



**DENVER**  
OFFICE OF THE  
INDEPENDENT MONITOR

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# 2015 Annual Report

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Nicholas E. Mitchell  
Independent Monitor



# The Office of the Independent Monitor

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The Office of the Independent Monitor (“OIM”) is charged with working to ensure accountability, effectiveness, and transparency in the Denver Police and Sheriff disciplinary processes. The OIM is responsible for:

- ◆ Ensuring that the complaint and commendation processes are accessible to all community members;
- ◆ Monitoring investigations into community complaints, internal complaints, and critical incidents involving sworn personnel;
- ◆ Making recommendations on findings and discipline;
- ◆ Publicly reporting information regarding patterns of complaints, findings, and discipline;
- ◆ Making recommendations for improving Police and Sheriff policy, practices, and training;
- ◆ Conducting outreach to the Denver community and stakeholders in the disciplinary process; and
- ◆ Promoting alternative and innovative means for resolving complaints, such as mediation.

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## FROM THE INDEPENDENT MONITOR

March 15, 2016

2015 was a year of progress and productivity for the Office of the Independent Monitor (“OIM”). The OIM reviewed hundreds of investigations conducted by the Internal Affairs Bureaus of Denver Police and Denver Sheriff Departments (“DPD” and “DSD,” respectively) in an attempt to ensure that those investigations were conducted fairly and impartially. The OIM also monitored the handling of multiple officer-involved shootings and deaths-in-custody, and significantly expanded its youth/officer outreach program: *Bridging the Gap: Kids and Cops*, which has demonstrated exciting preliminary results at enhancing trust between officers and youth. Similarly, the OIM was a significant contributor to efforts at reform in both the DPD and DSD by making recommendations that helped those departments reshape policy, practice, or training in a number of key areas.

These efforts are discussed in greater depth in this report. We look forward to continuing to work with the community, the Executive Director of Safety, the DPD, and the DSD to further this important work in 2016.

Sincerely,

A handwritten signature in blue ink, appearing to read 'N. Mitchell', with a stylized flourish at the end.

Nicholas E. Mitchell  
Independent Monitor  
Denver, Colorado



# 1 Overview

The Office of the Independent Monitor (“OIM”) is charged with monitoring the disciplinary systems in the Denver Police and Denver Sheriff Departments (“DPD” and “DSD,” respectively), making policy recommendations to those departments, and conducting outreach to communities throughout Denver. By ordinance, the OIM is to report to the public by March 15th of every year on the work of the OIM, as well as information about complaints, investigations, and discipline of sworn police and sheriff personnel during the prior year.

The OIM’s 2015 Annual Report is presented in five chapters. Chapter 1 provides an overview of key information related to OIM operations in 2015. Chapter 2 presents the OIM’s evaluation of recent revisions to certain DPD policies and practices, and makes recommendations for additional changes. Chapters 3 and 4 discuss OIM monitoring of the DPD and the DSD, respectively, and examine statistical patterns in complaint and disciplinary trends in each. Finally, Chapter 5 contains information about the officer-involved shootings and in-custody deaths involving DPD officers and DSD deputies that occurred in 2015.<sup>1</sup>

The OIM has a number of key focus areas:

1. Conducting data-driven systems analyses of potential policy issues in the DPD and DSD;
2. Promoting engagement through outreach to the community and officers;
3. Working to ensure that DPD and DSD Internal Affairs Bureau (“IAB”) investigations are thorough, and conducted without bias;
4. Working to ensure fair and consistent disciplinary outcomes;

5. Monitoring officer-involved shootings and in-custody deaths; and
6. Cultivating DPD officer/community member dialogue through the use of mediation.

In 2015, the OIM had significant achievements in each of these areas.

## **Data-Driven Analyses of Potential Policy Issues**

### **Expanding the OIM’s Authority Through an Ordinance Change**

The OIM’s 2013 Semiannual Report presented findings and recommendations from our in-depth evaluation of the DSD’s Inmate Grievance Process, which ultimately resulted in significant improvements to the accessibility of the complaint process for inmates.<sup>2</sup> While preparing that report, the OIM was unable to obtain some necessary documents from the DSD,<sup>3</sup> which prompted a public dialogue about the need to strengthen the OIM’s authority to obtain information from the DPD and DSD.<sup>4</sup>

In 2015, the Denver City Council approved amendments to three sections of the Denver Revised Municipal Code that define the OIM’s access to information. These changes require the DSD and DPD to cooperate with the OIM as it monitors IAB investigations.<sup>5</sup> Further, those departments, as well as the Department of Safety, must provide records and other information requested by the OIM as it performs its duties, unless the requested records are “protected by the attorney-client privilege or the attorney work product privilege or any document that must not be disclosed to the monitor’s office pursuant to federal, state, or local law or federal or state regulation.”<sup>6</sup> Under the revised ordinance, if information requested by the OIM cannot be produced, the OIM must be provided with a prompt and sufficiently detailed written explanation as to why not.<sup>7</sup> These changes will maximize the OIM’s effectiveness by removing potential barriers to information access. The OIM is thankful to Councilman Paul Lopez for leading this effort at reform, and to Mayor Michael B. Hancock and other members of the City Council for supporting it.

## Analysis of DPD Policy

Proactive policy analysis is a critical component of the OIM's work. In Chapter 2, we present six issues involving DPD policy that the OIM evaluated and, in some cases, made recommendations on in 2015. The chapter begins by summarizing four issues that were either discussed in prior OIM reports or about which the OIM otherwise made recommendations to the DPD. The DPD made notable improvements to its policies regarding each of these issues. Specifically, we discuss:

- The DPD's revisions of its Body Worn Camera Policy, which incorporated significant feedback from the OIM and the community;
- The DPD's new prohibition against shooting into moving vehicles, and new training in that area;
- The DPD's recent improvements of its Early Intervention System; and
- The DPD's revision of its racial profiling policy to make it consistent with federal guidelines.

The chapter then presents two additional subjects that we believe provide opportunities for improvements to the policies or practices of the DPD or Office of the Executive Director of Safety ("EDOS"). Specifically:

- The OIM recommends that the DPD and EDOS strengthen discipline to deter misuse of the National Crime Information Center ("NCIC") and Colorado Crime Information Center ("CCIC") criminal justice databases; and
- The OIM recommends that the DPD clarify its Use of Force Policy and prohibit the use of strikes to prevent arrestees from swallowing potential contraband.

We look forward to working with the DPD and EDOS on these additional recommendations in 2016.

## Participation in the DSD Reform Effort

Beginning in 2013, the OIM issued a series of written analyses of systemic issues impacting accountability in the DSD.<sup>8</sup> After several high-profile civil rights lawsuits and disciplinary cases involving the use of inappropriate force on inmates, Mayor Hancock announced a series of steps to review and ultimately reform the DSD.<sup>9</sup>

The DSD is now in the midst of a comprehensive reform process. In May 2015, two independent consultant groups hired to evaluate the DSD issued a report that included 277 recommendations that address nearly every area of the DSD's operations.<sup>10</sup> Following the release of that report, Mayor Hancock created the DSD Reform Implementation Team, led by EDOS Stephanie O'Malley. Members of this team have organized issue-specific action groups comprised of DSD personnel, city employees, and community members. Former Manager of Safety Al LaCabe and Independent Monitor Nicholas Mitchell are co-chairing the Use of Force and Internal Affairs Action Group, which is working to reengineer the DSD's use of force and disciplinary policies, among other areas. To fund certain reforms, the Denver City Council approved a 2016 budget that includes 24 million dollars dedicated to implementing high-priority recommendations, such as hiring more deputies and providing additional use of force training to DSD staff. Training on the new DSD Use of Force Policy is set to begin in March 2016.

The OIM's recent policy work with the DSD has focused on helping to advance the reform process, rather than issuing reports that analyze the DSD's policies, training, and practices, many of which are in the process of being developed or changed. Recent updates about the reform process can be found among the Mayor's official programs and initiatives on the [Sheriff Department Reform Website](#).<sup>11</sup>

## Community and Officer Engagement

The OIM had many notable achievements in outreach to communities and to officers in 2015. We held or attended 208 presentations or events in the community, including 148 meetings with neighborhood associations, advocacy groups, and representatives of community organizations. We also held or attended 60 events that included outreach to members of law enforcement, including presentations at roll calls, ride alongs, and training events.

