

Closing Report and Recommendations

F20-033 / C20-090 / OPO #20-59

OFFICE OF THE POLICE OMBUDSMAN



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Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

Staff Information

Bart Logue, *Police Ombudsman*

Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, *Deputy Police Ombudsman*

Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is also a certified Advanced Force Science Specialist.

Christina Coty, *Administrative Specialist*

Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, *OPO Attorney*

Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

This document was reviewed by the City Attorney's Office as to form prior to submission for review by the Spokane Police Guild pursuant to the requirements provided in Article 27 of the Agreement between the City of Spokane and the Spokane Police Guild (2017-2021).

Authority and Purpose

The mission of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through providing independent and thorough oversight of matters that impact the community and the department. We desire to help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern in order to increase accountability and transparency into the matter as well as closing reports that may lead to recommendations for improving police policies or practices. By insisting on transparency, our goal is to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again. It is also our intent to highlight effective police practices in order to give the community a better understanding as to why those practices were utilized, although this is limited by provisions within the 2017-2021 Collective Bargaining Agreement (CBA).

Spokane Municipal Code (SMC) §04.32.030 and the CBA provide authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The CBA also provides authority for the OPO to publish policy and procedure reports regarding cases the OPO reviews during a review board process. The OPO's recommendations will not concern discipline in specific cases or officers and this report shall not be used in disciplinary proceedings of bargaining unit employees. This report is solely meant to further discussion on aspects of this incident that may be improved upon.

Reports also provide opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this incident in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

Required Disclosures

Under Article 27 of the current CBA between the City of Spokane and the Spokane Police Guild, this report must provide the following disclosures:

1. Any closing report from an IA investigation shall clearly state the information expressed within the report is the perspective of the OPO, that the OPO does not speak for the City on the matter, and the report is not an official determination of what occurred;
2. The report will include the current policy practice, policy, and/or training as applicable and shall expressly state the policy recommendations that follows reflect the OPO's opinion on modifications that may assist the department in reducing the likelihood of harm in the future; they do not reflect an opinion on individual job performance under the current policy, practice, or training;
3. A report shall not comment on discipline of an officer(s). This prohibition includes a prohibition on writing in a report whether the OPO or OPOC agrees with or differs from the Chief's findings, whether the officer acted properly, whether the officer's actions were acceptable, or whether the officer's actions were in compliance with training or policy. Additionally, no report will

criticize an officer or witness or include a statement on the OPO or OPOC's opinion on the veracity or credibility of an officer or witness.

4. The OPO's closing report shall not be used by the City as a basis to open or re-open complaints against any bargaining unit employees, or to reconsider any decision(s) previously made concerning discipline.
5. The report may not be used in disciplinary proceedings or other tangible adverse employment actions against bargaining unit employees, but not limited to decisions regarding defense and indemnification of an officer; and
6. The names of officers or witnesses may not be disclosed.¹

Additional information and records regarding this matter are available through the City Clerk's Office by [Public Records Requests](#).

Summary

This closing report combines analysis of issues identified through a community member filed complaint, which allows for a closing report, and a use of force review process, which allows for a policy and procedures report.

Procedural History

This complaint was received and reviewed from multiple sources. It was first reviewed by the chain of command as a use of force review as F20-033 following a TASER application, a reviewable use of force under SPD Policy Manual 301.14.1. Under SPD Policy Manual 302 and following the chain of command review and finding, the Use of Force Review Board (UOFRB) reviewed this case in December 2020. The UOFRB reviews applications of non-deadly force after disciplinary decisions are final in order to evaluate training, equipment needs, and policy and standard operating procedures in place or practiced department-wide. Finally, the OPO was subsequently contacted by a community member regarding the incident who filed a complaint in December 2020 (C20-090/OPO #20-59).

Use of Force Summary

On July 13, 2020, Spokane Police Officers 1, 2, 3, and 4 were dispatched to a report of a 12 year-old, subsequently referred to as Juvenile, who was threatening self-harm and also harm to other household members with a knife. Officer 1 was the first to arrive in front of the family's home. The officer arrived at the 0:45 second mark according to the timestamp on the body worn camera (BWC)². Officer 1 stood behind a parked vehicle on the street for cover while assessing the situation. At 1:35, the officer asked Officer 4 over the radio if there were other less-lethal options, "a forty,³ shield, anything?" At 1:50, two

¹ In addition to not mentioning officer or witness names, every effort was made to remove identifying pronouns throughout this report. The same standard was also utilized for the complainant and the involved persons.

