

SYRACUSE

CRB

CITIZEN REVIEW BOARD

**Annual Report
2017**

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SUMMARY OF 2017 OPERATIONS

The close of 2017 marked another active year of oversight by the Syracuse Citizen Review Board. The following information provides a summary of the CRB's 2017 operations. A more detailed discussion of the data is available in the body of this report:

- 118 complaints received
- 26 hearings held
- **The annual Sustain Rate for 2017 was 14.4% (of the 118 complaints received, 18 resulted in one or more sustained findings). The Sustain Rate for 2016 was 12.84%.**
- There was a significant decline in 2015 than prior years in the number of complaints filed alleging excessive force and the number of excessive force complaints that were sustained by the CRB:
 - In 2013, the CRB received 49 complaints of excessive force and sustained 12 (24%) excessive force allegations.
 - In 2014, the CRB received 43 complaints of excessive force and sustained 18 (41%) excessive force allegations.
 - In 2015, the CRB received 26 complaints of excessive force and sustained 6 (23%) excessive force allegations.
 - The majority of this decline is explained by a drastic drop in allegations of excessive force following a suspect fleeing from police (the topic of a previously released special report).
 - In 2016, the CRB received 33 complaints of excessive force and sustained 7 (21%) excessive force allegations.
 - In 2017, the CRB received 37 complaints of excessive force and sustained 5 (13.5%) excessive force allegations.

2017 CRB Disciplinary recommendations:

- 18 recommendations for retraining
- 4 recommendations for written reprimand
- 5 recommendations for verbal reprimand
- 2 recommendations for one (1) week suspension
- 1 recommendation for loss of one day pay
- 1 recommendation for termination
- 1 recommendation for restitution

SPD DISCIPLINARY ACTION RATE:

- The disciplinary action rate (or rate of agreement) is the rate at which the Chief of Police imposes discipline when the CRB recommends it. Local Law 1 of 2012 requires the CRB

to report to the public the number of times that the Chief of Police imposed disciplinary sanctions when the CRB sustained an allegation against an officer and recommended discipline. The CRB received __12__ responses from the Chief of Police to the __18__ hearings in which a CRB panel sustained an allegation. The Chief agreed with 2 Findings of the CRB in cases with hearings held in 2017 and one (1) Officer was “addressed sufficiently” and the others Officers were not disciplined because it was “well outside the window during which disciplinary actions may be initiated.” The CRB received a total of 18 response letters from the Chief for cases filed in 2015-2017. However, since the CRB did not receive all of the Chief’s required responses in 2017, the CRB is unable to fulfill this public reporting obligation.

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

OPINION AND ORDER ENTERED MARCH 24, 2017

“Here, pursuant to the plain language of the ordinance, the CRB is entitled to the response from the Chief of Police required by section seven (3)(g) of the ordinance in furtherance of its independent duties thereunder (see *Green*, 255 AD2d at 107-108). Like the Public Advocate in *Green*, the CRB is charged in the ordinance with determining the effectiveness of the police department’s response to civilian complaints and ascertaining whether the police department’s “failure to prosecute and/or impose discipline against misbehaving officers is indicative of systematic problems in the response to complaints.” (*Green*, 174 Misc 2d at 402). Thus in light of the CRB’s mandate and obligation to handle grievances filed by the citizens against the police officers, it is squarely within the CRB’s “zone of interest” to take action to obtain compliance with the ordinance. Further, pursuant to the ordinance, the CRB has both subpoena power, including the authority to enforce those subpoenas in court, and the power to retain independent counsel. Such factors, together with the lack of an implied power to sue (see *Saratoga Lake Protection & Improvement Dist. V. Department of Pub. Works of City of Saratoga Springs*, 11 Misc 3d 780 782-785, *mod on other grounds* 46 AD3d 979, *lv denied* 10 NY3d 706; *cf. Community Bd. 7 of Borough of Manhattan*, 84 NY2d at 157-158.) Moreover, without the required response letters from the Chief of Police, the CRB cannot publicly report the number of cases where sanctions were imposed as required by the ordinance, thereby depriving the CRB and the public of the ability to assess the disciplinary practices of the Chief of Police as intended by the ordinance (see generally *Community Bd. 7 of Borough of Manhattan*, 84 NY2d at 156; *Mater of City of New York v. City Civ. Serv. Commn.*, 60 NY2d 436, 444-445, *rearg denied* 61 Y2d 759.)”

“Here, the CRB’s enabling legislation provides that it was formed to “establish an open-citizen controlled process for reviewing grievances involving members of the Syracuse Police Department” and that “citizen complaints regarding members of the Syracuse Police Department shall be heard and reviewed fairly and impartially by the review board.” Further the CRB is required by the ordinance to report and publish the number of cases in which sanctions were imposed. Inasmuch as the CRB cannot perform its legislative mandate without the Chief of Police’s compliance with the corresponding legislative mandate that he “advise the [CRB] in writing as to what type of actions or sanctions were imposed, and the reasons if none were imposed,” we conclude that the CRB has sustained a sufficiently particularized injury that falls squarely within the zone of interests set forth in the ordinance (see *Saratoga Lake Protection & Improvement Dist.* 46 Ad3d at 981-982.)”

“Accordingly, we conclude that the CRB has both the capacity and standing to institute this proceeding/action seeking, *inter alia* to compel the Chief of Police to comply with the legislative mandate at issue, and the order therefore should be affirmed.”

- The CRB has developed a new reporting mechanism designed to track repeated complaints against individual officers. The ***Complaint Intensity Index***, found on the following page, demonstrates the number of officers with three or more complaints and at least one allegation sustained by the CRB since being reestablished in 2012.



COMPLAINT INTENSITY INDEX

OFFICERS WITH REPEATED COMPLAINTS

The CRB tracks complaints by officer name and records the final disposition of all completed cases. The chart below indicates the number of officers with three or more complaints and at least one allegation sustained by the CRB. Officers with multiple complaints but no sustained allegations are not included in this chart. The chart includes 79 instances of excessive force sustained by the CRB and 13 distinct officers with two or more sustained allegations of excessive force. For the complaints included in the chart, the CRB is unable to provide information related to the discipline imposed by the police department.

Complaint Intensity Index Table

Number of Officers	Number of Complaints Filed with at least one Sustained Finding by the CRB*
9	9
4	8
10	7
8	6
11	5
24	4
22	3

*Based on complaints filed with and investigated by the CRB between January 1, 2012 and December 31, 2017.

MISSION & OBJECTIVES

The purpose of the Citizen Review Board, all of whose members are volunteers, is to provide an open, independent, and impartial review of allegations of misconduct by members of the Syracuse Police Department; to assess the validity of those allegations through the investigation and hearing of cases; to recommend disciplinary sanctions where warranted; and to make recommendations on Syracuse police policies, practices and procedures.

In fulfillment of its legislative purpose and mission, the Board is committed to:

- Creating an institution that encourages citizens to feel welcome in filing a complaint when they believe that they have been subject to police misconduct;
- Making the public aware of the CRB's existence and process through ongoing community outreach events and coverage by local media;
- Completing investigations and reviews of complaints in a thorough, yet timely fashion;
- Remaining unbiased, impartial, objective and fair in the investigation, evaluation, and hearing of complaints;
- Engaging in community dialog that encourages citizen input with the CRB;
- Respecting the rights of complainants and subject officers;
- Upholding the integrity and purpose of the CRB's enabling legislation;
- Reporting to the Mayor, the Common Council, the Chief of Police and the public any patterns or practices of police misconduct discovered during the course of investigation and review of complaints; and
- Operating in an open and transparent manner to the extent permitted by applicable municipal and state laws, regulations and ordinances.

BOARD MEMBERS & TERMS

The Board members serve staggered three-year terms and are all unpaid volunteers. Board members devote an average of ten hours per month to CRB matters. This includes their attendance at monthly meetings, preparation for and participation in panel hearings, training, and community outreach. Biographies of each Board member are available on the CRB website at www.syr.gov.net/crb_Members.aspx.

Members of the Syracuse Citizen Review Board as of December 31, 2017

Mayoral Appointees

Ms. Diane Turner - term expires December 2016* Held over until December 31, 2017
Mr. Peter McCarthy - term expires December 31, 2018
Ms. Mae Carter - term expires December 31, 2018

District Councilor Appointees

Ms. Dana Natale - 1st District - term expires December 31, 2018
Mr. John Meyer - 2nd District - term expires December 31, 2018
Mr. Caleb Duncan - 3rd District - term expires December 31, 2018
Ms. Ruth Kutz, Board Chairman - 4th District - term expires December 31, 2017
Mr. Herve Comeau- 5th District - term expires December 31, 2018

At-Large Councilor Appointees

Ms. Hatisha Holmes – term expires December 31, 2018
Open, - term expires December 31, 2018
Mr. Clifford Ryans - term expires December 31, 2017

We thank the following Board Members for their willingness to be held over and their ability to serve the City of Syracuse through the Citizen Review Board. Their contributions are appreciated:

Mr. Louis Levine –5th District Appointee (Term expired December 2016)
Ms. Diane Turner – Mayoral Appointee (Term expired December 2016)

FILING A COMPLAINT WITH THE CRB

The Syracuse CRB accepts complaints against members of the Syracuse Police Department (SPD) involving allegations of misconduct that may violate SPD rules and regulations, as well as state, local and/or federal law. The CRB accepts complaints on active misconduct – such as excessive force, constitutional violations, harassment, racial or gender bias, poor demeanor, search & seizure violations, theft or damage to property, untruthfulness, and false arrest – as well as passive misconduct such as failure to respond, failure to intercede or refusal to take a complaint.

Any member of the public can file a complaint with the Syracuse CRB; a complainant need not be a resident of the City of Syracuse or a US citizen. There are several ways a complaint can be filed. A complainant can walk in to the CRB office in City Hall Commons at 201 East Washington Street, Suite 705, to fill out a complaint, contact the CRB office to have a complaint form mailed to their address, download the complaint form from the CRB website, or request a home visit if necessary. The complaint form can be hand delivered or mailed to the CRB office. The CRB website is www.syr.gov.net/CRB.aspx. The CRB office telephone number is 315-448-8750. The CRB can be reached by e-mail at crb@syr.gov.net.

PUBLIC MEETINGS

The CRB meets on the first Thursday evening each month at 5:30 PM in Common Council chambers in City Hall. The meeting schedule is posted at area libraries, on the CRB website, and on the calendar on the City's main webpage. These meetings are open to the public with a public comment period that begins no later than 6:30 PM. The purpose of the public meeting is to develop and refine CRB policies and procedures in an open, transparent and accountable fashion and to conduct the ongoing business of the CRB. The Board meetings typically include a vote on items that require Board approval, a series of items presented by the Chairman for the Board's consideration, a report on the CRB's monthly activities by the Administrator, a variety of committee reports and an opportunity for public comment. After the conclusion of the public comment period, the Board continues its meeting in a confidential Executive Session to deliberate and vote on whether or not to send investigated complaints to a hearing. During 2017, the Board processed on average nine complaints per month depending on the current case load.

OUTREACH

The CRB legislation requires the agency to conduct at least five outreach events annually, one in each Council District. During 2017, the CRB hosted outreach events at a Dunkin' Donuts, one housing complex and city branch libraries. The 2nd District Outreach committee meeting was Tuesday, March 14 at Hazard Library, was cancelled due to a snow storm and was rescheduled for Tuesday, October 17 was not held and needed to be rescheduled; the 3rd District Outreach Committee Meeting was Wednesday, January 25 and June 14 at Betts Library. 3rd District Common Councilor Susan Boyle attending the January 25 Outreach Meeting; the 4th District Outreach Committee Meeting was Tuesday, February 21 at Beauchamp Branch Library with One (1) OCC student in attendance working on a documentary; the 1st District Outreach Committee Meetings were Wednesday, April 12 and Wednesday, September 13th which was cancelled at White Library. The 5th District Outreach meeting had to be cancelled due to a scheduling conflict and was rescheduled for November 15th at Soule Branch Library. The CRB participated in Unity Day Community Engagement activities sponsored by Syracuse Community Connections and the

SUG/SOY Gang and Gun Violence programs, May 19 at McKinley Park, June 9 at Jubilee Park, July 14 at Kirk Park, and August 4 at Wilson Park.

Community events at which the CRB was present or represented included Juneteenth, Saturday June 17 in Clinton Square; CNY Pride Parade, Saturday June 17, Inner Harbor; McKinley Park Summer Concert Saturday, August 4th; Near Westside Initiative Multicultural Block Party, Thursday, August 17 at Skiddy Park; Westcott Street Cultural Fair, Sunday, and September 17, Westcott Street (and side streets) between Concord and Dell Streets; “What Richmond Can Teach Syracuse,” Wednesday July 26 at The Event Center sponsored by Southside Community Coalition, Black Lives Matter-Syracuse, Syracuse Cure Violence and Syracuse Green Party; Southside TNT’s Soul of Syracuse Taste of the Southside Cultural & Arts Festival in the 1600 block of South Salina Street known as the Sankofa District.

Community Outreach and Public Education is achieved by having CRB information – brochures, complaint packets (complaint form, HIPAA form, Legal Assistance Addresses, Notice of Claim form) and magnetic information cards – available for the taking while interacting with the public and police depending on the event. Each event provided an opportunity to introduce the CRB process to the public and respond to any questions. Board members now have name badges to wear while attending outreach events. The badges have the Board member’s name and by whom they are appointed (District/At-Large Councilors or Mayor Stephanie Miner).

OPERATIONS

Between January 1 and December 31, 2017, the CRB held 12 monthly business meetings that were open to the public. A quorum was met for each meeting and all regular operating business was able to be conducted. The CRB received a total of 118 complaints in 2017 and completed processing of 80 cases (21 cases from 2016 are included with 2 remaining cases from 2016 to be processed in 2018).

CHANGES IN ADMINISTRATORS

Mr. Joseph L. Lipari assumed the position of Administrator on May 16, 2012 to bring the Syracuse Citizen Review Board forward. Mr. Lipari brought a unique blend of expertise in police accountability and reform, community organizing and the investigation of police misconduct. He is so highly respected among his peers in civilian oversight of law enforcement that in 2015 he was selected to travel to Russia as part of the Eurasia Foundation’s Social Expertise Exchange (SEE) Program. The foundation collaborated with NACOLE (National Association for Civilian Oversight of Law Enforcement) to identify practitioners in the field who can share best practices with their Russian counterparts. The foundation sponsored an eight-person United States–Russia working group on Rule of Law that focused on developing civilian oversight in both Russia and the United States. In May 2016, Mr. Lipari left the Syracuse CRB to take a position as a Senior Policy Manager for the Office of the Inspector General for the New York Police Department. We are forever grateful for the work he did in Syracuse and will continue to build on the foundation he helped establish.