## Expansion of the Youth Outreach Project— Bridging the Gap: Kids and Cops

As discussed in our 2014 Annual Report, the OIM sought and received a Colorado Justice Assistance Grant (“JAG”), which resulted in the OIM’s Youth Outreach Project (“YOP”), *Bridging the Gap: Kids and Cops*.<sup>12</sup> The YOP strives to proactively improve relationships between at-risk youth and law enforcement in Denver by educating youth on their rights and responsibilities when in contact with law enforcement, and educating officers on key aspects of adolescent development and de-escalation techniques when contacting youth. This education takes place in facilitated forums in which young people and officers share personal experiences, receive training, and have an opportunity to get to know one another outside of law enforcement contacts.

### YOP Advisory Committee Select Member Organizations

- Denver Police Department
- Denver Sheriff Department
- Citizen Oversight Board
- Denver Public Schools
- YESS Institute
- University of Denver
- University of Colorado, Denver
- American Civil Liberties Union
- Café Cultura
- Denver District Attorney,  
    Juvenile Diversion Program
- Denver Human Services:  
    Family Crisis Center
- Gang Rescue and Support Project  
    (GRASP)
- LYRIC: Learn Your Rights In Colorado
- Denver Office of Children’s Affairs
- Padres y Jovenes Unidos
- Project VOYCE
- Servicios de La Raza
- Victim Offender Reconciliation  
    Program (VORP) of Denver
- Youth on Record



I know what to expect when I am contacted by the police.

Youth participant feedback



I had several ‘light bulb moments’ during the forum. It was valuable and exposed me to a different perspective.

Officer participant feedback



The YOP had many successes in 2015. In May 2015, the OIM facilitated a session in which 21 DPD officers were educated on adolescent development and de-escalation strategies for youth contacts. The officers were trained using an adaptation of an evidence-based model proven to increase officers' knowledge of youth behavior and to promote more positive attitudes towards youth.<sup>13</sup> An additional 16 officers were trained in September, and 11 officers received a train-the-trainer certification, allowing the DPD to begin providing the educational component independently within the department. The DPD has committed to training an additional 20 officers in 2016. The OIM has also convened three forums, to date, that were well-attended by youth and DPD officers. In 2016, the OIM plans to convene up to 11 forums and will reach at least 500 of Denver's youth. Participant feedback has been overwhelmingly positive. The DPD's partnership, under the leadership of Chief White and spearheaded by District 1 Commander Paul Pazen, has been a critical component of the YOP's success to date.

### Internal Affairs/Disciplinary Oversight

A core OIM function is reviewing IAB investigations in an attempt to ensure that they are thorough, complete, and fair to both community members and officers. In 2015, the OIM reviewed 453 IAB investigations in the DPD. The OIM also reviewed 263 IAB investigations in the DSD, a 46% increase from the prior year, as DSD's IAB works to clear the backlog of cases discussed in previous OIM reports.<sup>14</sup> The OIM reviews included examining a voluminous quantity of evidence, including recorded interviews, video footage, police reports, and facility records. When we identified a need for further investigation of particular cases, we returned those cases to IAB with recommendations for additional work. We also reviewed 177 DPD and DSD cases as they went through the discipline process, making recommendations on the appropriate disciplinary outcome, if any, under the departmental disciplinary matrices. In 2015, one DPD officer was terminated, eight resigned or retired prior to the imposition of discipline, and 18 were suspended. In the DSD, four deputies were terminated, one was demoted, seven resigned or retired prior to the imposition of discipline, and 24 were suspended.

In 2015, DPD officers received 581 commendations and DSD deputies received 198 commendations, all of which reflected notable examples of bravery or commendable performance. We discuss a number of individual commendations of DPD officers and DSD deputies in Chapters 3 and 4, respectively.

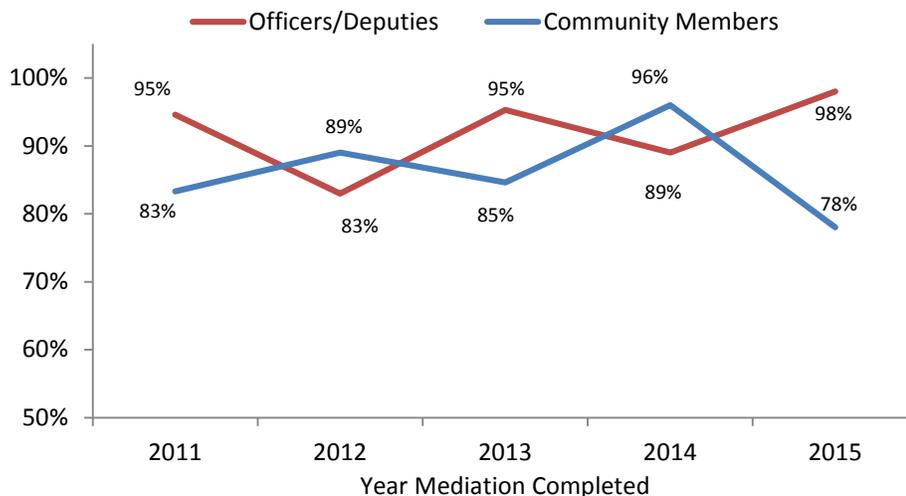
## Officer-Involved Shooting and In-Custody Death Investigations

Pursuant to Denver Ordinance, the OIM responds to every officer-involved shooting and monitors the investigation and administrative review of each shooting. In 2015, there were ten officer-involved shootings involving 15 DPD officers and no officer-involved shootings involving DSD deputies. There were two deaths of citizens in the custody of the DPD, and three deaths of citizens in the custody of the DSD.<sup>15</sup> In Chapter 5, we provide information about each of the shootings and deaths in-custody and their current status in the administrative review process.

## Mediation

Mediation continued to be an important focus area for the OIM in 2015. Since 2006, the OIM has facilitated 458 successful mediations between community members and DPD officers, and among DSD staff.<sup>16</sup> In 2015, 40 complaints were successfully mediated, including 38 complaints involving DPD officers and 2 complaints involving DSD deputies. Of those completed mediations, 98% of the officer/deputy participants and 78% of the community member participants reported feeling satisfied with the mediation process.<sup>17</sup> Community member satisfaction dropped this year, and the OIM is working closely with its mediation partner, Community Mediation Concepts, to better understand the drop in community member satisfaction, and to identify opportunities for improvement in 2016.

Figure 1.1: Community Member and Officer/Deputy Satisfaction with Mediation Process



# 2

## OIM Evaluation of DPD Policy: Recent Revisions and Recommendations for Additional Change

### Introduction

The last several years were marked by a series of police uses of force that spurred conversation—and controversy—across the United States. To address the need for guidance on improving community trust in American policing, in 2014, President Barack Obama established the President’s Task Force on 21<sup>st</sup> Century Policing (“President’s Task Force”). Comprised of national policing and criminal justice experts, the President’s Task Force engaged in months of research, then issued a report (“Report”) in May 2015 that made a series of recommendations on how police departments in the United States can build public confidence while simultaneously working to reduce crime.<sup>18</sup>

Several themes were emphasized throughout the Report and identified as critical to this effort. Among them, the Report noted that police leaders must be willing to reexamine police policies and practices, and stressed that they should do so in partnership with the community. For example, police policy “must be reflective of community values”<sup>19</sup> and police departments “should collaborate with community members to develop policies and strategies.”<sup>20</sup> Further, “law enforcement agencies should encourage public engagement and collaboration, including the use of community advisory bodies.”<sup>21</sup> Ultimately, “law enforcement agencies should work with community residents to identify problems and collaborate on implementing solutions that produce meaningful results for the community.”<sup>22</sup>

## Chapter 2 :: OIM Evaluation of DPD Policy

In keeping with this philosophy, the DPD, under Chief Robert White, made a number of significant changes to several of its policies and practices in 2015, often after substantial feedback from the OIM and the community. We discuss several of these changes in the first half of this chapter. This includes the DPD's recent revisions to its body worn camera program, its enactment of a new prohibition on shooting into moving vehicles, its improvements to the DPD's Early Intervention System ("EIS"), and its revisions to its racial profiling policy. We commend the DPD and Chief White for their significant achievements in each of these areas.

While these steps are notable and deserving of praise, there are other areas of policy that we believe can be improved. In the second half of this chapter, we examine two such areas. This includes the current practices of the DPD and the EDOS regarding discipline for misuse of the National Crime Information Center and Colorado Crime Information Center databases ("NCIC" and "CCIC", respectively, or "NCIC/CCIC"). NCIC and CCIC are sensitive criminal justice databases that contain significant amounts of personal information about community members. When used appropriately, they can be powerful tools to investigate crime. But the misuse of these databases for personal, non-law enforcement purposes may compromise public trust and result in harm to community members. We believe that the reprimands that are generally imposed on DPD officers who misuse the databases do not reflect the seriousness of that violation, and may not sufficiently deter future misuse.