² All times refer to Officer 1's BWC video.

³ Blue nose launchers fire 40 mm sponge rounds. The eXact iImpact 40 mm Sponge Round is a point-of-aim, point-of-impact direct-fire round. It is a lightweight, high-speed projectile consisting of a plastic body and sponge nose that is spin stabilized via the incorporated rifling collar and the 40 mm launcher's rifled barrel. The round utilizes smokeless powder as the propellant, and, therefore, have velocities that are extremely consistent. Used for Crowd Control, Patrol, and Tactical Applications.

<https://www.defense-technology.com/product/exact-impact-40-mm-standard-range-sponge-round/> (accessed May 24, 2021).

other officers arrive on scene, Officers 2 and 3. At 1:57, Officer 1 asks officers to prepare to use less-lethal force options to apprehend the Juvenile. Officer 2 volunteers to be on TASER and Officer 3 plans to use hands.

At 2:27, Officer 1 appeared to be communicating with dispatch over the radio. Officer 1 advised them that the officers were up front, and to tell the mother to come out through the west side of the house toward the officers. At 2:40, Officer 2 saw two children running from behind the house into the front yard and attempts to call them over. The officers then reported witnessing an altercation in the backyard of the residence and saw two other juveniles fighting with one armed with a knife. At 2:43, Officer 1 says, “they’re fucking fighting,” un-holstered the TASER and started running from the street, up the side driveway, and towards the back of the house. Officers 2 and 3 followed suit, with Officer 4 following closely behind armed with a .40 mm blue nose launcher.

The four officers ran up to the side area leading to the family’s backyard. There were two other juveniles, a dog, the mother who was holding a phone to her ear, and the Juvenile who was holding a knife at their side. The two juveniles and the dog complied with the officers’ commands and walked toward the officers, but the mother stayed in place, remaining within potential striking distance from the Juvenile. At 2:47, Officer 1 commands the Juvenile to “Get back, get back. Put the knife down, kid. Put the knife down, kid. It’s alright. It’s okay buddy. Just put it down. Mom, get back here please.” At 2:52, Officer 2 can be heard in the background also advising the Juvenile to put the knife down and telling the mom to get out of the way. The Juvenile does not move and the mother, who was still on the phone, took a small step away from the Juvenile but still remained within potential striking distance. At 2:56, Officer 2 said, “Index,” to indicate they will deploy their TASER, and Officer 1 responded, “Go.” At 2:57, Officer 2 fired their TASER and successfully temporarily incapacitated the Juvenile. The buzzing sound from the TASER can be heard for the full five second cycle. The officers then approached and prone handcuffed the Juvenile.

Complaint Summary

The complaint was submitted by the Juvenile’s family, through their attorney, to the OPO and requested a review of the incident to determine whether [the use of force] meets protocol in relation to a 12 year-old displaying a mental health crisis. The Juvenile’s family did not feel adequate time was given for the Juvenile to comply before the TASER was deployed. The family also raised concerns they learned from viewing the BWC footage where they heard an officer discussing using a “Forty,” which they presumed was a .40 caliber handgun, before the officers knew all the circumstances. The family was also concerned that three officers who arrived knew they were dealing with a 12 year-old in mental crisis but did not come up with less harmful means to bring the Juvenile into submission and suggested it was unreasonable for the officers not to bring a shield.

On January 8, 2021, the assigned IA investigator contacted the family’s attorney and complainant on this case. The investigator inquired whether the family intended to file a lawsuit to determine whether or not the investigator would proceed with an internal review or not. The attorney insisted they were not filing suit at this time and only wanted the officers’ actions reviewed. In an email to the OPO on January 20, 2021, the attorney summarized the interaction with the IA investigator. The attorney was concerned that IA was more focused on who the complainant was rather than the objective facts of the officers’ actions. The attorney also said that the entire focus of the call was, “why I was handling this matter on behalf of

[the family], and trying to get me to admit that the concern raised with your office was a precursor to a lawsuit.”

