White male disagreed.

Eight percent of respondents (7) said their co-workers do not consistently strive to perform their jobs well; three were White and four Non-White.

Ninety-four percent of respondents agreed that they are encouraged to work together to solve problems. Three Non-White and three White employees disagreed.

**More than half of Non-White respondents (12/23) and a third of respondents overall did not agree there is a climate of trust in the department.**

Twenty-six respondents, 12 of whom were Non-White, did not feel that there is a climate of trust<sup>47</sup>. The concern over trust was almost exclusively expressed by commissioned employees.

**Of the sixteen respondents that said their perspective is not heard and considered, ten were respondents of color.**

Eighteen percent of respondents (16) did not feel that their perspective is heard and considered. Of those, 10 were Non-White employees and, perhaps more importantly, 10/23 (almost half of Non-White respondents) did not feel their perspective was heard and considered.

**A quarter of respondents expressed concern about communication within the department.**

Twenty-three percent of the department disagreed with the proposition that there is good communication within the department. This included eight Non-White employees and 10 White employees.

Eighty-nine percent of the department agreed that they received the information they need from the department in a timely way. There was no appreciable difference between employees' opinions on this. Therefore, while a quarter of respondents had concerns about overall communication, most felt they were provided the information that they need to do their jobs.

### **Departmental Pride**

Ninety-four percent of respondents reported they were proud of their department. Only three Non-White and two White respondents did not agree.

One respondent summarized pride in the department very well:

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<sup>47</sup> Climate of trust was not defined in the survey and, as such, may have different meanings to different people.



We are police officers. Some say we hold the most powerful position in society, because we have a gun and a badge. We must keep the standard high. We can't afford to abuse that power the people have given us. Public trust is everything. Initially, I was upset with this entire process. I felt the Port of Seattle was on a witch hunt. But then I realized we have nothing to hide. We do good work. We have good people. I think once people look closer, they'll agree. I know people are mad about what happened to George Floyd. I am too. ***But there wasn't a Port of Seattle Police Officer there. If there had been no one would know George Floyd's name and he would still be alive.***

Only one employee said that compared to other law enforcement agencies, POSPD is not a good place to work. The rest of the department believed that it was.

The pride in the POSPD that employees expressed through the survey and in listening sessions will provide an excellent foundation for exploring ways to enhance internal procedural justice. Efforts to improve communication, give voice to all employees, consistently demonstrate dignity and respect for employees, and increased transparency in decision-making will enhance feelings of trust among POSPD employees and help address other concerns noted here, particularly among Non-White employees. While the data raises as many questions as it answers, an approach involving employees in better understanding the complexities and problem solving will help POSPD provide an experience of equity for all employees.<sup>48</sup>

## V. USE OF FORCE

### A. Motion 2020-15 and the Use of Force Subcommittee

Motion 2020-15 directed the assessment of Use of Force to include a review of policy, specifically whether changes are needed to policies, practices, or protocols regarding the use of weapons and tactics used to manage and disperse crowds, lethal force/restraint, and crisis situations. Additionally, the assessment was tasked to

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<sup>48</sup> Tanya Meisenholder and Monica Brooker, "Fostering an Inclusive Work Environment," *Police Chief* (August 2021), provides an overview of an approach taken in the New York Police Department (NYPD) to facilitate discussions about racial identity and race relations in the workplace, along with lessons learned during NYPD's experience.

examine current training and opportunities to improve training to provide officers with alternative options to the use of force across contexts.

### **B. Use of Force Subcommittee Members and Workflow**

The Use of Force Subcommittee was Co-Chaired by Sam Pailca, former Director of the Seattle Police Department Office of Professional Accountability, former board member of National Association for Civilian Oversight of Police and current board member of the ACLU and Veronica Valdez, a Commission staff member and former U.S. Department of Defense (DoD) employee, which provided a strong background for analysis of use of force issues. During the Task Force timeline, Veronica left the Port to return to the DoD, and was replaced by Eric Schinfeld, another Port staff member.

<b>Subcommittee C – Use of Force</b>	
<b>Chairs:</b>	<b>Sam Pailca and Veronica Valdez (Eric Schinfeld)</b>
<b>Name</b>	<b>Organization</b>
<b>Sam Pailca</b>	External Subject Matter Expert
<b>Eric Schinfeld</b>	Port of Seattle Federal and International Government Relations
<b>Veronica Valdez</b>	Port of Seattle Commission Office
<b>Corey Guilmette</b>	External Subject Matter Expert
<b>Sgt. Tygh Hollinger</b>	Port of Seattle Police Department
<b>Monisha Harrell</b>	External Subject Matter Expert
<b>Kenny Lyles</b>	Port of Seattle, Employee Resource Group, Blacks In Government
<b>Isaac Ruiz</b>	External Subject Matter Expert
<b>Jess Sanford</b>	Port of Seattle Subject Matter Expert
<b>Anita Simmons</b>	Port of Seattle Diversity and Development Council
<b>Michelle Woodrow</b>	Union representative

The subcommittee met five times between 10/15/2020 and 1/21/21, covering a wide range of issues, including de-escalation, crowd management, crisis response, and force review. To bring the subcommittee up to speed on the law, and emerging practices in use of force policies, and the current state of POSPD policy, 21CP provided an introduction and overview. This was supported by many presentations from POSPD to inform the subcommittee about current practices, each of which led to spirited debate and discussion. Sgt. Bram Urbauer presented on Use of Force/De-escalation training. Commander Jeff Selleg presented on the department’s efforts in

crisis intervention and briefly on the Lateral Vascular Neck Restraint (LVNR), but the subcommittee declined to revisit the Port Commission's decision to prohibit all forms of chokeholds and carotid restraints<sup>49</sup>. Sgt. Jason Coke presented on Use of Force in crowd management situations, which necessarily overlapped with the work of the Mutual Aid subcommittee. 21CP also reported out on the review of Use of Force cases as they emerged and observations on use of force and de-escalation training.

### C. Use of Force Case Review Methodology

The use of force case review was designed to serve as a backstop to the policy review and work of the Use of Force subcommittee exploring use of force generally. 21CP was not contracted to complete a comprehensive review of force; however, the infrequency of use of force by the POSPD lent itself to a deeper dive than was originally contemplated and this expansion of scope was important to understand how the policies and training play out in practice. 21CP reported out to the Use of Force Subcommittee on these review findings.

For most assessments, 21CP requests a random, statistically significant sample of a department's uses of force over a material time period to ensure that, at a 95% confidence level, the use of force cases reviewed would fairly represent the overall population of use of force. However, as the POSPD has relatively few uses of force, 21CP requested all cases for 2018-2020, which included all of 2018 and 2019, and the year to date for 2020 cases. In all, 21CP was provided 90 cases, all of which were reviewed. Typically, these cases included officer reports, a sergeant's review, a case disposition, and a Chief's letter back to the officer(s) about the results of the internal review.

No files included video, audio, or other material, although many cases indicated that the force was captured on video through airport or seaport security cameras. 21CP elected not to include a video assessment of these cases because (1) the time and effort

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<sup>49</sup> During these discussions, the POSPD did not advocate for the return of the LVNR to an intermediate use of force but inquired whether there was any place in policy for reviewing the LVNR as a use of deadly force. The Port Motion prohibited all forms of neck and carotid holds; recent state law is unclear whether LVNR *could* be permitted in deadly force situations. *Compare* Section 3 (3) of Chapter 324, Laws of 2021 ("A peace officer may not use any force tactics prohibited by applicable departmental policy, this chapter, or otherwise by law, except to protect against his or her life or the life of another person from an imminent threat.") with Section 2 of Chapter 320, Laws of 2021 ("A peace officer may not use a chokehold or neck restraint on another person in the course of his or her duties as a peace officer.").

it would take to do a comprehensive independent review of video was beyond the scope of this engagement and (2) because security cameras do not capture sound, which is needed for any real insight into tone and demeanor of both officers and subjects, such review would not likely have been sufficiently helpful. As discussed in other sections, if the Department decides to develop a body-worn camera program, the audio and video captured from those cameras would be critically important for future force reviews.

Additionally, many departments conduct interviews for high level uses of force, rather than having officers create written reports. While this is true for the POSPD for investigations into in-custody deaths by the Valley Independent Investigative Team (IIT), there does not appear to be an internal process for interviewing officers in high level uses of force that do not result in death. However, 21CP did not identify any high level uses of force that would generally qualify for such interviews.

The lack of video, audio, or other evidence means that 21CP's reviewers could only evaluate cases based on the representations of POSPD officers in reports and official materials. 21CP could not look "behind the curtain" or compare independent evidence against the officer statements. Consequently, the resulting analysis is, in some regards, only as deep as the reporting was accurate.

Although the POSPD provided 90 case files, 21CP identified some cases that involved more than one incident of force (when, for example, there were multiple subjects). As such, 21CP uses incidents, rather than cases, for this review. Additionally, 11 cases (with many incidents) in 2020 occurred on May 30 and May 31, 2020, were attributable to mutual aid engagements in Seattle or Tukwila as part of the demonstrations around the Derek Chauvin murder of George Floyd in Minneapolis. Analyzing the use of force in this context, which included the use of pepper spray (OC), tear gas (CS), and less-lethal launcher deployments, would require a much deeper investigation and is well beyond the scope of this assessment. As such, those 11 cases have been excluded from the use of force assessment, and the recommendations relating to such mutual aid crowd control events are contained in the Mutual Aid recommendations section.

Finally, for the following sections, there were some cases in which information was not readily discernable. Therefore, while there were 80 incidents within the review, some questions have a lower "n" due to missing information. The total number of incidents are provided with sufficient information within each section for context.

## *Use of Force Case Review Findings*

**Three-quarters (75%) of uses of force occurred at the airport facility**, with an additional four percent occurring at seaport facilities and ten percent on other Port properties. The remaining 11 percent of incidents occurred on non-port properties, often in the context of assisting other agencies.

**POSPD officers routinely used de-escalation strategies.** There were only five incidents that involved solo officers using force. As discussed in the section on de-escalation, summoning appropriate resources, whether additional officers, medical personnel, or crisis response personnel is a key part of reducing the need to use force in any given situation. There were several cases where port police appropriately called additional units initially but reduced the number of officers on-scene once the scene had been assessed. This shows good use of personnel and excellent modulation of police presence, which can be perceived as overwhelming when too many officers are present. In two-thirds of incidents that eventually resulted in a use of force, two or three officers responded.

The racial breakdown of subjects on whom force was used is as follows; the vast majority (91%) of subjects were male.

<b>Value</b>	<b>Percent</b>	<b>Count</b>
<b>White</b>	50.7%	37
<b>Black/AA</b>	37.0%	27
<b>Hispanic</b>	2.7%	2
<b>Asian</b>	2.7%	2
<b>Other</b>	6.8%	5
	<b>Totals</b>	<b>73</b>

As discussed above in detail, methodologies to determine whether there exists a disparity of use of force in relation to representation in the population are generally unsatisfactory. Here, for the POSPD, when the subjects of force are predominantly local and not members of the travelling public, it becomes even more difficult to determine an appropriate denominator for determining disparity.

Regardless, it makes more sense to simply accept the disparity and just take steps to decrease the disparity.

To that end, looking at cases in response to cases that ended as a trespass or an involuntary commitment, the percentage of Black suspects increased to 45%, and subjects of color overall became the majority. This suggests, within the available data, that finding alternatives to respond to addiction, mental illness, and homelessness-driven concerns would go a long way not only in reducing force overall but reducing the disparity in the use of force on people of color within those populations.

It is also worth noting that, in the 12 cases where it was possible to identify that the subjects of force were members of the traveling public, 11 (or 92%) of those uses of force were on White subjects, either intoxicated, in crisis, or both, who were either removed from planes or in conflict with airline or airport staff.

By far, hands-on engagement and controlled takedowns to the ground for the purpose of forcible handcuffing were the most common uses of force. Less lethal tools were rarely used.

The five Taser deployments were used on an actively aggressive suspect who stole water and gum from Hudson News; on a suicidal person threatening to jump from the Light Rail platform; against a violently resisting subject with a warrant; on a female subject with a knife in her hand; and against a man who threw a metal stanchion at officers and assumed a fighting stance. 21CP's reviews found all these Taser applications to be reasonable, necessary, and proportional.

<b>Value</b>	<b>Percent</b>	<b>Count</b>
<b>Hands on</b>	84.8%	67
<b>Takedown</b>	83.5%	66
<b>Strikes (kicks/punches)</b>	6.3%	5
<b>Pepper Spray</b>	1.3%	1
<b>Taser</b>	6.3%	5
<b>Firearm pointing</b>	7.6%	6
<b>Other (add to description)</b>	20.3%	16
	<b>Totals</b>	166



There were 12 uses of the Lateral Vascular Neck Restraint (LVNR) in the reviewed cases, six of which 21CP found to be either unreasonable, not necessary, or not proportional. To be clear, at the time these uses of the LVNR were in accordance with POSPD policy, which permitted the use of LVNR as an intermediate use of force. This was not uncommon in Washington State prior to the passage of E2HB 1054 prohibiting the technique altogether. National best practices, however, increasingly either abolish the LVNR and all neck holds completely or allow an exception when deadly force is required,<sup>50</sup> and 21CP cannot support the use of the technique at any lower level of threat. As such, the elimination of this technique by the Port and subsequently by Washington State should resolve this issue.

Thirty-nine percent of cases resulted in identifiable subject injury; in contrast, medical assistance was requested for subjects in fifty-three percent of cases, due to either behavioral crisis needs or pre-existing medical needs.

Value	Percent	Count
Yes	39.0%	30
No	61.0%	47
	Totals	77

Determining whether a subject was in crisis – defined as an episode of mental and/or emotional distress in a person that is creating significant or repeated disturbances and is considered disruptive by the community, friends, family or the person themselves – or intoxicated is not an exact science, especially because medical reports are often not provided to law enforcement. As such, reviewers attempted to categorize persons in crisis and intoxicated individuals based on the known information in the reports. Thirty-nine percent of individuals were clearly in behavioral crisis and thirty-two percent of people were intoxicated. There is significant overlap between these two categories.

Officer injury occurred in 22 percent of cases, the most serious of which appeared to be a fractured nose and a bite to the hand, but mostly injuries were contusions or abrasions. Again, the review was limited to the information contained in the use of

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<sup>50</sup> See e.g., International Association of Chiefs of Police, “National Consensus Policy and Discussion Paper on Use of Force,” October 2017, <https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force- and-consensus-policy>;

force reporting; 21CP did not review any additional officer injury reports that might provide more detail.

Reviewers were able to identify de-escalation efforts in two-thirds of cases, based on what was documented by the officer. The remaining one-third predominantly involved circumstances where de-escalation was not feasible because the subject became assaultive. The de-escalation efforts frequently included communication, trying to explain the officer's purpose, slowing the incident down, requesting additional officers or resources, or trying to help the subject figure out a way home.

In one case, an officer was dispatched to a suicidal subject at the light rail station who was threatening to jump from the platform. While a Taser ultimately became necessary in order to take the individual into custody, the officer's de-escalation tactics were successful in bringing the subject to a less precarious position where the Taser could be used without subjecting the person to the very fall officers were trying to prevent.).

In another case, officers spent a substantial amount of time engaging with a person in mild crisis to identify family members or a case worker but took no enforcement action as the person was not a threat to themselves or others (predicate criteria for involuntary commitment). Officers continued to monitor the person, who continued to behave in irrational, but lawful, behaviors. Officers ultimately were required to take her into custody when she entered the roadway, presenting a danger to herself and others, which resulted in a low-level use of force.

In 90 percent of cases, the reported use of force was found to be reasonable, necessary, and proportional. In eight cases, 21CP identified issues with the use of force. Six of these cases involved the LVNR in circumstances that did not call for a use of deadly force; again, although within policy at that time, these applications were flagged by our reviewers for the reasons discussed above. Two other instances involved cases in which subjects were prevented from voluntarily leaving the airport premises and force was used to take them into custody. In both of these cases, had the subjects simply been allowed to leave, no force would have been required. We recognize that POSPD officers are asked to manage trespass cases with homeless individuals or persons in crisis, many of whom they know to have previously been given trespass warnings or arrested for trespass. We acknowledge very real policy considerations at play in these circumstances: a person has been warned and/or arrested previously and knows they are not supposed to be in the airport terminal, at what point should an officer take enforcement action as opposed to simply prompting them to leave? As

discussed throughout this report, bringing additional resources to bear on the homeless and mentally ill population at the airport terminal would greatly alleviate these conflicts.

Misconduct was only identified by the department's review (and 21CP's review) in one case. However, counseling and mandated training was also appropriately required in several cases. In two cases, officers were counseled for taking law enforcement action without backup, which either increased the severity of the use of force or put the officer and subject at increased risk of harm. In another case, an officer was properly counseled for simply pointing a firearm but not otherwise taking any proactive action to stop an assault in progress. Because the officer chose to rely on a firearm, he was unable to physically intervene because he was holding a gun, which limited his options.

#### **D. Use of Force Recommendations**

Policies that guide the consistent and accountable application of force, including de-escalation and the use of alternatives to force, advance equity and fairness by bringing clarity to expectations. When officers know what, when, and how to use and report force, any disparities in application are more easily analyzed. As such, the recommendations below, although in large part technical, will better promote principles of equity around the use of force.

At the outset, the POSPD use of force policies have several elements that many departments fail to include and are often the subject of recommendations by 21CP. The POSPD policy properly sets forth:

- That force may only be used for a lawful purpose. 300.2.2.
- Clear and comprehensive criteria to determine reasonableness of force that goes beyond the objectively reasonable language of *Graham v. Connor*. 300.3.2
- That all neck holds are prohibited. 300.3.4
- Restrictions on shooting at a moving vehicle. 300.4.1
- Requirement that Tasers are mandatory equipment. 308.3
- Weapon-specific prohibitions for Taser, OC, Batons, and Pepper ball launchers 308.5 *et seq.*

**Recommendation No. 8. The department should consider restructuring the Use of Force policies into a unified policy.**

Use of Force policies are distributed across several chapters that are nonsequential and thus difficult to follow. They include:

- POSPD 300 – Use of Force
- POSPD 302 – Use of Force Review Boards
- POSPD 306 – Handcuffing and Restraints
- POSPD 308 - Control Devices and Techniques
- POSPD 309 – TASER Device Guidelines
- POSPD 310 – Officer-Involved Shootings and Deaths
- POSPD 312 – Firearms
- POSPD 313 – Edged Weapons
- POSPD 314 – Vehicle pursuits
- POSPD 318 - Canines
- POSPD 431 – Patrol Rifles

As such, the department should consider restructuring the Use of Force policies into a unified policy, and the POSPD should take the time to develop a public-facing explanation of its policies around the use of force, not only to aid the public's understanding of POSPD tactics and procedures but which could serve as an internal handbook for officers as well.

**Recommendation No. 9. The Mission and Vision Statements in the policy manual should more clearly indicate the Department's commitment, in all of its activities, to valuing and upholding equity and fairness, de-escalation, the sanctity of human life, and achieving the best possible outcome for all involved.**

In addition to the Mission and Vision Statement, there are other areas of the manual, including the Law Enforcement Code of Ethics, the Oath of Office, the Canons of Police Ethics, and the Use of Force Policy itself, that should be reconciled. Overall, manual appears to patch together too many competing sets of values that in some instances are inconsistent and, thus, potentially confusing.

Importantly, current POSPD policy is clear in its value statement:

The department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare

requires monitoring, evaluation and a careful balancing of all interests.”<sup>51</sup>

Policy language that follows, however, can be read as undercutting that commitment: “Although the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.”<sup>52</sup> While this is likely an appropriate statement, any “possible physical injury” is insufficiently precise. Best practices could connect the two concepts:

Police Officers have the responsibility to use force, when necessary, to protect life and safety, to effect an arrest and/or keep the peace. It is the policy of the Port of Seattle Police Department to value and preserve human life when using lawful authority to use force. Therefore, officers of the Port of Seattle Police Department shall use only the amount of necessary and proportional force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. Members are advised that this Department places restrictions on officer use of force that go beyond the restrictions set forth under the Constitution or state law.<sup>53</sup>

**Recommendation No. 10. The De-Escalation Policy should be updated to make de-escalation attempts mandatory, when possible to do so, and to add de-escalation tactics.**

The totality of the guidance on de-escalation in the policy reads:

When circumstances reasonably permit, officers should use non-violent strategies and techniques to decrease the intensity of a situation, improve decision-making, improve communication, reduce the need for force, and increase voluntary compliance (e.g., summoning additional resources, formulating a plan, attempting verbal persuasion).