We also discuss our recommendations to clarify current ambiguities in the DPD's Use of Force Policy about what types of force, if any, are permissible to remove potential contraband from the mouths of persons being placed under arrest. We recommend that the DPD fill the current gap in policy and training on this issue to clearly articulate what types of force are permissible or prohibited to remove potential contraband from the mouths of arrestees. Consistent with research and developing standards, we also recommend that the DPD specifically prohibit the use of strikes for this purpose.

The President's Task Force noted that building community trust "requires collaborative partnerships with agencies beyond law enforcement,"<sup>23</sup> and that "civilian oversight of law enforcement is important in order to strengthen trust with the community."<sup>24</sup> We wholeheartedly agree. By using our unique vantage to identify these issues for additional evaluation and potential change, we hope to help the DPD to more fully realize the Task Force's vision of enhancing community trust in policing, while continuing to work to reduce crime in Denver.

## The DPD Revises its Body Worn Camera Policy After Significant Feedback

In its 2014 Annual Report, the OIM presented its data-driven analysis of the DPD's Body Worn Camera ("BWC") pilot project, which was conducted for approximately six months in police District 6 in 2014. The OIM commended the DPD for initiating the project, which we believed was likely to improve police accountability and contribute to more positive relationships between police and community members in Denver.<sup>25</sup>

The OIM also identified several gaps in policy and practice during the BWC pilot project that may have reduced the effectiveness of the program. Perhaps most notably, a majority of the uses of force that occurred in District 6 or involved officers from District 6 working outside their District were not recorded by BWCs during the pilot project.<sup>26</sup> We identified a variety of reasons for this, including that many of these incidents involved sergeants or officers working off-duty, who were not assigned to use BWCs during the pilot project.

Recognizing opportunities for improvement, the OIM made nine actionable recommendations to the DPD before it finalized its BWC Policy and prepared to roll the program out department-wide.<sup>27</sup> These included deploying BWCs to all uniformed officers who interact with the public in a law enforcement capacity, including sergeants and officers working off-duty; requiring officers to notify community members that encounters are being recorded by BWCs when possible; providing written notice of possible disciplinary penalties for failing to adhere to the BWC Policy; and soliciting officer and community input when revising the BWC Policy, among other recommendations.<sup>28</sup>

In September 2015, the DPD released a draft BWC Policy for public comment. While that draft addressed some of the OIM's concerns, a number of the OIM's recommendations were either only partially implemented or not implemented at all.<sup>29,30</sup> The failure to implement one recommendation in particular—that BWCs be assigned to all uniformed officers who interact with the public, including sergeants and officers working off-duty—drew pointed criticism from City Council members, civil rights groups, and from Denver's Citizen Oversight Board.<sup>31</sup> Later that month, the DPD announced that it would, in fact, require officers working off-duty to wear BWCs,<sup>32</sup> and the following month, announced that sergeants would also be outfitted with BWCs.<sup>33</sup> We believe that the steps taken by the DPD to implement BWCs are very positive. We appreciate the

recent enhancements of the policy, and we look forward to the full deployment of BWCs department-wide.

## **The DPD Prohibits Shooting Into Moving Vehicles, and Revises Training**

In recent years, shooting into moving vehicles has come under increasing national scrutiny as a police practice that can create significant public safety risks. For example, it is often difficult to precisely judge speed and distance in order to shoot accurately into moving cars, and missed shots can hit bystanders, non-targets in a vehicle, or other police officers.<sup>34</sup> Further, shooting into a moving vehicle does not generally cause it to stop, and drivers struck by bullets are often not immediately incapacitated. Instead, a moving vehicle with a driver who has been shot may continue to travel towards bystanders or the involved officer, who may have failed to seize a brief opportunity to take cover and move to a position of safety.<sup>35</sup>

Between July 2014 and January 2015, there were four incidents in which one or more DPD officers fired into a moving vehicle based on the belief that the vehicle posed an imminent threat to officer safety. Two of these shootings were fatal. Troubled by this potential trend, on January 27, 2015, the OIM announced its launch of an evaluation of the DPD's policies, practices, and training on shooting into moving vehicles.<sup>36</sup> The next day, the DPD announced that it, too, had determined to conduct an internal review of this same subject matter.<sup>37</sup>

To perform its analysis, the OIM analyzed all officer-involved shootings ("OISs") in which DPD officers shot into a moving vehicle over an eight-year period,<sup>38</sup> compared the DPD's policies to the policies of 43 other law enforcement agencies, and evaluated DPD training on shooting into moving vehicles. This evaluation, and our conclusions about necessary changes to policy and training, are discussed more fully in the OIM's 2015 Semiannual Report.<sup>39</sup>

In June 2015, the DPD published a revised policy on shooting into moving vehicles that contains significant enhancements, including the addition of a general prohibition against shooting into moving vehicles.<sup>40</sup> The DPD also significantly strengthened its training on situations that could result in potential shootings into moving vehicles. The DPD adopted the revised policy and training after its own independent analysis. Yet, the revised policy and training addressed many of the OIM's concerns. They are also consistent with national best practices and model

policies in other jurisdictions. We believe that the DPD's steps to strengthen policy and training on this issue will improve safety for both officers and community members in the future.

## **The DPD Improves its Early Intervention System**

Early Intervention Systems (“EIS”) are proactive, data-driven management tools that use officer performance indicators, such as complaints and uses of force (among many others), to identify officers who may be developing problematic behavior. One example of an EIS performance indicator is the frequency with which an officer uses force, compared to the frequency with which officers in similar assignments use force.<sup>41</sup> When an officer is flagged for review by an EIS, a rigorous evaluation of all aspects of his/her performance should be conducted. If the officer's performance is truly concerning, s/he should be provided with enhanced supervision, retraining, or other resources to help him or her self-correct before more serious disciplinary sanctions become necessary. The Department of Justice (“DOJ”) consistently requires the development of EISs as part of its police reform efforts across the United States.<sup>42</sup>

Recognizing the importance of an effective EIS, in June 2013, the OIM called for a meeting with Chief White to express concerns about the DPD's EIS (called the Personnel Assessment System or “PAS”) and to inform the Chief that the OIM had initiated an evaluation of the PAS. After the meeting, the OIM sent a follow-up letter (attached as Appendix A).<sup>43</sup>

The OIM evaluation sought to determine if the PAS was operating according to DPD policy and national standards, and if it was effective at deterring future officer misbehavior. It included surveying academic research; assessing other police EIS programs; analyzing the DPD's EIS database and the criteria the DPD uses to flag officers for review; and evaluating the quality of the reviews conducted, and interventions provided, if any. After conducting several of these steps, our preliminary assessment was that while the design of the PAS was not fundamentally flawed, its implementation was problematic, and the quality of the reviews needed to improve.

Following a high-profile lawsuit alleging inappropriate force by a DPD officer with a lengthy complaint history, and while the OIM evaluation was ongoing, DPD command staff publicly acknowledged a failure in the PAS, telling the press that they had not been taking its warnings seriously enough.<sup>44</sup> In April and July of 2015, the DPD updated its PAS Policy to restructure some elements of the

system.<sup>45</sup> Around the same time, the DPD convened a PAS Improvement Workgroup that reviewed the system, identified certain problems with its usage, and made recommendations to revise both PAS policy and practice.<sup>46</sup> Resulting changes to the program include updates to the criteria used to flag officers, enhanced requirements of the officer reviews, and a reorganization of the unit that manages the PAS.<sup>47</sup> We commend the DPD for making these changes. We are cautiously optimistic that if rigorously implemented and reinforced throughout the DPD over time, they will make the PAS more effective. We will continue to assess the effectiveness of the PAS, and plan to revisit this issue in future OIM reports.

### The DPD Revises its Racial Profiling Policy

In its 2014 Annual Report, the OIM recommended that the DPD revise its Biased Policing Policy, which addresses racial profiling, to be consistent with federal guidelines. Those guidelines expressly prohibit federal law enforcement agents from considering race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity in law enforcement decisions, unless listed as part of a specific suspect description.<sup>48</sup> The DPD's previous policy prohibited profiling only if race was the *sole* basis upon which law enforcement decisions were made, and did not prohibit profiling based on gender identity.<sup>49</sup>

Following the OIM's recommendation, in June 2015, the DPD published a revised Biased Policing Policy that contains stronger prohibitions against profiling based on race, sexual orientation, gender identity, or other characteristics. The revised policy states:

Officers will not make routine or spontaneous law enforcement decisions . . . based upon to any degree a person's race, ethnicity, national origin, age, religion, gender, gender identity, or sexual orientation unless these characteristics, traits, attributes, or statuses are contained in suspect descriptions that have been provided to officers. Profiling or discriminating on the basis of these characteristics, traits, attributes, or statuses is prohibited. In taking police actions, officers may never rely on generalized stereotypes but may rely only on specific characteristic-based information.<sup>50</sup>

This was an important revision, and we are pleased that the DPD's revised policy is now consistent with federal standards.