The attorney is the point of contact for the family in this matter and advised the investigator not to contact the family since they work and do not have the time to navigate the intricate complaint process. The attorney redirected the investigator from questions about pursuing a lawsuit to the issues listed in the complaint. The investigator responded by saying, “the officers have rights too and this will incredibly impact their employment.” On January 18, 2021, the family informed the attorney that the IA investigator had called the Juvenile’s father on January 14 and demanded to know his relationship with the attorney and “attempted to extract an admission that this inquiry is a precursor to a lawsuit.” The Juvenile’s father advised he had to terminate the call since he was at work. The attorney stated the Juvenile’s father was advised at the end of the call that it was being recorded and he responded by saying that he was unaware he was being recorded and would not have agreed to it.

Investigation(s) and Department Recommended Findings Summary

1. Use of force review⁴

Force used: TASER application on juvenile

The reviewing sergeant noted the following details used in arriving at a recommended finding:

- The Juvenile did not comply with the officers’ instructions to drop the knife (2x);
- The Juvenile’s mother was standing approximately six feet from Juvenile, well within lunge distance; and
- The use force was effective and the Juvenile immediately locked up and fell to the ground.

The reviewing lieutenant noted the following details used in arriving at a recommended finding:

- The Juvenile’s age made inapplicable many of the tactics SPD would use on an adult. The Juvenile’s age created a moral dilemma for the officers in determining the tactics they should use on an armed person, but due to the age, they were more inclined to violate the Priorities of Life and avoid using the appropriate amount of force.
- Based on recent national events, there has been a focused effort to have professionals outside law enforcement respond to these types of incidents. No entity outside of law enforcement is equipped or desires to deal with the intensity of the initial confrontation, and then be able to transfer into a crisis counselor within a matter of seconds.
- Officers responded well, from their initial response using time, distance, and cover to identify the moment when the incident required them to take action.
- Officer 3’s decisive decision to deploy their TASER ended the incident where there was a high likelihood of the Juvenile making progressively worse decisions that could have led to a horrific outcome. The lieutenant goes on to quote Officer 3’s incident report which stated that the TASER

⁴ Per the agreement between the City and the Police Guild in the current CBA, the OPO is prohibited from mentioning whether or not the officer(s) acted properly, whether the officer’s actions were acceptable, or whether or not the officer’s actions were in compliance with training or policy. As such, the final determination by the chain of command cannot be mentioned.

was deployed because under the totality of the circumstances, no other reasonable method to detain the Juvenile seemed to safely exist. The lieutenant says this statement demonstrates the level of critical decision making Officer 3 displayed in a chaotic and tragic incident.

The reviewing captain noted the following details used in arriving at a recommended finding:

- Policy requires special consideration for TASER application on a juvenile;
- Officers in this situation attempted to use time, distance, and cover;
- When a physical altercation began, officers were placed in a situation where they had to close distance and render the scene safe;
- Due to the Juvenile's age, officers were limited in what tactics or tools could be deployed;
- The use of the TASER was reasonable and effective. "It actually served to de-escalate the situation and prevent a deadly force encounter."

The reviewing major noted the following details used in arriving at a recommended finding:

- The officers can be seen on BWC arriving and congregating together prior to making their approach. They form a team and brought two less lethal options to prepare for an encounter with an individual reportedly armed with a knife.
- The Juvenile and his/her family emerged suddenly and without warning from the home. Four officers proceeded together, gave verbal commands to drop the knife, and provided the verbal warning, "Index" prior to deploying the TASER.
- The Juvenile was armed with a kitchen steak knife, with a serrated edge and sharp pointed tip. The Juvenile threatened self and others and stabbed lines in the kitchen wall and hot tub cover.
- The TASER was reasonable and served to quickly and effectively get the Juvenile under control.
- Officers were professional throughout the encounter.

Other information noted:

- At least 1 attending officer was CIT certified
- Certified crisis intervention officer was requested
- Certified crisis intervention officer was dispatched
- Certified crisis intervention officer arrived on-scene

2. Complaint investigation

Allegations: Excessive Force and Inadequate Response against Officers 1-4

The assigned IA investigator contacted the family's attorney and Juvenile's father. Officers were not interviewed. The investigator found the officer's reports along with available evidence were sufficient to conduct an internal review.