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<sup>51</sup> POSPD 300.2.

<sup>52</sup> POSPD 300.3.

<sup>53</sup> Derived from a combination of the New Orleans and Las Vegas Metropolitan Police Department Use of Force policies.

The term “should” is permissive – the policy should unequivocally require de-escalation – “will” or “shall.” While there are certainly times when de-escalation is not possible, the phrase “when circumstances reasonably permit” does not provide clear guidance. The policy should use “when possible<sup>54</sup>” instead.

This recommendation is consistent with:

- **IACP National Consensus Policy on Use of Force** – “An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force.”<sup>55</sup>
- **American Law Institute Principles on Use of Force.** – “Agencies should require, through written policy, that officers actively seek to avoid using force whenever possible and appropriate by employing techniques such as de-escalation.”<sup>56</sup>
- **Seattle Police Department** – “When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics in order to reduce the need for force.”<sup>57</sup>
- **New Orleans Police Department** – “When feasible based on the circumstances, officers will use de-escalation techniques, disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases.”<sup>58</sup>

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<sup>54</sup> Although many departments use “when safe and feasible,” Chapter 324, Laws of 2021 (SB 1310) mandates that “When possible, exhaust available and appropriate de-escalation tactics prior to using any physical force....”

<sup>55</sup> IACP Consensus Policy at 3.

<sup>56</sup> Principles of the Law: Policing §5.04 (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at [https://www.ali.org/media/filer\\_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf](https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf).

<sup>57</sup> Seattle Police Department Manual, Section 8.100: Using Force (rev. Sep. 15, 2019), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

<sup>58</sup> New Orleans Police Department Use of Force Policy, at 5, available at <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/>.



Additionally, while the POSPD policy suggests a few tactics, E2SHB 1310 requires de-escalation considerations “such as: creating physical distance by employing tactical repositioning and repositioning as often as necessary to maintain the benefit of time, distance, and cover; when there are multiple officers, designating one officer to communicate in order to avoid competing commands; calling for additional resources such as a crisis intervention team or mental health professional when possible; calling for back-up officers when encountering resistance; taking as much time as necessary, without using physical force or weapons; and leaving the area if there is no threat of imminent harm and no crime has been committed, is being committed, or is about to be committed.”

The internally developed de-escalation training, which supports this policy, is discussed in the Training and Development Section below. However, briefly, that training properly instructs officers to use time, distance, shielding, and communication, which are the hallmarks of de-escalation. After the passage of E2SHB 1310, new recruits should also be receiving de-escalation training supporting the mandates of the new law.

## De-escalation Defined in WAC

- (a) Patrol tactics, actions and communication methods that de-escalate situations when appropriate to reduce the likelihood of injury to all parties involved, avoid unnecessarily escalating situations that may lead to violence, and avoid unnecessarily placing officers in situations that require or lead to deadly force by:**
  - (i) Managing the distance between the officer and the persons involved;
  - (ii) Utilizing shielding to protect the officer and others from a threat;
  - iii) Managing the pace of an interaction; and
  - (iv) Engaging in communication to increase options for resolving the incident and reduce the likelihood of injury to all parties involved.

These concepts should be provided to officers in policy along with the requirements of SB1310 set forth above – they are not just training considerations.

**Recommendation No. 11. The Use of Force Policy should expressly require that any use of force be objectively Reasonable, Necessary, and Proportional.**

POSPD 300.3 states that “Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.” The policy does not appear to define necessary, though RCW 9A.16.010 provides the following definition: “‘Necessary’ means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.” This definition is also used in POSPD department training<sup>59</sup>. As the language in RCW 9A.16.010 already incorporates the “no reasonably effective alternative to the use of force language,” it appears that “reasonably necessary” is likely redundant.

Many departments’ force policies specifically require that the nature or severity of the force that an officer uses be proportional to, or consistent with, the nature of the threat posed by the subject. As such, the best force policies expressly require that all force must be reasonable, necessary, and proportional.

“Proportionality requires that any use of force correspond to the risk of harm the officer encounters, as well as to the seriousness of the legitimate law-enforcement objective that is being served by its used.”<sup>60</sup> The “requirement of proportionality operates in addition to the requirement of necessity” and “means that even when force is necessary to achieve a legitimate law-enforcement end, its use may be impermissible if the harm it would cause is disproportionate to the end that officers seek to achieve.”<sup>61</sup>

The POSPD added “proportionality” during this assessment, based on a Lexipol policy update, however the concept is easily overlooked. The policy begins clearly with a

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<sup>59</sup> Chapter 324, Laws of 2021 (SB 1310) provides a different definition in the deadly force context: “Necessary” means that, under the totality of the circumstances, a reasonably effective alternative to the use of deadly force does not exist, and that the amount of force used was a reasonable and proportional response to the threat posed to the officer and others.

<sup>60</sup> Principles of the Law: Policing §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at [https://www.ali.org/media/filer\\_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf](https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf).

<sup>61</sup> Principles of the Law: Policing §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at [https://www.ali.org/media/filer\\_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf](https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf).

directive: “Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.”<sup>62</sup> Then the policy discusses how reasonableness will be judged and then states: “Given no policy can realistically predict every possible situation an officer might encounter, *officers are entrusted to use well-reasoned discretion in determining the appropriate, and proportional, use of force in each incident.*”<sup>63</sup> This policy does not equivocally state that officers should only use reasonable, necessary, and proportional force, which is best practice.

A 2017 survey found that over half of the country’s fifty largest police departments have a proportionality requirement.<sup>64</sup> Some policies specifically use the term “proportional”; others describe the concept in different ways.

- Seattle Police Department – “Officers shall use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject . . . . The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officers or others . . . . The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.”<sup>65</sup>
- New York Police Department – “Only the amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody . . . . All members of the service at the scene of a police incident must . . . use minimum necessary force.”<sup>66</sup>

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<sup>62</sup> POSPD 300.3

<sup>63</sup> *Id.*

<sup>64</sup> Brandon L. Garrett & Seth W. Stoughton, “A Tactical Fourth Amendment,” 103 *V. L. Rev.* 211 (2017).

<sup>65</sup> Seattle Police Department Manual, Section 8.000: Use of Force Core Principles, *available at* <https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

<sup>66</sup> New York Police Department, General Regulations, Procedure No. 203-11: Use of Force at 1 (Aug. 1, 2013), [http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig\\_nypd\\_use\\_of\\_force\\_report\\_-\\_oct\\_1\\_2015.pdf](http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf).

**Recommendation No. 12. The Use of Force Policy should require officers to provide a warning, when safe and feasible, before using any force.**

The United States Supreme Court has predicated the use of deadly force against felony suspects fleeing escape on, “where feasible, some warning ha[ving] been given” by the officer.<sup>67</sup> This is consistent with United Nations Basic Principles on the Use of Force and Firearms and its provision that “when law enforcement is faced with an imminent threat of death or serious bodily injury, officers must,” among other things, “give a clear warning” unless doing so “would unduly place the law enforcement officers at risk,” would create a risk of death or serious harm to others, or would be “clearly inappropriate or pointless in the circumstances.”<sup>68</sup>

21CP observes here that some organizations and departments focus exclusively on the provision of warnings before the use of deadly force.<sup>69</sup> The importance and reasoning behind this requirement easily extends, however, to the application of all types of force – especially considering that the use of less-lethal force will typically correspond to less-severe threats and circumstances in which an officer has more time and ability to provide a warning and to determine whether the subject is complying with the warning before applying force. In other words, the feasibility of providing a warning may be substantially greater or more likely in situations involving less-significant applications of force than circumstances involving deadly force. Consequently, a more general rule that requires officers to issue a warning, whenever feasible, before using *any* force provides simpler and more straightforward guidance to officers and, ultimately, allows for such warnings to become more automatic in practice.

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<sup>67</sup> *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).

<sup>68</sup> Amnesty International, “Deadly Force: Police Use of Lethal Force in the United States” at 23 (2015) (summarizing UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990)).

<sup>69</sup> See, e.g., Campaign Zero, Model Use of Force Policy, Section II, <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5deffb38594a9745b936b64/1576009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf> (last accessed Jan. 13, 2021) (offering warnings as an alternative to physical force and requiring verbal warnings before deadly force but not expressly mandating warnings before the use of non-deadly force); Lexipol, *Police Use of Force: Safer Communities Through Sound Policies*, <https://useofforce.lexipol.com/law-enforcement/> (last visited Jan. 13, 2021) (noting a July 2020 amendment to Lexipol model policies seeking “to clarify that warnings should be used whenever reasonable before deploying deadly force”).

Indeed, a number of police departments require a warning before any force is used, whether that force is lethal or less-lethal, severe, or comparatively less severe:

- **Cleveland Division of Police** – “Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.”<sup>70</sup>
- **Northampton (Mass.) Police Department** – “When feasible, an officer will allow the subject an opportunity to comply with the officer’s verbal commands. A verbal warning is not required in circumstances where the officer has to make a split-second decision, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy.”<sup>71</sup>

Even where departments do not have a blanket requirement to provide a warning before any use of force, warnings are typically required before the use of less-lethal instruments like Tasers and OC spray:

- **Philadelphia Police Department** – “A verbal warning shall be given to a person prior to activating the ECW unless to do so would place any other person at risk.”<sup>72</sup>
- **Sonoma County Sheriff’s Office** – “A verbal warning of the intended use of the Taser should precede its application, unless it would otherwise endanger the safety of Deputies or when it is not practicable due to the circumstances.”<sup>73</sup>

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<sup>70</sup> Cleveland Division of Police, Use of Force: General, *available at* <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

<sup>71</sup> Northampton (MA) Police Department, AOM Chapter 0-101.

<sup>72</sup> Philadelphia Police Department, Directive 10.3: Use of Lethal Force: The Electronic Control Weapon (ECW), *available at* <https://www.phillypolice.com/assets/directives/PPD-Directive-10.3.pdf>.

<sup>73</sup> Sonoma County Sheriff’s Office, Office-Wide Policy and Procedure Manual, Taser Use, *available at* <https://static1.squarespace.com/static/542ec317e4b0d41ade8801fb/t/590a3284be6594e6a30b5bd23/1493840516709/Taser+Use.pdf>.

- **Seattle Police Department** – “Officers shall issue a verbal warning to the subject, fellow officers and other individuals present prior to using OC spray.”<sup>74</sup>

**Recommendation No. 13. The Use of Force Policy should require officers to provide medical care within the scope of their training and immediately summon medical aid to the scene.**

POSPD 300.6 requires: “Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious.” Similarly, the updated draft Lexipol policy states “Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious.” Other policies, such as POSPD 309.7 (Taser) and 308.6.2 (OC Spray), provide additional guidance for medical treatment following deployment of these tools.

In contrast, POSPD 466, which is not included as part of the Use of Force policies, provides that “[w]henever practicable, members should take appropriate steps to provide initial medical aid (*e.g.*, first aid, CPR, and use of an automated external defibrillator (AED) in accordance with their training and current certification levels.” As such, one section of policy imposes upon officers a general duty to provide medical treatment, but that duty is confused by conflicting guidance in the Use of Force policy that limits the requirement to summoning aid. The language in POSPD 466 is exactly the language that should be considered for incorporation into the use of force policy (or cross-referenced). Again, this may be another example where the department policy when read in full context addresses necessary points but loses clarity in the complexity and incongruity of the manual overall. Aligning the language of POSPD 466 in the use of force policies would, additionally, meet the requirement of the Valley IIT interlocal agreement concerning the provision or facilitation of medical care.

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<sup>74</sup> Seattle Police Department Manual, Section 8.300: Use of Force Tools, *available at* <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools> (also requiring verbal warning before deployment of beanbag shotgun, canine, taser, and firearm deployment).



**Recommendation No. 14. Policy should be revised to require officers to report and document all force they use and/or witness.**

As noted above, the policy requires officers to “articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.” In concert with the above recommendation, the policy should provide clarity on what information should be documented and by whom and ensure that the department continues to gather and track demographic information. The policy does not tell officer how to document force or require officers to document force used by other officers. In practice, officers do this more times than not, and often fill out separate witness statements if they did not use force. Therefore, the policy should reflect practice and mandate that all officers report force used, and force witnessed. While this policy should be tailored for POSPD, a good example for consideration is:

- **New Orleans Police Department** – “Depending on the level of reportable use of force, as set forth below, an Involved Officer (IO) and/or Witness Officer (WO) may be required to prepare a Force Statement. The officer shall independently prepare his or her Force Statement and include facts known to the officer, to include:
  - (a) A detailed account of the force incident from the officer’s perspective;
  - (b) The reason for the initial police presence, e.g.: response to (nature of) call,  
on-view suspicious activity (describe the suspicious activity), flagged by a  
citizen (nature of citizen’s concern), shots fired, or screams heard, etc.;
  - (c) A specific description of the acts that led to the use of force;
  - (d) The specific description of resistance encountered;
  - (e) A description of every type of force used or observed;
  - (f) Names of all assisting officers and supervisors participating in the  
actions  
leading up to the use of force;
  - (g) The name of the supervisor the involved officer notified, and the  
time of the  
notification;
  - (h) The name of the supervisor who responded to the scene;
  - (i) Names, if known, of any civilian witnesses;

- (j) A description of any injuries suffered by the officer, subject, or witnesses;
- (k) Whether a body-worn camera was activated and its identifiable file location;
- (l) Whether a vehicle camera was activated and its identifiable file location;
- and
- (m) Whether a CEW activation occurred, even if the CEW was not discharged.”

**Recommendation No. 15. The Use of Force Reporting policy should require that a supervisor respond to all applications of reportable force, not just those that result in “visible injury.”**

Current POSPD requires that “A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available.”<sup>75</sup> Given the relatively few uses of force annually and the current actual practice – in every use of force case that was reviewed, a supervisor responded to the scene – the policy should be changed to require a supervisor to respond to the scene of every use of force to investigate as set forth in POSPD 300.7.

**Recommendation No. 16. The POSPD should consider having officers enter use of force reports directly into BlueTeam, rather than having a supervisor gather and present facts. The supervisor’s investigation and all supporting materials should be consolidated in BlueTeam and routed to the chain of command through the system.**

Current POSPD policy instructs officers that “[a]ny use of force by a member of this department shall be documented promptly, completely and accurately in the applicable case report. The officer should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances.”<sup>76</sup> This open question format does not mandate the collection of necessary information, which apparently falls to the supervisor.

Once the officer completes the case report, a supervisor completes a Blue Team entry (Blue Team/IA Pro is a relatively rudimentary but standard, widely used administrative investigation tracking database) when the officer uses reportable

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<sup>75</sup> POSPD 300.7

<sup>76</sup> POSPD 300.5

force. Having the supervisor complete data entry on behalf of the officer requires a game of “telephone” rather than having the officer, with first-hand information, document the required information.

Additionally, E2SSB 5259 creates an advisory group that will make implementation recommendations on reporting, collecting, and publishing of use of force data reports, as well as “traffic stops, pedestrian stops, calls for services, arrests, vehicle pursuits, and disciplinary actions, as well as demographic information including race, ethnicity, and gender of a crime victim or victims.”

While the final requirements have not been developed, the law sets forth significant data collection requirements, including, at a minimum:

The date and time of the incident	The location of the incident
The agency or agencies employing the law enforcement officers	The type of force used by the law enforcement officer
The type of injury to the person against whom force was used, if any	The type of injury to the law enforcement officer, if any
Whether the person against whom force was used was armed or unarmed	The type of weapon the person against whom force was used was armed with, if any
Whether the person against whom force was used was believed to be armed	The age, gender, race, and ethnicity of the person against whom force was used, if known
The tribal affiliation of the person against whom force was used, if applicable and known	Whether the person against whom force was used exhibited any signs associated with a potential mental health condition or use of a controlled substance or alcohol based on the observation of the law enforcement officer
The name, age, gender, race, and ethnicity of the law enforcement officer, if known	The law enforcement officer's years of service
The reason for the initial contact between the person against whom force was used and the law enforcement officer	Whether any minors were present at the scene of the incident, if known
Whether dashboard or body worn camera footage was recorded for an incident	The number of officers who were present when force was used

The number of suspects who were present when force was used	
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The upcoming state requirements and the Port’s interest in more comprehensive metrics around use of force require that uses of force be documented in a more systematic manner, rather than open narratives. It may be that the state develops a Use of Force data collection portal similar to the SECTOR system used for traffic ticketing, but in the meantime the POSPD should use Blue Team/IA Pro to its fullest. This is best accomplished by adding data fields to Blue Team and having the officer directly enter the information.

**Recommendation No. 17. The POSPD should maximize its transparency by publishing data and reports on its website and regularly reporting the information to the Commission.**

As the POSPD increases its data gathering, it should strive to increase its transparency by putting out more granular data on officer activity, to include use of force and crisis contacts. This is an increasingly common practice nationally.<sup>77</sup>

Additionally, as the department publishes Annual Reports, Use of Force Annual Reports, Bias Policing Reviews, and reviews of misconduct complaint trends, the POSPD should continue to ensure those are communicated formally to the Commission and publicly available on its website.<sup>78</sup>

**Recommendation No. 18. Video evidence should be downloaded and included in BlueTeam or linked within the system.**

While 21CP did not have direct access to BlueTeam/IA Pro, we were informed that video evidence – such as airport security and civilian cell-phone video – is not routinely linked in the system. Especially if the POSPD implements a BWC program, all relevant evidence should be linked in the electronic case file for easy access for reviewers.

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<sup>77</sup> See e.g., New Orleans Police Department <https://nola.gov/nopd/data/>; Baltimore Police Department, <https://www.baltimorepolice.org/transparency/overview>; Seattle Police Department, <https://www.seattle.gov/police/information-and-data/use-of-force-data/use-of-force-dashboard>

<sup>78</sup> <https://www.seattle.gov/police/information-and-data/crisis-contacts/crisis-contact-dashboard>  
<https://www.portseattle.org/documents?tid=191&primary=191>

**Recommendation No. 19. POSPD should create a standing Use of Force review committee, to include a training officer, the IA officer, and Command Staff, exclusive of the Chief, and tasked with reviewing every use of force.**

Ultimately, any use of force review process should entail a comprehensive, 360-degree inquiry – one that looks squarely at whether the force was consistent with the Department’s policy but also at the extent to which the force, regardless of whether consistent with policy, suggests any tactical, training, policy, or other issues.

Currently, the POSPD reviews every use of force as follows:

“Each completed Blue Team entry and accompanying reports shall be forwarded to the commander of the involved officer(s). The affected commander shall review all documentation and, if needed, cause additional investigation or documentation to be completed. The commander shall also ensure the appropriate Blue Team entries are made and have been submitted. Once the commander has ensured all needed information has been compiled, the commander shall brief the applicable deputy chief or present the Command Team with the facts of the incident for further review and discussion.

The Professional Development Sergeant, along with an appropriate department trainer (dependent on the type of force used), may also participate in this discussion to provide subject matter guidance, answer questions and address concerns. Final dispositions will be determined by a member of the Executive Team.”

While the process only calls for a briefing to the deputy chief or presentation to the Command Team, in practice the command staff reviews every use of force, but without the input of Internal Affairs or training unless requested. Also, currently the Chief is part of this review, which could compromise the Chief’s ability to be the final arbiter of discipline should the Chief approve a use of force that later results in a disciplinary complaint.

Additionally, policy calls for convening a Review Board “when the use of force by a member results in very serious injury or death to another” or at the discretion of the Chief of Police.<sup>79</sup>

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<sup>79</sup> POSPD 302.4.

The POSPD is already working on implementing this recommendation, which was included in previous status reports. The draft policy divides force into “lower threshold” and “upper threshold” force but also appears to preserve the prior Review Board process for serious injury or death. This structure approximates the Type (or Level) I, II, III distinctions drawn by many departments, and there is no apparent need for the POSPD to draft this policy from scratch.