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The policy changes discussed above reflect significant examples of the DPD and its leadership working with the community and the OIM in precisely the ways outlined by the President's Task Force. In the remainder of this chapter, we examine two other issues that we believe present opportunities for additional reform of important DPD policies and practices.

## **The OIM Recommends Stronger Discipline to Deter Misuse of the NCIC/CCIC Databases**

In recent decades, police agencies have become increasingly reliant on information aggregated in criminal justice databases to help fulfill their law enforcement and public safety responsibilities. As a data-driven agency, the DPD has embraced this trend by equipping DPD officers with access to a variety of law enforcement databases for use in their work. This includes the databases known as the National Crime Information Center and Colorado Crime Information Center.<sup>51</sup> NCIC is available to virtually every law enforcement agency nationwide and includes a variety of important criminal justice record types, including multi-state information about arrests, sex offenders, protection orders, immigration, missing persons, and alleged gang affiliations, among others.<sup>52</sup> It is a critical law enforcement tool that DPD officers use every day to solve crimes, apprehend fugitives, recover stolen property, and execute other policing functions that keep Denver's residents safe.

Some of the information in NCIC/CCIC is sensitive or confidential. For example, it includes home addresses, and immigration status information, as well as certain personal information about victims of domestic violence who have obtained protection orders.<sup>53</sup> In recent years, additional types of sensitive criminal justice records have been included within NCIC/CCIC, including certain juvenile arrest records.<sup>54</sup> NCIC is thus a growing repository of sensitive information about the American public.<sup>55</sup> While DPD officers are permitted to use NCIC/CCIC for official purposes, they may not use it for personal reasons. Indeed, DPD policy includes several strong warnings to officers against the misuse of the databases. For example, the DPD policy in effect during the incidents summarized on pages 17 through 19 of this report warned officers that misuse of NCIC/CCIC may subject them to possible criminal penalties:

All personnel should be advised that the NCIC system is covered under the Federal Privacy Act of 1974, which contains criminal penalties for violations. This Act provides in part that, 'any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty ...'. Personnel shall not use the CCIC/NCIC system to obtain information, criminal or otherwise for personal use, gain, benefit, or remuneration. This includes police officers, CSA employees, and any other person.<sup>56</sup>

This point is reiterated elsewhere in the DPD policy on NCIC/CCIC:

Any information available via the NCIC/CCIC system will be limited to criminal justice purposes only. Personnel will not use criminal justice information for personal reasons, including curiosity inquiries or non-criminal justice investigations.<sup>57</sup>

Other DPD policies, such as DPD's Care and Use of Computer Equipment Policy, also inform officers that the misuse of computer resources, such as NCIC/CCIC, may subject them to disciplinary action and possible criminal or civil penalties:

(5) Employees may be disciplined by the Department for any conduct that is prohibited by or otherwise in violation of this policy.

d. Violations of this policy may result in suspension or termination of department computer Internet access; disciplinary action pursuant to the department's rules and regulations; or legal action in the form of criminal or civil penalties.<sup>58</sup>

Notwithstanding these strong warnings, when DPD officers have misused NCIC/CCIC, the practice of the DPD and the EDOS has generally been to impose oral or written reprimands, rather than stronger disciplinary sanctions, such as fined time or suspensions. In many cases, the OIM agreed with these disciplinary outcomes. Yet, in the past year, several cases highlighted the risks of harm associated with this misconduct, and caused the OIM to reconsider the issuance of reprimands for misuse of NCIC, which may neither be commensurate with those risks nor sufficiently deter the behavior.

- On September 28, 2015, a man was parked at the Colorado Springs home of a woman he was dating. The woman was in the middle of a divorce. The woman's soon-to-be ex-husband ("ex-husband") saw the man's car in the driveway, suspected his wife of having an affair, and took note of the car's license plate. Database records revealed that on September 28, a DPD officer ("Officer A") ran the man's license plate in NCIC/CCIC. Shortly thereafter, the ex-husband began driving by the man's house and threatening him. The ex-husband also found and contacted the man's wife to tell her that the man was having an affair. The ex-husband told the wife that he knew their home address, showed her a picture of the

## Chapter 2 :: OIM Evaluation of DPD Policy

man's car, and asked her questions about the man to find out what gym he worked out at, what shift he worked, and where he spent his leisure time.

During an investigation, Officer A admitted that he knew the ex-husband, who called him to complain about the vehicle parked in front of his house. The ex-husband said that he believed that his wife was having an affair, and asked Officer A to run the vehicle's plate, which Officer A did. The DPD issued a written reprimand to the officer for this misuse of the NCIC/CCIC databases.

- On May 15, 2015, a female hospital employee spoke with a DPD officer who was at the hospital to investigate a reported sexual assault. The female employee was not involved in the investigation, but the officer made "small talk" with her after his interview of the sexual assault victim. At the end of her shift, the female employee returned home and found a voicemail message from the officer on her personal phone. She had not given the officer her phone number, and was upset that he had obtained it (she assumed) by improperly using law enforcement computer systems. During an investigation into the incident, records revealed that the officer had, in fact, used the NCIC/CCIC database (and other DPD databases) to obtain her phone number, and the officer ultimately admitted to this conduct. The DPD issued the officer a written reprimand for his misuse of the NCIC/CCIC databases, and fined him two days' pay for leaving an unwelcome voice message that upset the female employee.
- A tow truck driver who frequently works with DPD officers was involved in a custody dispute with her ex-boyfriend regarding her teenage daughter. She learned that her ex-boyfriend and daughter were given a ride by another individual (who was a friend of the ex-boyfriend). According to the tow-truck driver, she called a DPD officer and asked him to run the license plate of the individual's vehicle. The officer did so and provided her with information about the individual. The tow truck driver then spoke with the individual by phone and told him that she had personal information about him, including his home address.

During an investigation into the incident, the tow-truck driver expressed significant concern about the officer possibly getting into trouble, and said that she had explained her reason for wanting the officer to run the license plate before he did so. The officer denied this, saying instead that he ran the plate because he thought that the tow-truck driver might have needed

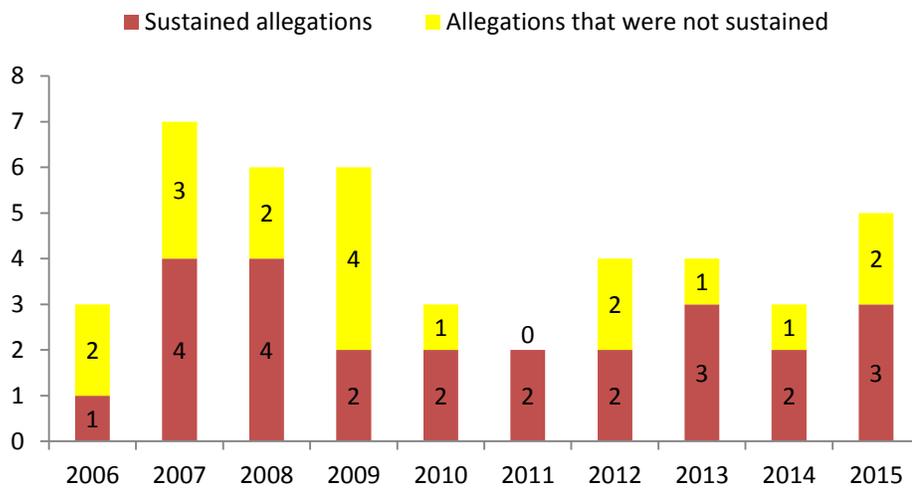
the information in connection with her official duties. The officer was alleged to have misused NCIC/CCIC and to have improperly communicated confidential information. The DPD and EDOS found these allegations to be not sustained and unfounded, respectively, and no discipline was imposed related to this incident.