The investigator referenced the Use of Force Review Board's review of the case in December 2020. The review board's minutes stated that the OPO noted that the officers made a good plan but then were not able to follow the plan when the Juvenile's family exited the home. The OPO also had concerns over the reviewing captain's comments on the TASER deployment as "de-escalation since deadly force was justified." Another member of the board noted that officers train for multi-force options and that

situations may change rapidly. A member also expressed that the family's actions dictated the response and there was no time to execute the plan.

In the investigator's conversation with the family's attorney, the investigator asked if the family intended to proceed with filing a lawsuit against the City, to determine whether he could proceed with the investigation. The attorney insisted there was no plan to file suit at this time, only to review the officers' actions that warranted the use of force. Based on the conversation, the investigator determined the family had the following questions in the complaint that the investigation needed to cover:

- 1) What was meant by the term "40"?
- 2) Why were no shields used or available to approach the Juvenile as he/she held the knife?
- 3) Why did the officers run up on the Juvenile so quickly to deploy a TASER without giving him/her time to comply?
- 4) Why were no mental health professionals on-scene?

The following are excerpts from the Investigative Summary to address the specific questions posed in the complaint:

- 1) The term "40" is common terminology which refers to a 40mm blunt impact weapon. In recent years, this has gained more widespread use in law enforcement to address violent subjects who show a means and propensity for causing substantial bodily injury to others or themselves, without having to use lethal force. This weapon can only be deployed by specially trained individuals under strict considerations, including age and weight. Officer 4 determined he/she was not able to conduct a "two man loading process," a required step prior to deploying the weapon, due to the rapidly evolving events. The attorney referenced a concern that one of the officers had a long gun. The investigator did not see any lethal rifles deployed in any video and believe what the attorney is referring to is actually the 40 mm blunt impact device. SPD Policy 308.7.2 and 308.7.3 governs the deployment and use of the 40mm exact impact munition. While these policies mention consideration of a subject's physicals, e.g. age and weight, they do not expressly discourage or prohibit the use on juveniles.
- 2) Shields are generally issued to specialty officers, e.g. SWAT or TAC. On any given shift, there may be one or two available, so long as the officer is not on another service call. Officer 3 notes in his/her report that Officer 2 requested a shield but none were available to the units on scene. The investigator also consulted with a sergeant who is a subject matter expert in the department on patrol tactics. The sergeant said there is no department training on using the shield as a striking implement. This would fall under an exceptional technique, only approved if no other reasonable alternatives exist. Even with a shield, officers are discouraged from closing space with a person armed with a knife due to the danger of being cut or stabbed. Officers are trained to use the shield in a pinning fashion to gain control of the subject's arms to restrain them.
- 3) The officers' reports indicate they arrived and took up a safe position near the front of the house and made a plan on how to contain the Juvenile. They were forced to abandon any plan when they observed an altercation with knives, within two minutes of arriving on scene. All four officers wrote that when they ran up, they gave or heard commands for the Juvenile to drop the knife but did not comply. Further, the Juvenile's mother was ordered to move away from the Juvenile, who appeared to be three to six feet away, but she did not. Officer 3 believed she was in danger based on the information provided and the circumstances did not allow time to use other reasonable methods.

- 4) On the date of this incident, the four specially trained officers assigned to the Behavioral Health Unit (BHU) were all off duty. Furthermore, the investigator contacted a sergeant, the department's subject matter expert on mental health crisis response. The sergeant provided that Frontier Behavioral Health does not respond to armed individuals nor do they negotiate with armed individuals. It still falls on law enforcement, e.g. hostage negotiators, to respond to armed individuals in crisis. The mental health professional's role would be to connect the individual with resources once the threat is gone.

Facts Determined as a Result of the Investigation

OPO Summary of Facts

This includes the OPO's perspective of the factual information that was obtained as a result of the IA investigation. Per the instructions agreed upon by the City and the Spokane Police Guild in the current CBA, the information expressed within the report is the perspective of the OPO, that the OPO does not speak for the City on the matter, and the report is not an official determination of what occurred. The OPO's opinions are based upon a careful review of the IA investigation summary and accompanying interviews, reports, and BWC footage; the chain of command review; the Use of Force Review Board minutes; and first-hand knowledge from OPO participation in the investigation and certification process as well as participation during the UOFRB.