Mr. David L. Chaplin II, Esq. came to the CRB from the Corporation Council Office. In December 2016, he left to pursue other opportunities as an attorney for Onondaga County.

Ms. Ranette L. Releford, MPS came to the CRB from the Corporation Council Office in June 2017 and is the current CRB Administrator.

BOARD TRAINING AND DEVELOPMENT

The Board did not participate or attend any training in 2017 due to transitions of the Administrators and Board members.

HEARINGS & DISCIPLINARY RECOMMENDATIONS

Once the full CRB votes to send a case to a panel hearing, a panel is composed of three members of the CRB (one mayoral appointee, one district councilor appointee, and one at-large councilors' appointee) and the hearing is typically held within two to three weeks based on the availability of the complainant and witnesses.

During 2017, the CRB held 26 hearings to examine a variety of complaints. 18 of those hearings resulted in a sustained finding against one or more officers. The CRB made disciplinary and training recommendations to the Chief of Police in those 18 cases. The CRB's disciplinary recommendations included: retraining, loss of one (1) days' pay, verbal reprimand, written reprimand, One (1) week suspension, Permanent written reprimand, and Termination.

During 2017, the CRB held 26 hearings. 18 of the hearings resulted in sustained findings against one or more officers. For the year, the Board made 18 recommendations for retraining, 5 recommendations for verbal warning, 4 recommendations for written reprimand, 2 recommendations for one (1) week suspension, 1 recommendation for restitution, and 1 recommendation for termination.

A sustained finding means that the panel found that there was ***substantial evidence*** that the alleged misconduct did occur. **The CRB's sustain rate for 2017 was 14.4%.** The sustain rate is calculated by dividing the number of hearings that resulted in sustained findings (18) by the number of complaints received in the year (118).

DISCIPLINARY ACTION RATE

The disciplinary action rate (or rate of agreement) is the rate at which the Chief of Police imposes discipline when the CRB recommends it. Local Law 1 of 2012 requires the CRB to report to the public the number of times that the Chief of Police imposed disciplinary sanctions when the CRB sustained an allegation against an officer and recommended discipline. Out of the 18 cases involving sustained findings by the CRB in 2017, the Chief provided the CRB with 12 responses. The Chief agreed with 2 Findings of the CRB in cases with hearings held in 2017 and one (1) Officer was "addressed sufficiently" and the others Officers where not disciplined because it was "well outside the window during which disciplinary actions may be initiated." The CRB received a total of 18 response letters from the Chief for cases filed in 2015-2017. However, since the CRB did not receive all of the Chief's required responses in 2017, the CRB is unable to fulfill this public reporting obligation.

2017 ANNUAL POLICY & TRAINING RECOMMENDATIONS

In each year's Annual Report, the CRB makes recommendations on police policy, training and procedures. The recommendations are provided to the Mayor's office, the Common Council, and the Chief of Police in an effort to spur constructive dialog about how to improve particular aspects of the Syracuse Police Department. We believe that these recommendations, if adopted, will serve the interests of the public as well as the City's police officers. The CRB offers the following recommendations under the authority granted the Board by Section Three, Paragraph (6) of the CRB legislation.

REAFFIRMATION OF 2012, 2013, 2014 & 2015 POLICY RECOMMENDATIONS

2015 POLICY RECOMMENDATIONS

The CRB made a series of policy recommendations in its 2012, 2013, and 2014 Annual Reports. Those recommendations are restated here in an effort to encourage the SPD to adopt these recommendations:

1. ***The SPD Should Adopt a Modern Comprehensive Use of Force Policy*** similar to the one developed by the CRB (see Appendix I). The policy should be based on national best practices, model policies from other police departments, and requirements outlined by the U.S. Department of Justice in consent decrees with other cities. The policy should include:
 - A delineation of all force options, including all department-approved lethal and less-lethal weapons, and specific guidance on when each force option is appropriate and not appropriate;
 - Precise definitions of key terms including but not limited to imminent threat, force transition, de-escalation, reportable force, and the definitions and correlation of various levels of subject resistance (passive, active, aggressive and aggravated aggressive) to levels of force;
 - A discussion of what constitutes "objectively reasonable" force under the U.S. Supreme Court's *Graham v. Connor* (1989) decision;
 - Specific prohibitions on when certain forms of force should not be used;
 - A more prominent emphasis placed on the limitation of the use of impact weapons to strike the head or neck area to deadly force situations;
 - The limitation of respiratory restraints (i.e. "chokeholds") and vascular (or carotid) restraints only to situations where deadly force is justified.
 - A "Duty to Intervene" and a "Duty to Report" policy which dictates that any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force and promptly report these observations to a supervisor;
 - A prohibition on officers firing at or from a moving vehicle when the moving vehicle constitutes the only threat.
2. ***The SPD Should Install Seatbelts and Cameras in the Rear Compartment of Police Transport Vans*** that can record and store for a reasonable time period audio and

video. The transport vans are currently equipped with holding straps and cameras which do not record audio or video.

3. ***The SPD and the City of Syracuse Should Engage in a Concerted Effort to Secure Funding for Police Body Cameras and Develop a Policy on their Usage.*** In September 2015, the Bureau of Justice Assistance announced that the SPD did not receive a federal grant for body cameras. However, the SPD and the City should continue to explore funding options for body cameras and should continue to develop its policy on the use of body cameras. In doing so, the SPD should seek input from the public and police officers on the composition of such a policy. The policy should include:
 - Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
 - The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;
 - Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;
 - The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;
 - The method for documenting chain of custody;
 - The length of time recorded data will be retained by the agency in various circumstances;
 - The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed; and
 - The process and policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests.¹
4. ***The SPD Should Purchase and Install Dashboard Cameras and Audio Mics in all SPD Patrol Vehicles.*** Currently, only seven department vehicles are equipped with dashboard cameras and these vehicles are used primarily for traffic enforcement. The in-car dashboard cameras and audio mics could be fully integrated with a new body camera system providing maximum possible coverage of interactions between police and the public.
5. ***The SPD Should Include in their Rules and Regulations a Policy which Outlines the Proper Procedures for Conducting Eyewitness Identifications*** including photo lineups, live lineups, show up identifications, and field view identifications (see Appendix II).

¹ See the Police Executive Research Forum's *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (2014) available at <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

2014 POLICY RECOMMENDATIONS

1. ***Revise the Existing Use of Force Policy*** to make it consistent with the city’s new well-developed Taser policy. The city’s current use of force policy simply states, “It is the responsibility of each officer to be aware of the requirements of Article 35 [of the NYS Penal Law] and to guide their actions based on that law and department policy and training.” Article 35 provides no specialized guidance to police officers on the appropriate uses of force and does not constitute a use of force policy. A new use of force policy should be based on recommendations provided by the U.S. Department of Justice in consent decrees reached with other cities.² The new policy should include:
 - A. A delineation of all force options, including all department-approved lethal and less-lethal weapons, and specific guidance on when each force option is appropriate and not appropriate;
 - B. Precise definitions of key terms including but not limited to imminent threat, force transition, de-escalation, reportable force, and the definitions and correlation of various levels of subject resistance (passive, active, aggressive and aggravated aggressive) to levels of control (low level, intermediate, and deadly force);³
 - C. A discussion of what constitutes “objectively reasonable” force under the U.S. Supreme Court’s *Graham v. Connor* (1989) decision;
 - D. Specific prohibitions on when certain forms of force should not be used;
 - i. A more prominent emphasis placed on the limitation of the use of impact weapons to strike the head or neck area to deadly force situations;⁴
 - ii. A clear prohibition against respiratory restraints (i.e. “chokeholds”) and the limitation of vascular (or carotid) restraints to situations where deadly force is justified.⁵
 - E. A “Duty to Intervene” policy which indicates that any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another officer use force that exceeds the degree of force permitted by law should be required to promptly report these observations to a supervisor.⁶

² In the DOJ’s most recent findings of the Cleveland Division of Police, in a section titled, “Systemic Deficiencies Cause or Contribute to the Excessive Use of Force,” the DOJ concludes that police departments “must provide their officers clear, consistent policies on when and how” to use force. See U.S. DOJ Civil Rights Division, Investigation of Cleveland Division of Police, December 2014, pg. 28.

³ DOJ’s consent decree with the city of New Orleans in 2012 provides many of these definitions, see pgs. 4 – 11; as does Syracuse’s new Taser policy.

⁴ Current SPD policy reminds officers that under certain circumstances the use of a less lethal weapon may constitute a use of deadly physical force; the head and neck are then mentioned in parentheses, see Volume 1, Article 4, Section 6.12. Volume 1, Article 4, Section 2.00 also notes that “deadly physical force can be expanded to include the use of other weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.” A clearer prohibition would simply state that strikes to the head or neck with an impact weapon are defined as deadly force and shall be limited in use to situations where deadly force is legally justified.

⁵ For more on the definitions and danger of various styles of “chokeholds,” see A MUTATED RULE: Lack of Enforcement in the Face of Persistent Chokehold Incidents in New York City, NYC CCRB, 2014, pgs. 11-18.

⁶ Model “Duty to Intervene” or “Duty to Report Misconduct” policies can be found in the Las Vegas and Los Angeles departmental policies and procedures. See also legal obligations under prior court precedents such as *Warren v. Williams*, 2006 U.S. Dist. LEXIS 18900 (D. Conn. 2006), *O’Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988), *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir. 1994), and *Randall v. Prince George’s County*, 302 F.3d 188, 203 (4th Cir. 2002).

2. ***Commence Development of a Comprehensive Body Camera Policy*** ready to be implemented upon the eventual acquisition of body cameras.⁷ This policy should be developed with input from both the public and the officers who will use them.

In addition to acquiring body cameras, the SPD should increase the number of dashboard cameras installed in police vehicles. Currently, only seven SPD vehicles are equipped with dashboard cameras; these vehicles are typically used for traffic enforcement.

3. ***Develop and Implement a Disciplinary Matrix*** to bring consistency and predictability to the department's disciplinary process.⁸ A matrix, a common disciplinary tool used by employers both inside and outside of policing, categorizes violations into various levels of severity and provides disciplinary options for each level. A degree of administrative discretion can be built into the matrix by including mitigating and aggravating factors that can increase or decrease the level of discipline.
4. ***Adopt a Policy to Immediately Retrieve and Secure Video*** from the COPS Platform cameras or nearby private surveillance cameras anytime there is a use of force incident within range or as soon as a complaint has been made against an officer (either through 911, at the scene, or later through OPS).

The CRB also recommends that the SPD extend the timeframe that COPS Platform camera videos are available from 15 days to 45 days so the videos will more likely be available for complaint investigations.

5. ***The Office of Professional Standards should Conduct Recorded Interviews with Subject Officers and Acquire Police Radio Transmissions*** as a routine part of their internal affairs investigations. The recording of interviews with officers who are the subject of a complaint or who are a witness to the incident is a widely accepted best practice for internal affairs investigations. The recording of interviews tends to improve the quality of the interview and preserves the interview for review by outside agencies when necessary. The routine acquisition of police radio transmissions would provide investigators with additional context and the ability to verify critical aspects of an officer's account of a given incident. If adopted, both recommendations would serve to improve the quality and thoroughness of OPS investigations.

2013 POLICY RECOMMENDATIONS

1. ***Develop a Policy on the Use of Police Vehicles when Chasing a Suspect who is on Foot or Bicycle.*** In 2013 the CRB reviewed two different cases in which an individual alleged that police used their vehicle to bump or cut them off as they were either running or riding a bike. The SPD has a clear policy in regards to the use of police vehicles while in pursuit of a suspect in a vehicle, but the CRB could find no policy concerning the use of

⁷ Guidance on the development of a comprehensive body camera policy can be found at the Americans for Effective Law Enforcement (AELE) website. Washington, D.C.'s Office of Police Complaints also recently produced a very useful guide for developing such policies. In addition, Seattle Police policy on body cameras can be accessed here.

⁸ For more on the application of a disciplinary matrix, see *The Police Chief*, October 2006, "Employee Disciplinary Matrix: A Search for Fairness in the Disciplinary Process."

police vehicles while in pursuit of a suspect on foot or on bike. Current policy only allows officers to use a police vehicle to hit or box-in another vehicle with the permission of a supervisor. The CRB panel thus recommends that the SPD develop a policy for the use of police vehicles when pursuing suspects on foot or bicycle.

2. ***Initiate a Review of SPD's Use of Force Policy.*** The CRB recommends that the police department conduct a review of the SPD's use of force policy to ensure that it meets current best practices encouraged by the U.S. Department of Justice and increasingly adopted by police departments throughout the country.⁹ The current SPD use of force policy states, "It is the responsibility of each officer to be aware of the requirements of Article 35 [of the NYS Penal Law] and to guide their actions based on that law and department policy and training." Article 35 provides the legal justifications under which any citizen of New York can use force within the law, with a few additional qualifications for police and peace officers. It is not a law that provides any specialized guidance to officers for the fluid and fast moving situations they confront every day.

Lack of specific policy guidance on the appropriate use of force may lead officers and supervisors to believe that they are justified in using force in situations in which it would be unreasonable or unnecessary. Conversely, unclear or overly general policies may result in officers refraining from using necessary and appropriate force out of a fear of being accused of using excessive force.¹⁰

A comprehensive use of force policy would include all force techniques, technologies, and weapons, both lethal and less lethal that are available to officers. It should clearly define and describe each force option and the circumstances under which use of such force is appropriate.¹¹ To ensure consistency in the application of the use of force, an effective use of force policy should among other things define key terms such as levels of resistance (passive, active, aggressive and aggravated aggressive resistance) and the appropriate force counter-responses available to officers (low level, intermediate level, and deadly force options).

The current SPD use of force policy was put in place prior to the present SPD and mayoral administrations and prior to the current efforts by the U.S. Department of Justice to improve police policies and procedures around the country. Syracuse officials presently have the opportunity to improve the city's use of force policy with little or no cost to taxpayers. Jurisdictions whose policies do not comport with the practices encouraged by the DOJ leave themselves vulnerable to the possible imposition of DOJ mandates that can include significant financial costs to area taxpayers.