The OIM believes that by-and-large, DPD officers adhere to DPD policy on the use of NCIC/CCIC. Yet, in our view, each of the cases above reflected serious departures from that policy and the standards of conduct expected of DPD officers. Further, each case risked potential harm to the reputation of DPD officers as trustworthy public servants, and in one case, the improper disclosure of NCIC/CCIC information created the opportunity for possible criminal behavior by a vengeful spouse. In each case, the OIM recommended that the DPD and EDOS impose discipline greater than a reprimand for the misuse of NCIC/CCIC. These recommendations were not accepted.<sup>59</sup>

## Historical Information About the Misuse of NCIC/CCIC

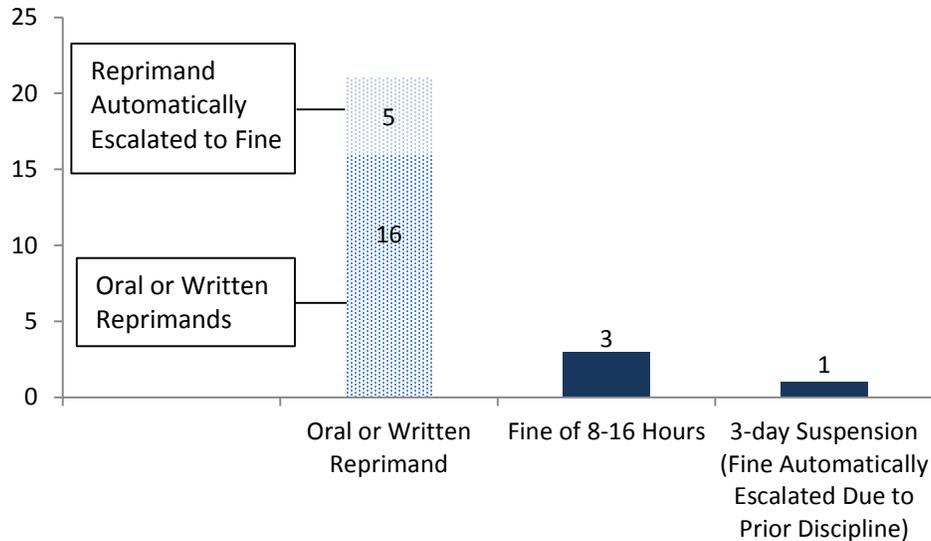
The OIM identified a total of 43 allegations over the last ten years of unauthorized access to or misuse of NCIC/CCIC by DPD officers.<sup>60,61</sup> Twenty-five of these allegations were sustained.<sup>62</sup> That is, the investigations determined that the officers had, in fact, misused NCIC/CCIC. These sustained allegations were dispersed across the ten years, with each year having a minimum of one sustained allegation and a maximum of four sustained allegations of misuse of NCIC/CCIC.

Figure 2.1: Allegations of Misuse of NCIC/CCIC Over Time (2006–2015)



Of the 25 sustained allegations, the majority of officers (16) received reprimands for their misuse of NCIC/CCIC. In eight cases, an officer was fined between 8 and 16 hours of pay, and in one case, an officer was suspended for 3 days. Of the nine officers who received penalties greater than reprimands, five would have received written reprimands for their misuse of NCIC/CCIC but for their prior disciplinary history. Because these five officers had prior disciplinary infractions, the disciplinary matrix automatically elevated their penalties to fined time, rather than reprimands.

Figure 2.2: Discipline Imposed in the 25 Sustained Misuse of NCIC/CCIC Allegations (2006–2015)



In some of these cases, additional discipline was imposed for misconduct other than the misuse of NCIC/CCIC. For example, in five cases, officers were disciplined for engaging in other misconduct that included: conduct prejudicial,<sup>63</sup> failing to make, file or complete official reports, improper use of electronic mail, law violation – assault, and departing from the truth. The penalties imposed for this other misconduct included fines of 16 hours, and in one case, dismissal.

### Seriousness of the Misconduct and Risk of Harm

The DPD’s Disciplinary Handbook (“Handbook”), which governs the discipline process for DPD officers, repeatedly emphasizes that the severity of discipline for any act of misconduct should be determined by “the nature and seriousness of the misconduct,” and “the harm or prejudice arising” from it, among other factors.<sup>64</sup> When imposing discipline, the DPD and EDOS are required to assess the “actual and demonstrable harm or risk of harm” that results from the misconduct.<sup>65</sup> “[H]arm’ is not limited to physical injury. The term ‘harm’ is intended to apply to any demonstrable wrong, prejudice, damage, injury or negative effect/impact which arises from the violation.”<sup>66</sup> In order to evaluate the harm or risk of harm, the DPD and EDOS must carefully consider the “overall effect of the misconduct on the goals, values, operation, image and professional standards of the Department.”<sup>67</sup>

## Chapter 2 :: OIM Evaluation of DPD Policy

In light of these principles, violations that tend to result in reprimands under the discipline matrix are generally minor, with little appreciable harm or risk of harm to the community. This includes, for example, failing to abide by police uniform restrictions when off-duty (such as wearing “civilian attire with the uniform cap or helmet”),<sup>68</sup> or entering into a “place of amusement or liquor establishment” when on duty.<sup>69</sup> Similarly, suggesting “attorneys, bondsmen, or bail brokers to any person arrested” (other than a member of the officer’s immediate family) can also result in a reprimand.<sup>70</sup> The failure to make reports “promptly, accurately, and completely in conformity with specifications of the Department” also generally results in a reprimand.<sup>71</sup>

In contrast, violations that involve the abuse of police powers for personal reasons tend to result in more severe discipline under the matrix, such as fined time or suspensions. This includes, for example, officers taking “police action or making arrests in their own quarrels or in those involving their families,”<sup>72</sup> officers misusing their police powers to “solicit preferential treatment,”<sup>73</sup> and officers who knowingly receive anything of value from “suspects, prisoners, arrestees, prostitutes, or other persons whose vocations may profit from information obtained from the police.”<sup>74</sup> Similarly, violations that tend to damage officer or public safety, or result in harm to the reputation or professional operations of the DPD, also tend to result in more serious discipline. This includes discrimination,<sup>75</sup> verbal abuse of the public,<sup>76</sup> or intimidation of persons,<sup>77</sup> each of which should result in the imposition of stiff discipline under the matrix.

The OIM believes that the misuse of NCIC/CCIC has more in common with the second category of violations discussed above than it has with the first. Indeed, the DPD’s written NCIC/CCIC Policy acknowledges the seriousness of this violation through its repeated warnings of the criminal, civil, or disciplinary penalties that could theoretically result from the misuse of NCIC/CCIC. Further, the misuse of NCIC/CCIC involves the misuse of a power granted for official purposes, it may damage community trust in the DPD, and in some cases, it risks actual harm to community members.

## The Role of Deterrence in Police Discipline

The Handbook identifies the deterrence of misconduct as another critical aim of the DPD's disciplinary system for several reasons.<sup>78</sup> First, by imposing sanctions on an officer who has engaged in misconduct, the DPD and EDOS aim to deter future misconduct by the particular officer being disciplined.<sup>79</sup> Second, and no less important, by imposing disciplinary sanctions for an act of misconduct, the DPD and EDOS aim to provide notice of the consequences of misconduct to all members of the DPD, and thus deter future misbehavior by the entire department.<sup>80</sup> This is consistent with best practices, and with the philosophy espoused by DOJ on the important role of discipline on deterring officer misbehavior.<sup>81</sup>

The cases and historical trends discussed above are not evidence of widespread abuse of the NCIC/CCIC databases. Instead, they suggest that small-scale misuse of NCIC/CCIC may have persisted across time, and may require the imposition of discipline more serious than reprimands to deter future misconduct. Some other law enforcement agencies have already adopted such an approach. For example, officers in the Phoenix Police Department who misuse NCIC are referred for suspensions without pay.<sup>82</sup> Other departments also impose significant discipline on officers who misuse NCIC, including suspensions and, in some egregious cases, termination.<sup>83</sup>

Therefore, to address the concerns above:

### **OIM Recommendation # 1:**

The OIM recommends that the DPD and the EDOS re-evaluate the current framework for imposing discipline on DPD officers who misuse NCIC/CCIC. Specifically, due to the potential for harm to community members and the reputation or operations of the DPD, the OIM recommends that penalties for misuse of NCIC/CCIC should be strengthened within the matrix, carrying a range of penalties from fined days to termination, depending on the seriousness of the misuse of NCIC/CCIC and the harm or risk of harm that resulted from it. To ensure fair notice to officers, the OIM also recommends that the DPD and the EDOS provide written notification to officers of the reasons for this change in disciplinary practices, and the factors that will be considered in assigning an NCIC/CCIC violation to a particular conduct category within this new penalty range.