- 1) It took two (2) minutes and 12 seconds from the time Officer 1 arrived on scene to when Officer 2 deployed their TASER.
- 2) Officer 1 asked Officer 4 for less lethal alternatives, i.e. "40mm blue nose, shield, anything?"
- 3) Officer 1 attempted to create a plan for the less lethal alternatives that Officers 2 and 3 would use, i.e. Officer 2 would use their hands and Officer 3 would have their TASER ready. Officer 1 did not indicate which less lethal option they would use, if any. However, upon viewing the BWC, Officer 1 can be seen holding a TASER while approaching the family's home.
- 4) Officers reported witnessing an altercation in the backyard of the residence and saw two other juveniles fighting with one armed with a knife. This prompted the officers to immediately leave cover and run toward the home. The fighting is not visible on BWC. However, screaming from the backyard can be heard after 2:43, when Officer 1 says, "They're fucking fighting."
- 5) Officers 1 and 2 both provided multiple verbal commands for the other family members to step away and also asked the Juvenile to surrender. Officer 1 said, "Get back, get back," and then commanded the Juvenile, "Put the knife down, kid. Put the knife down, kid."
- 6) Two juveniles complied with the officers' commands, but the mother only took a small step away from the Juvenile and was still at risk of being cut or stabbed. The Juvenile armed with the knife did not respond to any of the officers' commands.
- 7) Officer 1 attempted de-escalation efforts with the Juvenile. After running up, Officer 1 slowly approached the Juvenile with one hand extended up in front of him, as if to indicate a non-threatening manner and said, "It's alright. It's okay buddy. Just put it down."
- 8) It took ten seconds from the time Officer 1 issued the first verbal command to when Officer 2 deployed the TASER, during which multiple commands are given to drop the knife without compliance.
- 9) The officers did not act according to their plan to use less lethal. Officer 2 planned to use his hands but ended up using a TASER. However, as the officers ran towards the Juvenile, available space at the side of the house became constricted.

- 10) While the Juvenile did not comply with officer commands and the Juvenile did not take any steps toward the mother or officers, the knife is plainly visible in the Juvenile's hand and the Juvenile did not comply with commands to drop the knife.
- 11) Officer 2 later told a supervisor that the Juvenile had a 1,000 yard stare, which indicated non-compliance to the officer. The Juvenile's mannerism and facial appearance are clearly visible on the BWC.
- 12) The complaint was filed by an attorney who stated that he/she was a friend of the family and that the IA investigator could go through him/her with any questions for the family.
- 13) The attorney was not advised the initial interview was being recorded. It is not audible in the taped interview nor included in the transcript of the taped interview.
- 14) The IA Lieutenant submitted an IA Additional referencing the fact the investigator did not advise the attorney of the recording.
- 15) In the investigator's interview of the attorney, the investigator inquired or mentioned filing litigation five times. The investigator first brings up litigation by saying, "Okay and are you an attorney that's representing them in a...civil suit? Is that...that's kind of how it sounds." The attorney provides a direct response, "No, I'm not." The investigator inquires or mentions litigation four more times afterwards.
- 16) The IA investigator called the Juvenile's father after the attorney advised the investigator not to contact the family and to communicate through him/her.
- 17) The Juvenile's father asked the IA investigator to talk with his attorney. However, the IA investigator pressed on with "one quick question" and proceeded to ask the father whether the attorney had been retained for litigation against the City.
- 18) The Juvenile's father was advised he was being recorded after the conversation already took place. At the end of the conversation with the Juvenile's father, the IA investigator says, "And just to let you know, so I've recorded the conversation that we've had just as a matter of reference...so, because there was a complaint that came in regarding it."
- 19) The IA investigator spoke with the attorney and the Juvenile's father to inquire whether the family planned to file suit. Despite being assured by both the attorney and the father that there was no lawsuit pending, the investigator still wasn't sure he could proceed because of potential litigation. He told the Juvenile's father, "I'll attach [the recorded conversation] to [the investigative file], but I may not be able to forward...go forward with an internal complaint if there is some possible litigation against the city."
- 20) In the chain of command review on the use of the TASER, the captain said the use of a TASER "...actually served to de-escalate the situation and prevent a deadly force encounter."
- 21) The IA Lieutenant completed an IA Additional to document the phone interviews being conducted without advisement and also to note that the investigator inquiring whether a civil suit was being initiated had been a request by the chain of command.