In addition to protecting taxpayers' financial interests as well as constitutional rights, addressing this issue should lead to an increase in officer safety. Our police officers work under extremely difficult and stressful circumstances. A clearer set of rules for the use of force coupled with extensive training on those rules would give officers more confidence in reacting to a variety of different forms of subject resistance, expand their range of responses, and ultimately produce a

⁹ See DOJ finding letters to the cities of Austin, TX. (2008, pgs. 3-27), Seattle, WA. (2011, pgs. 23-34 and 37-38), and the territory of Puerto Rico (2012, pgs. 86-90). See also the DOJ's Consent Decree with the city of New Orleans, (2012, pgs. 14-23 and 33-34). All available online at www.justice.gov/publications. See also the DOJ COPS offices' Collaborate Reform Process for Las Vegas, NV. (2012, pgs. 24-25, 60-63 and 126-130), available online at www.cops.usdoj.gov.

¹⁰ DOJ finding letter to the City of Austin, pg. 4.

¹¹ DOJ finding letter to the City of Austin, pg. 6.

more flexible and appropriate force response to a given situation. Officers need to be as prepared as possible for the multitude of situations that they face.

2012 POLICY RECOMMENDATIONS

1. ***Securing Entryways following a Forced Entry.*** Current SPD policy states that subsequent to a forced entry in which an entryway is damaged, an officer must ensure that the building is physically secured before leaving the scene. It states that officers *can* contact the Department of Public Works (DPW) for assistance in securing the premise. In 2012, the CRB identified an instance in which an entryway was not sufficiently secured by an officer after the main door and lock was damaged during a legally warranted forced entry by police that resulted in the arrest and removal of the occupants of the residence. An officer did attempt to secure the door but only used two nails to affix the damaged door to the door frame. The nails were subsequently removed by burglars and the residence was burglarized. The CRB discussed the issue with personnel from DPW who are responsible for boarding up structures. The board-up crews from DPW use at least five *screws* on each side of a damaged entryway to fully secure the premise. The CRB recommends that the SPD adopt a similar policy and has suggested language that requires the officers to use a similar number of *screws* (as opposed to nails) or *requires* officers to request the assistance of DPW if no officer on scene possess the required tools or hardware.
2. ***Provision of Property Receipts for Seized Currency.*** Current SPD policy details the process by which seized currency shall be entered into the Property Division, but it provides little guidance to officers on the provision of property receipts to the individual whose money was seized. Property receipts (Form 5.4) are typically provided to individuals from whom police officers seize money due to the presence of other illegal contraband (such as drugs). Occasionally, an officer may not have in his or her possession the required Form 5.4. In the course of past investigations, the CRB identified an instance in which an officer failed to provide a property receipt to an individual after seizing a substantial sum of money during a traffic stop in which drug paraphernalia was also discovered. The officer did not have a copy of Form 5.4 and did not request one from police dispatch. No property receipt was issued at the point of seizure to document the amount seized. Subsequently, the officer was accused of stealing a portion of the money. To protect officers from false accusations of theft and to ensure that the public's interest is fully protected, the CRB recommends that the SPD make the provision of property receipts (Form 5.4) mandatory at the point of seizure, provided doing so does not jeopardize the safety or security of the officer or any other person. If the officer does not have a property receipt at the point of seizure, then the officer should request one through dispatch and the officer's supervisor should ensure that the necessary form is delivered to the scene without delay.
3. ***Inclusion of a Non-Retaliation Clause in the SPD's Complaint Procedures.*** Current SPD policy for accepting complaints against police officers contains no non-retaliation clause. The CRB recommends the inclusion of an unambiguous clause that restricts any manner of retaliation or intimidation against any individual who files a complaint, seeks to file a complaint, or cooperates with the investigation into a complaint against a member of the SPD.

CASE SUMMARIES OF SUSTAINED FINDINGS

Out of the complaints processed during 2017, 18 resulted in a sustained finding against one or more officers. The CRB provides summaries of the sustained cases below in an effort to afford the public an accurate understanding of the cases sustained by CRB panels. Consistent with Local Law 1 of 2012, no identifying information is included in the summaries to protect the identity of the complainants and officers involved.

- **False Arrest and Demeanor**

A female complainant was arrested for menacing, harassment and criminal possession of a weapon based on an incident between her and her downstairs neighbor. She lives in the upstairs apartment of a two-family residence. The downstairs tenant has a live-in boyfriend with whom the Complainant has had many disagreements with in the past.

On the day in question, the Complainant was sitting on the front porch of her home awaiting a cab for a medical appointment she had that morning. The neighbor was watching his kids while they waited for the school bus. Once the kids were gone, he returned to the residence and took offense to the Complainant looking at him while he walked up the porch steps. He asked the Complainant, "What you looking at?" and she replied "Nothing." The two then traded insults. The neighbor repeatedly went inside only to come back out again to renew the argument. This went on until the Complainant's ride arrived. She went upstairs to lock up and when she returned, there were two police officers present. The Complainant was talking on the phone with a friend as she stepped outside and asked the officers what was going on. Officer One grabbed her phone out of her hand, terminated the call and said to the Complainant, "You are going to fucking jail." She was immediately cuffed and taken to a police car. Neither officer answered any of her questions other than to say "Shut the fuck up."

The Complainant later learned that her neighbor had accused her of attacking him with a power drill. She does not own a power drill and in fact, suffers from multiple disabilities making it unlikely that she would own any power tools let alone have the ability to wield them as a weapon. She maintains that a quick search of her apartment would have proven that the complaint against her was false. Further, the complaining neighbor has a long and unfortunate criminal history making him a less than credible witness. It should be noted that the Complainant is approximately 5'4" and by her own estimate, weighs approximately 105 lbs. I cannot vouch for her weight but if asked, I would describe her as "frail."

In addition to her physical disabilities, the Complainant suffers from emotional and mental health problems that likely contribute to her tendency towards oppositional behavior. She states that she has a past with Officer One and believes that motivated him to take advantage of the opportunity to arrest her. She relates a prior experience where she had called the police based on suspicion that a person at a party in the area was carrying a gun and threatening people. The officers who responded included Officer One. After investigating the complaint, he did not make an arrest. The Complainant readily admits that she became angry and upset at the officer, so much so that she unleashed a torrent of extremely insulting remarks centering on the officer's anatomical inadequacies and questioning the nature of his relationship with his wife. The Complainant believes that the officer's desire for revenge motivated him to ignore the flimsy nature of the allegations against her and to refrain from performing any meaningful investigation.

The panel concluded that there was no probable cause to arrest the Complainant and further, that the Officer's demeanor in using foul language was inappropriate.

- **Failure to Act Sustained against one Officer**

The Complainant was in a car accident after which the other driver left the scene. The police located the other driver but did not give him a ticket for leaving the scene of the accident. The Complainant's vehicle was parked facing south prior to the accident; she activated her left turn signal in preparation for making a three-point turn to drive north. Traffic was clear in all directions when she pulled out and across the two lanes of traffic. She then started to back-up to complete the next step of the three-point turn. Suddenly another car appeared behind her going north. The driver of the other vehicle veered and passed her along the right side of her vehicle and there was not enough room between her car and the curb to fit another vehicle. The other car essentially side swiped the right side of Complainant's car.

Both drivers pulled over and exited their vehicles. The other driver was on his cell phone when he stepped out of the car and Complainant believes he was using his phone when the accident happened. The other driver was a young male who appeared to be nervous and agitated. He gave conflicting information to Complainant. They argued briefly about the accident before Complainant returned to her car to get her cell phone to call 911. While she was on the phone with them, they advised that she should write down his plate number in case he should leave the scene. She wrote down the number and almost immediately saw the other driver get into his car and just drive away.

Officer One contacted the Complainant, informed her that they had found the other driver and they were going to issue him a ticket for leaving the scene of the accident. Officer One advised the Complainant to get a copy of the report as it would contain all of the relevant information. When the Complainant received a copy of the report, it showed that no ticket was issued. The report blamed the accident on the Complainant for failing to yield the right of way.

Officer One states that the other driver explained that he initially stopped but after speaking with Complainant, it appeared to him that she did not want to report the accident because it was her fault for making a U-turn in front of him. He claims that Complainant stated, "it's all okay" which he interpreted as permission for him to leave. Accordingly, Officer One did not issue a ticket for leaving the scene of the accident.

The panel concluded that there was no reason for Officer One not to issue a ticket for failure to leave the scene of the accident. Ultimately, the faulty party for the accident would be determined in court. The panel found it remarkable that Officer One accepted and apparently relied on the other drivers subjective and self-serving "impression" that the Complainant did not want to report the accident because it was her fault. The panel found this to make no sense since there was an undisputed fact that she did report the accident when she called 911.

- **Racial Profiling and Improper Search/Seizure Sustained against two Officers**

The male Complainant was pulled over by Officers One and Two while driving a motor vehicle for allegedly having inadequate lights and failing to use a turn signal. During the traffic stop, the Officers determined that the Complainant did not have a driver's license. Both Officers claim to have smelled and seen evidence of illegal drug use/possession when they approached the vehicle.

Based on that, the Officers asked the Complainant to get out of the vehicle but the Complainant did not initially comply and instead, locked the car door. The Complainant, in less than a minute, changed his mind and unlocked the car door to exit the vehicle in compliance with the orders of the Officers. The Officers then used a minimal amount of force to handcuff him and he did not resist.

Officer Two searched the Complainant and found no contraband or weapons. Officer One then searched him repeatedly and more invasively with each search attempt. Officer One's search attempts caused the Complainant's pants to fall down. Officer One, as part of his last search, placed his hand in direct flesh-to-flesh contact with the Complainant's intergluteal cleft, causing an abrasion that required medical treatment. The previously mentioned search by Officer One took place in public view. The search was not legally a body cavity search; however, it did qualify as a partial "strip search."

The panel found that the circumstances of the search in question did not require that a strip search take place, in public view, at the scene of the arrest. The panel concluded that the partial strip search that publicly humiliated the Complainant was not necessary, resulted in a minor physical injury and was therefore inappropriate.

- **False Arrest and Racial Profiling Sustained against two Officers**

The male Complainant states that he assisted a resident who had locked their keys in the car on the day in question at which time SPD performed a raid looking for narcotics and weapons while he was across the street. He never stepped foot on the property being raided. Officer One pulled his gun out, pointed it at him, and told him "freeze, get on the ground." He was arrested along with 12 others.

Officer One asked him where his vehicle was and the Complainant denied where it was so the officer used the key fob to locate the vehicle. Officer One took possession of the Complainant's vehicle and drove it to another location to be searched. The officers performed a search on his mother's car at another location and found no drugs in the vehicle. The vehicle's windows were left down, it rained, and the car's interior was destroyed as it sat there for a month.

The Complainant was incarcerated for 7 months. His charges were dismissed when Officer One testified he didn't see him doing anything on that particular day and when he was searched they did not find any drugs on him. Although, the officers stated his arrest was after a long-term investigation and surveillance showed the Complainant, collaborating with the rest of the arrestees and was directly observed actively participating in drug sales.

Detective One stated the Complainant wanted to be an informant and he advised the Complainant that his complaint needed to be resolved before they could work with him. The Complainant advised the CRB hearing panel that the officers told him if he drops his Notice of Claim he would not go to jail.

The panel concluded that there was no probable cause to arrest the complainant and Officer One had no reason to pull his weapon and aim it at the complainant.

- **Excessive Force, Demeanor, Inappropriate Physical Contact During a Search, and Racial Profiling against Three Officers**

The male Complainant alleged the Officers used excessive force and subjected him to inappropriate contact during a physical search. The Officers displayed poor demeanor and he was racially profiled by the Officers prior to his arrest. The Complainant states he noticed a police car sitting at a stop sign as he was traveling to his house and he observed the officers watching him. He entered the parking lot of his house and observed the police car enter the parking lot as well. He exited his vehicle and began walking to his apartment and he heard the officers tell him to stop. He turned around and observed Officers One and Two exit their police car.

The Complainant asked the leading Officer One what the problem was and Officer One ordered him to put his hands up. He felt that the officers' demeanor was threatening as they were approaching him and asking him to put his hands up. He raised his hands in a show of surrender as the officers closed in on him from both sides. Officer Two grabbed him and punched him in the face and back. Officer One grabbed him from the other side and struck him in the face. Officer Three struck him in the back as well. He recalls losing consciousness briefly but recalls being thrown on the ground handcuffed and dragged on the ground. The Officers kicked and yelled racial slurs at him and when the other Officers arrived on the scene they joined they also kicked him and yelled racial slurs. Officer One searched his pockets and an audio recording can be heard in which he states "he did not reach for nothing."

Officer Three started pulling on his undergarments searching his private parts in an inappropriate manner and that's when he began to resist because he felt violated by the actions of Officer Three. This type of swipe has been depicted as a "Credit Card Swipe." In an audio recording provided by an eyewitness, you can also hear the Complaint state that the officers "violated my rights, went in my ass, and went in his nuts." You can hear an eyewitness state "they striped that man, how you strip someone outside, your face is leaking, and he's naked?"

When the Complainant attempted to resist the actions of Officer Three, Officer Two put his knee in his back, while the other officers pinned his face to the ground. Officer Three and the other officers physically assaulted him. Officer One pepper sprayed him twice while handcuffed and he could hear Officer One say to the other officers get his keys and search his car. Officer Three and Officer One picked him up by his handcuffs and carried him to the transport van and shoved him into the middle partition headfirst.

The Complainant requested to go to the hospital. Officer One is alleged to have responded "don't give him medical, let him go with the rest of his friends in Oakwood." The other officers started laughing and someone said "he could die right there for all they care." Upon arrival at the Justice Center, Officer One advised the staff "he is not to go to the hospital and he is not allowed to see the doctor or the nurse for two or three days." The complainant states the nurse told him during his intake she would document all she could from him regarding his medical needs.

The panel concluded that racial profiling played a factor in the arrest of the complainant; the officers used excessive force and inappropriate physical contact during a physical search. Officer One's demeanor was less than appropriate with the complainant. There are conflicting accounts of the initial cause of the encounter between the named officers and complainant. Officers Three and Two report traffic stop for failure to use a blinker prior to complainant entering the parking lot and the officers state they attempted to effectuate a traffic stop but were unsuccessful.