- **Cleveland Division of Police**

**Level 1 Use of Force:** Force that is reasonably likely to cause only transient pain and/or disorientation during its application as a means of gaining compliance, including pressure point compliance and joint manipulation techniques, but that is not reasonably expected to cause injury, does not result in an actual injury and does not result in a complaint of injury. It does not include escorting, touching, or handcuffing a subject with no or minimal resistance. Un-holstering a firearm and pointing it at a subject is reportable as a Level 1 use of force.

**Level 2 Use of Force:** Force that causes an injury, could reasonably be expected to cause an injury, or results in a complaint of an injury, but does not rise to the level of a Level 3 use of force. Level 2 includes the use of a CEW, including where a CEW is fired at a subject but misses; OC Spray application; weaponless defense techniques (e.g., elbow or closed-fist strikes, kicks, leg sweeps, and takedowns); use of an impact weapon, except for a strike to the head, neck or face with an impact weapon; and any canine apprehension that involves contact.

**Level 3 Use of Force:** Force that includes uses of deadly force; uses of force resulting in death or serious physical harm; uses of force resulting in hospital admission due to a use of force injury; all neck holds; uses of force resulting in a loss of consciousness; canine bite; more than three applications of a CEW on an individual during a single interaction, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different officers; a CEW application for longer than 15 seconds, whether continuous or consecutive; and any Level 2 use of force against a handcuffed subject.



- **Baltimore Police Department**

Level 1 Use of Force — Includes:

- Using techniques that cause Temporary Pain or disorientation as a means of gaining
- compliance, hand control or escort techniques (e.g., elbow grip, wrist grip, or shoulder grip), and pressure point compliance techniques. Force under this category is not reasonably expected to cause injury,
- Pointing a firearm, Less-Lethal Launcher, or CEW at a person,
- “Displaying the arc” with a CEW as a form of warning, and
- Forcible takedowns that do not result in actual injury or complaint of injury.

Level 2 Use of Force — Includes:

- Force that causes or could reasonably be expected to cause an injury greater than Temporary Pain or the use of weapons or techniques listed below — provided they do not otherwise rise to a Level 3 Use of Force:
- Discharge of a CEW in Drive-Stun or Probes Deployment, in the direction of a person, including where a CEW is fired at a person but misses,
- Use of OC spray or other Chemical Agents,
- Weaponless defense techniques including, but not limited to, elbow or closed fist strikes, open hand strikes, and kicks,
- Discharge of a Less-Lethal Launcher/Munitions in the direction of a person,
- Canine-inflicted injuries that do not rise to a Level 3 Use of Force,
- Non-weapon strikes to the head, neck, sternum, spine, groin, or kidney area, and
- Striking of a person or a vehicle with a vehicle that does not rise to Level 3 Use of Force.

Level 3 Use of Force — Includes:

- Strikes to the head, neck, sternum, spine, groin, or kidney area with an impact weapon,
- Firearm discharges by a BPD member,
- Applications of more than three (3) CEW cycles in a single encounter, regardless of the mode or duration of the application, and regardless of whether the applications are by the same or different members,
- CEW application for longer than 15 seconds whether the application is a single continuous application or from multiple applications,

- Uses of Force resulting in death, Serious Physical Injury, loss of consciousness, or requiring hospitalization, and
- Uses of Deadly Force/Lethal Force.

Additionally, given that POSPD averages only 30 uses of force per year, there does not seem to be a need to bifurcate the review of cases. POSPD should simply review every use of force holistically.

## VI. MUTUAL AID

The term “mutual aid” generally refers to assistance under RCW 10.93, the Washington Mutual Aid Peace Officers Powers Act and agreements defined by RCW 39.34, the Interlocal Cooperation Act. 21CP has reviewed POSPD policies and agreements governing cooperation with other law enforcement agencies. However, the subcommittee was also interested in understanding the “*ad hoc*” engagements where POSPD provided backup or assistance to other jurisdictions.

Law enforcement has long understood that multi-agency cooperation can benefit efforts to address activities which cross jurisdictional boundaries. It is also widely acknowledged that a single police department cannot staff, prepare for, or respond to large-scale natural or human-initiated emergencies which may occur in their jurisdiction. For these reasons, public safety agencies enter into mutual aid agreements with other agencies to obtain support and resources when such emergencies occur. The idea is straightforward, but many agencies have learned – through some difficulties – that successful mutual aid requires careful, advance attention to the details of management, command and control, planning and joint training.<sup>80</sup>

A Mutual Aid Agreement is the first step in a successful mutual aid arrangement. The Agreement should govern the nature of the support, conditions under which the support is provided, and roles and responsibilities of agencies and their personnel. The purposes of Mutual Aid agreements include:

- Coordination of planning;
- Multiplying the response resources available to any one jurisdiction;
- Ensuring timely arrival of aid;
- Arranging for specialized resources; and

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<sup>80</sup> International Association of Chiefs of Police, *Mutual Aid: Concepts and Issues Paper* (2008)

- Minimizing administrative conflict and litigation post-response.<sup>81</sup>

Mutual Aid Agreements are formal agreements, entered into under authorization of state and (often) local law, that require a formal request for assistance. Such agreements generally cover a larger geographic area than generic, blanket aid agreements. Agreements may be with neighboring jurisdictions, regional, statewide, or even inter-state partners. Regardless of the level, current best practice calls for arrangements to be memorialized in a written document signed by all participating parties, supplemented by a deployment-specific operational plan that covers the specific resources, tasks, personnel, asset allocations, roles, responsibilities, integration, and actions that mutual aid participants execute respective to their assignments.<sup>82</sup>

POSPD has granted all general authority law enforcement agencies the authority to operate within Port jurisdictions, and has been granted reciprocal authority in most, if not all, other jurisdictions.<sup>83</sup> POSPD is a party to three formal interlocal agreements under RCW 10.93 and RCW 39.34:

1. The Interlocal Cooperative Agreement Valley Special Response Team (Valley SWAT), which includes with the cities of Auburn, Kent, Renton, and Tukwila, and makes available “enhanced use of personnel, equipment, budgeted funds, and training” to respond to high-risk incidents such as “civil disobedience, barricaded subjects, hostage situations, gang member arrests, high risk felony arrests, and narcotic/high risk search warrants;”<sup>84</sup>
2. The Valley Independent Investigative Team, which includes the cities of Auburn, Des Moines, Federal Way, Kent, Renton, and Tukwila and serves to “independently, thoroughly and objectively investigate the most serious incidents involving police officers,” including but not limited to:
  - Officer-involved uses of deadly force that result in death, substantial bodily harm, or great bodily harm;
  - In-custody deaths or life-threatening injuries;

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<sup>81</sup> Federal Emergency Management Agency, Best Practices: Mutual Aid Agreements – Types of Agreements, Lessons Learned Information Sharing, <https://www.hsd.org/?view&did=765559> (last accessed June 30, 2021)

<sup>82</sup> N.C.G.S § 160-A-288.

<sup>83</sup> <https://www.waspc.org/police-officers-powers-act>

<sup>84</sup> Interlocal Cooperative Agreement Valley Special Response Team.

- Death or life-threatening injuries of a police employee;
  - Other matters as directed by the Executive Board”<sup>85</sup>; and
3. The Valley Civil Disturbance Unit, which includes the cities of Auburn, Federal Way, Kent, Renton, and Tukwila, and provides “South King County Cities with well-trained and equipped police response for effective crowd control and quelling civil disturbances.”<sup>86</sup>

**A. Motion 2020-15 and the Mutual Aid Subcommittee**

The motion required the assessment to include an exploration of how and when POSPD engage in mutual aid, the protocols for that engagement to ensure alignment with Port values and policing policies, and the formal agreements in place to ensure compliance with Port standards when engaged in mutual aid. This assessment was also tasked to examine whether and how the Port and partner agencies review these mutual aid agreements on a regular basis, as well as the risks and benefits of mutual aid in the various scenarios in which it is provided. Similarly, the Task Force was asked to review the scenarios in which the Port calls for mutual aid from other jurisdictions, what accountability measures are in place during those mutual aid situations, and how POSPD protocols are enforced during those instances.

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<sup>85</sup> Valley Special Response Team Operational Agreement.

<sup>86</sup> The Valley Civil Disturbance Unit (VCDU) Tactical Standard Operating Procedures.

## B. Subcommittee Workflow

<b>Subcommittee F – Mutual Aid</b>	
<b>Chairs:</b>	<b>Milton Ellis and Captain John Hayes</b>
<b>Name</b>	<b>Organization</b>
<b>Captain John Hayes (Ret.)</b>	Seattle Police Department
<b>Milton Ellis</b>	Port of Seattle, Labor/Represented Employees
<b>Loren Armstrong</b>	Port of Seattle, Legal
<b>Lukas Crippen</b>	Port of Seattle, Diversity and Development Council
<b>Sergeant Ryan Leavengood</b>	Union Representative
<b>Efrain Lopez</b>	Port of Seattle, Employee Resource Group
<b>Marco Milanese</b>	Port of Seattle, Community Relations
<b>Keri Pravitz</b>	Port of Seattle, External Affairs
<b>Aaron Pritchard</b>	Port of Seattle, Commission Office
<b>Jim Pugel</b>	External Subject Matter Expert
<b>Mian Rice</b>	Port of Seattle, Employee Resource Group
<b>Commander Jeff Selleg</b>	Port of Seattle Police Department
<b>Amy Tsai</b>	External Subject Matter Expert
<b>Shaunie Wheeler</b>	Union Representative

The MA subcommittee met four times between 10/14/20 and 2/12/21 to discuss the types of MA engagement by the POSPD, the coordination of MA in the areas of SWAT, crowd management, and *ad hoc* engagements. The Mutual Aid Subcommittee focused on understanding the operational agreements with jurisdictions contiguous to Port properties and with the three primary task forces of which POSPD is a member (Valley SWAT, Valley IIT, and the Valley Civil Disturbance Unit). The subcommittee considered state law and POSPD policy concerning mutual aid and defined the scope of mutual aid for purposes of this review. The group also reviewed pro-immigration demonstrations in late January 2017 that involved mutual aid from other jurisdictions and the after-action review by POSPD related to the event.

A substantial portion of subcommittee discussion concerned nuances of crowd management, especially in light of the demonstrations of 2020 related to the murder of George Floyd. Members distinguished between noticed events – which are often permitted and allow for engagement organizers and planning – and non-noticed, spontaneous events, which require a quick response.

## C. Mutual Aid Recommendations

**Recommendation No. 20. The POSPD should continue to take the lead on updating current Mutual Aid agreements to drive best practices regionally and align with the new state policing laws.**

Based on FEMA guidelines, a Mutual Aid agreement should contain key elements like purpose, benefits, authorities, definitions, governance structure and operations oversight, licensure and certifications, interoperable communications, tort liability and indemnification, insurance, worker's compensation, deployment notification, reciprocity and reimbursement, termination, dispute resolution, modification and amendment management, operational plan and procedures requirements, and supplemental information.<sup>87</sup> Additionally, based on discussions in the subcommittee and on 21CP's experience in other jurisdictions, the POSPD should ensure that all agreements provide:

- Pre-emption by home agency policies – POSPD personnel remain bound by the Port's policies while engaging in Mutual Aid.
- Use of Force
  - Required de-escalation
  - Permitted less-lethal tools and use
  - Required provision of medical care within training
- Prohibition on immigration enforcement
- Consistent with Washington law, prohibition of pre-text stops when working with federal law enforcement.

During this assessment, the POSPD (and specifically Acting Chief Villa) has shown strong leadership in response to the 2020-2021 legislative session, which passed many new laws concerning law enforcement. The POSPD funded legal support for meetings of the Valley Chiefs (and other regional departments) to begin coordination on policy development incorporating new law and discussion of any implementation concerns. 21CP attended a meeting in Kent, WA, that was well-attended and observed the regional departments working collaboratively to consider the mandates of recent legislation.

At that meeting, several Chiefs suggested that there was already common ground as most of the departments were Lexipol agencies and therefore crafting updates to

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<sup>87</sup> Federal Emergency Management Agency, National Incident Management System Guideline for Mutual Aid (2017).



policy – especially Use of Force policies – would be relatively easy and would benefit all of the agencies. However, some said that the laws are unclear and translating the mandates of the legislation into clear policy could be difficult. At a follow-up meeting in Renton, different Valley departments were considering different responses to the recent legislation, but the POSPD took the lead on drafting revisions to the Use of Force policy to hopefully drive towards consensus. And again, by providing legal support to the group, the POSPD is helping to intelligently frame the response.

**Recommendation No. 21. After engaging in mutual aid deployments, at the Port or in other jurisdictions, POSPD should actively engage in after-action assessments and track all resulting recommendations.**

Specifically, POSPD should:

- Participate fully in after-action assessments with involved agencies
- Independently assess each engagement
- Track recommendations to ensure they are addressed (for example, recommendations can be tracked in IA Pro).

While POSPD is already fully participating in after-action discussions regarding specific incidents, the drafting of any report is left to the primary agency and reports are not always provided (or kept in a retrievable manner). As such, this recommendation would not only support inter-agency after-action dialogue but would also require POSPD to examine any mutual aid engagements against its own policies. Any lessons learned from either process should be triaged and tracked to ensure those lessons are not lost and that feasible changes are implemented in practice.

**Recommendation No. 22. The POSPD should develop its own Crowd Management policy outlining the POSPD terms of engagement, facilitation of First Amendment activities, and which specifically sets forth the POSPD engagement strategy with demonstration leadership.**

Although the Valley Civil Disturbance Unit (CDU) has a policy manual addressing command structures, use of force principles, permitted equipment, training, event planning, deployment, mass arrests, and record keeping, as well as standard operating procedures that support that policy manual, the POSPD does not have its own Crowd Management policy that would apply to those situations where the POSPD staffs demonstrations that do not require mutual aid. POSPD reports that they follow the same protocols as Valley CDU, but that is not documented anywhere. As such, the POSPD should craft its own policy, which will serve two important

purposes: (1) to provide policy support for how POSPD engages in Crowd Management and (2) the process of crafting such a policy can inform potential changes to the Valley CDU policy manual and standard operating procedures as recommended above.

**Recommendation No. 23. The Port should add specific approval criteria and processes required before deploying resources for Mutual Aid.**

This two-part recommendation addresses both the approval process chain of command and considerations for the chain of command in evaluating mutual aid requests. In subcommittee presentations, POSPD explained that requests for mutual aid from external agencies are vetted at the Deputy Chief level and on occasion elevated to the Chief. The primary consideration for approval hinges on whether there remain sufficient resources to cover Port jurisdictions – in other words, the POSPD apparently defaults to “yes” to requests for mutual aid unless it would be left with insufficient resources.

Instead, 21CP suggests that the approval level be assigned based on the urgency of the deployment and the potential for liability or reputational damage to the POSPD or Port, and suggest the following:

- Any Valley CDU involvement should be approved by the Chief.
- Any Valley SWAT engagement should be approved by the SWAT commander w/notification to the Chief.
- Any Valley IIT engagement should require notification to the Chief.

For any event, including crowd management, POSPD should specifically consider:

- Any impact on Port operations
- The values of the Port on whether Mutual Aid support should be provided for any particular event
- Whether there has been sufficient planning and engagement (when feasible) to support POSPD involvement

## **VII. OVERSIGHT, ACCOUNTABILITY, RACIAL EQUITY & CIVIL RIGHTS**

### **A. Motion 2020-15 and Oversight, Accountability, Racial Equity & Civil Rights**

The Motion included a significant number of directives related to these topics. First, it directed the assessment to look at how complaints by members of the public or other Port employees are handled; in particular, the assessment is required looking at how civilians are able to submit complaints, and how those complaint mechanisms are publicized. The assessment should also include a review of internal reporting mechanisms for police officers who want to report alleged misconduct of other officers – including racially-motivated misconduct – without fear of reprisal or retaliation.

In addition, the assessment should review when additional Commission, Port leadership and/or external oversight is needed to facilitate accountability and transparency to the community, including any recommendations for ongoing reporting of progress toward approved metrics and notifications to Commission and Executive leadership of relevant complaints and reports.

Finally, the Task Force should review the Port Police disciplinary process and how civil lawsuits brought against a Port Police officer are considered during that process. The Task Force should consider how the Port Commission and Executive Director are made aware of such civil lawsuits, particularly where “qualified immunity” is invoked. The assessment should identify what protocols and oversight are in place to ensure all officers – in particular, Black officers, other officers of color and other underrepresented demographics in the police force – are treated respectfully, equally, and equitably. The assessment should determine what protocols are in place for police employees to identify and report any mistreatment experienced or observed that are contrary to the Port’s high standards expected of law enforcement, without fear of retaliation or reprisal. In conducting the assessment, consider impacts on diversity, equity, and civil rights.

**B. Oversight, Accountability, Racial Equity & Civil Rights Subcommittee Members and Workflow**

<b>Subcommittee D – Oversight, Accountability, Racial Equity &amp; Civil Rights</b>	
<b>Chairs:</b>	<b>Anne Levinson and Marin Burnett</b>
<b>Name</b>	<b>Organization</b>
<b>Marin Burnett</b>	Port of Seattle, Strategic Initiatives
<b>Judge Anne Levinson (Ret.)</b>	External Subject Matter Expert
<b>Deborah Ahrens</b>	External Subject Matter Expert
<b>Cynthia Alvarez</b>	Port of Seattle, Human Resources
<b>Officer Arman Barros</b>	Port of Seattle Police Department/Union Representative
<b>Nate Caminos</b>	Port of Seattle, External Affairs
<b>Jay Doran</b>	Port of Seattle Office of Equity, Diversity and Inclusion
<b>Oris Dunham</b>	Port of Seattle Police Civil Service Commission
<b>Glenn Fernandes</b>	Port of Seattle, Audit
<b>Officer Herb Gonzales</b>	Union Representative
<b>Duane Hill</b>	Port of Seattle, Employee Resource Group
<b>Mikel O'Brien</b>	Port of Seattle, Labor Relations
<b>LeeAnne Schirato</b>	Port of Seattle Commission Office
<b>Sgt. Kyle Yoshimura</b>	Port of Seattle Police Department
<b>Michelle Woodrow</b>	Union representative

The Oversight, Accountability, Equity, and Civil Rights (Oversight) Subcommittee met five times between October 9, 2020, and January 26, 2021. 21CP worked closely with Co-chairs Judge Anne Levinson (Ret.) and Marin Burnett to refine and adjust the proposed workplan as the subcommittee moved through different aspects of the Police Department’s misconduct complaint handling process. Anne Levinson provided her expertise on oversight and accountability best practices and Marin Burnett provided insight on the role of various Port components that can be involved in the complaint processing system. Subcommittee members offered their own perspectives and experiences to, contributing to robust discussions and useful input to the final recommendations outlined below.

Note that the topic of protocols to ensure officers are treated respectfully, equally, and equitably are addressed below, but are covered more thoroughly in the discussion

above on officers' perceptions on equity and the need to enhance the experience of internal procedural justice. The issue of "qualified immunity" is addressed below in Section X. Advocacy.

### **C. Oversight and Accountability Generally and at the Port of Seattle Police Department**

Law enforcement officers must follow high ethical standards and a code of conduct established by federal and state law and delineated in an agency's policy manual, directives, and other governing documents which embody an agency's values and mission. The goal is that police officers have a clear understanding of agency conduct expectations, both on and off duty.

To ensure that police services meet the high standards of integrity community members expect and that law and policy demand, there must be a means to identify and investigate allegations of police misconduct, with discipline or retraining meted out as appropriate and recognition for officers who meet conduct expectations. For the majority of medium or large police departments, this complaint handling function resides in Internal Affairs or an Office of Professional Standards (or a similarly named departmental unit). Sometimes this function is external to the agency or shared with civilian oversight entities. Regardless of where the misconduct complaint handling function resides, to be considered legitimate in the eyes of complainants and officers, the process must be timely, thorough, and objective, and include appropriate documentation and regular communication with the individuals involved. Allegations of misconduct are investigated against agency conduct expectations as detailed in relevant agency policy and protocols.