Policy Recommendations

Applicable Current Policy Practice, Policy, and/or Training

Per the instructions agreed upon by the City Administration and the Spokane Police Guild in the current CBA, the report will include the current policy practice, policy, and/or training as applicable and shall "Expressly state the policy recommendations that follows reflect the OPO's opinion on modifications that may assist the department in reducing the likelihood of harm in the future; they do not reflect an opinion on individual job performance under the current policy, practice, or training."

- 1) Policy 1020.1.1(D) – Personnel Complaints Defined, provides personnel complaints shall be classified as an Administratively Suspended Investigation if the complaint involves an accident where a civil suit or claim for damages has been filed against the City and has not been resolved.
- 2) Internal Affairs Standard Operating Procedures,⁵ Recording of complaint and non-employee witness interviews. “Interviews will be recorded by the interviewer to capture the exact wording of questions and responses. Transcripts can later be generated from recorded statements if necessary.
- 3) Policy 308.8.6(B) – Special deployment considerations, provides the use of the TASER device on certain individuals, i.e. elderly individuals or obviously juveniles, should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes the need to control the individual outweighs the risk of using the device.
- 4) Policy 300.2 – Definition, defines de-escalation as, “tactics and techniques are actions used by officers, when safe to do so, that seek to minimize the likelihood of the need to use force or reduce the level of necessary force during an incident and increase the likelihood of voluntary compliance. Mitigating the immediacy of a threat gives officers time to utilize extra resources and increase time available to call more officers or specialty units.”
- 5) Policy 300.3 – De-escalation, provides when an officer encounters a non-compliant subject, officers shall, when safe and feasible, use de-escalation tactics in an effort to reduce the need for, or degree of, force necessary to safely resolve a situation. The policy in subsection 300.3(B) provides at least 11 de-escalation tactics:
 - a. Allow subjects the opportunity to submit to arrest before force is used.
 - b. Attempt to isolate and contain the subject. When it is safe and reasonable to do so, officers should make advantageous use of:
 - i. Positioning, distance, concealment, and cover by isolating and containing a subject.
 - ii. Continuously evaluating the officer’s positioning, subject’s actions, and available force options.
 - iii. Placing barriers between an uncooperative subject and an officer.
 - c. Create time and distance from the subject by creating a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force:
 - i. When it is safe and reasonable to do so, officers should use time as a tactic.
 - ii. In order to use time as a tactic, a zone of safety should be established for the security of responding members and the public.
 - iii. Using time as a tactic may:
 1. Permit the de-escalation of the subject’s behavior and create a window of opportunity to use a lower level of force to resolve the situation.
 2. Allow for continued communication with the subject and the adjustment of the verbal control technique employed by the members.
 - iv. Request the arrival of specialty units / additional resources, such as the Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, or extended range impact weapons.
 - d. The number of officers on scene may increase the available force options and may increase the ability to reduce the overall force used.
 - e. Communicate from a safe position intended to gain the subject’s compliance using:
 - i. Verbal persuasion

⁵ Version received from Internal Affairs on March 11, 2020.