## The OIM Recommends that the DPD Clarify Policy on the Use of Force Against Arrestees Attempting to Swallow Potential Contraband

While on patrol, officers may encounter suspects who place potential contraband into their mouths in an attempt to swallow it or otherwise prevent its detection or seizure by the police. For example, in an August 2014 arrest, a man attempted to swallow a sock filled with suspected drugs, and was punched in the face multiple times by a DPD officer who was trying to make him spit out the substances. A witness later alleged that the officer had used inappropriate force against the arrestee and another person.<sup>84</sup> The DPD exonerated this officer in January 2016 after an administrative review of his conduct.

As the OIM noted during that review, the DPD's Use of Force Policy is almost entirely silent on whether physical force is authorized to remove potential contraband from an arrestee's mouth and, if so, what kinds of force are permitted.<sup>85</sup> Little guidance is provided, other than a short notation that officers may not use Tasers to prevent arrestees from swallowing contraband.<sup>86</sup> Similarly, the DPD Training Academy does not currently provide any specific training addressing appropriate and safe methods for the removal of potential contraband from an arrestee's mouth.<sup>87</sup> The DPD's Arrest and Control Technique ("ACT") Manual is also silent on this issue.<sup>88</sup>

This gap in current policy and training leaves officers in the unenviable position of having to make field determinations about whether to attempt to remove potential contraband from arrestees' mouths, quickly and under tense circumstances, without formal direction from the DPD. In December 2015, the OIM verbally recommended that the DPD revise its Use of Force Policy to provide specific guidance on this issue. In a follow-up letter sent in January 2016 (a copy of which is attached as Appendix B of this Report), the OIM specifically recommended that the DPD prohibit the use of strikes to force persons to spit out potential contraband for several reasons.

First, medical research reflects that when foreign bodies such as drug packets are swallowed, they generally pass through the body within 12-24 hours without medical intervention.<sup>89</sup> At that point, they may be recovered and used as evidence in criminal proceedings, if necessary. Second, to be successful at causing arrestees to spit out potential contraband, strikes may often be serious enough to risk potential injury. In Denver, between 2013 and 2015, there were at least 2,037

incidents in which one or more DPD officers used force,<sup>90</sup> and DPD data indicate that a high proportion of the uses of force that involved strikes resulted in injury to community members.<sup>91</sup> Similarly, the use of strikes to remove contraband from the mouths of arrestees may also be dangerous for officers, who may be bitten or otherwise assaulted during those uses of force.<sup>92</sup>

Third, some police departments have recently prohibited the use of strikes to remove potential contraband from the mouths of suspects or gone even further— forbidding the use of any force at all for this purpose. This includes the Seattle Police Department, which adopted a new Use of Force Policy that distinguishes between a suspect who is attempting to put possible contraband into his mouth, and one who has done so and is attempting to swallow it.<sup>93</sup> While reasonable force is permissible to prevent a suspect from putting possible contraband into his mouth, no force is permitted to try to remove such contraband after the suspect has placed it into his mouth. This new policy was adopted under the auspices of the DOJ and a United States federal judge.<sup>94</sup>

Therefore, to address the concerns above:

**OIM Recommendation # 2:**

The OIM recommends that the DPD revise its Use of Force Policy to provide specific guidance on what types of force are permitted, and prohibited, to remove potential contraband from the mouths of persons being placed under arrest. The OIM further recommends that this revised policy prohibit the use of strikes to force persons being placed under arrest to spit out potential contraband.

## **Summary of OIM Recommendations to the DPD and the Office of the Executive Director of Safety**

- 1) The OIM recommends that the DPD and the EDOS re-evaluate the current framework for imposing discipline on DPD officers who misuse NCIC/CCIC. Specifically, due to the potential for harm to community members and the reputation of the DPD, the OIM recommends that penalties for misuse of NCIC/CCIC should be strengthened within the matrix, carrying a range of penalties from fined days to termination, depending on the seriousness of the misuse of NCIC/CCIC and the harm or risk of harm that resulted from it. To ensure fair notice to officers, the OIM also recommends that the DPD and the EDOS provide written notification to officers of the reasons for this change in disciplinary practices regarding misuse of NCIC/CCIC, and the factors that will be considered in assigning an NCIC/CCIC violation to a particular conduct category within this new penalty range.
  
- 2) The OIM recommends that the DPD revise its Use of Force Policy to provide specific guidance on what types of force are permitted, and prohibited, to remove potential contraband from the mouths of persons being placed under arrest. The OIM further recommends that this revised policy prohibit the use of strikes to force persons being placed under arrest to spit out potential contraband.

# 3

## Denver Police Department Monitoring

### Introduction

The OIM is responsible for monitoring Denver Police Department (“DPD”) investigations into complaints involving sworn personnel and for ensuring that the complaint process is accessible to all community members. Having an accessible complaint process is critical for several reasons. First, complaints provide the DPD with information it can use to hold officers accountable when they fail to live up to Department and community standards of conduct. Second, complaints may provide “customer feedback” that can be used to improve police services through the refinement of policies, procedures, and training. Third, complaints can identify points of friction between officers and the community, which can support the development of outreach and community education initiatives. Finally, an open complaint process tends to foster community confidence in the police, which enables officers to effectively fulfill their important public safety function.

In this chapter, we review statistical and workload patterns relating to the DPD’s 2015 complaints, investigations, findings, and discipline.

### Highlights

- The number of community complaints recorded by the DPD in 2015 declined substantially. In 2014, 539 community complaints were recorded against DPD officers, compared to 396 in 2015.
- The percentage of internal complaints, or complaints filed by DPD officers, in which one or more allegations were sustained declined between 2014 and 2015. In 2014, 50% of internal complaints had one or more sustained allegations compared to 30% in 2015.

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- One DPD officer was terminated in 2015 and eight officers resigned or retired while an investigation or disciplinary decision was pending.

### Receiving Complaints Against DPD Officers

Complaints against Denver police officers fall into three categories: community complaints, internal complaints, and scheduled discipline complaints.

#### Community Complaints/Commendations

Community complaints are allegations of misconduct against a sworn member of the DPD that are filed by community members. Community members can file complaints or commendations by filling out the OIM's online complaint/commendation form, mailing the OIM a completed postage pre-paid complaint/commendation form, emailing or faxing a complaint/commendation to the OIM, or by visiting the OIM's offices. Complaints or commendations can also be filed directly with the DPD, through its Internal Affairs Bureau ("IAB"), or by using forms that are generally available at the Mayor's office, DPD District stations, and City Council offices. See Appendices C and D, which describe how complaints and commendations can be filed, and where OIM complaint/commendation forms are located.

#### Internal Complaints

Internal complaints are those that are filed by an officer, supervisor, command staff, or Internal Affairs. Internal complaints are more likely to be procedural than community complaints, and often allege a failure to follow DPD procedures. Not all internal complaints are minor, however, as complaints of criminal behavior by officers are sometimes generated internally.

#### Scheduled Discipline Complaints

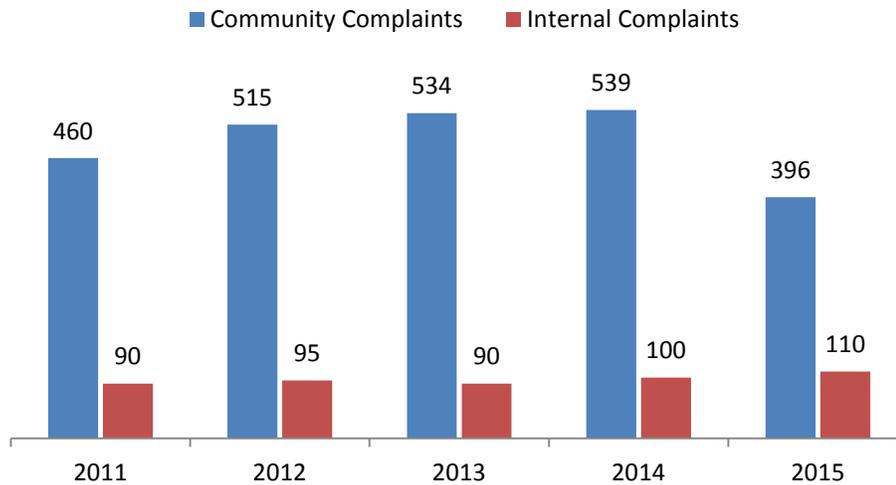
Scheduled discipline complaints are generally minor, such as when a DPD officer gets into a preventable traffic accident that does not cause injury, or misses a court date, shooting qualification, or continuing education class.<sup>95</sup> Discipline for these types of routine offenses is imposed according to a specific, escalating schedule. Historically, the OIM has opted not to monitor or report on these types of cases. As a result, this chapter does not address patterns in scheduled discipline.