With input from the subcommittee, 21CP considered the POSPD's misconduct complaint handling system, guided by the goals of understanding and enhancing:

- Accountability – who investigates and how is that decision made, who reviews the investigation, how are complaints and investigations tracked, what internal and external mechanisms exist to provide oversight or checks and balances
- Transparency – is there ready access to the process by stakeholders

The following charts and tables provide an overview of the complaint intake process, how complaints are classified, and alternative disposition outcomes. The number and classification of complaints received at the POSPD 2015 – 2020 and the disposition

of complaints 2017 – 2020 are also summarized, along with a brief description of the allegations involved and discipline imposed for cases that were sustained 2017 – 2020.

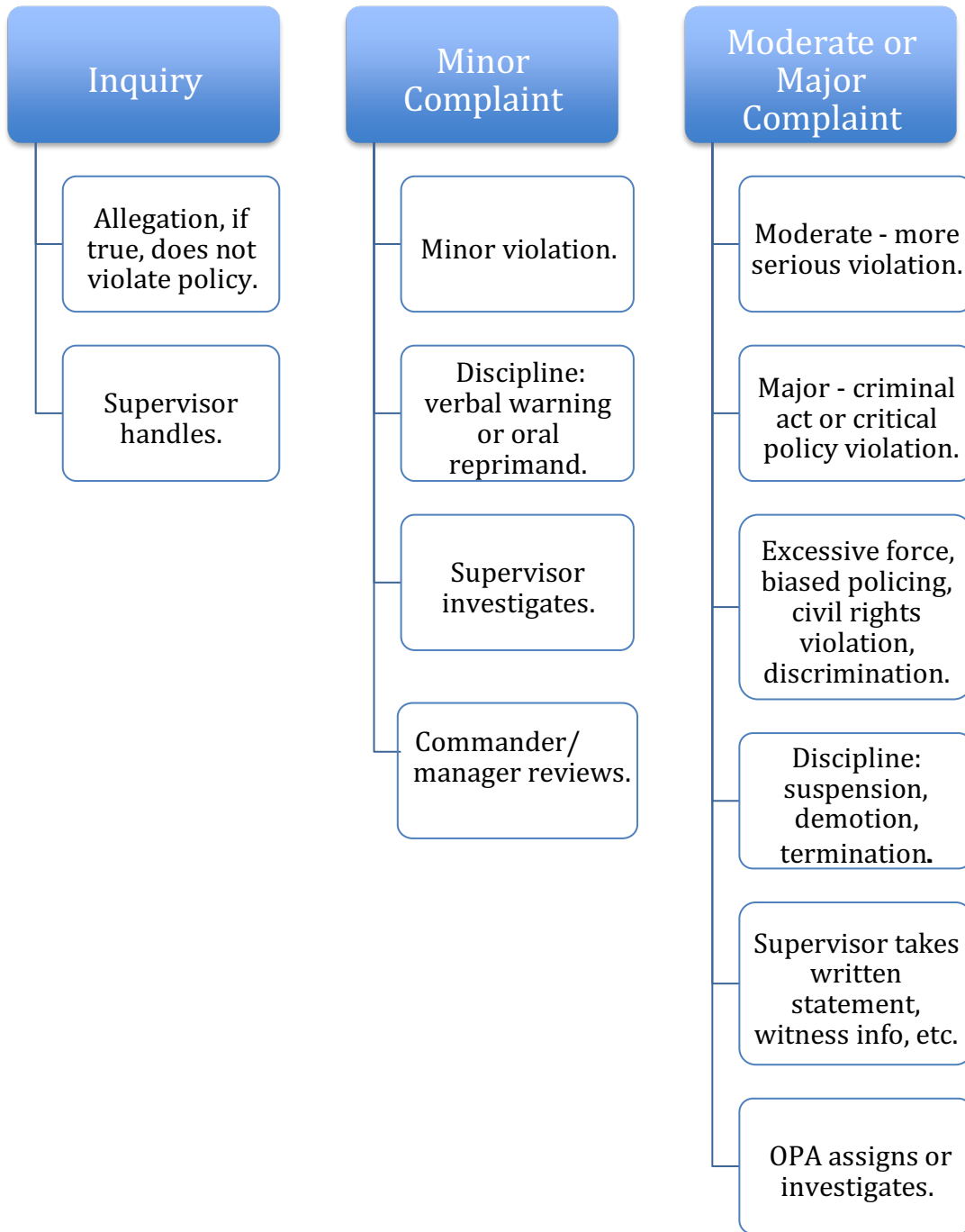
### ***Misconduct Complaint Handling Process at POSPD***

#### **Complaint Intake**





## Complaint Classification



***Six Year Overview of Complaint Intake and Classification***

Port of Seattle Police Department Misconduct Complaint Intake and Classification								
	2015	2016	2017	2018	2019	2020	TOTAL	6 -YEAR AVG
INQUIRIES	32	24	18	21	18	10	123	20.5
MINOR COMPLAINTS	8	9	4	5	6	2	34	5.7
MODERATE/MAJOR COMPLAINTS	2	5	2	----	3	3	15	2.5
TOTAL	42	38	24	26	27	15	172	28.7

***Complaint Dispositions***

- Unfounded: Alleged act did not occur.
- Exonerated: Alleged act occurred but was justified, lawful, and proper.
- Not Sustained: Insufficient evidence to sustain or exonerate.
- Performance Issue: Failed to meet expectations, but not rise to sustained policy violation.
- Sustained: Alleged act occurred and violates policy.

### Four Year Overview of Complaint Disposition

Port of Seattle Police Department Moderate/Major Complaint Investigation Dispositions										
Disposition	Year									
	2017		2018		2019		2020		TOTAL	
	Mod/ Major	Minor	Mod/ Major	Minor	Mod/ Major	Minor	Mod/ Major*	Minor	Mod/ Major	Minor
Unfounded				2		5				7
Exonerated										
Not Sustained		2		1	1			2	1	5
Performance Issue										
Sustained	2	1	1	1	2		2		7	2
Administrative Closure		1								

### Discipline Process and Appeals

#### Verbal Warning or Oral Reprimand

- Minor/informal infractions
- May document in Blue Team
- Supervisors authorized to immediately provide counseling, training, verbal warning, and oral reprimand.

#### Written Reprimand

- Formal censure of conduct with warning similar misconduct may result in more severe discipline.
- Requires approval of Human Resources prior to serving written reprimand.<sup>82</sup>
- Employee may serve written rebuttal.

#### Written Reprimand, Suspension, Punitive Transfer, Demotion, Reduction in Pay or Step, Termination

- Right to appeal - handle in accord with collective bargaining agreement, Civil Service rules, and Port of Seattle policy.<sup>83</sup>
- Document in personnel file and Blue Team.

***Allegations and Discipline for Sustained Cases***

<b>Port of Seattle Police Department Moderate/Major Complaint Investigations Allegations and Discipline for Sustained Cases</b>	
<b>Year</b>	<b>Allegations and Discipline</b>
<b>2017</b>	
<b>Moderate/Major</b>	2 Sustained: (1) Letter of Reprimand for Job Performance (2) Termination for Criminal Act/Conduct Unbecoming
<b>Minor</b>	1 Sustained: Letter of Reprimand for Conduct Unbecoming
<b>2018</b>	
<b>Moderate/Major</b>	1 Sustained: Termination for Criminal Act/Conduct Unbecoming
<b>Minor</b>	1 Sustained: Letter of Reprimand for Disrespect Toward Citizen and Failure to Follow Supervisory Direction
<b>2019</b>	
<b>Moderate/Major</b>	2 Sustained: (1) Dismissal from K9 and Last Chance Agreement for Conduct Unbecoming, Unethical Conduct, Disrespect Toward Employee, Threatening Behavior, Disparaging Remarks Against a Supervisor (2) Letter of Reprimand for Conduct Unbecoming
<b>Minor</b>	-----
<b>2020</b>	
<b>Moderate/Major</b>	2 Sustained: (1) Letter of Reprimand for Insubordination with Supervisor (2) Termination for Conduct Unbecoming, Prohibited Speech, and Insubordination
<b>Minor</b>	-----

In addition to considering four years of summary information on complaint intake, categorization, and disposition, 21CP was provided the files underlying inquiry and complaint investigations. An initial check was conducted to verify the various steps involved with misconduct complaint handling by the POSPD, from intake through

disposition and discipline, as appropriate. 21CP then reviewed a random selection of the investigation files more closely, to determine if complaint receipt and other steps were properly documented, whether witnesses were interviewed and relevant evidence was gathered, if appropriate notices and letters to the complainant and named officer were sent, and whether the analysis and disposition were well founded.

It was evident from the cases that were reviewed that the POSPD has a process in place to treat misconduct complaints objectively, thoroughly, and in a timely manner. While 21CP, like any reviewer, could almost always find something they would have handled differently regarding the underlying incident or the complaint investigation, there appeared to be a consistent effort to investigate and document what occurred and to explain to the complainant in person and in writing the reasoning behind POSPD's disposition.

Furthermore, 21CP was informed that if a complaint is sustained and discipline is under consideration, prior misconduct allegations against the officer are reviewed, whether sustained or not, and any related litigation comes to light during that process. Depending on the seriousness of the discipline involved, Human Resources and Legal Counsel will be consulted, regardless of a specific concern about related lawsuits. However, litigation involving POSPD officers related to alleged misconduct is infrequent, as seen in the discussion below on qualified immunity.

Where officers receive follow-up counseling related to a complaint, sergeants provided a memorandum with an overview of the incident and what was said to the officer by way of counseling. Even where a complaint lacked merit, one situation reviewed pointed to the need for training more broadly in the Department, which was documented. Identifying and following up on policy and training recommendations regardless of the outcome of a related complaint reflects best practices in this area.

All of these elements serve the goals of enhanced accountability and transparency, which contributes to complainants, officers, witnesses, and others perceiving the overall complaint handling system at the POSPD as legitimate. As with other internal and external aspects of policing that have been discussed, to the extent that those involved in complaints perceive that the process is fair, they are given an opportunity to be heard, there is transparency during the process and with outcomes, and the final disposition is determined on an objective basis, they will experience a sense of procedural justice and trust in the complaint handling system.

While 21CP did not review complaint investigations involving EEO concerns and handled through Human Resources or Workplace Responsibility, data concerning these complaints was provided as seen below.

***POS Police Code of Conduct Individual Complaints Workplace Responsibility<sup>88</sup>***

**2017 – 1 Complaint**

1. Race Discrimination - Unsubstantiated

**2018 – No Complaints**

**2019 – 3 Complaints**

1. Race Discrimination -Unsubstantiated/Retaliation - Substantiated
2. Disability Discrimination - Unsubstantiated
3. Retaliation – Unsubstantiated

**2020 – 4 Complaints**

1. Race Discrimination /Retaliation – Open
2. Race Discrimination/Retaliation – Unsubstantiated
3. Retaliation – Unsubstantiated
4. Employee Ethics/Conflicts of Interest – Closed for Police Department Internal Affairs Investigation

**2021 – 1 Complaint**

1. Race Discrimination - Open

POSPD employees expressed concern about the amount of time involved with complaints investigated by Human Resources or Workplace Responsibility. Staff indicated that efforts were being made to complete investigations more expeditiously.

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<sup>88</sup> Human Resources staff indicated that this information was up to date as of April 13, 2021.



## D. Oversight, Accountability, Equity and Civil Rights Subcommittee Recommendations

### *Relationship between POSPD Standards of Conduct and the Port's Code of Conduct, including Avenues of Complaint*

As with some other policies, POSPD Policy 340/Standards of Conduct is confusing to read, internally disorganized, and does not consistently serve the goal of articulating conduct standards in a way that promotes clear understanding by employees. In contrast, the Port of Seattle Code of Conduct is plainly written and well organized, clearly stating the Port's values that employees:

- Conduct business with the highest of standards
- Honor their commitments to one another, the community, and the Port's customers
- Recognize that employees are capable, high performing people who appreciate the privilege of public service
- Encourage employees to embrace the richness of a diverse workplace and support employee development.

These values are then individually delineated without unnecessary repetition and with clear guidance on where to direct questions concerning the conduct standards and the complaint investigation process when the conduct code is allegedly breached.

However, while the Port's Code of Conduct offers easily understood guidance for employee conduct expectations, it is still necessary that the POSPD have a set of standards complimenting the Port's, but one that incorporates the unique values and ethics associated with police services.

#### **Recommendation No. 24. POSPD should adopt the Port of Seattle Code of Conduct into policy.**

To promote a shared understanding of conduct expectations among all Police Department commissioned and non-commissioned staff and to further align the Department with the Port organization, POSPD should adopt the Port of Seattle Code of Conduct, including the clear guidance provided on where to direct questions and the complaint investigation process, and then revise the current set of conduct standards in the Policy Manual so that it complements the Port's, but incorporates the unique values and ethics associated with police service.

This policy should also articulate how its unique standards of conduct relate to the Port's Code of Conduct, collective bargaining agreements, MOUs, and other relevant governing documents.

**Recommendation No. 25. POSPD policy should make explicit the types of complaints that should be pursued internally verses those that should be handled through Port of Seattle Human Resources, Workplace Responsibility, or other avenues of complaint, with explicit protocols between components developed, including timelines for completing investigations of employee complaints.**

To understand conduct expectations for Police Department officers and rules related to misconduct investigations, discipline, and appeals, reference must be made to applicable sections of the POSPD Policy Manual, the applicable collective bargaining agreement, the Police Officers' Bill of Rights and Code of Conduct/Workplace Responsibility Handbook appendices attached to some collective bargaining agreements, Port of Seattle Police Civil Service Rules, and the Port of Seattle Code of Ethics & Workplace Conduct. With new Washington State legislation enacted in 2021 that creates additional conduct expectations – *e.g.*, the duty to intervene – reference will need to be made to the legislation and Department training bulletins, as policy on point is developed.<sup>89</sup>

While the survey results indicate that the vast majority of survey respondents know their options for filing complaints, the alternatives are not clearly stated in POSPD policy and can require reference to a number of documents. The OPA Sergeant indicated that Human Resources is consulted as needed when it is not clear whether a matter should be handled internally or referred to Human Resources or Workplace Responsibility. While it is very helpful to have an established relationship that facilitates such a discussion, more clarity in policy could obviate the need to consult with Human Resources. The types of complaints to be handled by POSPD (and OPA), Human Resources, and Workplace Responsibility should be made explicit, as should the protocols for referring matters between entities, the timelines set for each entity to complete an investigation, the types of issues requiring input from higher level authority in each entity, and the types of information that can be shared between entities, with the parties involved, and with others. Discussions with representatives from POSPD/OPA, Human Resources, and Workplace Responsibility that occurred

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<sup>89</sup> See, *e.g.*, POSPD Departmental Directives 03-2021 (Duty to Intervene and Report Unreasonable Force) and 04-2021 (Duty to Report External Agency Wrongdoing).

during subcommittee meetings pointed to the need for explicit protocols and interest was expressed in working towards clarification.

While the focus above is on complaints that come to the attention of the POSPD, Human Resources, or Workplace Responsibility, there also was discussion earlier about complaints against POSPD officers received by Customer Services and the need to establish protocols about referring such complaints to the POSPD. As previously recommended, it would be useful to set up a working committee involving representatives from the POSPD, Human Resources, Workplace Responsibility, and Customer Services to review the issues raised here and to develop a responsive set of preferred protocols to make the process more transparent and accountable.<sup>90</sup>

### *Complaint Intake and Classification*

**Recommendation No. 26. The complaint classification scheme (inquiry and minor, moderate, or major complaint) should be revised as it is unnecessarily technical, the terms used are not consistently well defined, and use of a methodology to assist in complaint classification will promote objectivity and consistency.**

POSPD classifies complaints alleging policy violations as either a Minor, Moderate, or Major Complaint. A complaint, even if proven true, that would not establish a policy violation is called an Inquiry.<sup>91</sup> The scheme of categorizing complaints as Minor, Moderate, or Major appears unnecessarily technical, given the relatively few complaints handled by the POSPD. If the primary distinction is between relatively minor complaints that can be handled by a supervisor and those alleging serious misconduct or involve more complex facts should be investigated by OPA, then a two-tiered approach might be all that is needed.

The definitions used in the classification scheme do not always explain the technical distinctions intended. For example, note the circular nature of the definition used for “Minor Complaints”:

Complaints involving allegations against department members when the actions or behavior of the employee constitutes violations of

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<sup>90</sup> As noted previously, Customer Services provided 21CP with a set of protocols dated July 27, 2021, after the report had been drafted and too late in the assessment process to evaluate and provide feedback. Regardless, working with other Port components on similar concerns regarding the handling of complaints would be beneficial.

<sup>91</sup> POSPD 1020.3.

department policy that are minor in nature. Discipline resulting from a sustained finding involving minor complaints will generally not result in any property loss... (i.e. suspension, demotion, termination, etc.). Minor complaint allegations may include...[complaints about courtesy, minor service issues, minor traffic violations], and complaints of actions committed by a department member deemed to be minor policy violations.”

Defining a “minor complaint” as one that involves a minor policy violation does not provide helpful guidance to POSPD officers, supervisors, and other staff, or for other Port employees and public stakeholders, and thus does not serve the goal of transparency and undercuts accountability.

A complaint classification scheme should be easy to understand and administer and usually only two or three options – what the POSPD calls “inquiry,” or low-level allegations that might not implicate a POSPD policy or are not likely to result in discipline and more serious allegations involving more complex facts and potential discipline requiring a formal investigation with procedural safeguards. A third option could involve referral to another agency, ADR, or some other mode of resolution. It is not unusual for lower-level complaints to be handled by a supervisor, but they should be thoroughly documented and reviewed, as is the case for such complaints reviewed by 21CP.

Given limited resources and competing demands on time, complaints are typically triaged to ensure that the most serious allegations are prioritized for investigation and that potentially perishable evidence is collected as early as possible. It is helpful to set up triaging protocols, such as providing that all complaints involving misuse of force or biased policing be referred for a formal investigation. The rationale is that, if shown to have merit, these complaints can have serious consequences for the involved officer, can negatively impact the community’s view of the Department, and elevating such allegations can communicate respect to the complainant and help build trust in investigation outcomes.

POSPD policy sets up a complaint intake scheme that provides for different processes depending on whether a complaint is submitted in writing or made in person or over the phone. Accountability is served by the requirement that both avenues result in Blue Team documentation.

POSPD provides that complaints are, at least initially, processed differently depending on whether they are in writing or oral.<sup>92</sup> Written inquiries and complaints are first forwarded to the administrative specialist of the Chief of Police, who confirms receipt with the complainant and then refers the matter to OPA for classification and assignment. In-person or telephoned complaints are forwarded to an on-duty supervisor for intake, and then the supervisor determines how to classify the complaint. It appears that the on-duty supervisor either handles or refers to the first-line supervisor any investigation of complaints deemed to be minor. If a moderate or major complaint is involved, they are to be referred to “the affected commander” for review, who then forwards it to OPA for assignment.

While an approach that sets up different processes based on whether a complaint is made in writing, in-person, or over the telephone presumably encourages thorough information gathering while a complainant is more immediately available and provides for up-front feedback to a complainant submitting a written complaint, the system appears unnecessarily complicated and confusing, given the relatively few complaints involved. While inquiries and complaints are entered and tracked through BlueTeam by the OPA Sergeant, a regular review, such as every quarter or biannually, of intake and classification decisions will help ensure accountability and consistency in the process.

**Recommendation No. 27. When an on-duty supervisor handles complaint intake and the investigation of an inquiry or minor complaint, their investigation memo should indicate the rationale behind the classification decision, the complaint classification should be explicitly approved by the Commander, and complaint classification decisions should be regularly audited to check for consistency in application of policy and other classification guidance.**

As noted above, when there is an in-person or telephoned complaint, it is referred to the Sergeant serving as the on-duty supervisor who determines how to classify the complaint, after gathering information relevant to the allegations involved. If the matter is classified as an inquiry or minor complaint and investigated by the on-duty supervisor or referred to a line supervisor, the rationale behind the classification decision should be made explicit in the investigation memo that details the complaint, evidence, analysis, and outcome, and the classification should be considered and approved during review by the Commander. This will help ensure that supervising Sergeants and Commanders are using the same classification criteria and allows for

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<sup>92</sup> 1020.4.

learning opportunities and discussion where there might have been a close call about a classification decision, or the complaint presented issues that might have benefited from review by OPA or a Commander prior to classification and investigation.