- **Theft Sustained against two Officers**

A male complainant alleged during his arrest his cellular telephone was not entered into his property log or logged in by the arresting officers. The Complainant stated his Samsung Galaxy phone was the only property not returned to him and he states it was taken by the Officers because he would not cooperate when they requested information from him.

Officers One and Two arrested the male complainant for possession of a controlled substance. The Complaint states he exited a corner store and observed the officers ride by before he entered a vehicle with friends to show them some old pictures he had on a digital camera. He was in the back of the vehicle and was opening the door to exit when Officers One and Two pulled him out of the car, searched him and located the controlled substance in his front right top pocket as the jacket he was wearing had top pockets on each side.

The Complainant had a Samsung Galaxy cellular telephone, digital camera, lottery tickets, and money on him along with the controlled substance when arrested. Officers One and Two were questioning him and he would not cooperate. He was previously arrested by the officers for marijuana a year ago. He spent seven (7) days in jail and upon his release; he received the digital camera, lottery ticket, and money which was all listed on his property receipt. The Samsung Galaxy cellular telephone was the only property not returned to him and he states it was taken by the officers. The Complainant expresses deep concern that he no longer has the pictures of his grandparents that are now deceased because his cellular telephone was not returned to him.

Officer Two informed the Complainant when he called inquiring about his telephone not being in his property “we did not take his phone. In short, no phone was taken or turned in from the Complainant at any point during our interaction.”

The panel concluded the Complainant's Samsung Galaxy telephone was not returned to him because of his unwillingness to cooperate with the officers' additional questioning.

- **Harassment Sustained against one Officer**

The male Complainant and a friend were walking down the street when Officer One pulled over his patrol vehicle and approached them claiming the friend had “given him a look” and aggressively asked if there was something he wanted to say.

The Complainant responded, “That man wasn't looking at you in no kind of way, you're harassing him.” Officer One responded to the Complainant, “You are a marked motherfucker.” After that day the Complainant received three tickets from Officer One. Officer One was driving down the street and the complainant was walking down the street, the officer slowed down his vehicle and told him to “expect your ticket in the mail.”

The panel concluded that Officer One's excessive contact with the complainant after his attempt to protect his friend was harassment.

- **Improper Search, Improper Offer to Reduce Charges, Racial Profiling, and False Arrest Sustained against two Officers**

The male complainant was in a parked rental car with a valid driver's license when Officers One and Two approached the vehicle and stated they were pulled over for "direct observation of vehicle and traffic violations." Later Officer One stated "this was happening because he was on parole" and then asked him "where are the drugs?" The Complainant replied, "There are none."

The Complainant states that Officer One searched the vehicle and then walked up to him "pulled a piece of lint off his sweater" and issued him an appearance ticket for criminal possession in the 7th, VTL 1163 OD I III Signal: Parked, PL 220.50 01 AM Crim Use Drug-2nd Dilutents, and PL 220.50 03 AM Crim Use Drug Para-2nd: Scales.

The Complainant advised the Officers that he uses the scale to obtain the proper amount of a dietary supplement "Super Inositol" because his body does not create enough creatine. Officer One responded "get me a gun or he was going to notify his parole officer and have him violated."

The Complainant states he asked to be taken to jail and Officer One responded, "You won't go to jail if you give us a gun." After the Officers persisted for over an hour, he told them he would get them a gun and they let him go with an appearance ticket.

The Complainants Parole Officer advised he was never informed of the complainants arrest by either Officer Two or One and further stated he does not normally learn of a parolee arrest via an arresting officer. The Complainants charges related to this stop were all subsequently dismissed.

The panel concluded that Officer One and Two engaged in racial profiling when they saw the Complainant and his passenger parked in a vehicle. The officers performed an improper search on the vehicle and improperly offered to reduce the Complainants charges if he provided them with a gun. The Complainants false arrest led to him violating his parole.

- **Demeanor and Property Destruction Sustained against one Officer**

A female Complainant was driving down the street on the snowy day around 11:30 a.m. She attempted to make a right turn onto E. Adams St. prior to the beginning of an SU football game and observed police officers directing traffic.

Officer One was directing traffic that day and attempted to deter vehicles from turning right onto E. Adams St. He stated he shook his head "no" and waved his flashlight in the direction he wanted the cars to go instead. He did the same motions to other cars in this intersection and was successful in deterring them from turning right onto E. Adams St.

Officer One states the Complainant approached with her right turn signal on, he gave the same motions, and she failed to comply. He further stated she passed so close that he thought she was going to hit him "I took two or three steps toward her vehicle and swung my right leg towards her car. My foot struck the rear passenger side door, by the door handle."

The Complainant states she was driving and went past the officer like the car in front of her, heard a loud noise, and saw the officer's arms leaving her car; she rolled down the window and was informed by the officer "that she was going the wrong way." Officer One assisted her in backing up

so she could go the right way. She continued to drive to safe location to stop because she wanted to see if there was damage to her vehicle based upon the loud bang she heard. The Complainant returned to the scene and yelled at the Officer “you dented my car “mother fucker, you gonna pay for that.” She asked for Officers name and badge number. The Officer told her to “wait he’s working and you almost hit me.”

The Complainant decided to approach another officer up the road about Officer One badge number and it was provided to her. She went home and called for a supervisor to come to her home so she could make a report regarding the incident. When the supervisor arrived she was informed that Officer One would arrive shortly and provide her with a traffic ticket regarding the incident. She immediately contacted her mother and requested she come to her house as she was a passenger in the car during the incident earlier that day.

The witness stated at the hearing and during a call with the Administrator that Officer One was very belligerent to her daughter first and stated “he was so tired of directing cars.” She stated he was so belligerent to her daughter that she rolled down her window and asked “if it took all of that” and Officer One calmed down once he realized she was a grown woman. The Witness further advised that she went to her daughter’s house to help diffuse the situation between Officer One and her daughter. She stated that her daughter gave it to him, like he gave it to her during both interactions with Officer One.

Officer One attempted to give the traffic ticket to the witness rather than her daughter when he arrived as neither the Complainant nor the witness understood why a ticket was being issued to the Complainant several hours after the initial incident. The Complainant advised she picked up the ticket issued by Officer One from Downtown although Officer One was at her house to give her the ticket. The ticket was reduced to non-moving violation and she has to pay a fine/surcharge.

The CRB Panel found credible evidence that property destruction was caused by Officer One based upon his own narrative and further that Officer One’s demeanor was less than courteous to the Complainant.

- **Inappropriate Physical Contact during a search Sustained against two Officers and Nonfeasance Sustained against one Officer**

The Complainant was arrested at his aunt’s house after his ex-girlfriend called 911 stating he was in possession of a gun and was threatening to shoot everyone. She also stated the Complainant had a warrant out for his arrest, he was “crazy” and “on Molly.” Several units from the Syracuse Police Department were dispatched and arrived on the scene following the 911 call.

The Complainant had outstanding warrants stemming from previous domestic violence investigations involving the 911 caller including criminal charges that stemmed from an investigation conducted by an officer on the previous day of the arrest in 2017. The officers were able to locate the Complainant in a backroom at his aunt’s house inside, he was pat frisked and placed under arrest on the outstanding criminal charges. The Complainant states he was slammed on the trunk of a patrol car and slammed on the ground after he was taken outside.

The officer states in his report “As we attempted to place the Complainant into the back of the patrol vehicle he immediately became combative and began to push officers with his shoulders, clearly in an attempt to free himself from police custody. I then utilized a leg sweep that was taught

to me while participating in the SPD's Defensive Tactics School. The Complainant was then brought to the ground where he continued thrashing about, clearly still in an attempt to free himself from police custody. Numerous officers responded in an attempt to safely detain the Complainant. The Complainant was ultimately controlled and was brought to his feet, where he again became combative with police. At this point I then drew my SPD-issued Taser and displayed it by pressing it to the stomach area of the Complainant while ordering him to stop being combative with police during the investigation. At this point the Complainant became compliant and was escorted into the back of the SPD Prisoner Transport Vehicle." After being placed inside the vehicle officers determined that the Complainant had not been thoroughly searched.

The Complainant admits he slid to the back of the transport wagon and was sitting on the edge of bench. One of the officers forced his arm around him and forced him into a corner and another officer came in the transport wagon, pulled his pants down and "did a credit card swipe" from the "top to bottom forcibly in his buttocks area." The Complainant states he began to resist and the officers attempted to control him by bringing his arms up so high it hurt. The complainant further resisted when the Officers began pulling his boxers and jean shorts down. His resisting was an attempt to avoid the "credit card swipe."

Officers One and Two entered the SPD Prisoner Transport Vehicle to perform the search and stated they were required to use force to control the Complainants combative actions against them. Officer Three states he interviewed the Complainant and "The Complainant initially stated the police had violated his rights and demanded the names of the officers who searched him in the prisoner transport vehicle...he made the claim he was inappropriately touched by an officer during the search of his person. Specifically, the Complainant made a complaint that Officers Two and One searched his rectum with their fingers while putting him in the back of the transport unit prior to being transported to the Justice Center...an Onondaga County Sheriff Sergeant approached the Complainant upon arrival at the Justice Center. The Complainant reported to the sergeant that his "ass hurt." The sergeant had him brought into the booking area where he made his complaint again for the camera. Based on the Complainants complaint, the nurse was called. The Sergeant advised that the Complainant has made this type of complaint in the past. Due to the Complainants claim, he could not be processed without medical evaluation.

Officer Three documented that he witnessed the Complainant being placed into the back of the transport unit and the subsequent search that was conducted by officers. Officer Three documented that officers used reasonable force against the Complainant based on his combative actions against them. Officer Two documented that he undid the belt of the Complainants pants and pulled the pants down around his ankles for the purpose of conducting a thorough search of the pants for a weapon. He also documented that the Complainants pants were pulled back up prior to being transported to booking. Knowing that a waistband is a common area that is used to conceal weapons and contraband the waistband of the boxer shorts that the Complainant was wearing was also checked. Officer One documented that he ran his right hand across the exterior of the Complainants waistband to confirm that he was not concealing anything. The officers did not locate a weapon and/or contraband while performing their search of the Complainant."

Officer Three further stated the Complainant refused to exit the transport wagon upon arrival to the Justice Center. He stated he wanted SERT to come out so he could inform them about the inappropriate physical contact during search and he wanted to know the names of the officers that did the search. The Complainant informed the Justice Center staff of the inappropriate physical

contact during the search and they refused to take him. AMR was called and the Complainant was taking to St. Joseph's Hospital where a rape kit was taken.

Officer Four was interviewed and he advised "Once at the Justice Center, the Complainant made claims that he was inappropriately touched during a standard lawful search incident to arrest. At this point, AMR was notified and responded to the Justice Center so he could be evaluated by a hospital. Once AMR arrived, the Complainant was then again searched for weapons before being transported to the hospital by me and another officer that yielded negative results. During the search, he voluntarily removed his own shoes and his own pants to assist in the search. At no time was he ever told to remove the above stated articles of clothing. The above stated acts were completely voluntarily done by him. This search was video recorded by cameras located in the booking entrance of the Onondaga County Justice Center. He was subsequently transported to St. Joseph's hospital to be evaluated. One officer rode with the Complainant in the back of the ambulance and another officer followed the ambulance to the hospital."

The CRB panel found the accounts of the Complainant to be credible regarding the inappropriate physical contact during a search performed by Officers One and Two and further finds nonfeasance in relation to Sergeant One's investigation of the Complainant's claims of inappropriately being touched by an officer during the search of his person. Pictures of the Complainant in the booking area were provided. In said pictures, his pants are around his ankles and his hands are cuffed behind his back. Two CDs labeled Booking videos 1 and 2 were provided as well and viewed.

- **Failure to Act Sustained against three Officers**

A male complainant was arrested after calling 911 to report his "daughters grandmother stabbed me, she is still on the scene and has been stabbed as well. I have a knife from her, we both have been stabbed."

The ambulances and Officers arrived on the scene after the 911 call. Force entry was made by Officer Three into the apartment and he "found both the complainant and grandmother sitting on the floor of the apartment both apparently suffering from stab wounds. Officer Three reported both parties appeared to be struggling weakly with each other and appeared exhausted. The female continued calling for help stating the Complainant had stabbed her multiple times. She also later stated the Complainant had forced her to grab the handle of the knife used. He noted that due to extensive areas of blood splatter it appeared the two parties had struggled with each other for some time."

Officer Three's narrative supplements 1 "I located apartment # 17 on the third floor at the rear of the building just on the other side of a hallway fire door. I was joined by K9, Officer. I could hear people inside and knocked once on the door. I could hear someone yelling for help so I kicked open the door and immediately in front of me saw a black male and white female on the floor, both covered in blood. Both were facing me in a seated position, their arms were tangled with one another as if in a struggle and severe exhaustion. The female was stating over and over for us to help her and that the male has stabbed her all over. She stated that the male had forced her to grab and hold the knife by the handle. She mentioned something about him being on parole and crack cocaine, giving me the impression drugs were involved. The male was saying that the female had stabbed him and he lived there. He started to choke, cough and appeared to have the dry heaves. Both were told to not move and when I approached them I could see a cell phone on the ground between them and a large dark handled butcher type knife under females left leg. I told them both

lay still, not to move and I dragged the knife away from the female with my foot. I informed dispatch that two subjects were stabbed multiple times and that we needed the ambulance expedited. As the other officers arrived I could see there was a lot of blood in the apartment. I noticed the living room wall leading down the hallway to the bathroom was covered in blood, as if a significant struggle between the two had taken place. Both parties were subsequently transported by ambulance to Upstate Hospital for treatment.”

Officer One reported, “She arrived shortly after Officer Three and observed both parties lying on the floor at that point bleeding. Officer One later located a citizen who provided information that he had given the female a ride to the Complainants apartment to discuss the females granddaughter. She was at the apartment for several hours after he returned to pick her up he heard what sounded like fighting from the apartment and heard the female screaming for help. Officer One then responded to Upstate Hospital where she learned the female suffered eight total stab wounds; right flank, neck, four in abdomen, right thigh, and left arm. She also learned the Complainant suffered stab wounds to his clavicle (resulting in a collapsed lung) right thigh and left hand.”