- ii. Advisements
 - iii. Warnings
 - f. Avoidance of physical confrontation, unless necessary.
 - g. Designate an officer to establish rapport and engage in communication and apply verbal techniques with the subject.
 - h. Tactically reposition, if safe to do so, as often as reasonably necessary to maintain a reactionary gap.
 - i. Continue de-escalation techniques as reasonably necessary to resolve the incident.
 - i. An officer's awareness of these possibilities, when time and circumstances reasonably permit, shall be balanced against the facts of the incident.
 - j. Any other tactics and approaches that attempt to achieve law enforcement objectives by gaining compliance of the subject.
- 6) Policy 302.5 – UOFRB Outcomes
- a. The recommendations of the UOFRB, if any, will be compiled and reported through the chain of command by the UOFRB Chairperson, the Training Director. The Training Director will coordinate any approved training recommendations for individual officers recommended by the UOFRB for implementation. The Training Director will be responsible for coordinating departmental recommendations, such as those involving in-service training. The Office of Professional Accountability will document any recommendations and action taken involving individual officers.
 - b. The recommendations resulting from the UOFRB will be submitted in a monthly report to the Chief of Police following each meeting. The Training Director will provide a copy of the report to the Office of Police Accountability for further distribution.
- 7) Policy 308.7.2 – Deployment and Use
- a. The 40mm exact impact “Blue Nose” munition is the only authorized non-chemical impact munition for patrol deployment.
 - b. Only department-approved special impact munitions shall be carried and deployed. Only officers who have successfully completed department-approved training in the use of any special impact munitions are authorized to carry and use this device.
 - c. Officers are not required or compelled to use approved munitions in lieu of other reasonable tactics if the involved officer determines that deployment of these munitions cannot be done safely.
 - d. The safety of hostages, innocent persons, and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.
- 8) Policy 308.7.3 – Deployment Considerations
- 1) Before discharging special impact munitions, the officer should consider such factors as:
 - a. Distance and angle to target
 - b. Type of munitions employed
 - c. Type and thickness of subject's clothing
 - d. The subject's proximity to others
 - e. The location of the subject
 - f. The subject's physicals (age, pregnancy, weight, etc.)
 - g. Whether the subject's actions dictate the need for an immediate response and the use of control devices appears appropriate.
 - 2) A verbal warning of the intended use of the device should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances.

The head and neck should not be intentionally targeted, except when the officer reasonably believes the suspect poses an imminent threat of serious physical injury or death to the officer or others.

Recommended Policy and Training

Accepting complaints with concerns of a pending lawsuit. Policy 1020 allows for the department to suspend a complaint investigation where a lawsuit or claim for damages *has been filed and has not been resolved* (emphasis added). Policy 1020 does not provide a justification for suspending complaints in anticipation of a potential lawsuit or claim for damages. Every complaint received has the potential to become a lawsuit and/or claim for damages. These considerations are outside the scope of the OPO and IA and should not impact whether an investigation moves forward. In this case, the family's attorney said the family did not intend to file suit at the time but wanted to review the officers' actions in relation to the force used.

It is not unusual for the Chief's office to provide direction directly to the Internal Affairs unit due to the special reporting relationship between the two. While we do not know if the direction came from the Chief's office as the memo referred only to the chain of command, there was a specific emphasis towards not investigating this complaint as it may involve a future claim or lawsuit. A policy should make it clear that upon receiving a complaint, an investigator will follow all appropriate leads without influence as to what the investigation may reveal. All attempts to hinder an investigation in anticipation of an outcome should be avoided. It may be interpreted that SPD did not want further scrutiny on this matter which would not be a best or effective practice in investigations of community complaints.

RECOMMENDATION R21-02: *The OPO recommends SPD maintain and not expand its current policy of Administratively Suspending complaints in which a lawsuit or claim for damages has been filed to include not investigating matters which may lead to a lawsuit or claim for damages. IA Investigators should fully investigate complaints it receives independent of potential lawsuits or future claims for damages until the complainant indicates or IA learns a lawsuit or claim for damages has already been filed.*

Two party consent for recording calls. IA investigators record interviews as directed by the IA Standard Operating Procedures (SOP). They also typically advise individuals the call is being recorded at the outset of the call. In this case, the IA investigator did not advise Juvenile's father he was recording the call until the end of conversation and the attorney later raised the issue with the OPO. The attorney says the Juvenile's father was not aware he was being recorded and would not have agreed had he known. This provided the attorney with distrust regarding the investigative process. In this case, notifying the Juvenile's father he was being recorded after he requested the investigator speak with his attorney exacerbated the complainant's skepticism. In reviewing the IA SOP, the Washington State requirement of advising of recording was not included. The IA Lieutenant has stated IA will modify its practice to

include this advisement at the onset of conversations. As such, the OPO recommends the required advisement to be added to the IA SOP.