### *Timelines*

**Recommendation No. 28.** Though there was no evidence of missed timelines for completing investigations, best practice would be to set timelines for each step in the process, from complaint intake through a final disposition, including notice to the named officer and complainant, and the timelines should be reflected in an updated complaint intake flowchart, and policy should be clarified as to acceptable reasons for extending timelines, identify who has authority to grant an extension, and note any limits on the length of an extension.

POSPD policy states that administrative investigations should not extend over ninety (90) calendar days, which can be extended if needed, with notice to the subject employee.<sup>93</sup> The policy does not address reasons for extending timelines, does not identify who has authority to grant an extension, and does not set any limits on the length of an extension. Department policy does not appear to set other timelines for completing the various steps involved with complaint intake, investigation, and disposition, which is a surprising omission. The team was referred to the POSPD Police Officers' collective bargaining agreement for deadlines related to complaint processing. Though the 21CP team has by no means assimilated the entire collective bargaining agreement, the only complaint related timeline evident was a requirement in Appendix B, Police Officer Bill of Rights, that an employee be notified within five (5) days if they are subject to an investigation by the Internal Investigations Section (presumably OPA). Other governing documents may reference specific timeline requirements such as seen regarding appeals and hearings under the Police Civil Service Rules.

The subcommittee was provided a copy of the "Complaint Intake Flowchart" used by the POSPD. The OPA Sergeant acknowledged that it was not up to date, as reference is made to "Internal Affairs" and there is no Internal Affairs unit or function outside of OPA. Other issues identified with the flowchart are discussed above, such as the lack of review of the initial complaint classification and the absence of other quality control checks during complaint handling. The flowchart should be revised to bring it up to date, should include all applicable timelines for steps throughout the process,

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<sup>93</sup> 1020.6.4.



and should build in review of decisions made between complaint intake and a final determination on the allegations made.

### *Conflicts of Interest*

**Recommendation No. 29. The POSPD should develop policy that identifies potential conflicts of interest and protocols to address actual or perceived conflicts related to misconduct complaint handling and discipline matters.**

Because officers handling police misconduct complaints internally, through an Internal Affairs Unit or POSPD’s Office of Professional Accountability, naturally will have worked with and have relationships with officers who are named in complaints, it is easy for real or perceived conflicts of interest to arise. The POSPD policy that sets out guidelines for reporting and investigating misconduct complaints does not include a provision addressing such potential conflicts. 21CP was told of one potential conflict that was elevated for review, but with no policy on point, it might not be obvious to some how to handle such matters. POSPD does have a policy on Nepotism and Conflicting Relationships, with the purpose defined as, “to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination, or actual or perceived conflicts of interest by or between members of this department.”<sup>94</sup> The policy includes “discipline” among the list of employment practices that are covered. However, there is no explanation in this policy or elsewhere concerning the identification of and protocols to address specific conflict of interest concerns in the complaint handling or discipline processes.

In all departments where sworn members are tasked with investigating complaints against other members in the same organization, unique issues of perceived or actual conflict of interest can crop up. Furthermore, since even those who have engaged in criminal activity should have an avenue to complain about officer misconduct, those engaged in investigating complaints cannot be swayed by any underlying alleged criminal behavior by the complainant. The goal is to ensure that everyone involved in the investigation and review process is capable of being objective, fair, and unbiased with regards to the subject officer, complainant, witnesses, and issues raised. Where there are questions of perceived or actual conflict of interest, the policy should explicitly state the steps to be taken to resolve any concerns.

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<sup>94</sup> POSPD 1050.1.

## *Alternative Dispute Resolution*

**Recommendation No. 30.** The Port should explore alternative dispute resolution (ADR) options for resolving some complaints, whether or not they involve the Police Department, as ADR does not appear to be an option for case processing in the POSPD, Human Resources, or Workplace Responsibility.

While the number of complaints filed against POSPD officers might not justify the time and expense of setting up an alternative dispute resolution (ADR) program, if Human Resources and Workplace Responsibility were interested in offering ADR options, it would be useful to consider dispute resolution programs that could be available regardless of where a complaint is lodged or where in the Port organization the named employee works.

## *Access to the Police Department and Information on Filing Complaints*

Clearly communicating to all stakeholders that the POSPD takes complaints seriously and offering a user-friendly complaint filing system with regular status updates to the involved parties provides transparency and will help build trust by complainants and officers alike that disputes will be handled objectively, thoroughly, and in a timely manner.

**Recommendation No. 31.** There are a number of ways to make the POSPD and complaint filing system more accessible to stakeholders, including modifying the complaint form, changing the on-line search system, and identifying police facilities on SEA Airport maps.

- The form available on the POSPD webpage refers to “inquiry, commendation, complaint, suggestions, and area of concern,” is unnecessarily specific and should be limited to “concern or complaint.”
- The online complaint form should provide directions, including for third party complaints, information on what to expect for next steps, an overview of the investigation process, and how a complainant can follow up (i.e., provide a tracking number or contact information for investigator), along with providing confirmation once the complaint is received by the Department.
- A search for “police complaint” on the Port of Seattle website should take the searcher directly to the complaint form page.
- The location of POSPD headquarters and the substation should be more clearly identified on SEA Airport maps.

## VIII. DIVERSITY IN HIRING AND RECRUITING

### A. Motion 2020-15 and the Diversity in Recruitment and Hiring Subcommittee

Motion 2020-15 provided that the assessment of the POSPD was to include a review of how potential officers are vetted during the testing and hiring process, including how an officer’s background is reviewed and evaluated as well as how an applicant’s physical, mental, and emotional fitness for the duty is assessed. Building on the Executive Director’s executive action that would “disqualify applicants based on substantiated instances of excessive use of force or racial discrimination,” the motion provided that the assessment should more clearly define how such instances would be identified and the types of misconduct that would be prohibited. The assessment also required assessment the diversity of the POSPD in terms of demographics and other aspects, such as languages spoken, and identify what additional efforts could be made to increase diversity in those areas. The assessment was to include areas such as increased outreach during the recruitment process, internships and youth training opportunities, community-focused hiring programs or incentives, changes to the use of lateral postings for frontline officers, hiring panel diversity, and removal of disqualifications that disproportionately impact people of color. Consistent with the focus on equity to be applied to this assessment in full, 21CP was asked to consider in this section impacts on diversity, equity, and civil rights.

### B. Diversity in Recruitment and Hiring Subcommittee Members and Workflow

<b>Subcommittee A – Diversity in Recruitment and Hiring</b>	
<b>Chairs:</b>	<b>Jessica Sullivan &amp; Ericka Singh (Derek Bender)</b>
<b>Name</b>	<b>Organization</b>
Derek Bender	Port of Seattle, Human Resources
Ericka Singh	Port of Seattle, Human Resources
Jessica Sullivan	External Subject Matter Expert
Ilays Aden	Port of Seattle, Community Relations
Sgt. Darrin Benko	Port of Seattle Police Department
Sgt. Molly Kerns	Port of Seattle Police Department
Efrain Lopez	Port of Seattle, Diversity & Development Council
Luis Navarro	Port of Seattle, Office of Equity, Diversity & Inclusion
Bessie Scott	External Subject Matter Expert

Michelle Woodrow

Union Representative (Proxy: LeLand Allen)

The Diversity in Recruitment and Hiring Subcommittee met six times between February 26 and May 21, 2021. Port of Seattle Human Resources Talent Acquisition Manager/Co-chair Erika Singh and Talent Acquisition Lead/Substitute Co-chair Derek Bender were instrumental in gathering information relevant to the work of the subcommittee, along with Sgt. Molly Kerns and Sgt. Darrin Benko from the POSPD, who helped provide perspective and context on current recruitment and hiring practices. Co-chair Jessica Sullivan, a former King County Sheriff’s Office Captain and currently the Director of REI Corporate Security, provided insight on best practices, along with her knowledge of successful approaches to recruitment and hiring being used by local law enforcement agencies. Members of the subcommittee actively participated during meetings, asking questions of the presenters, sharing observations about the material reviewed, and requesting more information, as needed. The recommendations below were developed with significant input from the DRH Subcommittee.

### ***Overview of Recruitment and Hiring of Police Officers Generally and at the Port of Seattle Police Department***

A survey of 411 police departments conducted by the Police Executive Research Forum (PERF) found that 63% experienced a reduction in the number of applicants in 2019.<sup>95</sup> Police recruitment continues to be challenging in 2021 after a year of widespread racial justice protests and calls for police reform, along with a much higher than usual rate of retirements and resignations that some attribute to officers’ low morale.<sup>96</sup> Applicant shortages are occurring in departments of all sizes and all regions of the country. At the same time, agencies are working to meet their goals of building a workforce that reflects the diversity of the communities they serve. However, recruitment for applicants of color face additional challenges, including a long history of discrimination in the profession, high levels of mistrust of the police in underrepresented communities, lack of awareness of career opportunities in law enforcement, and difficulties in passing background and credit checks.<sup>97</sup> “Whereas departments have had historical difficulties recruiting women and minority

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<sup>95</sup> Police Executive Research Forum.2019. “The Workforce Crisis and What Police Agencies Are Doing About It.” Washington, DC: Police Executive Research Forum.

<sup>96</sup> See, e.g., <https://www.axios.com/police-morale-suffers-recruiting-down-fb25f81e-b423-41fe-9d5f-242d43ebf337.html> and <https://www.npr.org/2021/06/24/1009578809/cops-say-low-morale-and-department-scrutiny-are-driving-them-away-from-the-job>

<sup>97</sup> CCJ Task Force on Policing, “Recruitment, Diversity, and Retention,” Policy Assessment, May 2021 (citations omitted).

applicants, their inability to grapple with generational differences has shown the profession to be underprepared for the rapidly changing and uncertain economic and social landscape.”<sup>98</sup>

There are relatively few rigorous studies on effective recruitment strategies. The studies done have focused on making it easier to apply or making the position more attractive to desired candidates, such as sending reminder emails and texts and postcards with messages about “being up for the challenge” of serving and emphasizing career opportunities in the profession.<sup>99</sup> A recent guidebook out of the U.S. Department of Justice COPS Office provides a useful overview of existing resources for promoting workforce diversity, intended to “highlight publications that are unique, particularly insightful, or considered foundational.”<sup>100</sup>

Against this backdrop, the Diversity in Recruitment and Hiring (DRH) Subcommittee considered POSPD’s approach to hiring new officers, recruitment strategies, and data available to assess where minority and female candidates fall out during the application process. Port of Seattle Police officers are hired through three pathways – as an entry officer, lateral officer, or internal entry officer with overlapping and distinct steps in the application and testing process for each. Officers hired from all three pathways must meet the minimum requirements of being at least 21 years of age, a U.S. citizen or a lawful permanent resident with the ability to read and write in the English language, hold a high school diploma or GED certificate, have or obtain a WA State driver’s license prior to hire, and successfully pass a background investigation that includes a complete criminal records check, a polygraph examination, a medical examination, and a psychological examination. Also, regardless of the pathway used in applying to the Port Police Department, there are factors that will automatically disqualify an applicant, including:

- Drug use prohibitions
- Criminal activity, including any adult felony conviction, conviction of any offense classified as a felony under WA State law while employed in any capacity at a law enforcement agency, admission of having committed any act

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<sup>98</sup> Jeremy M. Wilson, “Strategies for Police Recruitment: A Review of Trends, Contemporary Issues, and Existing Approaches,” *Law Enforcement Executive Forum*, 2014, 14(1), p. 79.

<sup>99</sup> *Id.*

<sup>100</sup> *Recruitment and Retention for Workforce Diversity – Resource Guidebook – 2021*; CRI-TAC Spotlight, U.S. Department of Justice, Office of Community Oriented Policing Services; <https://cops.usdoj.gov/RIC/Publications/cops-w0962-pub.pdf>

amounting to a felony under WA State law, as an adult, within five years prior to application or while employed as a peace officer (including military police officers), any conviction under a domestic violence statute, and unlawful sexual misconduct

- Certain driving related offenses
- Employment related experiences including dishonorable discharge from armed forces, lying during any stage of the hiring process, falsification of application or related forms, previous revocation or denial of any certified status, any substantiated finding of the use of excessive force or a substantiated finding of racial discrimination or corrupt acts against another employee or member of the public.

Additionally, financial issues, such as poor credit history, including excessive credit card debt or unresolved accounts in collections, are thoroughly assessed and may be grounds for disqualification.<sup>101</sup> Applicants are required to sign a waiver allowing backgrounders to see applicants' personnel files, misconduct investigations, and all other relevant documents. Information regarding minimum requirements and automatic disqualifiers are posted on the Port Police Careers webpage.<sup>102</sup>

For those who meet the minimum qualifications and are not automatically disqualified based on the factors noted above, the application process is dependent on the hiring pathway being followed. Though the Port is currently using a strategy focused on hiring experienced officers applying through the lateral pathway and is not accepting applications for entry-level officers, the subcommittee reviewed the steps involved for each of the hiring pathways. Entry-level applicants must pass written and physical ability tests administered by Public Safety Testing and an oral board interview to then be merged onto a Civil Service Eligibility list, with the highest candidates moving to background investigations if there are entry-level officer openings. Lateral applicants must pass a physical ability test administered by the Exercise Science Center. After passing the physical fitness examination, a lateral

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<sup>101</sup> Under E2SSB 5051, as a condition of continued employment, peace officers must obtain and maintain CJTC certification, which includes release of their personnel files, termination papers, criminal investigation files, and other material. The new legislation sets out the grounds for certification denial or revocation, which includes factors not currently listed as disqualifying by the Port Police Department, though might have had a disqualifying impact as more information about an applicant was discovered during the background check and otherwise. The legislation also sets out additional backgrounding requirements that must be complied with.

<sup>102</sup> <https://www.portseattle.org/page/port-seattle-police-department-careers>

candidate must complete a written exercise and an oral board interview, followed by the background investigation, polygraph examination, potentially be interviewed by the Chief of Police, and must pass psychological and physical exams. Finally, the internal entry-level pathway is open exclusively to Port of Seattle employees who must follow the steps outlined for entry-level applicants, though the physical ability test is administered by Port staff. Concerns about some aspects of the application process are reflected in the recommendations below.

***POSPD Employee Demographics***

Note that the information provided on POSPD employee demographics was sourced from different data sets compiled at different points in time, and thus, the total number of employees or number within a subgroup may differ between charts and tables.

**2020 Affirmative Action Utilization & Availability Chart**  
**POSPD Commissioned Employees**

EEO JOB GROUP	TOTAL	FEMALE					MINORITY				
		Utilization		Avail. <sup>103</sup>		D <sub>104</sub>	Utilization		Avail.		D
Commissioned Police	89	1 1	12.35	1 4	15.96	-3	14	15.73	18	20. 11	- 4
Commissioned Police - Command	26	4	15.38	3	13.20	+ 1	7	26.92	4	16. 34	+ 3

<sup>103</sup> Availability is an aggregation of external candidates with requisite skills and internal employees who can move between jobs.

<sup>104</sup> D = Difference between Utilization and Availability



***Gender Identification for Commissioned/Non-Commissioned Employees***

<b>Job Group Description</b>	<b>Gender</b>	<b>#</b>	<b>%<sup>105</sup></b>
Commissioned Police – Command <sup>106</sup>	Male	19	79%
Commissioned Police – Command	Female	5	21%
Commissioned Police	Male	79	90%
Commissioned Police	Female	9	10%
Total Commissioned Police - Male		98	88%
Total Commissioned Police - Female		14	12%
Non-Commissioned Protected Services	Male	3	14%
Non-Commissioned Protected Services	Female	19	86%

***Race/Ethnicity Identification for Commissioned Employees***

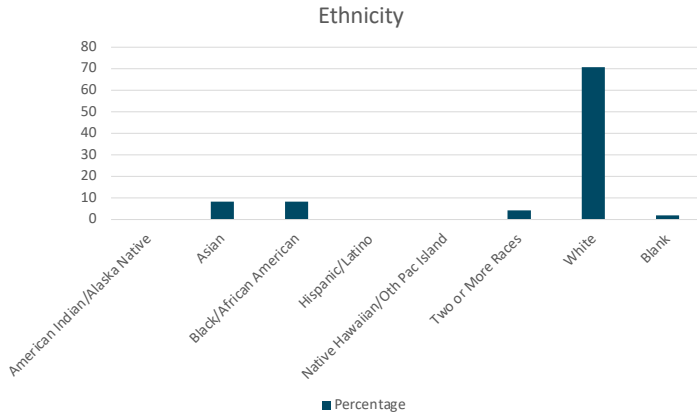
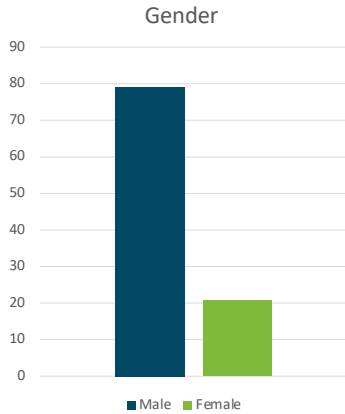
<b>Job Group Description</b>	<b>Race/Ethnicity</b>	<b>#</b>	<b>%</b>
Commissioned Police – Command	American Indian/Alaska Native	0	0%
	Asian	2	8%
	Black/African American	2	8%
	Hispanic/Latino	0	0%
	Native Hawaiian/Other Pacific Islander	0	0%
	Two or More Races	1	4%
	White	17	71%
	Unknown	2	8%
Commissioned Police - Officers	American Indian/Alaska Native	1	1%
	Asian	4	5%
	Black/African American	3	3%
	Hispanic/Latino	1	1%
	Native Hawaiian/Other Pacific Islander	2	2%

<sup>105</sup> Percentages rounded off.

<sup>106</sup> Commissioned Police – Command includes Sergeants

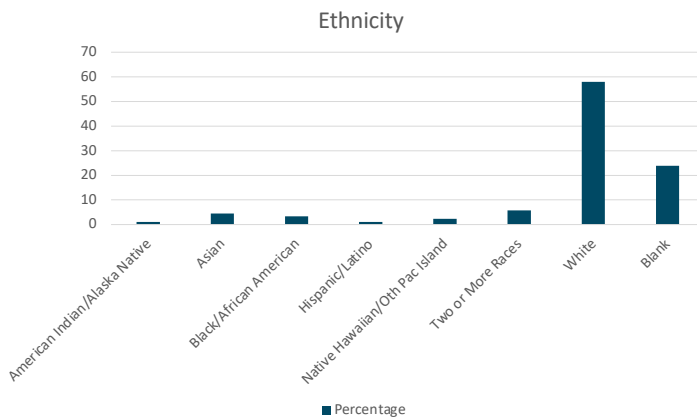
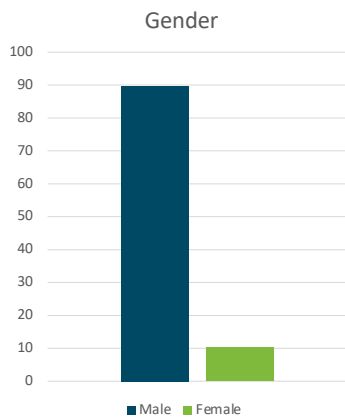
	Two or More Races	5	6%
	White	51	58%
	Unknown	21	24%

## Commissioned Command Demographics



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## Commissioned Patrol Demographics



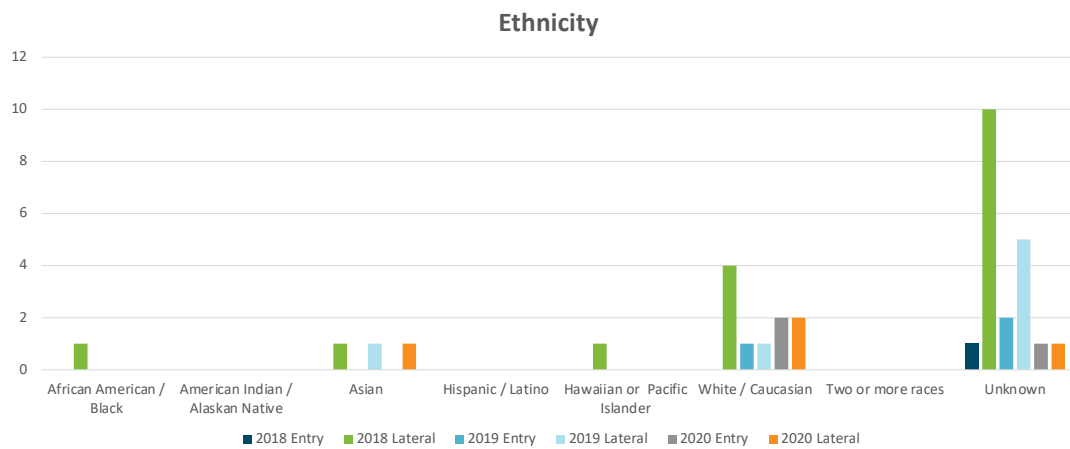
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## Demographics for POSPD Hired 2018 – 2020

Of a total of 35 POSPD officers hired during the years 2018 - 2020, 80% (28) were lateral and 20% (7) were entry-level. In addition to three officers hired from the Honolulu Police Department and one from the Washington State Patrol, lateral hires represented police agencies in the following Washington State cities:

- Seattle (10)
- Tukwila (4)
- Gig Harbor (2)
- Auburn (1)
- Federal Way (1)
- Issaquah (1)
- Kent (1)
- Mercer Island (1)
- Pacific (1)
- Redmond (1)
- Renton (1)

## Entry vs Lateral Hires



Of the 35 officers hired since 2018, 23 laterals were male, 5 laterals were female, and all seven entry-level hires were male.