In Officer One’s narrative supplement she states “Emergency Room Trauma Unit personnel added that while speaking to with the female about what happened she received the following information: The female advised that she went over to the Complainants apartment to speak with him about the custody of her granddaughter. She advised the male became upset and locked her in the bedroom refusing to allow her to leave, during that time the male stab’s her multiple times. The female advises while in the bedroom she can hear the male pacing back and forth in the hallway saying he isn’t going back to prison. The female advises that she observes the male stab himself then calls the police.”

Officer Two reported “he responded and found the female had already been transported. The Complainant was still on the scene being attended to by ambulance personnel, appearing to exhibit a stab wound to his left upper chest. Officer Two interviewed and took a statement from a citizen. He later interviewed the female after she exited emergency surgery for her throat and abdomen. She explained that she had gone to the male’s apartment at his request to help with his daughter, who is the females granddaughter. Once there, she found her granddaughter was not there. After several hours of discussion, during which the male would periodically go into another room for several minutes at a time and may have been using drugs the male told her he needed to kill her and her husband to ensure he could get full custody. He then blocked the door with a chair and brandished a knife. He began stabbing the female who began screaming for help. She eventually collapsed onto the living room floor. The complainant then spoke about his parole, forced her hand onto the handle of the knife, and then stabbed himself. He then called 911, reporting that the female had just stabbed him. Officer Two made the determination to arrest the male rather than the female based on the female’s statement as well as the number and severity of her stab wounds. It appeared to him that the male was the primary aggressor.”

Upon their (EMS) arrival the male according the Upstate University Health System records indicated a “53 year old male was using cocaine and got into an altercation with his significant other. Both parties were stabbed during the altercation. Per EMS report he was in arrest on arrival. EMS Needle decompressed his left chest and he regained consciousness. Brought to Upstate as level 1 trauma activation. Pulmonary/Chest –diminished on left Superficial 2 mm lac to LUQ, GCS 15, 2 cm laceration to the left anterior chest around the clavicle. 4 superficial lacerations to the left thigh. A 4 cm laceration to thigh. Psychiatric- Altered. The Patient was arraigned in the ED and taken to the secure unit where his chest tube was placed on suction. ”

The Complainant was taken to the Justice Center upon release from the hospital and was brought back to Upstate; “when he was found to have a low systolic blood pressure in the 70s, complaints of pain at the site of chest tube and complained of difficulty breathing. The patient complains of an open wound on his right hand and mild shortness of breath. He sustained the wound during the stabbing he was involved in 2 days ago. Left Hand: He exhibits tenderness and laceration-3 cm superficial laceration to palmer aspect of left hand.”

Officer Two Narrative supplement 1 “Based on information collected in the early stages of the investigation, to include observations made by Officer Three and statements made by the female, in addition to the number and severity of the females stab wounds there was sufficient evidence to suggest that the male was the primary aggressor in this matter. As a result, while situated in the emergency room of Upstate University Hospital, I informed the male he was under arrest for Assault in the First Degree and Criminal Possession of a weapon. It should be noted that the male was non-communicative at this time he was being administered oxygen and made no statements. Several hours later I received information that the female was recovering, but alert, following emergency surgery to her throat and abdomen. As a result, Officer Four and I responded to Upstate Hospital in an effort to interview the female regarding this matter. As it was still unclear as to how the male received his injuries, the female was afforded her Miranda Warnings at approximately 1420hrs date. The female waived these rights and agreed to speak with us regarding this matter...the male was ultimately charged.”

The CRB panel found the account of the Complainant to be credible regarding Officers One, Two and Officer Three’s failure to obtain a statement from him while at the hospital or thereafter. The panel believes Officer Two made a medical judgement rather than following the appropriate procedures outlined in the policy titled Preliminary & Follow-up Investigations Section 4.00 found in Vol. 1 Art. 3. The Panel reviewed photographs provided of the apartment and Upstate University Hospital related to this matter.

BUDGET

2017-2018 Adopted

PERSONNEL SERVICES

510100	Salaries	\$ 99,942.00
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CONTRACTUAL & OTHER SERVICES

540300	Office Supplies (Contractual & Other Expenses)	\$ 3,300.00
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540500	Operating Supplies & Expenses	\$ 9,310.00
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541500	Professional Services	\$ 25,050.00
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541600	Travel, Training & Development	\$ <u>2,475.00</u>
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TOTAL:		\$140,077.00
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2017 Totals

Total Complaints Received during 2017: 118

Categories of allegations as defined in CRB Ordinance (totals from all complaints received in 2017; note that multiple allegations can be made in one complaint):

Active Misconduct: 37

Passive Misconduct (Failure to Act): 37

Damaged or lost Property: 17

Denial or Violation of Constitutional Rights: 10

Lack of Truthfulness in a Police Report or Falsifying a Report: 9

The number of cases processed and closed by the Board during 2017: 86

The number of cases where a CRB panel recommended disciplinary sanctions be imposed by the Chief of Police during 2017: 18

The number of CRB cases where the Chief of Police or the SPD imposed sanctions or discipline when disciplinary recommendations were made by a CRB panel during 2017: Out of the 18 cases involving sustained findings by the CRB in 2017, the Chief provided the CRB with 12 responses. The Chief agreed with 2 Findings of the CRB in cases with hearings held in 2017 and one (1) Officer was “addressed sufficiently” and the others Officers where not disciplined because it was “well outside the window during which disciplinary actions may be initiated.” The CRB received a total of 18 response letters from the Chief for cases filed in 2015-2017. However, since the CRB did not receive all of the Chief’s required responses in 2017, the CRB is unable to fulfill this public reporting obligation.

The number of complaints processed and not sent to a panel hearing during 2017: 65

The number of cases that successfully were routed to conciliation: 0

The number of complainants who initiated extended contact with the CRB but did not follow through with a formal signed complaint: 5

The length of time each case was pending before the Board: 2 months on average (but some take longer due to unavoidable delays).

The number of complaints in which the Board recommended that the City provide restitution to the complainant and type of restitution recommended: 1

The number of complainants who filed a Notice of Claim against the City of Syracuse while their complaint was being considered by the Board: 22

Hearing outcomes

Panel hearings scheduled: 27

Panel hearings held: 26

Panel hearings resulting in disciplinary recommendations from CRB: 18
 Panel hearings resulting in no disciplinary recommendations from CRB: 8

**Categories of Complaints Received by the CRB during 2017*
 Number & Percent of Annual Intake**

Demeanor	Destruction of Property	Evidence Tampering	Excessive Force	Failure to Act	Failure to Secure Entryway after Forced Entry
95	17	0	37	37	0
53%	14%	0%	31%	31%	0%

False Arrest	Gender Bias	Harassment	Improper Offer to Reduce Charges	Improper Search/Seizure
7	2	46	2	26
5%	2%	39%	2%	22%

Racial Bias/Profiling	Retaliation	Theft/Larceny	Untruthfulness in a Police Statement or Falsifying a Report	Violation of Constitutional Rights
35	0	8	9	10
30%	0%	7%	** 8%	8%

*Some individual complaints include multiple allegations

**Typically not discovered until after a complaint is filed and police reports have been acquired.

Categories of Allegations Sustained by the CRB during 2017

Raw Number, Percent of All Sustained Hearings (18 total) & Percent of that Category that were Sustained

Demeanor	Destruction of Property	Evidence Tampering	Excessive Force	Failure to Act	Failure to Secure Entryway after Forced Entry
7	1	0	6	2	0
38%	5%	0%	33%	1%	0%

False Arrest	Gender Bias	Harassment	Improper Offer to Reduce Charges	Improper Search/Seizure
4	0	1	1	5
22%	0%	5%	5%	27%

Racial Bias/Profiling	Retaliation	Theft/Larceny	Untruthfulness in a Police Statement or Falsifying a Report	Violation of Constitutional Rights
5	0	1	1	1
27%	0%	5%	*5%	5%

*No complaints filed making such allegation; however, finding sustained based on CRB investigation.

Complaints Received per Common Council District for 2017

District 1:

Demeanor: 14
Evidence Tampering: 0
Excessive Force: 7
Failure to Act: 9
False Arrest: 0
Gender Bias: 0
Harassment: 7
Improper Search/Seizure: 4
Property Destruction: 2
Racial Bias: 2
Taser Discharge: 0
Theft/Larceny: 1
Untruthfulness in a Police Statement/Falsifying a Report: 1
Violation of Constitutional Rights: 3

District 2:

Demeanor: 22
Evidence Tampering: 0
Excessive Force: 7
Failure to Act: 6
False Arrest: 1
Gender Bias: 0
Harassment: 13
Improper Search/Seizure: 7
Property Destruction: 6
Racial Bias: 10
Taser Discharge: 0
Theft/Larceny: 2
Untruthfulness in a Police Statement/Falsifying a Report: 4
Violation of Constitutional Rights: 2

District 3:

Demeanor: 15
Evidence Tampering: 0
Excessive Force: 6
Failure to Act: 10
False Arrest: 1
Gender Bias: 0
Harassment: 3
Improper Search/Seizure: 3
Property Destruction: 2
Racial Bias: 3
Taser Discharge: 0
Theft/Larceny: 0
Untruthfulness in a Police Statement/Falsifying a Report: 0
Violation of Constitutional Rights: 0

District 4:

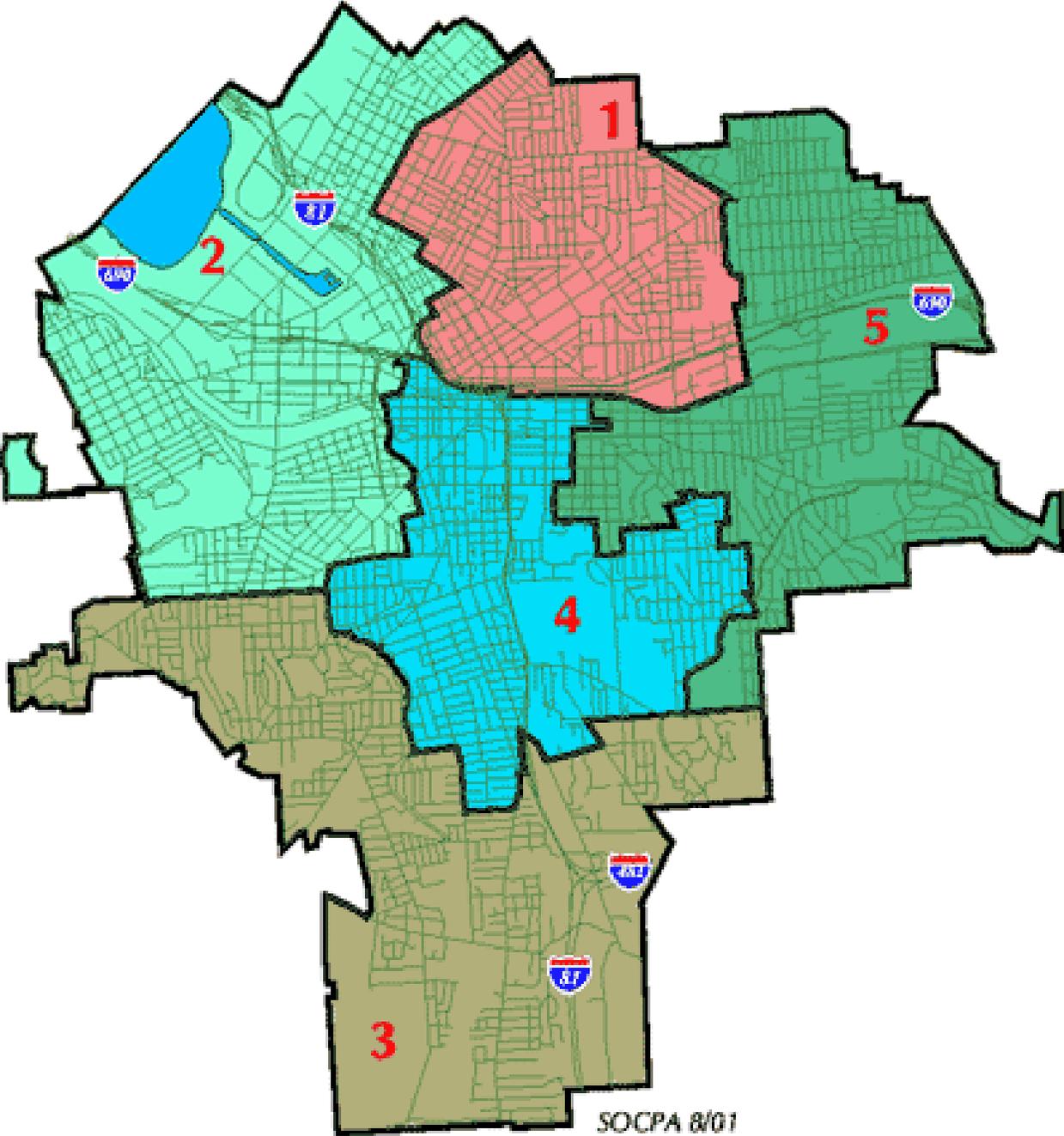
Demeanor: 32
Evidence Tampering: 0
Excessive Force: 11
Failure to Act: 8
Failure to Secure Entryway after Forced Entry: 0
False Arrest: 2
Gender Bias: 1
Harassment: 16
Improper Offer to Reduce Charges: 1
Improper Search/Seizure: 10
Property Destruction: 6
Racial Bias: 11
Taser Discharge: 0
Theft/Larceny: 3
Untruthfulness in a Police Statement/Falsifying a Report: 1
Violation of Constitutional Rights: 3

District 5:

Demeanor: 11
Evidence Tampering: 0
Excessive Force: 3
Failure to Act: 3
False Arrest: 2
Gender Bias: 1
Harassment: 4
Improper Search/Seizure: 1
Property Destruction: 2
Racial Bias: 2
Taser Discharge: 0
Theft/Larceny: 0
Untruthfulness in a Police Statement/Falsifying a Report: 2
Violation of Constitutional Rights: 2

***See the following page for a map of the Common Council Districts**

CITY OF SYRACUSE COMMON COUNCIL DISTRICTS



Complainant Demographics for All Complaints Received in 2017

Ethnicity		
Black	81	69%
White	25	21%
Latino	9	8%
Asian	1	.008%
Native American	2	2%
Other	0	0%
Total	118	100.008%

Sex		
Male	57	48%
Female	59	50%

Sexual Identity of Complainant		
LGBTQ	2	2%

Age		
Under 18	3	2%
18-35	56	47%
36-50	38	32%
51+	23	19%

Disability		
Visual	*	%
Hearing	1	1%
Physical	*	%
Intellectual	*	%

Language other than English		
Spanish	9	8%
Vietnamese	*	0%
Other	1	.008%

*Disability information and languages other than English were not indicated by the complainants.