RECOMMENDATION R21-03: *The OPO recommends IA formalize its practice of advising individuals the call is being recorded at the onset of a conversation before any substantive discussion occurs by requiring it in the IA SOP. The policy should include that if providing an advisement was overlooked, the investigator should provide the advisement immediately after they realize it had been omitted.*

Interpretation of de-escalation. It is not always safe and reasonable to attempt de-escalation and this incident involved a “compressed timeline.” However, the OPO is concerned that the police department referred to utilizing a TASER on a juvenile as it, “actually served to de-escalate the situation and prevent a deadly force encounter.” This statement illustrates a vast difference in how law enforcement interprets de-escalation compared to a community member. De-escalation and training in mental crisis are popular with the public and are now a statewide requirement after the passage of I-940 in 2018. Training in mental crisis and de-escalation reassures the public that officers are being trained in softer skills like communication and persuasion. Using force, even if it was a lesser means of force, should not be referred to as de-escalation. It is properly referred to as using force.

The de-escalation policy refers to time, distance, cover, and communication, among other tactics listed to reduce the need for, or degree of, force necessary to safely resolve a situation. In this situation, the reviewer focused on the “degree of force” part of de-escalation, which justifies using a lower level of force since lethal force was not used. This interpretation of de-escalation disregards any attempt to use other skills to resolve a situation by focusing on the outcome and not on the process of attempting to gain voluntary compliance. It is noted, that officers did attempt, albeit briefly, to gain voluntary compliance from the Juvenile by using de-escalation techniques. The use of a force option should not be considered a de-escalation tactic in evaluating a use of force. Instead, de-escalation and the force option utilized should be evaluated separately.

RECOMMENDATION R21-04: *The OPO recommends SPD reinforce its policy to ensure that de-escalation, both in practice and review, includes a tactical review of the de-escalation techniques that are applied prior to a use of force. SPD should also consider implementing officer feedback from the Use of Force Review Board which includes other techniques which could have been considered, if any were identified. The OPO is willing to provide specific policy language in this regard if requested.*

Justification factors when using force options on juveniles. Juveniles fall into the group of people the general public either commonly assumes are not capable of being an imminent threat of death and/or serious bodily harm or that they should be treated more sensitively and compassionately by officers. Officers understand that juveniles can be capable of the aforementioned threats that may justify the use of an electronic control device (ECD) as a force option. However, officers who use an ECD against juveniles

will foreseeably be placed under heightened scrutiny and will likely be required to provide additional justification for the use of the ECD. A model policy by Americans for Effective Law Enforcement⁶ for ECDs applied to children provides, “when officers apply an ECD to a child, [as defined by state law], the younger the child the greater the justification that will be required for the officers’ application of the ECD.” The model policy goes on to say that ECDs can sometimes be a better choice. ECDs have saved the lives of numerous children who were imminent threats of death or serious bodily injury. Normally these children were armed with edge weapons and threatening imminent use.

SPD’s policy states that special deployment considerations apply for the use of the TASER device on certain individuals. It states that using a TASER on elderly individuals or obviously juveniles should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject or others, and the officer reasonably believes the need to control the individual outweighs the risk of using the device. The IA Investigator noted, “SPD Policy 308.7.2 and 308.7.3 governs the deployment and use of the 40mm exact impact munition. While these policies mention consideration of a subject’s physicals, e.g. age and weight, they do not expressly discourage or prohibit the use on juveniles.”

RECOMMENDATION R21-05: *The OPO recommends SPD specify in its policy the restrictions or considerations an officer should consider when a TASER or 40 mm Blue Nose Launcher is deployed and if a 40 mm Blue Nose Launcher is encouraged, discouraged, or prohibited as a force option for juveniles.*

⁶ <http://www.aele.org/law/2007LRMAR/taser-laaw.pdf>

Summary of Recommendations

Recommendation R21-02: The OPO recommends SPD maintain and not expand its current policy of Administratively Suspending complaints in which a lawsuit or claim for damages has been filed to include not investigating matters which may lead to a lawsuit or claim for damages. IA Investigators should fully investigate complaints it receives independent of potential lawsuits or future claims for damages until the complainant indicates or IA learns a lawsuit or claim for damages has already been filed.

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