Demographic information for lateral and entry-level applicants was provided by the Port's Human Resources Office and an effort made to analyze the application process to better understand the points at which women and minorities fell out. However, due to subcommittee time constraints and data that was not immediately available, it was difficult to reach insights on this front.

The Department has relied heavily on lateral hires the past few years because laterals can be assessed on their actual performance as police officers, it is less expensive to on-board lateral hires (estimated as \$55,816.40, as compared to the \$87,717.80 estimated cost of entry level hires), and, because lateral hires do not need to repeat academy training they have previously completed, they are available for patrol assignment much more quickly. An entry-level officer typically requires 45 weeks of training before handling calls solo (six weeks of pre-academy training, 18 weeks for the academy, six weeks post-academy, and 15 weeks of field training) as compared to a lateral officer who on average needs 18 weeks of training before being assigned to patrol (six weeks of pre-field training and 12 weeks of field training).

### **C. Diversity in Recruitment and Hiring Recommendations**

#### ***Recommendations relating to Data Collection, Demographics and Self-Identification***

While representatives from the Port's Office of Human Resources and Police Department provided information summarizing a range of data points relevant to consideration of officer recruitment and hiring trends at the POSPD, there were limitations to the information immediately available using internal and external data sources. For example, with entry-level hires, the Port must rely on Public Safety Testing's willingness and availability to provide certain categories of data that would be useful in analyzing the pass/fail data points for these candidates. For different types of analyses, the Port uses different benchmarks, which may look to the entire population of an area or specifically to the population of qualified law enforcement applicants.

A significant proportion of POSPD commissioned officers do not self-identify when asked about their race/ethnicity affiliation. While this information is usually provided during the application phase, once hired, 20-25% of officers do not provide racial/ethnic information in the personnel system. This reluctance to self-identify is found Port-wide at similar levels and severely limits analysis of trends in recruitment and hiring from the perspective of meeting race/ethnic hiring goals.

**Recommendation No. 32.** The Port should coordinate with the Police Department, Human Resources, and other Port components to consolidate data sources with the goal of developing a robust data collection and analytic approach to better understand the recruitment and hiring of Police Department personnel, including at which stage women and/or applicants of diverse ethnic and racial backgrounds have high fail rates, and identify opportunities for improvement.

Individuals from the Port's Human Resources Office and the POSPD provided an abundance of information on the recruitment and hiring process for police officers. When the DRH Subcommittee asked for even more data, they worked internally and with IT and external sources to pull as much information as possible in a short amount of time. While more analysis would be useful, as discussed below, it is important that data sources be consolidated or coordinated to allow for a robust data set and more sophisticated data analytics. The subcommittee was told that efforts are being made towards this end.

**Recommendation No. 33.** The Port should develop clear guidance on the benchmarks to be used in assessing the availability and utilization of persons identifying with different ethnic and racial groups, including the rationale for using census data from specific areas.

In analyzing POSPD recruitment and hiring data, the EEO job groupings used for federal affirmative action reporting purposes grouped commissioned employees into either commanders or officers, with sergeants included with commanders. As the role of sergeants who supervise falls between command staff and officers and differs significantly from a commander's role, it is confusing to include them with commanders and it's important to consider the demographics of supervisors as a separate group.

Affirmative action utilization and availability information also did not always clearly identify the benchmarks being used, which can impact outcomes. For example, in considering the availability and utilization of African American/Blacks, looking to African American/Black police officer applicants for the POSPD verses the percentage of applicants in the Pacific Northwest or as compared to King County or Washington State census data yields different results, though the percentage of African American/Black police officer applicants seeking a position at the POSPD is higher than all three other metrics. In considering Hispanic/Latino applicants, the percentage of Hispanic/Latino officers applying to the POSPD is less than half of the average percentage of the three comparators, indicating that the Port is having

difficulty attracting Hispanic/Latino police officer applicants. The impact is reflected in the race/ethnic identification data presented above, showing only one POSPD office identifies as Hispanic/Latino, with the significance of the gap dependent on the specific benchmark used.

**Police Officer Applicants January 2019 – July 2020<sup>107</sup>**

	<b>Pacific Northwest Police Applicants</b>  1/1/2020 to 2/28/2021	<b>Port of Seattle Police Applicants</b>  1/1/2019 to 7/16/2020	<b>King County 2019 US Census</b>	<b>State of Washington 2019 US Census</b>
African American/Black	6.2%	10.6%	7.0%	4.4%
Hispanic/Latino	10.8%	5.4%	9.9%	13.0%

Clearly identifying benchmarks is vital for setting recruitment and hiring goals and for measuring the Port’s success rate in meeting those goals.

**Recommendation No. 34. The Port should explore the reasoning behind the significant percentage (20-25%) of employees who do not report their race/ethnicity and consider the impact of this missing demographic information on employee demographic data analysis for identifying and addressing any disparities in hiring and other employment opportunities.**

During subcommittee discussions, many assumed that POSPD employees who do not report their race/ethnicity are likely White and fear identifying their race will impact their employment opportunities in the face of diversity goals. It is also possible that some believe that since race is a social construct, it is not productive to perpetuate the idea that any distinction is meaningful.<sup>108</sup> Staff from Human Resources suggested that it is simply an oversight made by employees who are asked to complete a variety of forms when initially hired, including those asking for race/ethnicity data, and that employees have no incentive to correct or complete the information when Port-wide

<sup>107</sup> This data was taken from a Public Safety Testing chart dated April 8, 2021, that was included in a slide deck presented to the subcommittee titled, “Recruiting and Hiring Data, Pt. 2, Police Task Force Subcommittee, 5/7/2021. The full chart includes similar comparison points for other race/ethnic groups and for females.

<sup>108</sup> <https://www.scientificamerican.com/article/race-is-a-social-construct-scientists-argue/>

or department-wide requests are made to update personnel files. Whatever the explanation for the high rate of employees who do not identify their race/ethnicity, the lack of complete data makes it very difficult to assess the POSPD's diversity progress.

**Recommendation No. 35. The Port and Police Department should consider using non-binary gender designations.**

Given the increasing numbers of individuals identifying as non-binary or gender-fluid, it is important to consider the limitations inherent in only using binary gender identification options when collecting demographic information from applicants and employees and should consider how to incorporate non-binary gender options into all practices and systems.<sup>109</sup>

***Advertising and Recruitment***

As was noted during the work of this subcommittee, it is important to separate out advertising from recruitment, as the latter requires a more strategic approach. The Port advertises police officer hiring opportunities through a variety of means, including:

- LinkedIn
- Indeed
- PoliceOne
- National Association of Black Law Enforcement Officers (NOBLE)
- Multiple Diversity/Military outlets

The Port is instituting a new system to more readily analyze which advertising sites lead individuals to apply to the POSPD and, of those sites, which are most productive. Information from the system will be useful in considering whether which advertising avenues should continue to be used and where new audiences should be sought.

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<sup>109</sup> In June 2021, Attorney Generals from 20 states, including Washington, joined together to urge the FBI to create the gender category of “X” for nonbinary individuals in the Uniform Crime Reporting system, which is used to study, analyze, and react to crime. See, e.g., <https://www.nj.com/politics/2021/06/nj-asks-fbi-to-add-x-gender-to-represent-nonbinary-residents-in-crime-stats.html>. Also, the American Medical Association now recommends removing sex labels entirely from birth certificates, as explained in this Opinion piece in the Seattle Times. <https://www.seattletimes.com/opinion/listen-to-the-ama-and-remove-sex-labels-from-birth-certificates-in-washington-state/>



As for recruitment efforts, the POSPD developed a series of thoughtful, engaging recruitment videos that are posted on its Port Police Careers webpage, featuring officers of different genders and ethnic/racial backgrounds talking about why they came to the POSPD and ways in which police work at the Port is unique. The videos are diverse and engaging and seem to be a useful tool for visitors to the website and in reaching out to various community and professional groups.

### ***Recommendations Related to Advertising and Recruitment***

**Recommendation No. 36. Develop a recruitment plan aimed at increasing the number of Hispanic/Latino individuals applying to be a police officer at the POSPD.**

The Port is acquiring a software program that will allow it to more closely analyze where applicants learn about POSPD police officer hiring opportunities, to maximize advertising approaches that yield the best outcomes and to identify where efforts might need to be increased. While more robust data and clear benchmarks are needed, as discussed above, information that is available shows that the number of Hispanic/Latino police officer applicants and hires at the POSPD falls well below what is expected. A recruitment plan aimed at increasing the number of Hispanic/Latino individuals applying to the POSPD is recommended. One step to consider towards this end is to consult with the Port's Hispanic/Latino Employee Resource Group for input on effective ways to reach out to the broader Hispanic/Latino community. It also might be helpful to evaluate whether to seek funding for advertising with the National Latino Peace Officers Association and similar groups.<sup>110</sup>

An idea suggested by a subcommittee member for increasing interest in policing, particularly among Hispanics/Latinos and those who are bilingual, was to advertise openings inside the airport at baggage claim and other places where international travelers, some of whom are bilingual, will be exposed to the information and might

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<sup>110</sup> While there are problems with the data related to the number of female applicants and hires that make it difficult to determine if the POSPD meets expectations regarding employment of female officers, advertising through the National Association of Women in Law Enforcement and similar law enforcement and non-law enforcement organizations might be useful.

develop an interest in pursuing a policing career, such as baggage carousels for flights arriving from Mexico City. It was also suggested that information be sought from current Hispanic/Latino officers to better understand their interest in the POSPD for use in recruiting others.

**Recommendation No. 37. Consider a variety of recruitment suggestions made by the Diversity in Recruitment and Hiring Subcommittee to gather information and to reach out to youth and other communities to garner interest in policing and in the POSPD.**

The DRH Subcommittee offered a variety of suggestions aimed at learning more about what attracts individuals to want to work as a police officer at the POSPD and to garner interest in policing and the POSPD among youth and other community groups. These suggestions include:

- Seek more information from current lateral hires to determine if there is a typical point in their career they sought to transfer and whether that informs how the Port approaches recruitment and hires with this demographic.
- Consider encouraging POSPD Officers representing diversity in the Department to spend time serving as ambassadors to minority communities, to develop relationships and interest in law enforcement.
- Use internships at the POSPD to encourage youth interest in law enforcement generally and the POSPD in particular.
- Collaborate with other law enforcement agencies throughout Washington to develop strategies for encouraging youth to pursue a career in policing, such as bringing together difference groups of current and former Latino, African American, and female Chiefs of Police to record them talking about their backgrounds and journey into policing for televised programs to be aired in select communities. Look for financial support for the project from organizations such as the Latino Civic Alliance, which might be particularly interested if other police departments experience a low rate of applications from Hispanic/Latino like that seen at the POSPD.
- Explore the idea of identifying “Community Ambassadors” who can work in communities to help identify people with an interest in law enforcement careers, educate them about preparation and opportunities, and facilitate

connections with the POSPD, the Washington State Criminal Justice Training Commission, and similar resources.

A final recommendation included in the list of recruitment suggestions was to explore a collaboration with police departments in other communities to partner on Community Policing Academies and Explorer Programs, reducing time and resources required by any one agency. DRH Subcommittee Co-chair Jessica Sullivan was in touch with the Burien Police Department Chief while this idea was being discussed in the subcommittee and the Chief was open to the idea of collaborating.

### ***Female Entry-Level and Lateral Applicants***

**Recommendation No. 38. Follow-up with Public Safety Testing to explore why female applicants to the Port of Seattle Police Department fail the written test at a higher level than male applicants and whether the Port is receiving all data analytics needed to assess applicant and hiring patterns and give follow-up consideration as to why there have been no female entry-level hires in the past three years.**

As part of the application process, entry-level applicants are required to take a written test administered by Public Safety Testing (PST), which is not required of lateral applicants. Females fail the written test at a higher rate than males; for example, in 2019, the failure rate on the written test for female applicants was 7%, as compared to 5% for males. While 26% of entry-level POSPD applicants failed the physical test administered by PST, only 9.1% (all male) of lateral applicants failed the physical test administered by the Exercise Science Center (ESC) since 2018. The different pass rates could be a function of the type of physical test involved in each setting, or a reflection of the fact that at least in-state lateral candidates must have already completed the PST test to have been certified to work as an officer in Washington State. Since no female lateral candidates failed the ESC physical test, the test eliminated disparate impact for females, an important equity consideration. Also, the pool of female lateral applicants was slightly larger than that for entry-level female applicants – 14.9% lateral versus 12.2% entry-level. However, because data on failure rates by gender available through PST was limited, it is not clear why POSPD has not hired any female entry-level applicants in the past three years.

### ***Oral Boards***

Oral board interviews are required of all officer applicants. Entry-level applicants are called in order (top down) of their written scores. Lateral candidates are contacted to

participate in an oral board in the order of completion of all pre-oral board requirements. All Internal Entry-level applicants are interviewed if qualified and pass the physical agility test. Oral board questions differ for lateral versus entry-level applicants, with a copy of each set of questions provided to the DRH Subcommittee. While it was beyond the subcommittee's capacity to review all the questions used, and confidentiality requirements prohibit any detailed discussion of the questions, some observations were made as noted below.

### *Recommendations Related to Oral Boards*

**Recommendation No. 39.** Increase the number of civilians, pulling from diverse employee groups such as Employee Resource Groups (ERGs), to be trained and available to serve on oral boards, so that they can rotate in when available to assist with this step of the hiring process and consider ways to assess whether the training provided to minimize the impact of implicit bias has positive impacts.

Each oral board is made up of a diverse group of individuals, with a goal to have a demographic mix in terms of gender and race, along with a mix of commissioned and noncommissioned employees, and civilians outside of the POSPD. There was a sense among some that there are a handful of oral board regulars, those who are more likely to be available to assist when needed. However, the subcommittee did not analyze oral boards over time to determine the demographics of those who served. Without a basis for determining if there's an issue with the make-up of oral boards, it is nonetheless advantageous to consider ways to expand the number and diversity of individuals in the pool used to appoint oral boards and to develop a strategy for assessing oral board participation in the future.

**Recommendation No. 40.** Review oral board questions to determine if they are eliciting responses that address the subject area behind each question, such as assessing character, and consider whether the oral board should include questions directly asking applicants about involvement in extremist groups<sup>111</sup>, about an encounter with someone of a different race, sexual orientation, etc., whether they have ever been the subject of discrimination themselves, or the community groups they belong to.

As previously noted, it was beyond the capacity of the DRH Subcommittee to conduct an in-depth analysis of oral board questions. However, a review of the questions and responses in light of the underlying value at issue would be worthwhile. Also, POSPD

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<sup>111</sup> E2SHB 5051 now requires inquiry into involvement in extremist organizations as part of the backgrounding process.

should consider adding or substituting more direct questions to explore an interviewee's biases.

**Recommendation No. 41. Consider whether some limited follow-up questions by oral board members should be permitted.**

While it is understandable that Human Resources wants to ensure the integrity of the oral board process by prohibiting any deviation, there is potential for miscommunication or misunderstanding when no follow-up questions are permitted. The Port should consider whether vital information might be lost in the process and if there are ways to allow for limited follow-up without sacrificing standardization in the process.

***Equity Issues***

As the DRH Subcommittee used an equity lens in assessing recruitment and hiring efforts for the POSPD, ideas intended to enhance equity are incorporated throughout these recommendations. However, a few suggestions were aimed very specifically at enhancing police equity in recruitment and hiring.

For example, because the background check includes a review of economic factors, there was a concern that some economically disadvantaged applicants would be excluded, despite the fact that they might not impose an integrity risk if hired. The subcommittee was assured that where it is apparent that an applicant fell into financial difficulty but is working to pull out of the situation, that experience alone would not exclude them from consideration.

**Recommendation No. 42. Bring representatives of all ERGs into the recruitment and hiring process at all steps, not just for oral boards, so that a variety of perspectives and ideas are shared with the Police Department and the Port throughout the process.**

**Recommendation No. 43. While points can be added to an applicant's score if they speak a second language, consider a pay incentive or hiring preference for the ability to speak more than one language, encouraging multilingualism for applicants and current employees.<sup>112</sup>**

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<sup>112</sup> Given the wide range of languages spoken by people traveling through SEA Airport, having officers who can speak more than one language serves the Port's broader interests in being able to respond to customer needs.

Finally, a suggestion to make POSPD demographics more transparent by regularly reporting the information to the Commission was realized in the POSPD Annual Report for 2020, which included demographics and presumably will continue to include such information, and which was presented to the Commission and is available on the POSPD web page.

## IX. TRAINING AND DEVELOPMENT

### A. Motion 2020-15 and the Diversity in Recruitment and Hiring Subcommittee

Motion 2020-15 stated that the assessment should include a comprehensive review of the police training curriculum, including whether existing training promotes a “guardian mentality” approach to policing as well as what training is provided to officers as alternative or intermediate approaches to avoid excessive use of force. In addition, the assessment should review whether officers are developed and advanced throughout the organization in a way that ensures equitable outcomes for officers of color; the assessment should identify whether barriers to advancement exist for officers of color and recommend ways to overcome those barriers. The assessment should also review current community engagement activities by the Port of Seattle Police Department in communities of color and economically distressed zip codes.

### B. Training and Development Subcommittee Members and Workflow

<b>Subcommittee B – Training and Development</b>	
<b>Chairs:</b>	<b>Deborah Jacobs &amp; Tracy Patterson</b>
<b>Name</b>	<b>Organization</b>
<b>Tracy Patterson</b>	Port of Seattle, Human Resources
<b>Deborah Jacobs</b>	External Subject Matter Expert
<b>Milton Ellis</b>	Port of Seattle, Labor/Represented Employees
<b>Detective Steve Ivey</b>	Port of Seattle Police Department
<b>Anika Klix</b>	Port of Seattle, Diversity and Development Council
<b>Patricia Ly</b>	Port of Seattle, Aviation division; Rep of Blacks in Government
<b>Sgt. Bram Urbauer</b>	Port of Seattle Police Department
<b>Shaunie Wheeler</b>	Union Representative

<b>Jo Woods</b>	Port of Seattle, Maritime division; Rep of Blacks in Government
<b>Jerrell Wills</b>	External Subject Matter Expert
<b>Neil Woodruff</b>	External Subject Matter Expert
<b>Janice Zahn</b>	Port of Seattle, Priority Hire

The Training and Development Subcommittee met three times in the Spring. The subcommittee primarily examined training – including, but not limited to, use of force, de-escalation, crisis intervention, and professional development, including barriers to advancement for people of color. All aspects of this assessment were viewed through an equity lens.

### ***Training***

The Co-Chairs of the Training and Development subcommittee joined 21CP in attending the 2021 use of force training for POSPD. Additionally, 21CP attended the 2020 de-escalation training and legal in-service updates, including 40mm Less Lethal, Taser, ground control, and search and seizure training.