Appendix I

Proposed Comprehensive Use of Force Policy

The current SPD Use of Force policy includes adequate procedures for reporting uses of force. Thus, the proposed Use of Force policy by the CRB does not address reporting requirements. The department's existing reporting policies should be maintained and integrated into a comprehensive Use of Force policy such as the one proposed here.

The following Use of Force policy is based on current national best practices, model policies from other police departments, and recommendations by the United States Department of Justice in consent decrees reached with jurisdictions across the country.

A Comprehensive Use-of-Force Policy for the Syracuse Police Department
Proposed by the Syracuse Citizen Review Board

Volume 1, Article 4 – Rules of Conduct

Section 3.00

Use of Physical Force

- I. POLICY
- II. DEFINITIONS
- III. USE OF FORCE TO EFFECT DETENTION, AN ARREST, OR TO CONDUCT A SEARCH
- IV. DETERMINING OBJECTIVELY REASONABLE FORCE
- V. LEVELS OF RESISTANCE
- VI. LEVELS OF CONTROL
- VII. USE OF DEADLY FORCE
- VIII. IMPACT WEAPONS
- IX. LOW LETHALITY SHOTGUN
- X. OC SPRAY
- XI. ELECTRONIC CONTROL WEAPONS
- XII. DUTY TO INTERVENE
- XIII. MEDICAL AID
- XIV. DE-ESCALATION & ASSESSING OPTIONS

I. POLICY

The Syracuse Police Department is committed to the sanctity and preservation of life, human rights, and the dignity of every individual. Department members are sometimes required to use force in self-defense, defense of others, and during the execution of lawful duties. In all situations, Department members are required to conduct themselves in accordance with lawful and constitutional standards.

All members shall view their duties in the context of safety for themselves and others, with an emphasis on respect, professionalism, and reverence for human life, even when force is required.

In compliance with applicable law, officers shall use the amount of force reasonable to effect an arrest, overcome resistance to arrest, or defend themselves or others from harm. When force is necessary, the degree of force employed should be in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others. There is a compelling public interest that officers authorized to exercise the use of force do so in an objectively reasonable manner and in a way that does not violate the civil rights guaranteed by our Constitution and applicable law. Officers who use excessive or unjustified force degrade confidence in law enforcement among the community that they serve, undermine the legitimacy of a police officer's authority, and hinder the Department's ability to provide effective law enforcement services to the community.

Officers who use excessive or unauthorized force shall be subject to discipline, possible criminal persecution, and/or civil liability. Use of force is only authorized when it is objectively reasonable and for a lawful purpose. Accordingly, the Department will thoroughly investigate all uses of force by officers to assure compliance with all legal requirements and this policy.

II. DEFINITIONS

Approved Weapons – Approved weapons are those weapons meeting department specifications for which an officer has received proficiency and safety training.

Blocking – Blocking is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. The intent of blocking is to prevent an avenue of escape by the placement of a police vehicle.

Deadly Force – Any use of force likely to cause death or serious physical injury, including the use of a firearm; neck hold; or strike to the head, neck, or throat with a hard object or closed fist.

Electronic Control Weapon (ECW) – The ECD is a Neuro-Muscular Incapacitation device that stimulates the motor neurons to contract disrupting communication from the brain to the muscles thereby causing temporary motor skill dysfunction.

1. Spark Display – A non-contact demonstration of the ECD's ability to discharge electricity.
2. Drive (or Touch) Stun – A secondary function of the ECD intended to administer pain to a subject by making direct contact with the body after the air cartridge has been expended or removed. Note: Use of the ECD in this mode is discouraged.
3. Probe Mode – The primary function of the ECD, which occurs when the ECD is fired and both probes make contact with a subject. The intent is that the subject be temporarily immobilized for the period of time the ECD is cycled.

Force – Physical effort to compel compliance by an unwilling subject above un-resisted handcuffing, including pointing a firearm at a person.

Force Transitions – The movement, escalation/de-escalation, from the application of one force type to another in conjunction with the “objectively reasonable” standard from *Graham v. Connor*, 490 U.S. 386 (1989). The officer must consider all the factors prior to using force and choose a reasonable option based on the “totality of the circumstances” present.

Hard Hand Tactics – Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Such strikes are used to subdue a subject and include strikes to pressure points such as the common peroneal (side of leg) and radial nerve (top of forearm). Defensive strikes are used by officers to protect themselves from attack and may include strikes to a subject's body with the hand, fist, forearm, legs, or feet. These techniques target the major muscle groups and are delivered to create muscle cramping, thereby inhibiting muscle action and allowing the officer to subdue the subject. In extreme cases of self-defense, where the officer reasonably believes that a subject's actions are likely to result in death, serious bodily injury, or incapacitation of the officer or another person (see Aggravated Aggressive Resistance in Section V), the officer may need to strike more fragile areas of the body, such as the head or neck, where the potential for serious bodily injury is

greater. The use of neck restraints or chokeholds is prohibited unless the use of deadly force is authorized.

Imminent Threat – “Imminent threat” refers to an impending violent act or resistance that an officer reasonably believes will occur, based on the totality of the circumstances.

Involved Officer – A commissioned officer or supervisor, who participated in, directed or influenced the application of the use of force.

Less Lethal Force – Force neither intended nor likely to cause death or serious physical injury, but that can cause death or serious physical injury. Less-lethal force includes, but is not limited to, the use of an ECW, an impact weapon such as an asp or baton, and OC spray.

Critical Firearm Discharge – Each discharge of a firearm by an officer. This term includes discharges at persons where no one is struck. This term is not intended to include discharges at the range or in training or negligent discharges not intended as an application of force, which are still subject to administrative investigation.

Reasonable Force – Reasonable force is an objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances presented at the time of the incident. See section IV. “Determining Objectively Reasonable Force.”

Reportable Use of Force – Any use of force that is greater than that required for un-resisted searching or handcuffing. Additionally, pointing a firearm at or in the direction of a person, and any use of force which results in injury or a complaint of pain or injury is a reportable uses of force.

Serious Bodily Injury – A bodily injury that creates a substantial risk of death or incapacitation; causes serious, permanent disfigurement; or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

Significant Force – Any force by any officer which results in injury, treatment by a medical professional, or admission to a medical facility. All Significant Force is Reportable Force.

Soft Hand Tactics – The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against passive resistance.

Witness Officer – A commissioned officer or supervisor who observed, heard or was in close proximity to a use of force event but did not participate in or directly influence the application of the use of force.

III. USE OF FORCE TO EFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

A. General

1. Officers shall use advisements, warnings, and verbal persuasion, when possible before resorting to force.
2. If it is not already known by the subject to be detained, arrested, or searched, officers should, if reasonable, make clear their intent to detain, arrest or search the subject. When practicable, officers will identify themselves as a police officer before using force.
3. When feasible based on the circumstances, officers shall prioritize the employment of de-escalation techniques to include, but not limited to the utilization of verbalization; disengagements; area containment; surveillance; waiting on a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and increase officer and civilian safety. Force shall be de-escalated immediately as resistance decreases.
4. Officers shall allow individuals time to submit to arrest before force is used wherever possible.

B. Use of Force Authorization and Limitations

Officers of the Department are authorized to only use objectively reasonable force to accomplish lawful objectives. Officers may use force:

1. To effect an arrest or prevent the escape from custody of a person whom the officer reasonably believes has committed an offense.
2. To defend an officer or others from the use, or imminent use, of physical force.
3. To take persons into protective custody when authorized by law, such as persons who are a danger to themselves or others, persons incapacitated by alcohol, and/or runaway children.
4. To prevent someone from committing suicide or inflicting serious physical injury upon themselves.
5. To assist a licensed physician or psychologist in providing necessary medical treatment.
6. To overcome passive or active resistance to a lawful order.
7. To neutralize an unlawful assault and defend themselves or others from harm.

The authorized use of physical force ends when resistance ceases and/or the officer has accomplished the purpose necessitating the use of force. Justification for the use of force is limited

to the facts known or perceived by the officer at the time such force is used and meet the objectively reasonable standard described in Section IV below.

Force shall never be used to subject a person to torture and/or other cruel or inhumane or degrading treatment, to unlawfully coerce a person, or to punish a person.

IV. DETERMINING OBJECTIVELY REASONABLE FORCE

Under the Fourth Amendment of the United States Constitution, a police officer may only use such force as is “objectively reasonable” under all of the circumstances. The standard that courts will use to examine whether a use of force is constitutional was first set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and expanded by subsequent court cases. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving.

The reasonableness inquiry in reviewing use of force is an objective one: the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them. The officer’s perception may be a consideration, but other objective factors will determine the reasonableness of force. These factors may include but are not limited to:

1. The severity of the crime(s) at issue;
2. Whether the subject poses an immediate threat to the safety of the officer(s) or others;
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight;
4. The influence of drugs/alcohol or the mental capacity of the subject;
5. The time available to an officer to make a decision;
6. The availability of officers/resources to de-escalate the situation;
7. The proximity or access of weapons to the subject;
8. The environmental factors and/or other exigent circumstances.

The officer will use a level of force that is necessary and within the range of “objectively reasonable” options. When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner. Reasonable and sound judgment will dictate the force option to be employed. Therefore, the department examines all uses of force from an objective standard rather than a subjective standard.

V. LEVELS OF RESISTANCE

It is important for officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. The person in question may not be capable of understanding the gravity of the situation. Officers must consider several factors when dealing with a non-compliant subject. A subject may be noncompliant due to a medical condition, mental, physical, or hearing impairment, language barrier, drug interaction or emotional crisis, and have no criminal intent. This may not make the subject any less dangerous but it may require a change in tactics that will be more effective while maintaining officer safety.

1. **Compliant** – A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance.
2. **Passive Resistance** – Behavior that is unresponsive to police verbal communication or direction (e.g., ignoring or disregarding police attempts at verbal communication or control; going limp; or failing to physically respond or move) and verbal resistance (e.g., verbally rejecting police verbal communication or direction; telling the officer that he or she will not comply with police direction, to leave alone or not bother him or her). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance.
3. **Active Resistance** – The subject's verbal or physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip, and hiding from detection. Verbal statements, bracing, pulling away, or tensing alone do not constitute active resistance.
4. **Aggressive Resistance** – The subject displays the intent to fight or otherwise harm the officer or another person, but the subject's actions do not represent an imminent threat of death, serious bodily injury, or incapacitation. The aggression may manifest itself through a subject taking a fighting stance, punching, kicking, striking, or other actions which present an imminent threat of physical harm to the officer or another person.
5. **Aggravated Aggressive Resistance** – The subject displays the intent to fight or otherwise harm the officer or another person, and the subject's actions represent an imminent threat of death, serious bodily injury, or incapacitation of the officer or another person. These actions may include the imminent use of a firearm, a blunt or bladed weapon, or extreme physical violence.

VI. LEVELS OF FORCE

When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option is appropriate for the situation and bring it under control in a safe and prudent manner. Officers may use the amount of force that is no greater than that which is objectively reasonable to overcome resistance in order to take lawful police action. The level of force employed by an officer should correspond to the level of resistance demonstrated by the subject:

1. Compliant Subject
 - Officer Presence
 - Verbal Communications
 - Escorting without force
 - Handcuffing/Other Restraint Devices
2. Passive Resistance
 - Officer Presence
 - Verbal Communications
 - Escorting under force (including lifting or carrying subject)
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
3. Active Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (no bite)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)
4. Aggressive Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (with bites)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)
 - OC Spray
 - ECW/Taser
 - Hard Hand Tactics (strikes to major muscle groups, excluding head and neck)
 - Baton or Impact Weapon (strikes to major muscle groups, excluding head and neck)
5. Aggravated Aggressive Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (with bites)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)

- OC Spray
 - ECW/Taser
 - Low Lethality Shotgun
 - Hard Hand Tactics (including strikes to head and neck)
 - Baton or Impact Weapon (including strikes to head and neck)
 - Firearm use
- **Force Transition:** In use of force incidents, the officer will transition to differing degrees or types of force, including attempts to deescalate. Force situations are dynamic and require an officer to continually assess the suspect's actions to ensure a proportionate response. Officers shall modify their level of force in relation to the amount of resistance offered by a subject.
- Prior to the use of any approved weapon option, the officer, when practical, will communicate to other officers and the subject that the use of the option is imminent, and clearly and audibly announce the same to all personnel in the immediate area unless exigent circumstances prevent this from occurring.

VII. USE OF DEADLY FORCE

An officer may use deadly force upon another person only when it is objectively reasonable to:

1. Defend the officer or others from what is reasonably believed to be an imminent threat of death, incapacitation, or serious bodily injury;
2. Effect an arrest or prevent the escape from custody of a person whom they reasonably believe has committed, or attempted to commit, a felony involving the infliction or threatened infliction of serious physical injury; AND the officer reasonably believes this person still poses an imminent threat of death or serious physical injury to the officer or other persons. Where feasible, the officer should give warning of the intent to use deadly physical force.

See, Tennessee v. Garner, 471 U.S.1, 85 (1985): The United States Supreme Court ruled that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed, non-violent suspect (the case involved a burglary suspect). The Supreme Court further stated that deadly force may be used against an offender who has attempted or committed an offense involving the infliction or threatened infliction of great bodily harm. **Deadly force may not be used against an unarmed, non-violent, property crime offender.** The United States Supreme Court decision went on to state that when an officer is justified in the use of deadly force he will, **if feasible**, first give a verbal warning. (Example: "Police! Stop or I will shoot!")

3. Use of Firearm to Destroy Animals – Officers may use deadly force against an animal that represents an imminent threat to public safety, or as a humanitarian measure where the animal poses an imminent danger to public safety or to the officers' safety, or where the

animal is seriously injured after the officers have received authorization from the animal's owner (to the extent practicable) and the officer's supervisor.

4. Use of Department Weapons for Training and Other Purposes – Officers may discharge their firearms for the purpose of practice, firearms training, when on the police range or other established shooting ranges, or when authorized by the Chief of Police to participate in law enforcement competition events.