## Complaints Recorded in 2015

Figure 3.1 presents the number of complaints recorded by DPD IAB during 2015 and the previous four years.<sup>96,97,98</sup> These numbers do not include scheduled discipline cases. In 2015, 396 community complaints and 110 internal complaints were recorded against DPD officers.<sup>99</sup> The number of community complaints is lower in 2015 than in previous years, while the number of internal complaints increased slightly. When compared to 2014, community complaints decreased by 27% in 2015 and internal complaints increased by 10%.

As we have noted in previous reports, it is very difficult to explain fluctuations in the number of complaints filed over time. Patterns in complaints can change as the result of improvements to organizational policy, practice, or training. Complaint numbers can also increase or decrease in response to a range of other factors, including but not limited to media coverage, changes in complaint triage practices, and/or changes in the types of complaints that are recorded.

Figure 3.1: Complaints Recorded by Year



## Most Common Complaint Specifications

Table 3.1 presents some of the most common specifications (or rules that a DPD officer might be disciplined for violating) in both internal and community complaints in 2015 and the previous four years.<sup>100</sup> The most common specification recorded by IAB in 2015 was “Responsibilities to Serve the Public,” a specification used when officers are alleged to have violated a rule requiring them to “respect the rights of individuals and perform their services with honesty, zeal, courage, discretion, fidelity, and sound judgment.”<sup>101</sup>

*Table 3.1: Most Common Specifications*

Specification	2011	2012	2013	2014	2015
Responsibilities to Serve Public	16%	18%	26%	21%	23%
Duty to Obey Departmental Rules and Mayoral Executive Orders	22%	15%	20%	22%	22%
Discourtesy	23%	23%	20%	18%	19%
Inappropriate Force	16%	12%	10%	16%	14%
Conduct Prohibited by Law	2%	2%	1%	1%	4%
Failure to Give Name and Badge Number	1%	4%	3%	3%	3%
Failure to Make or File Reports	3%	3%	3%	3%	2%
Conduct Prejudicial	3%	2%	2%	1%	1%
Duty to Protect Prisoner	0%	0%	0%	0%	1%
All Other Specifications	14%	20%	15%	14%	12%
<b>Total Number of Specifications</b>	<b>920</b>	<b>1,124</b>	<b>1,255</b>	<b>1,372</b>	<b>911</b>

\*Note: Columns may not sum to 100 due to rounding.

## Intake Investigations and Screening Decisions

After a complaint is received, a preliminary review is conducted to determine its level of seriousness, and whether it states an allegation of misconduct or a policy and procedural concern. This process may be thought of as “triage” to determine the level of resources to devote to the investigation of each complaint. IAB conducts this preliminary review (sometimes known as an “intake investigation” or “screening investigation”). The preliminary review may include a recorded telephonic or in-person interview with the complainant and witnesses; a review of police records, dispatch information, and relevant video; and interviews of involved officers.

Following the preliminary review, IAB supervisors determine what policies and procedures have allegedly been violated, and make a screening or classification decision that determines how the complaint will be handled. There are five common screening decisions:

### Decline

The complaint either does not state an allegation of misconduct under DPD policy, or the preliminary review revealed that the facts alleged in the complaint did not occur or that there is insufficient evidence to proceed with an investigation. No further investigation will be conducted. The OIM reviews every declined case before it is closed. The OIM also communicates the case outcome by mailing a letter to the complainant, along with a findings letter from IAB.

### Informal

The complaint states an allegation of a minor procedural violation (“minor misconduct”) not rising to the level of official misconduct (“serious misconduct”). As such, the complaint will be investigated by the subject officer’s supervisor, rather than by IAB. The OIM reviews the completed investigation, and may recommend additional investigation, if warranted. If the allegation is proven, the supervisor is to debrief or counsel the subject officer and document this action.

### Service Complaint

The complaint states a general concern with police policy or services, rather than an allegation of misconduct against a specific officer. The OIM also reviews service complaints prior to case closure.

### Mediation

The complaint states a relatively non-serious allegation of misconduct, such as discourtesy, and the complainant and officer might benefit from the opportunity to discuss their interaction. The complaint will not be further investigated, but the OIM will work to schedule a facilitated discussion with a neutral, professional mediator.

### Formal

The complaint alleges misconduct under DPD policy and requires a full investigation and disciplinary review. Cases that are selected for full formal investigations are investigated by sergeants in IAB. On some serious cases, the OIM will actively monitor the investigations. When the OIM actively monitors a case, an OIM monitor will observe interviews, consult with the investigators and their supervisors on what direction the investigation should take, and review evidence as it is collected. Since active monitoring is resource-intensive, the OIM only actively monitors the most serious cases. Regardless of whether the OIM actively monitors a case, an OIM monitor reviews and comments on the IAB investigation once it is complete. The case is then given to the DPD's Conduct Review Office ("CRO") for disciplinary findings.

## Findings and Discipline

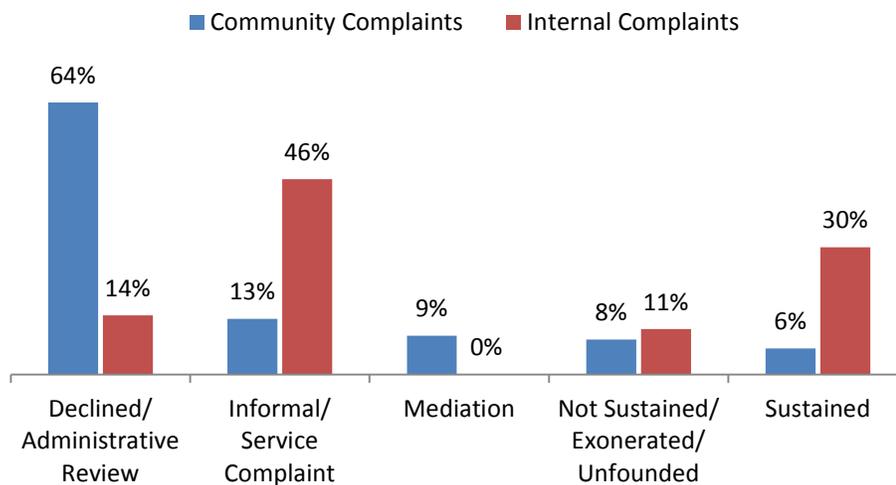
After a case is investigated by IAB and reviewed by the OIM, the case is sent to the CRO. In reviewing a case, the CRO examines the evidence, evaluates the appropriateness of the specifications assigned by IAB, and makes findings on each specification. There are generally four findings on formal investigations:<sup>102</sup>

- Sustained - A preponderance of the evidence indicates that the officer's actions violated a DPD policy, procedure, rule, regulation, or directive.
- Not Sustained - There was insufficient evidence to either prove or disprove that the alleged misconduct occurred as described in the complaint.
- Unfounded - The evidence indicates that the misconduct alleged did not occur.
- Exonerated - The evidence indicates that the officer's actions were permissible under DPD policies, procedures, rules, regulations, and directives.

## Patterns in Outcomes on Community Complaints

Figure 3.2 shows the disposition of internal and community complaints closed during 2015. There were clear differences in outcomes between complaints filed by community members and internal complaints filed by supervisors or command staff. The majority of community complaints closed in 2015 were declined after an initial intake investigation (64%), while a much smaller percentage of internal complaints were closed as declines (14%). Internal complaints were much more likely to result in a sustained finding than community complaints. For example, 6% of community complaints closed in 2015 resulted in at least one sustained finding, while 30% of internally-generated complaints resulted in a sustained finding.