The subcommittee began with an explanation of the current training program by the POSPD. The Training Section includes a commander, a sergeant, and an officer. They are responsible for all in-service training. Due to the demands of the cruise ship season and redeployment of resources, the POSPD training year is October – April, which limits the available months to deliver trainings to the department.

The State of Washington, through the Criminal Justice Training Commission (CJTC), requires 24 hours of annual in-service training for every officer; the POSPD union contract sets a minimum of 40 hours. In reality, training hours are over 60 for most officers and specialty units have even more.

New recruits receive the 720-hour Basic Law Enforcement Academy (BLEA) through CJTC. The Port provides a pre-BLEA (a mini-police academy) to “set them up for success.” Following BLEA, the Port has another six weeks of training before the Patrol Training Officer (PTO) program. Members of the subcommittee discussed the primary distinctions between Field Training Officer (FTO) programs (focused on checking off practical skills) as opposed to PTO programs (which are problem-solving based, and train more thoughtful approaches to policing). As noted in the Final Report of President Obama’s Task Force on 21st Century Policing, the “Reno Model,” developed in collaboration with the United States Department of Justice’s



Community Oriented Policing Services (“COPS”) Office and the Police Executive Research Forum (“PERF”), “use[s] adult learning theory and problem solving tools to encourage new officers to think with a proactive mindset, enabling the identification of and solution to problems within their communities.”<sup>113</sup> The Reno Model established the foundation of the PTO model<sup>114</sup>.

Lateral hires (from other agencies) receive 13 weeks of training.

The POSPD developed a five-year training plan and maintains training files to ensure the department knows what has been trained and who has received the training.

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<sup>113</sup> *Final Report of the President’s Task Force on 21st Century Policing* 60 (2015).

<sup>114</sup> Hoover Group of Reno, *History of Field Training (Reno Model PTO Program)* (2006); see also Community Oriented Policing Services, United States Department of Justice, *A Problem-Based Learning Manual for Training and Evaluating Police Trainees*, <https://www.policeforum.org/assets/docs/Free Online Documents/FTO/trainee%20manual.pdf> (last accessed Mar. 2, 2021)

***Five Year Training Plan***

HANDS ON TRAINING				
2018	2019	2020	2021	2022
SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS	SPRING/FALL FIREARMS
LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES	LEGAL UPDATES
40mm	40mm	40mm	40mm	40mm
TASER	TASER	TASER	TASER	TASER
FIT TESTING	FIT TESTING	FIT TESTING	FIT TESTING	FIT TESTING
RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills	RBT/Patrol Skills
DT	DT	DT	DT	DT
Rapid Deployment	Rapid Deployment	Rapid Deployment	Rapid Deployment	Rapid Deployment
LESS LETHAL WEAPONS		LESS LETHAL WEAPONS		LESS LETHAL WEAPONS
SLOW/MEDIUM SPEED EVOC	HIGH SPEED EVOC	SLOW/MEDIUM SPEED EVOC	HIGH SPEED EVOC	SLOW/MEDIUM SPEED EVOC
STOP STICK REFRESHER	HIGH RISK STOPS	STOP STICK REFRESHER	HIGH RISK STOPS	STOP STICK REFRESHER
FIRST AID/ CPR/ AED		FIRST AID/ CPR/ AED		FIRST AID/ CPR/ AED

ONLINE TRAINING				
2018	2019	2020	2021	2022
PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY	PURSUIT, USE OF FORCE, DEADLY FORCE POLICY
BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)	BLOOD BOURNE PATHOGEN TRNG (ONLINE)
HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE)	HEAT EXPOSURE (ONLINE_
HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)	HAZMAT REFRESHER (ONLINE)
CIT	CIT	CIT	CIT	CIT
BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)	BIAS BASED POLICING (ONLINE)
			TEMPORARY DETENTION FACILITY	

ANNUAL
BIANNUAL
TRIENNIAL

The overall training is driven by state law, the administrative code, and policy. Additionally, the Commission on Accreditation for Law Enforcement Agencies (CALEA) training requirements prioritize training delivery in order to meet the accreditation standards. The following courses are mandated by the CALEA certification process:

- CALEA training requirements:
  - o 1.1.2 Code of Ethics
  - o 1.2.9 Bias Policing
  - o 4.1.2 Use of Deadly Force
  - o 4.3.3: Annual/Biennial Proficiency Training
  - o 33.1.5: Remedial Training
  - o 33.1.6: Employee Training Record Maintenance
  - o 33.4.1: Recruit Training Required
  - o 33.4.2: Recruit Training Program
  - o 33.4.3: Field Training Program
  - o 33.5.1: Annual In-Service Training Program
  - o 33.5.3: Accreditation Training
  - o 33.6.2: Tactical Team Training Program
  - o 33.8.2: Skill Development Training Upon Promotion
  - o 41.2.2: Pursuit of Motor Vehicles
  - o 41.2.7: Mental Health Issues
  - o 46.1.9: All Hazards Plan Training
  - o 46.3.2: Hazardous Awareness Training
  - o 71.2.1: Training of Personnel
  - o 72.1.1: Training User Personnel

The State mandates eight hours of crisis intervention training for officers but offers a 40-hour certification. Approximately 50% of officers have had the 40-hour course; only four have not received the eight-hour course, but they are slated for training according to POSPD.

### ***Development***

The subcommittee also received POSPD briefings about the evaluation system at POSPD and opportunities for development. Evaluation forms (WPR or work performance review) are completed by supervisors and are approved up the chain of command. Supervisors also have access to a data dashboard of officer activity, which is viewable by officer or squad.

Promotional processes, like the hiring processes, occur in partnership with Public Safety Testing. The third-party vendor mechanisms are supposed to help prevent bias in promotions. The overall promotional process at POSPD was described by Port HR as “the most focused of any Port promotional process.” The design stage for a promotional exam includes surveying the people doing the work and collecting the competencies they believe are most valuable. Some of the previously identified competencies include oral communication, written, interpersonal insight, problem solving, judgment, planning and organizing, delegation/sphere of control. This design attempts to control for trends and influences and consciously attempts to avoid creating a process that puts a disadvantage on officers that have never been in a leadership role.

The design is then assessed by a committee of managers (civilian airport duty, emergency preparedness facility manager) and numerous external law enforcement professionals in an effort to reduce bias and the influence of established relationships in assessment process.

Some subcommittee members noted that under the current civil service rules, the Chief has a lot of leeway in final decisions. Additionally, the subcommittee discussed that if the test questions are drawn from current institution, there is potential to simply perpetuate the current thought system.

POSPD reported that the WPR is the most important promotional element, as current department leadership philosophy is to promote not solely the best test takers, but rather balance the test day with performance evaluations over the last few years.

### ***Engagement with Communities of Color***

The subcommittee discussed the value of community outreach as part of training in order for officers to find out about the people they serve. While POSPD currently does annual night out events (particularly at Shilshole Marina), coffee with a cop, and have engagements with the Puget Sound Center and in high schools, there are no community engagement programs identified that directly connect officers with communities of color.

## C. Training and Development Subcommittee Recommendations

### **Recommendation No. 44. The POSPD should consider ranking applicants for Special Team assignments to increase transparency in those processes.**

As discussed elsewhere, 21CP consistently heard concerns about the fairness of assignments to specialty units, such as K9, SWAT, Hostage negotiation, Dive Team, Boat Team, PTO, Bomb Disposal, Honor Guard, Peer Support, and the Crowd Management Unit. The current process involves testing, but applicants are not ranked by test scores. Instead, applicants qualify for the unit based on their testing and the Chief or head of the relevant unit select the people they want for the unit. While Command Staff reports that in actuality, people are selected by test score in almost every case, the inherent discretion in choosing from a pool creates the perception of inequities.

Additionally, while 21CP was not provided any data about who has applied for Special Teams in the past and not selected, the end demographics of Special Teams raise concerns. SWAT is all white, and all male.<sup>115</sup> The Boat Team and Dive Team are all white and male. The Bomb Disposal Unit and PTO include one female each but are all white. K9 includes one female, two Asian, and one African American officer. Hostage Negotiation includes one female officer, one Asian, and one Pacific Islander. Honor Guard is all white, but evenly split between men and women. Peer Support has two females and one Pacific Islander. Finally, the Crowd Management Unit, with 20 officers, is all male and has one Asian and one American Indian officer. The lack of apparent diversity in these teams can only reinforce skepticism about the fairness of the process, especially as applied to race. Because special assignments, depending on type, are either considered permanent or can be extended where a time limitation is set, many perceive this as further limiting participation opportunities. Again, 21CP does not have a way of determining whether the process has been fair, but the perception of unfairness alone is problematic.<sup>116</sup>

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<sup>115</sup> Recent budget decisions resulted in the one female SWAT officer being removed; the department hopes to reinstate her when budgets allow.

<sup>116</sup> To the extent testing emphasizes work experience and knowledge, the POSPD might consider emphasizing skill sets and ability to learn instead. This can help level the playing field and increase diversity. See, e.g., <https://hbr.org/2021/06/you-need-a-skills-based-approach-to-hiring-and-developing-talent>

<sup>116</sup> Melissa Bradley, Katherine Holihen, and Charlene Moe. *Procedural Justice*. Office of Community Oriented Policing Services. (2015).

Given these perceptions of inequity expressed by commissioned personnel from different corners of the POSPD, it is important that leadership create the conditions necessary to build a sense of internal procedural justice. “[P]rocedural justice implementation must begin with an internal structural commitment from executive leadership and an understanding among supervisors who carry out processes, policies, and procedures within the department.”<sup>117</sup> Procedural justice “speaks to four principles, often referred to as the four pillars: fairness in the processes, transparency in actions, opportunities for voice, and impartiality in decision making.”<sup>118</sup> POSPD leadership can build a sense of internal procedural justice as they “demonstrate that assignments, training, promotions and discipline are fairly awarded based on merit, qualifications and need...”<sup>119</sup> Operating primarily from a relational leadership approach that fosters and facilitates relationships up and down and across the Department, POSPD leadership can enhance internal procedural justice with a focus on developing collaborative decision-making, team-building, employee inclusivity and empowerment, transparency, and effective internal communication. As the Department considers implementation of this recommendation (and others), involving POSPD members in the process to better understand their concerns and get input on setting priorities and problem solving, such as with alternative approaches for Special Teams assignments, will itself demonstrate a commitment to procedural justice.<sup>120</sup>

**Recommendation No. 45. The POSPD should continue to train de-escalation as a core engagement philosophy.**

As the International Association of Chiefs of Police (IACP) has observed, “[t]he term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this

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<sup>117</sup> Melissa Bradley, Katherine Holihen, and Charlene Moe. *Procedural Justice*. Office of Community Oriented Policing Services. (2015).

<sup>118</sup> *Id.*

<sup>119</sup> Brian N. O’Donnell. *How Internal Procedural Justice Impacts External Behaviors: The Implications Officer Perception of Leadership and Leadership Behaviors Have for Organizational Culture*. *Police* 1 (2021), citing M. Kool and D. Van Dierendonck. *Servant Leadership and Commitment to Change, the Mediating Role of Justice and Optimism*. *Journal of Organizational Change Management* (2012), 25(3), 422-433.

<sup>120</sup> Note that the *Accelerating Reform: Transforming Police Culture* training that some POSPD members have attended ties procedural justice concepts into its leadership training. If other POSPD members will be attending the training, a capstone project focused on building internal procedural justice might provide further structure for moving forward on this recommendation.

goal.”<sup>121</sup> Generally, de-escalation and de-escalation philosophy is well-integrated into POSPD trainings.

The core principles of time (pace), distance, shielding, and communication resurfaced in all use of force related trainings. The department trains that “De-escalation requires not only effective patrol tactics to decrease the intensity of an event, but also knowledge about mental illness, communication techniques, and available resources and tools,” with the goal of “control[ing] the pace of the event whenever possible by using sound patrol tactics.”

POSPD also includes specific instruction on communication, including “tactical, investigative, conversational techniques.” Additionally, the training stresses emotional intelligence, including:

**Self-Awareness-** Recognize one’s own emotions as they are occurring to help guide your decision making.

**Self-Management-** The ability to control and manage your emotions in the moment and adapt to rapidly changing circumstances (self-control).

**Social Awareness** – The ability to recognize emotions in others (empathy, “seeing through the eyes of another”).

**Relationship Management** – The ability to inspire, influence, connect, and contribute to healthy conflict resolution (rapport building).

These concepts are well-developed and POSPD trainers should continue to seek out new methods for delivering this material.<sup>122</sup>

**Recommendation No. 46. The POSPD should continue to stress a “guardian mentality” in its trainings.**

As set forth by the Criminal Justice Training Commission and quoted by the POSPD, “The Heart and Mind of the Guardian is a career long education process designed to ensure the development of a highly evolved police officer who is prepared at any moment to reflect the best of what policing demands. POSPD fosters a culture of

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<sup>121</sup> International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), [http://www.theiacp.org/Portals/0/documents/pdfs/National\\_Consensus\\_Policy\\_On\\_Use\\_Of\\_Force.pdf](http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf) [hereinafter “IACP Consensus Policy”].

<sup>122</sup> See e.g., <https://www.policeforum.org/icat-training-guide>



leadership, character, and service in the spirit of what democratic policing promises its citizenry. It is a process aimed at developing the right: Heartset, Mindset, Skillset and Toolset, enabling officers to meet the demands of modern policing.”

All of the recent training included discussion of the value of the guardian mindset, which necessarily incorporates readiness to take action in order to “guard,” but deemphasizes militaristic attitudes.<sup>123</sup> The concept was specifically stressed in the 2021 Use of Force in-service training.

However, all trainings prior to 2020 contained some form of admonition similar to the below, suggesting that the concept is still developing at POSPD.

The “warrior mindset” needs to be constantly reinforced throughout training. This will assist the officer in maintaining composure during a critical incident and greatly enhance their ability to react.

**Recommendation No. 47. The POSPD should provide positive examples to reinforce good police tactics rather than stressing poor outcomes in training.**

Although the POSPD trainings stressed the positive outcomes that can be achieved through more thoughtful police engagements, the video examples presented to the classes were almost exclusively violent and lessons in what “not to do.” POSPD should seek out the success stories in which officers successfully de-escalated or communicated with subjects to set positive examples of what “to do.”<sup>124</sup>

**Recommendation No. 48. The POSPD should continue to utilize national and local leadership development opportunities, but with transparent selection criteria.**

In the past, leadership development programs, such as West Point Leadership, the Senior Management Institute for Police, the FBI National Academy, and Leadership in Police Organizations, a three-month program, have been successful options for POSPD. Additionally, the Port’s Leadership Tomorrow program was cited as an excellent development opportunity, especially with its focus on “understanding race

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<sup>123</sup> Kyle McLean, Scott E. Wolfe, Jeff Rojek, Geoffrey P. Alpert & Michael R. Smith (2020) *Police Officers as Warriors or Guardians: Empirical Reality or Intriguing Rhetoric?*, Justice Quarterly, 37:6, 1096-1118, DOI: [10.1080/07418825.2018.1533031](https://doi.org/10.1080/07418825.2018.1533031)

<sup>124</sup> <https://slate.com/news-and-politics/2015/05/police-shootings-the-grim-videos-cops-watch-of-their-colleagues-being-killed-in-the-line-of-duty.html>

and racism in this country.” However, there are no established internal selection criteria and some officers complained that selection was not transparent, often based on connections, and sometimes wasted on officers late in their career when the leadership knowledge could not benefit the department before that officer’s retirement. In 21CP’s experience, these types of programs impart meaningful skills and techniques for emerging Departmental leaders and, critically, allow officers to gain a national perspective on policing and on best and emerging practices in the profession. Graduates of these programs often return to their agencies with broader perspectives and new ideas that help to reinvigorate their departments’ everyday cultures.

**Recommendation No. 49. The POSPD should consider incorporating existing community engagement opportunities as part of training to better understand cultural differences.**

Jurisdictions the size of POSPD do not always have the bandwidth to recreate external community engagements focused on the many diverse communities with whom the departments interact. However, several noted existing opportunities, such as engagement with the NW Immigrants’ Rights Project and the Seattle Police Demographic Advisory Councils, such as the African American Police Advisory Council.<sup>125</sup> As these entities are already established, providing the encouragement and support for POSPD officers to attend would help develop the department’s overall cultural competency.

## **X. ADVOCACY**

### **A. Motion 2020-15 and Advocacy**

The Motion indicated that the Task Force assessment should include a review of potential state and federal legislation and reforms, such as changes to federal “qualified immunity” provisions or the creation of state or federal misconduct tracking databases, for the Port to include in its advocacy efforts.

This work was redesigned mid-project to allow members of the Task Force and 21CP to engage in real time with the Port’s legislative efforts around police reform during the Washington State Legislature’s 2021 legislative session. This “kitchen cabinet” of Port and external advisors helped to evaluate state legislation and inform the Port’s

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<https://www.seattle.gov/police/community-policing/demographic-advisory-councils/african-american-community-advisory-council>

advocacy strategy. At the heart of these discussions was the work of the relevant subcommittee, which helped provide a better understanding of POSPD operations and policy.

## **B. Qualified Immunity**

While Motion 2020-15 specifically references Qualified Immunity, this is a policy/legal matter and 21CP is not providing legal advice on what the Port should do *vis a vis* Qualified Immunity.

Qualified Immunity is at the forefront of national debates on how to improve policing<sup>126</sup> but is apparently poorly understood both in concept and in practice. It is also one of the most contentious parts of the George Floyd Justice in Policing Act that, at the time of this writing, is stalled in the United States Senate after being passed by the House of Representatives. Qualified Immunity is a limited defense for government officials – not only police<sup>127</sup> – who are sued in their individual capacity in civil lawsuits under Title 42 U.S.C. for money damages for allegations of violations of federal law, primarily the United States Constitution. It does not apply in criminal cases, in disciplinary matters, in lawsuits seeking to require changes to how policing is done (also called injunctive relief), in lawsuits against the Port itself, or in negligence cases brought under state law.

42 U.S.C. § 1983 was enacted in 1871 as part of the Ku Klux Klan Act and provides civil remedies for Constitutional deprivations by a “person” acting under “color of law.” State and local officials must be sued in their individual capacity, not in their official capacity. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). Therefore, police officers sued under § 1983 are individually liable, not the Port of Seattle.

Qualified Immunity is a doctrine designed to temper this individual liability by protecting “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). “[T]he protection of qualified immunity applies regardless of whether the government official’s error is ‘a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.’” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

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<sup>126</sup> <https://www.nytimes.com/2021/03/08/us/supreme-court-qualified-immunity.html>

<sup>127</sup> The Port of Seattle asserted Qualified Immunity in King County Superior Court Cause No. 20-2-10720-4 SEA, which is currently pending, and involves non-police Port employees.

The doctrine asks two questions. The first question (also called a First Prong Analysis) is whether there was a Constitutional violation. If the Court finds there was no violation, then the case is dismissed on the merits. However, if the Court cannot make that finding (or simply chooses not to address the First Prong), the Court considers whether the Constitutional right was clearly established such “that every reasonable officer” would know that the conduct was unlawful. *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011). This does “not require a case directly on point, but existing precedent must have placed the statutory or constitutional question *beyond debate*.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

It is this Second Prong analysis that causes concern about Qualified Immunity as there have been a host of Court decisions stretching the analysis to the point of absurdity<sup>128</sup>. However, a 2017 national study found that qualified immunity was only granted in 3.9% of the cases during 2011-2012, across five federal circuits, in which the defense could have been raised<sup>129</sup> and concluded, therefore, that the doctrine does not have a major impact on the outcome of civil litigation. In contrast, Federal District Court Judge Carlton W. Reeves, Southern District of Mississippi, recently authored a scathing indictment of the doctrine of Qualified Immunity, complete with its historical context in law.<sup>130</sup>

21CP requested “Section 1983 lawsuits filed against the Port/Port employees for the last five years and any information on whether Qualified Immunity was raised and if so, whether it was successful” from the Port. Additionally, 21CP undertook a docket search of the Western District of Washington for “Port of Seattle Police Department,” which revealed some earlier cases. Noting that this may not encompass all litigation brought against the Port of Seattle for actions of its police officers, two points stand out. First, litigation alleging constitutional violations by

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<sup>128</sup> See *Jamison v. McClendon*, 16-CV-595-CWR\*31 (Southern District of Mississippi 2020)(“Our courts have shielded a police officer who shot a child while the officer was attempting to shoot the family dog; prison guards who forced a prisoner to sleep in cells “covered in feces” for days; police officers who stole over \$225,000 worth of property; a deputy who body- slammed a woman after she simply “ignored [the deputy’s] command and walked away”; an officer who seriously burned a woman after detonating a “flashbang” device in the bedroom where she was sleeping; an officer who deployed a dog against a suspect who “claim[ed] that he surrendered by raising his hands in the air”; and an officer who shot an unarmed woman eight times after she threw a knife and glass at a police dog that was attacking her brother.”)(citations omitted).