A. Elements of a Deadly Threat

1. **Ability** – Ability exists when a person has the means or capability to cause grave injury, serious bodily harm, incapacitation, or death to an officer or another. This may include, but is not limited to the following: the officer and the suspect's physical ability, size, age, strength, gender, and combative skill; the suspect's level of aggression, and any weapons in their immediate control.
2. **Opportunity** – Opportunity exists when a person is in a position to effectively resist an officer's control or to use force or violence upon the officer or another. Examples that may affect opportunity include relative distance to the officer or others, and physical barriers between the subject and the officer.
3. **Imminent Jeopardy** – Based upon all the facts and circumstances confronting the officer, the officer reasonably believes the subject poses an imminent threat to the life of the officer(s) or other third parties and the officer must act immediately to prevent death, incapacitation, or serious bodily injury.
4. **Preclusion** – All other lesser alternatives have been reasonably considered and exhausted prior to the use of deadly force, to include disengagement. Deadly force in response to the subject's actions must remain reasonable while based upon the totality of the circumstances known to the officer at the time force was applied.

B. Deadly Force Restrictions

1. Warning Shots Prohibited – Officers are prohibited from discharging their firearms as a means of warning or frightening a person.
2. Shooting at or from Moving Vehicles – Officers will not discharge a firearm either at or from a moving vehicle, unless it is absolutely necessary to do so to protect against imminent threat to the life of the officer or others. The imminent threat must be by means other than the vehicle itself. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. This prohibition includes, but is not limited to:
 - a. Officers will attempt to move out of the path of an oncoming vehicle, if possible, rather than discharge their firearms;
 - b. Officers will not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearms;

- c. Officers will not discharge their firearms at a fleeing vehicle (a vehicle moving away from the officer) or its driver or occupants.
3. Risk to Innocent Bystanders – When officers are about to discharge their firearms, they should be aware of their field of fire, including the backstop, so as to not unnecessarily create a substantial risk of harm to innocent persons. Officers are prohibited from discharging their firearms without specific target acquisition, including: into a crowd, into a building or through a wall, or where the subject is not clearly identified and it is unknown if there are other occupants present.
4. Drawing and Pointing Weapons – Officers are prohibited from drawing and pointing their firearms at or in the direction of a person absent an objectively reasonable determination that the situation may escalate to the point where deadly force would be authorized under this policy. When it is determined that the use of deadly force is not necessary, officers shall, as soon as practicable, secure or holster their firearms. It is the rule of this department that drawing a firearm and pointing it at a target is considered a reportable use of force.
5. Use of Firearms While under the Influence of Alcohol and/or Drugs – Officers shall not carry or use any firearms or weapons while consuming alcohol or impaired by drugs or any other medical condition that might interfere with their judgment or proficiency.
6. Security, Storage, and Safe Handling of Firearms – Officers shall be trained in accordance with Department guidelines, and shall obey all safety rules when handling any firearm or any other weapon. No person other than Syracuse Police Department Officers shall be permitted access to any department-owned firearm, with the exception of: police officers from other jurisdictions in the official performance of their duty; for repair or maintenance as approved by the department; or other circumstances with the express permission of the Chief of Police.

Officers will secure and store firearms, both on and off duty, in such a way as to ensure that no unauthorized person will have access to or gain control over the firearm. All Department firearms kept at home must be secured in a safe place inaccessible to family members, especially children.

Whenever an officer is in a departmental facility and removes his/her handgun or other weapon, the item must not be left in the open and must be secured so that it is not readily accessible to civilians, suspects, victims, or witnesses.

C. Less Lethal Force Restrictions

The following tactics of less lethal force may be permitted in circumstances only when deadly force is authorized by this policy:

1. Any chokeholds or neck restraints, with or without a device, that restricts a person's airway or inhibits the flow of blood;

2. Any use of flashlights, radios, or any other items not issued or trained specifically as defensive weapons;

In limited circumstances when a confrontation escalates suddenly, however, an officer may use any means or device at hand such as a flashlight, radio, and other issued equipment, to defend him/herself, as long as the level of defensive action is objectively reasonable given the existing circumstances.

D. Other Force Restrictions

1. Force shall not be used against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons, or, as objectively reasonable, where physical removal is necessary to overcome passive resistance.
2. Officers will not use force against persons who only verbally confront them and do not impede a legitimate law enforcement function.
3. Officers will not use force in a retaliatory fashion. Retaliatory force includes, for example, force in excess of what is objectively reasonable to prevent an escape to punish individuals for fleeing or otherwise resisting arrest; and force used to punish an individual for disrespecting officers.

VIII. IMPACT WEAPONS

Authorized impact weapons may be used only when an officer is confronted with aggressive resistance or aggravated aggressive resistance occurring or imminent against him/herself or another person.

1. The use of a baton or similar instrument to strike a blow to a subject's arms or legs will be considered use of less lethal force and may be used to confront aggressive resistance.
2. The use of any such items to intentionally strike a subject's head or neck is prohibited except where deadly force is authorized by this policy and may only be used to confront aggravated aggressive resistance.
3. Using a firearm as an impact weapon is not an authorized tactic as such use of a firearm could result in an unintentional discharge causing the death of suspects, bystanders, and/or officers.

IX. LOW LETHALITY SHOTGUN

The low lethality shotgun should only be used against persons who are armed with a weapon that could cause serious injury or death to themselves or others, or when a subject poses an imminent threat to the safety of the officer or other persons. This includes, but is not limited to: an edged weapon, club, pipe, bottle, brick, etc.

Officers are cautioned that the target area for impact munitions substantially differs from a deadly force target area. Instead of aiming for center mass of the body, the low lethality shotgun is aimed at abdomen, thighs or forearms. The head, neck, and groin should be avoided.

It may be used as an alternative to deadly force only when circumstances allow the officer involved to bring an incident to a safe conclusion without unnecessary risk to the officers.

1. Prior to firing a low lethality shotgun, when feasible, the officer will announce a warning to the subject and other officers of the intent to deploy the low lethality shotgun if the subject does not comply with commands.
2. When fired at a distance of five yards or greater, the low lethality shotgun will be considered a less lethal option.
3. When fired at a distance less than five yards, the low lethality shotgun will be considered a deadly force option.
4. Officer shall give the subject a reasonable opportunity to voluntarily comply.
5. Two officers must be present if a low lethality shotgun is deployed.

Restrictions:

The low lethality shotgun will not be used in the following circumstances:

1. Against persons who are holding a firearm unless there are compelling reasons to do so which can be clearly articulated.
2. In a civil unrest situation unless authorized by a lieutenant or above, and each application must have a specific targeted individual who presents an imminent threat; and it must be reasonably assured that other individuals in the crowd who pose no threat of violence will not be struck by the munitions.
3. When the subject is visibly pregnant, unless deadly force is the only other option.

The low lethality shotgun should not be used in the following circumstances unless there are compelling reasons to do so which can be clearly articulated:

1. When the subject is at the extremes of age (elderly and young children) or physically disabled;
2. When a subject is in an elevated position where a fall is likely to cause serious injury or death;
3. When subject is handcuffed or otherwise restrained;
4. As a breaching tool.

X. OLEORESIN CAPSICUM (OC) SPRAY

The use of Purified Oleoresin Capsicum aerosol spray (Pepper Spray) is an option granted to officers when a subject is demonstrating aggressive or aggravated aggressive resistance.

1. **Verbal Warning:** If an officer reasonably determines that the use of pepper spray is necessary s/he must, where reasonable, issue a warning that pepper spray will be imminently deployed if the subject fails to cooperate.
2. **Consider Less Intrusive Alternatives:** Before an officer resorts to a justified use of pepper spray s/he must consider the availability and efficacy of less intrusive alternatives.
3. **Aggressive Resistance:** In order for the use of pepper spray to be justified and necessary, an officer must possess a reasonable belief that the subject is exhibiting signs of aggressive resistance.
4. **Restrictions:**
 - a. **Risk Groups:** Officers should not deploy pepper spray where a member of a “risk group” is the intended target. These include children, the elderly, women believed to be pregnant, individuals who are blind, and individuals appearing in frail health or having cardiovascular or respiratory conditions.
 - b. **Indiscriminate Groups/Crowd Control:** Officers should not deploy pepper spray for the purposes of generalized crowd control nor should they direct pepper spray towards an indiscriminate group of people.
 - c. **Small, Contained Areas:** Officers should not deploy pepper spray in small contained areas such as automobiles and closets.
 - d. **Passive Resistance:** Under no circumstances should an officer use pepper spray against an individual who is passively resisting.

Note: OC spray may be less effective or ineffective when deployed against subjects who are intoxicated, drugged, or otherwise irrational or emotionally disturbed. In such circumstances, other forms of force may be more appropriate.

XI. ELECTRONIC CONTROL WEAPON (ECW or “TASER”)

A. Wearing of ECW

1. ECWs must be carried in a Department approved holster, attached to the officer's gun belt, or secured to the officer.
2. ECW must be worn on the officer's non-dominant side in cross-draw position.

B. Use of ECWs

1. *Deployment:* ECWs should be used only against subjects who are exhibiting aggressive or aggravated aggressive resistance.
2. ECWs shall not be used:
 - a. As a pain compliance technique against a passive subject or active resistor whose actions are not directed at harming the officer or another person. Active resistance includes pulling away from an officer's grasp or running away from an officer and do not justify the use of an ECW under this policy;
 - b. On children, the elderly, obviously pregnant females, frail individuals, blind individuals, against subjects operating or riding on any moving device or vehicle where the subject may fall while it is in motion, against individuals in a body of water of sufficient depth to cause drowning, in situations where the subject may fall from an elevated surface, or when the officer knows that the subject suffers from a serious medical condition;
 - c. On handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others;
 - d. In a punitive or coercive manner to obtain information from an uncooperative person;
 - e. In drive-stun (touch-stun) mode as a prod or escort device;
 - f. To rouse unconscious, impaired, or intoxicated individuals;
 - g. When combustible gases or flammable liquids are present;
 - h. When a K-9 is in the process of apprehension, an ECW will not be deployed;
 - i. For demonstration purposes unless specifically authorized by the Chief of Police.

Warnings

A warning should be given to a subject before deploying ECW unless doing so would place any person at risk. Warnings must include a verbalization, and may also include display, laser painting, arcing, or a combination of these tactics.

An officer is not required to give a verbal warning if the warning would compromise the safety of the officer or others.

Officers shall make all reasonable efforts, when feasible, to warn other officers that a deployment is about to occur.

Multiple Applications

Officers should not intentionally use more than one ECW at a time against a subject. Unless faced with exigent circumstances, no more than one officer should deploy an ECW against an individual at the same time.

Extended Durations

Officers should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Officers should give a new warning for every subsequent cycle. Officers should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.

Any subsequent ECW applications should be independently justifiable, and the risks should be weighed against other force options.

In determining the need for additional cycles, officers should take into account and beware that a person subjected to an ECW cycle may not be able to respond to commands during or immediately following exposure.

SPD and this policy recognizes, however, that multiple applications may be necessary to gain or maintain control of a combative individual, particularly where back-up officers are unavailable.

Drive Stun Use

ECWs shall be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure in close quarters to gain separation between officers and the subject so that officers can consider another force option.

Targeted Area

Officers will make all reasonable efforts to avoid intentionally targeting a person's head, neck, eyes, chest, or genitalia.

The target area for frontal probe deployment is lower center mass (below the chest) and below the neck for back shots.

ECW use on Animals

ECWs can be effective against aggressive animals. This policy specifically permits use of an ECW as a tool for officers to use when confronted with an aggressive animal.

(For additional information on care and maintenance, training, post-deployment procedures, reporting and accountability, see Volume 1, Article 4, Section 6.00A)

XII. DUTY TO INTERVENE AND DUTY TO REPORT

Any officer present and observing another officer using force that is beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.

Whether or not an officer intervened, and whether or not an officer was present, an officer shall promptly report to a supervisor any use of force that an officer becomes aware of and believes may be beyond that which is objectively reasonable.

XIII. MEDICAL AID

Whenever force is used on a person, the officer shall immediately evaluate the need for medical attention for the person upon whom the force was used. It is the officer's responsibility to arrange for such attention by requesting emergency medical services when the person has sustained a visible injury, complains of injury or discomfort, or requests medical attention. If the person refuses to be treated, the person must sign the refusal statement on the emergency medical service's Pre-Hospital Care report form. If the person refuses to sign, the refusal must be witnessed on the form. The subject's acceptance or refusal of medical care shall also be documented in the officer's report.

XIV. DE-ESCALATION & ASSESSMENT OF OPTIONS

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest, or to protect the officer, other officers, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of Force Options. Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

Tactical withdrawal is a reasonable option when considering officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be appropriate responses to a situation, and should always be considered.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that officers under their supervision perform to a standard. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where police use of force is probable.

Appendix II

Recommended Policy on Conducting Eyewitness Identifications

The following policy was developed by The Daigle Law Group, LLC and provided to the Syracuse CRB upon request. The CRB extends its appreciation to Eric Daigle for his assistance and guidance in policy development.

A Model Policy for Conducting Eyewitness Identifications

Proposed by the Syracuse Citizen Review Board

I. PURPOSE

The purpose of this directive is to establish the proper guidelines and procedures for obtaining reliable eyewitness identifications.

II. POLICY

Syracuse Police Department (“Department”) personnel shall strictly adhere to this directive in order to maximize the reliability of identifications, minimize unjust accusations, and conform to established legal procedures.

III. DEFINITIONS

Eyewitness: A person who observes another person at or near the scene of an offense.

Photo lineup: A procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

Live lineup: A procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

Show up: A procedure in which a single person suspected as a perpetrator of an offense and maybe others are presented one at a time, to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator. A show up is also known as a Field Identification and/or One on One Identification. Show ups typically occur shortly after the commission of a crime and/or when a suspect is apprehended at or near the crime.

Field View: A procedure wherein the eyewitness views a group of people in a public place on the theory that the suspect may be among the group. A field view differs from a show up in that it may be conducted well after the commission of the crime may be conducted with or without a suspect in the group.

Identification procedure: Either a photo lineup or a live lineup.

Filler: Either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

Sequential Photo Lineup or Live Lineup: Whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live

lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time.

Double Blind Procedure: The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense.

Blind Administration (other than Folder Shuffle, below): The conduct of an identification procedure in which the administrator of the procedure is unaware of which photograph the witness is viewing during the procedure. This procedure is intended to ensure that the eyewitness does not interpret a gesture or facial expression by the officer (administrator) as an indication as to the identity of the suspect.

Folder Shuffle Method: When the conduct of the Double Blind Procedure is not practicable, the photo lineup shall be conducted by inserting each of the required photographs into separate, unmarked folders, shuffling them and allowing the eyewitness to remove the photographs, one at a time to view them. A computer program in which a software program is used to administer any lineup, wholly or in part, shall comport to the procedures contained within this policy. If the eyewitness is able to make an identification of a photograph that person should sign and date the identified photograph.

Lap: A single completed cycle to view all the photos in a photo lineup or all persons participating in a live lineup.

Confidence Statement: A statement from the victim/witness, in his or her own words, on how certain they are of the identification which is taken immediately after identification is made. The *Confidence Statement* should be recorded in writing and signed by the victim/witness or otherwise memorialized.

A. Photo and Live Lineup – General

1. Prior to the Identification Procedure the eyewitness shall be instructed on the procedures below using the Syracuse Police Department Witness Instruction Form for Eyewitness Identification:
 - a. That the eyewitness will be asked to view an array of photographs or a group of persons, and that each photograph or person will be presented one at a time;
 - b. That it is as important to exclude innocent persons as it is to identify the perpetrator;
 - c. That the persons in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair can change;
 - d. That the perpetrator may or may not be among the persons in the photo lineup or live lineup;
 - e. That the eyewitness should not feel compelled to make an identification;

- f. That the eyewitness should take as much time as needed in making a decision;
 - g. That the police department will continue to investigate the offense regardless of whether the eyewitness makes an identification;
 - h. That, after the identification procedure, he/she will be asked how certain he/she was that the perpetrator was or was not in the lineup;
 - i. That even if the eyewitness is able to make an identification, he/she will be asked to finish the procedure by looking at all the photographs or all of the individuals until he/she has completed looking at each one;
 - j. That if there are other witnesses, the eyewitness must not indicate to them that he/she has or has not made an identification of a suspect;
 - k. That the officer administering the procedure either does not know whether any of the people in the photographic array or in the lineup were involved in the crime or does not know the sequence in which the eyewitness is viewing the photographs;
 - l. That if the witness selects a person or photograph he/she will be asked to provide a statement about the identification. If the eyewitness does not recognize someone, he/she must say so; and
 - m. That if the eyewitness does not select someone, the police will continue to investigate
2. Any Individual Conducting or Assisting in the Identification Procedure:
- a. Shall not say anything to the eyewitness regarding the position in the photo lineup or the live lineup of the person suspected as the perpetrator.
 - b. Shall not say anything to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator.
 - c. Shall not provide any information concerning a person the eyewitness identifies as the perpetrator.

B. Photo Lineup

1. When Conducting Identification of Suspects by Photograph, the Following Procedures Should be Followed:
- a. The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense, i.e. double blind procedure, except that, if it is not practicable to conduct a photo lineup in such a manner, the photo lineup shall be conducted by the use of a folder shuffle method, computer program, or other comparable method so that the person conducting the procedure

does not know which photograph the eyewitness is viewing during the procedure.

- b. The witness shall be shown a photo lineup that includes at least five fillers, in addition to the suspected perpetrator.
 - c. The photographs shall be either all color or all black and white.
 - d. There shall not be two different photographs of the same suspect in the group.
 - e. Witnesses should never be shown only a photograph of the suspect.
 - f. The photographs shall be presented sequentially so that the eyewitness views one photograph at a time and the administrator shall record the order in which the folders were presented.
 - g. Each witness should view the photographs alone so that other witnesses will not be influenced or open to suggestion. When possible the suspect should be placed in a different position in the sequence for each witness.
 - h. The photographs shown to the witness should be selected to assure fairness and impartiality to the suspect. The fillers should generally fit the description, such as race, sex, facial features, profile, height, weight, build, clothing, etc. of the person suspected as the perpetrator, so that the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out.
 - i. No writings or information concerning any previous arrest of the person suspected as the perpetrator shall be visible to the eyewitness.
 - j. All photographs shown to witnesses should, if possible, be retained for any subsequent criminal proceedings.
 - k. The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure.
 - l. If the eyewitness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers included in the photographs in which the person suspected as the perpetrator is included shall be different from the fillers used in any prior lineups, and steps must be taken to ensure that the suspect does not stand out in the new lineup.
 - m. Should the witness request a second “lap” the lineup will be presented in the same ordered sequence as the initial lap.
2. Administration of Double Blind Photographic Lineups
- a. No information regarding the identification of the suspect will be revealed to the person administering the lineup.

- b. The lineup administrator will conduct the lineup following the sequential protocol, numbering each photo with the order in which it was presented to the witness.
 - c. The assigned investigator or anyone with knowledge of the suspect should not be allowed in the room at the time of the lineup administration.
 - d. The lineup administrator should give instructions to the witness by verbally reading the Witness Instruction Form to the witness and determine if they understand. The witness will then be asked to sign and date the form.
 - e. The lineup administrator will avoid any actions or comments that could be construed as an attempt to influence a witness to select a particular photo or to validate, invalidate or reinforce a selection that has been made by a witness.
 - f. If the witness identifies someone, the lineup administrator will then ask the witness to describe in their own words how confident they are of the identification.
 - g. Even if someone is identified, all of the photographs in the series will be shown.
 - h. The lineup administrator shall not provide any feedback about the lineup results to the witness.
 - i. Once the sequential lineup process is complete, the lineup administrator should generate a report with the results of the sequential lineup, initial the back of each photograph for lineup verification in court and preserve the photo lineup as evidence. The original photographs should be secured as any other evidence with the originals being maintained as evidence and one complete copy placed into the case file.
 - j. Laps – The administrator should not offer nor suggest that the eyewitness engage in another “lap” or viewing of the photographs. If the eyewitness should request a second lap of the photographs, one additional lap is permissible but in any event should not exceed two laps. If a witness requests a second lap, the entire series of photographs must be viewed by the witness in the same order in which they were shown originally. The witness must not be permitted to view just one photograph of the selection even if he or she requests to see just one.
3. Blind Folder Shuffle Procedure
- a. When implementation of the Double Blind Photographic procedure is not practicable due to lack of manpower resources, limited number of officers on duty, a major crime where many officers are aware of the identity of the suspect or any other such circumstance, a Blind Folder Shuffle must be used.
 - b. The photograph of the suspect and the five or more fillers are each placed into separate, unmarked folders and shuffled by the administrator, who will number each folder according to the sequence in which they were shown to the witness.

- c. The eyewitness should be instructed to remove each photograph, one at a time and view the single photograph. At no time should the lineup administrator be able to determine which particular photograph is being viewed by the witness at a particular time.
- d. If the blind method is not practicable, then the administrator must position himself or herself so as not to be able to give cues, consciously or unconsciously to the eyewitness such as his or her standing somewhere behind the eyewitness.
- e. When the eye witness concludes viewing a particular photograph, it should be placed back in the folder and returned to the administrator before viewing the next one.
- f. Even if the eyewitness identifies a suspect part way through the entire series, he/she should be instructed to continue viewing the remaining photographs.
- g. If the eyewitness requests a second lap, the folders should be shown to the witness in the same manner and in the same sequence as the first lap.

C. Live Lineups

1. In Order to Assure a Fair Lineup the Following Procedures Should be Followed:

- a. Before a suspect participates in a lineup, he or she must be informed of his/her right to have an attorney present at a lineup and of his/her right to be provided with an attorney without costs if he/she is unable to afford such legal counsel. Unless a knowing and voluntary waiver is made, in writing if possible, no lineup may proceed without an attorney present.
- b. A suspect cannot be compelled to participate in a lineup without probable cause to arrest. If the suspect refuses to participate in a lineup, the officer should contact his/her State's Attorney office.
- c. At least four (4) fillers who fit the description of the suspect as provided by the eyewitness(es) shall be included in the live lineup, in addition to the suspected perpetrator.
- d. There should be similarity between the accused and other persons in the lineup with regard to height, body type, and coloration of hair and skin.
- e. There should be a similarity in dress between the accused and the other persons in the lineup.
- f. If the accused is to wear particular clothing as a demonstration, the others in the lineup must be requested to wear the same clothing.
- g. If the accused is requested to speak or make gestures or movements for identification purposes, the other persons in the lineup must be asked to speak the

same words, or perform the same gestures or movements, in the same manner.

- h. If more than one witness is to make an identification from the lineup, each witness must do so separately, and no witness should be allowed to speak to another witness until all the witnesses complete their identification.
- i. No one must indicate to a witness, in any manner, which of the persons in the lineup is the accused or which person the police believe to be guilty.
- j. All line up participants shall be out of view of the eyewitnesses at the beginning of the identification procedure.
- k. The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure.
- l. All persons in the lineup should carry cards that identify him or her by number only and they should be referred to only by that number.
- m. The administrator of the lineup should carefully instruct the eyewitness by reading directly from the instruction form. The eyewitness should be asked to sign the form indicating that they understand the instructions and the administrator will sign and date the form.
- n. If the eyewitness makes an identification of a suspect, a statement must be taken as to the certainty of that identification.

D. Attorney's Role

- 1. The purpose of an attorney's presence is not to interfere with the conduct of the photo lineup or live lineup, but to observe the procedures used by the law enforcement officers, so that in any subsequent court proceedings the accused will have a lawyer as a witness to any unfair suggestive procedures that may have been employed during the photograph or live lineup.
- 2. The lawyer's role at a photo or live lineup is limited to observing the identification procedure, and advising the client, when in custody.
- 3. The attorney shall initial photocopies of all photographs used in the photo lineup.
- 4. Under no circumstances may a lawyer interfere with the conduct of the lineup procedures.
- 5. The attorney may not properly advise a client to refuse to participate in a lineup, a voice test, a handwriting sample, to wear certain clothing, to assume a stance, to walk, to gesture, or to cooperate in other similar physical demonstrations.

6. The officer in charge of the case shall ensure that attorneys witnessing the identification procedures are provided with a document outlining the attorney's role at the photo or live lineup.

E. Responsibilities of the Officer in Charge of the Case

1. The officer in charge of the case must advise the accused of the right to have an attorney present at the lineup.
2. The officer in charge of the case must find out if the accused has an attorney. If so, the officer in charge of the case must contact that attorney and advise the attorney of the time and place of the lineup.
3. The officer in charge of the case shall ensure that attorneys witnessing lineups are provided with a document outlining the attorney's role at lineups.

F. Refusal of Detainee to Stand in a Line Up

1. If a detainee refuses to stand in a lineup, the following procedures shall be followed:
 - a. A determination shall be made as to the availability of a photograph of the detainee suitable for use in photograph identification.
 - b. Photograph identification can be used in lieu of a lineup if the subject refuses to participate in a lineup and, by the subject's action, would seek to destroy the value of the identification.
 - c. Regardless of whether a photograph is available or not, the Patrol Unit Lieutenant shall be contacted for the number of the on-duty assistant state's attorney. The state's attorney contacted shall be informed if a photograph of the detainee is available or not and shall be informed that the detainee refuses to participate in a lineup. Department members and detention personnel shall be guided by the advice of the state's attorney.

G. Administration of Show Ups

1. Generally, no detainees shall be taken back to the scene of a crime to have the complainant identify the suspect. They should never be transported to a police station absent probable cause to arrest. Suspects should be detained at the scene of the stop and the witness(s) transported to that location to view the suspect.
2. A single confrontation for identification between an accused and an eyewitness, not as part of a lineup, should only be employed where there is good and sufficient justification for not setting up a formal lineup.
3. Exceptional circumstances, which would justify a one-on-one confrontation, are:
 - a. Where the accused requests an immediate confrontation in order to clear the

accused. In such cases it should be made clear to the accused that the accused does not have to confront the eyewitness but that police will accommodate the request if that is what the accused desires.

4. If the police deem a confrontation inadvisable at that time, there is no duty on the part of the police to arrange such a confrontation merely because it is requested by the accused.
5. Showup identification procedures are employed soon after a crime has been committed, when a suspect is detained at or near the crime, or under exigent circumstances. When exigent circumstances necessitate the employment of an immediate confrontation, the procedure shall be conducted in a non-suggestive manner.
6. Every showup must be as fair and non-suggestive as possible. If the suspect is handcuffed, he/she should be positioned so that the handcuffs are not visible to the eyewitness. Unless necessary for the safety of the officers or others the suspect should not be viewed when he/she is inside a police car, in a jail cell or in jail clothing.
7. Detaining a person who fits the description of a suspect in order to arrange a showup is lawful when the officer has reasonable suspicion that a suspect has committed a crime.
8. A suspect should be viewed by one eyewitness at a time out of the presence and hearing of other eyewitnesses. Witnesses who have viewed a suspect should not be permitted to communicate with those who have not.
9. Officers must not say nor do anything that would convey to the eyewitness that they have evidence of the suspect's guilt.
10. If an eyewitness makes identification, a statement should be obtained from the eyewitness including the level of certainty of that identification.

H. Field Views

1. Employing a procedure known as Field View may be appropriate depending on the facts of an individual investigation.
2. The eyewitness may be accompanied to a public location where the suspect may or may not be present and is then permitted to view a group of people in an effort to identify a suspect. The officer or investigator may not direct the eyewitness's attention to any particular person, make any suggestions to the eyewitness or otherwise attempt to influence the witness's ability to observe the group.

I. Written Record

1. A written record of the identification procedure shall be carefully made on the Identification Procedure Record and Form. The record shall include the following:
 - a. All identification and nonidentification results obtained during the identification

procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection.

- b. The names and addresses of all persons present at the identification procedure.
- c. The date and time of the identification procedure.
- d. In a photo lineup, the photographs presented to the eyewitness or copies thereof.
- e. In a photo lineup, identification information on all persons whose photograph was included in the lineup and the sources of all photographs used.
- f. In a live lineup, identification information on all persons who participated in the lineup
- g. In addition to written record, all live lineups shall be photographed. The name, rank, and assignment of the officer taking the photograph shall be entered on the identification record and become a permanent part of the file. The officer in charge of the case shall be responsible for the photographing of lineups conducted at all other locations.
- h. The Syracuse Police Department shall maintain as a separate and distinct record a set copies of Standard Identification Forms and records completed. The form shall be retained by calendar year for the purpose of facilitating analysis and reporting by outside persons or agencies tasked with same.