<sup>129</sup> <https://www.yalelawjournal.org/article/how-qualified-immunity-fails>

<sup>130</sup> <https://cdn.cnn.com/cnn/2020/images/08/04/jamison-v-mcclendon.pdf>

Port of Seattle Police Officers is empirically rare and the defense of these cases very successful. Second, 21CP did not identify any case that was dismissed based on the Second Prong of Qualified Immunity.

<b>Cause Number</b>	<b>Allegation</b>	<b>Resolution</b>
<b>17-1873-MJP</b>	Port of Seattle Police Officers present during secondary TSA screening	Dismissed by Court on Summary Judgment finding no Constitutional violation; not based on Qualified Immunity
<b>16-cv-00483-JCC</b>	Port of Seattle Officers falsely arrested plaintiff and used excessive force during the arrest.	Settled; not resolved on Qualified Immunity
<b>12-0966 RSM</b>	Port of Seattle Officers falsely arrested plaintiff and failed to provide him with his anti-seizure medications.	Dismissed by Court on Summary Judgment finding probable cause for arrest and that officers properly called EMTs to administer medication; not based on Qualified Immunity <sup>131</sup>
<b>13-1708-JCC</b>	Port of Seattle Detective negligently investigated her allegations of sexual assault by TSA.	Dismissed by Court on Summary Judgment finding no Constitutional violation; not based on Qualified Immunity
<b>15-0038-RSM</b>	Port of Seattle Officer stopped plaintiff's vehicle twice and subjected him to arrest without probable cause.	Dismissed by Court on Summary Judgment finding no Constitutional violation as officer had reasonable suspicion to stop and probable cause to arrest; not based on Qualified Immunity

<sup>131</sup> This order is somewhat confusing as it does analyze both claims under the Qualified Immunity standards. However, because the Court found probable cause and that the officers properly managed plaintiff's need for medication, the case was dismissed because there was no Constitutional violation (First prong of Qualified Immunity) and the Court never reached whether the law was clearly established, which is the controversial aspect of Qualified Immunity.

## C. Ongoing Legislative Efforts

**Recommendation No. 50. POSPD should continue to incorporate the new legislative requirements into policy and reinforce those changes through training.**

As discussed throughout this report, the 2021 legislative session introduced many significant and sweeping changes to the landscape of policing. These laws address a wide range of topics including, use of force, mandatory de-escalation, duty to intervene, Brady reporting, requirements to record Miranda warning given to juveniles, certification (and de-certification) changes, background investigation requirements, and how use of deadly force will be investigated. Many of the new legislative requirements were already part of the POSPD policy manual, but there is much work to be done to ensure complete alignment of policy and law and then to train officers on those changes. POSPD has taken a regional leadership role in advancing new policies that may be adopted by other agencies and is currently working to update its operations. POSPD should continue on that path.

**Recommendation No. 51. The Port should continue to engage with key stakeholders and elected officials on emerging State and Federal legislation.**

The 2020 - 2021 legislative session was comprehensive, but some reform approaches did not make it into law. Bills that did not pass this session addressed subjects such as granting authority to the Attorney General to prosecute officer deadly force cases, making community oversight boards mandatory, new methods of suing individual officers that would bypass federal qualified immunity, and restrictions on the powers of police unions. As these state bills are reintroduced in a similar or different form, other state police reform legislation is advanced, or as federal legislation is proposed, such as the George Floyd in Policing Act, the Port should remain proactive in understanding the significance of changes under consideration and determine whether particular provisions are right for the Port, its employees, and its community. The Port should share its unique perspectives to help shape those pieces of legislation that are particularly relevant.

## **XI. BUDGET, ROLES, AND EQUIPMENT**

### **A. Motion 2020-15 and Budget, Roles, and Equipment.**

The Motion states that the assessment should examine whether certain non-emergency situations could be better responded to by the deployment of non-uniformed officers, and whether investments in community-focused programs could decrease the prevalence of such situations. In addition, the assessment should review Port Police equipment and supplies used to conduct routine police work, including mass events and crowd management, and determine if any are excessive or unnecessary; in particular, the assessment should look at how military-grade equipment is procured and used, as well as the role of body cameras as a potential accountability measure for Port policing.

Similar to the Advocacy Committee, and in part due to emerging state law, the Task Force agreed that this portion of the assessment was better addressed with technical advice from 21CP on specific topics, along with identification of budget consequences for the recommendations in this report.

### **B. Reducing the Police Role in Responding to Homelessness and Persons in Crisis**

As previously raised in the Use of Force section, the Port’s response to homelessness and persons in crisis would be well-served by reducing the role of police and switching to an unarmed, service-oriented approach. A lack of mental health services – coupled with the often-co-occurring conditions of substance use disorder, homelessness, and other conditions of despair – has led to jurisdictions nationwide increasingly relying on police officers to serve as first responders to incidents of behavioral crisis. In nearby Seattle, a December 2018 report found that nearly 3 percent of all calls to police – some approximately 15,000 over an 18-month period – involved an individual in behavioral or emotional crisis.<sup>132</sup> Some studies suggest that as many as ten percent of officer-public contacts overall involve a person in a serious mental health crisis.<sup>133</sup>

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<sup>132</sup> Seattle Police Department, Use of Force in Crisis-Involved Incidents (Dec. 2018), [https://www.seattle.gov/Documents/Departments/Police/Publications/Crisis\\_UoF%20Report%20SPD%20Final.pdf](https://www.seattle.gov/Documents/Departments/Police/Publications/Crisis_UoF%20Report%20SPD%20Final.pdf).

<sup>133</sup> Martha W. Deane, “Emerging Partnerships Between Mental Health and Law Enforcement,” 50 *Psychiatric Services* 99 (1999).



As discussed above, while the POSPD does not track crisis calls or responses to people experiencing homelessness, 58% of uses of force are in trespass cases, which appear to be a reasonable proxy for homelessness cases.

The POSPD has taken the lead at directing resources towards this issue by drafting a job description for a Crisis Coordinator to be the point of contact internally and externally for issues relating to crisis. The Coordinator would be familiar with outreach services, have an understanding of mental illness manifestations, track crisis services and laws, build and maintain necessary relationships, and generally serve as a focused resource on this issue.

### **C. Military Style Equipment**

Regarding military equipment, HB1054, Chapter 320, Laws of 2021, Sec. 5, states that “A law enforcement agency may not acquire or use any military equipment. Any law enforcement agency in possession of military equipment as of the effective date of this section shall return the equipment to the federal agency from which it was acquired, if applicable, or destroy the equipment by December 31, 2022.” This prohibition applies to “firearms and ammunition of .50 caliber or greater, machine guns, armed helicopters, armed or armored drones, armed vessels, armed vehicles, armed aircraft, tanks, long range acoustic hailing devices, rockets, rocket launchers, bayonets, grenades, missiles, directed energy systems, and electromagnetic spectrum weapons.” In response, the Port of Seattle Police identified that two .50 caliber rifles meet this restriction and are taking appropriate action to dispose of those weapons<sup>134</sup>. The concern of the Port Commission in this area appears to have been resolved based on this legislation.

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<sup>134</sup> This change is mandated by law and therefore we do not debate the wisdom of disposing of these weapons. POSPD reported that they were obtained as an option for shooting through plane windows in the event of a hijacking, which seems different in kind than the need most departments would have for a weapon of this caliber. Additionally, some departments have raised concerns over HB 1054, which on its face would prohibit 40mm Less Lethal Launchers as they are technically greater than .50 caliber, we understand that the POSPD has elected to keep those less lethal force options, which the bill drafter has indicated was the original intent. See <https://www.q13fox.com/news/local-law-enforcement-has-concerns-over-new-police-reform-laws-going-into-effect>.

## D. Body Cameras

The use of body-worn cameras has dramatically accelerated across the policing profession in recent years. By the end of 2018, “about 10,500 agencies, or 58 percent of all law enforcement departments in the U.S., used body cameras.”<sup>135</sup>

Body-worn cameras have been associated with a number of benefits. First, a number of jurisdictions that deploy them have experienced decreases in officer use of force, officer misconduct, and civilian complaints about officer conduct.<sup>136</sup> Body-worn cameras may result in better transparency and accountability and thus may improve law enforcement legitimacy.<sup>137</sup> Indeed, cameras “may lead to a faster resolution of citizen complaints and lawsuits” by resolving issues and factual disputes effectively and efficiently.<sup>138</sup> Of course, “[f]ootage captured may be used as evidence in arrests or prosecutions.”<sup>139</sup> At the same time, body-worn camera footage also provides opportunities for the department to better learn from actual officer performance.<sup>140</sup> Finally, “[b]ody-worn cameras may also result in higher rates of citizen compliance to officer commands during encounters,” with civilians and police officers alike changing their behavior when they know that they are being recorded.<sup>141</sup>

Others remain skeptical about whether body worn cameras improve police-community relationships in any meaningful way. One study in Baltimore found that:

Black residents are unimpressed by body-worn camera initiatives; can be traumatized by the constant violent reminders that the footage often brings; and feel like they are in a “special kind of hell” when

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<sup>135</sup> Ben Miller, “Just How Common Are Body Cameras in Police Departments?,” *Government Technology* (June 28, 2019), <https://www.govtech.com/data/Just-How-Common-Are-Body-Cameras-in-Police-Departments.html>

<sup>136</sup> See, e.g., Michael D. White, Office of Justice Programs Diagnostic Center, U.S. Dept. of Justice, *Police Officer Body-Worn Cameras: Assessing the Evidence* 21 (2014); Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 3 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

<sup>137</sup> Brett Chapman, “Body-Worn Cameras: What the Evidence Tells Us,” 280 *NIJ Journal* 2 (Jan. 2019), <https://www.ncjrs.gov/pdffiles1/nij/252035.pdf>.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

faced with the perceived inaction following even the most damning of camera footage evidence.<sup>142</sup>

Most calls for the adoption of BWC programs stem from concerns about use of force and resolution of complaints<sup>143</sup>. Given 21CP’s review of the POSPD’s use of force policies (ninety use of force cases from 2018-2020), the work of the Use of Force Subcommittee (which unanimously agreed not to recommend development of a BWC program given the relatively infrequent use of force and costs involved with BWCs), the work of the Oversight Subcommittee and 21CP’s review of the relatively few complaints about POSPD activities, 21CP was not intending to issue a recommendation that POSPD develop a BWC program. The POSPD use force approximately 30 times per year, two-thirds of which occur in the airport facility, which has an extensive network of security cameras. In 21CP’s case review, video evidence was easily available in 57 percent of cases but that number is likely even higher. Given the infrequency of use of force and the already available video evidence, body-cameras did not rise as a priority, especially given the high costs. Most police departments in Washington State do not have BWC programs, primarily due “to the long-term costs of managing, storing and releasing body-worn camera and dash-camera video to the public.”<sup>144</sup>

However, the landscape was changed by Substitute House Bill 1223, which passed into the Session Law of 2021 in Chapter 329, and which requires (subject to exceptions) that:

...a custodial interrogation, including the giving of any required warning, advice of the rights of the individual being questioned, and the waiver of any rights by the individual, must be recorded electronically in its entirety if the interrogation subject is a juvenile or if the interrogation relates to a felony crime.

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<sup>142</sup> Erin M. Kerrison, Jennifer Cobbina & Kimberly Bender (2018) Stop-gaps, lip service, and the perceived futility of body-worn police officer cameras in Baltimore City, *Journal of Ethnic & Cultural Diversity in Social Work*, 27:3, 271-288, DOI: [10.1080/15313204.2018.1479912](https://doi.org/10.1080/15313204.2018.1479912)

<sup>143</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 34 (2014) (noting use of cost-benefit analysis “when exploring whether to implement body-worn camera” technology); Police Executive Research Forum, *Citizen Perceptions of Body-Worn Cameras: A Randomized Controlled Trial* (2017).

<sup>144</sup> <https://www.king5.com/article/news/investigations/police-body-cameras-not-a-priority-for-washington-lawmakers-in-2021-session/281-f189f3ce-f565-4b8c-955a-308f67c0e01e>

Based on these requirements and the infeasibility of recording and tracking such electronic records outside of a BWC program, the POSPD has begun implementing body-worn cameras.

**Recommendation No. 52.** As a body worn camera program is developed, the POSPD should consider policy choices around when cameras should be activated, what are acceptable uses for BWC footage, when officers may view footage, and how the BWC program can support overall transparency.

*1. When should the cameras be activated?*

Most departments require BWCs to be activated when “law enforcement action is taken.” Typically, this occurs when officers are dispatched to a call or take proactive enforcement action based on reasonable suspicion or probable cause. Communities in many jurisdictions throughout the nation have raised concerns about the privacy implications of police deploying body camera technology. Unlike other types of surveillance cameras or in-car video systems, body-worn cameras can “give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service.”<sup>145</sup> However, there are very real privacy considerations in First Amendment contexts, in hospitals or other care facilities, in sexual assault cases<sup>146</sup>, and when entering a home. Given the body of work POSPD officers engage in, some of these circumstances will arise less frequently than in other municipal departments. Nonetheless, clarity for officers on what discretion they have when activating cameras is critically important – nothing damages the legitimacy of a BWC program then officers not turning on the cameras when required.<sup>147</sup>

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<sup>145</sup> Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 11 (2014).

<sup>146</sup> See National Sexual Violence Resource Center, SART Toolkit Section 5.6, <https://www.nsvrc.org/sarts/toolkit/5-6> (last visited June 30, 2021); Pennsylvania Coalition Against Rape, *The Use of Body-Worn Cameras with Victims of Sexual Violence* (2017), [https://pcar.org/sites/default/files/resource-pdfs/body\\_worn\\_cameras\\_factsheet.pdf](https://pcar.org/sites/default/files/resource-pdfs/body_worn_cameras_factsheet.pdf); Mary D. Fan, “Privacy, Public Disclosure, Police Body Cameras: Policy Splits,” 68 *Alabama L. Rev.* 395 (2016), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1059&context=faculty-articles>

<sup>147</sup> <https://www.policingequity.org/newsroom/blog/police-body-cameras-are-pointless-unless-cops-use-them-correctly>

But discretion is not a bad thing, when backed by clear policy and accountability. For example, the Salt Lake City Police Department allows officers to suspend recording in particular instances, including “during a conversation with a sensitive victim of a crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity” if certain conditions are met, as well as “during a significant period of inactivity.”<sup>148</sup> When video is discontinued, “[t]he officer shall also document the reason for placing the body cameras into Privacy Mode in a written report.”<sup>149</sup> Similarly, the Seattle Police Department allows discretion in recording in sensitive areas (“jails and the interiors of medical, mental health, counseling, or therapeutic facilities unless for a direct law enforcement purpose”), residences and private areas, to protect privacy and dignity (“natural death scenes, death notifications, child or sexual assault victim interviews, cultural or religious objections to being recorded, and when the use of BWV would impede or limit the cooperation of a victim or witness”), as long as “[e]mployees who stop recording during an event will state on the recording their intention to stop recording and explain the basis for that decision. Employees will also document the reason(s) in the Report and/or CAD update.”<sup>150</sup>

## ***2. What are the acceptable uses for body-worn cameras within the department?***

A BWC program policy should set out the purposes of the video within department, who may access the video, and under what circumstances. May video be used for training purposes? What happens if policy violations are discovered when reviewing video? Again, clarity is paramount.

## ***3. When may officers view their BWC evidence before writing a report?***

One highly debated issue is when officers may view video prior to writing a report.

According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer’s statement to

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<sup>148</sup> Police Executive Research Forum, Executive Guidebook: Practical Approaches for Strengthening Law Enforcement’s Response to Sexual Assault 69–70 (May 2018).

<sup>149</sup> *Id.* at 70.

<sup>150</sup> <https://www.seattle.gov/police-manual/title-16---patrol-operations/16090---in-car-and-body-worn-video>

reflect what he or she perceived during the event, rather than what the camera footage revealed.<sup>151</sup>

However, both police reform advocates and some police defense attorneys argue that capturing a perceptual statement before an officer views any evidence, including video, is best practice. For example, in the Seattle Federal Consent Decree, the Federal Court-approved policy allows officers to view video prior to writing criminal or low-level use of force reports, but prohibits review prior to being interviewed in serious use of force cases, thereby striking a balance between efficiency and accuracy in reporting and the benefits of capturing an officer’s “perception of what occurred.”<sup>152</sup> However, the Court expressly recognized that “there will inevitably be inconsistencies between reports written before and after review of BWV due to the inherent limits of human perception and memory.”<sup>153</sup> As such, any policy restricting officer’s ability to review BWC evidence should include a clear statement that inconsistencies are expected and that not all discrepancies between video and officer recall and reporting implies dishonesty.

#### **4. How can the program support transparency?**

Nationally, there is a movement towards greater and timely transparency at the state level. California requires release of body worn camera recordings within 45 days of the incident<sup>154</sup>. Governor Lamont of Connecticut issued an executive order requiring release of state police body worn camera evidence within four days<sup>155</sup>. Colorado requires video evidence to be released within 21 days<sup>156</sup>. Municipalities and police departments have also moved towards greater transparency with video evidence. As examples, the D.C. Metro Police release video evidence within five days of the

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<sup>151</sup> Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 29 (2014).

<sup>152</sup> 12-cv-1282 (JLR), Dkt. No. 390.

<sup>153</sup> *Id.* at 7.

<sup>154</sup> Cal. A.B. 748 (2018), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB748](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748).

<sup>155</sup> Press Release, Governor Ned Lamont, Governor Lamont Signs Executive Order Modernizing Police Strategies and Programs (June 15, 2020), <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/06-2020/Governor-Lamont-Signs-Executive-Order-Modernizing-Police-Strategies-and-Programs>

<sup>156</sup> Colo. S.B. 20-217, [https://leg.colorado.gov/sites/default/files/2020a\\_217\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf).

incident<sup>157</sup>; the Seattle Police Department requires release of objective evidence within 72 hours<sup>158</sup>.

There are many logistical concerns and the specific information release policy that applies to any jurisdiction must be specifically tailored, but what is important is that the protocols are developed ahead of time and not during a crisis. In 21CP's experience, the increased legitimacy and trust that occurs with transparency far outweighs any logistical concerns of releasing objective evidence in matters of public concern as soon as possible. Providing objective evidence fills the speculative gaps for members of the public and can help alleviate social unrest around critical incidents. To be fair, POSPD has relatively few "critical events" and does not spend much time defending its actions in the press. That being said, a clear media policy stating what will be released and when is critical to the development of a BWC program, including:

- Specific timing of release of information, regardless of whether the objective evidence appears favorable or dis-favorable to the department or the Port;
- Clear parameters for any statements by any member of the department to ensure that the statements are factual and do not pre-judge the incident<sup>159</sup>;
- A prohibition on releasing the criminal background of the subject of the critical incident, except as specifically relevant to the incident itself; and
- A commitment to regularly update the public on developments in the investigation.

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<sup>157</sup> D.C. Act 23-336 (2020), [https://lims.dccouncil.us/downloads/LIMS/45307/Signed\\_Act/B23-0825-Signed\\_Act.pdf](https://lims.dccouncil.us/downloads/LIMS/45307/Signed_Act/B23-0825-Signed_Act.pdf).

<sup>158</sup> <https://www.seattle.gov/police-manual/title-1---department-administration/1115---media-release-officer-involved-shooting>

<sup>159</sup> <https://deborahjacobs.medium.com/stop-police-false-narratives-about-officer-involved-deaths-d34cb539ee25> (Article by Training & Development Co-Chair, Deborah Jacobs).



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