Figure 3.2: Outcomes of Complaints Closed in 2015



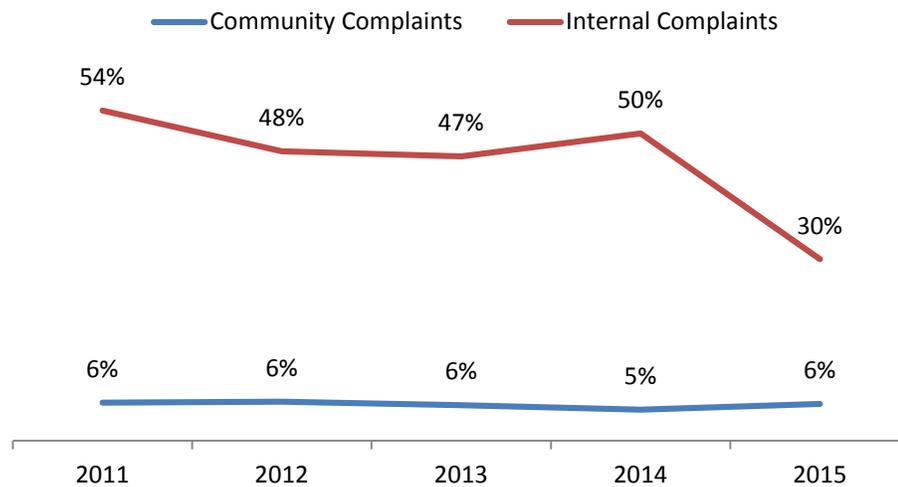
These patterns are generally consistent with previous years. However, a considerably larger percentage of internal complaints were resolved informally in 2015 than in previous years. In 2014, 13% of internal complaints were resolved informally, compared to 46% in 2015.

This increase in informal resolutions corresponds to a similar decrease in sustained findings. As Figure 3.3 demonstrates, between five and six percent of closed community complaints had at least one allegation that was sustained since 2011. In comparison, between 47% and 54% of the internal complaints closed between 2011 and 2014 had one or more sustained allegations. The total number

## Chapter 3 :: DPD Monitoring

of internal complaints closed in 2015 includes 30 cases alleging violations of DPD's Secondary Employment Policy identified by a Telestaff Audit.<sup>103</sup> These cases were closed informally and not reviewed by the OIM. The handling of these cases may explain why the rate of cases closed informally is substantially higher than in previous years. It may also help explain why the sustained rate for internal complaints is lower than in previous years. We will monitor this and discuss trends in complaint outcomes in future OIM reports.

Figure 3.3: Complaints that Resulted in One or More Sustained Allegations



## Discipline on Sustained Cases

After the completion of the DPD IAB investigation, the case is reviewed by the DPD Conduct Review Office (“CRO”). The CRO makes an initial finding regarding policy or procedural violations. The OIM then reviews the CRO findings. When the CRO and/or the OIM initially recommend that discipline greater than a written reprimand be imposed or when there is a disagreement between the OIM and CRO about the findings, a Chief’s meeting will be held. At this meeting, the Chief, Independent Monitor (and/or his representative), the CRO, Commander of IAB, the EDOS (and/or her representative), an assistant City Attorney, and a number of DPD Command officers discuss the case and provide input to the Chief to assist him in making his disciplinary recommendations, if any, to the EDOS.

If discipline greater than a written reprimand is contemplated following the Chief’s meeting, the officer is entitled to a “Chief’s Hearing.” At this meeting,

the officer can present his or her side of the story and any mitigating evidence to explain the alleged misconduct. After this meeting, the Chief and the Independent Monitor each make a final recommendation to the EDOS, independently. The EDOS is closely involved in the process of advising the Chief as he formulates his recommendation. The EDOS then makes a final decision as to findings and discipline. If the officer disagrees with the discipline imposed by the EDOS, the officer may file an appeal with the Civil Service Commission’s Hearing Office.

Table 3.2 reports the number of officers who retired/resigned prior to a discipline finding or who were disciplined by the Police Chief (for reprimands) or the EDOS (for any discipline greater than a reprimand) for sustained allegations from 2011 through 2015. The most frequent discipline imposed in 2015 was written reprimands, followed by suspensions without pay and fined time. One officer was terminated in 2015.<sup>104</sup>

*Table 3.2: Discipline Imposed by Year of Case Closure<sup>105</sup>*

Discipline	2011	2012	2013	2014	2015
Terminated	10	0	1	4	1
Resigned/Retired Prior to Discipline	1	4	9	6	8
Demoted	0	0	0	1	0
Suspended Time	28	21	20	22	18
Fined Time	38	35	19	28	15
Written Reprimand	41	31	38	38	30
Oral Reprimand	10	9	4	3	4

## **Significant Disciplinary Cases Closed in 2015**

### **Terminations**

■ On July 10, 2014, a female struggled with police officers while they attempted to arrest and handcuff her, spitting in one officer's face and kicking a second officer in the face while he placed her in the back of a patrol car. She was transported to a district station. While in a holding cell, the female refused to relinquish her belt and shoes, which quickly led to a struggle with the male officer who had been previously kicked. During the struggle, the officer placed his right knee in the area of her neck and pinned her down on a bench. Moments later, the female is seen on video apparently losing consciousness and sliding off the bench, possibly due to the pressure that the male officer had placed on her neck. The officer failed to get medical attention for the female, failed to report the use of force to supervisors, and also failed to document the use of force, all of which are required by DPD policy. The officer was terminated. He appealed that decision, and a Hearing Officer modified the discipline to two 30 day suspensions and a termination held in abeyance (i.e., a suspended termination, or probation) for two years pending no further similarly serious acts of misconduct. The Office of the EDOS has appealed this decision to the Civil Service Commission.

### **Resignations and Retirements**

■ On February 6, 2014, following a three-car accident, an off-duty officer was arrested in another jurisdiction and charged with driving under the influence of alcohol and careless driving. The results of a blood alcohol test indicated he had a Blood Alcohol Content ("BAC") of .186. The officer ultimately pled guilty to driving under the influence with one prior offense and was sentenced to 24 months of probation and ten days in jail. He resigned before a disciplinary decision was reached.

■ On June 8, 2014, a detective was arrested by the Thornton Police Department after police were called to his home for an alleged domestic violence incident. During this incident, he was allegedly intoxicated and fired six rounds from a handgun through the floor of a second story bedroom into a first story living room. Police found his wife and two children huddled together in a bathroom. He pled guilty to Prohibited Use of a Weapon, Reckless Endangerment, and Harassment by Telephone, and was sentenced to probation. As a condition of his probation, he was prohibited from carrying a weapon, thus disqualifying him from

further serving as a DPD officer. The detective resigned prior to a final discipline finding.

■ On July 26, 2014, an officer allegedly took an unattended backpack from a district station without authorization, instead of taking the property to the Property Bureau. He was seen on camera placing the backpack in a paper bag, taking it into the back of the parking lot, crouching down out of camera view, placing it in the trunk of his patrol car, and then bringing another bag back into the station. The backpack and its contents went missing. The officer also allegedly lied during the IAB investigation. The officer resigned prior to a discipline finding.

■ On August 16, 2014, an off-duty officer was arrested and charged with Disorderly Conduct and Child Abuse. The results of a portable breath test indicated that his blood alcohol level was .257. The officer was criminally charged and pled guilty to disorderly conduct. The officer resigned prior to a discipline finding.

■ On September 29, 2014, several officers responded to a 911 call in which a woman's ex-boyfriend, whom she knew to carry a gun, allegedly broke into her home. Officers were warned previously that the suspect would not be taken alive and would engage in a shoot-out with police. While transporting the victim and her children to a safe house, the officer allegedly drove the victim to three different locations where the victim believed the suspect might be. The suspect was seen kneeling beside his truck at the third location. To avoid being detected, the officer drove away, but stopped after a short distance, while other officers arrived to make the arrest. The officer then allegedly left his police car to assist with the arrest, leaving the victim and two children unattended and potentially vulnerable. There were also concerns that the officer lied to IAB during the investigation of the incident. The officer resigned prior to a discipline finding.

■ Sometime between the night of November 27 and the early morning hours of November 28, 2014, an off-duty officer threw his intimate partner's belongings from a balcony, possibly including car keys. The car allegedly went missing around the same time. The officer also allegedly lied to police during their investigation and during an IAB investigation. He was also alleged to have carried his service weapon while intoxicated, displaying it in a bar, and to have committed offensive acts. The officer resigned prior to a discipline finding.

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■ On February 11, 2015, during a task force investigation into juveniles being trafficked for prostitution, investigators allegedly linked a cell phone number on a trafficked juvenile's phone to a DPD officer. The officer resigned before a disciplinary decision was reached.

■ An officer had two cases alleging misconduct. In the first case, on March 3, 2015, while off-duty, the officer was involved in a car accident. He was charged with driving under the influence along with other violations and is alleged to have had a BAC of .146. In the second case, on August 22, 2015, the officer was on-duty when he was contacted by a supervisor because the officer allegedly appeared intoxicated. The officer resigned prior to the completion of the IAB investigation into either case.

### Other Significant Cases, Including Suspensions for Ten or More Days

■ In June 2009, a detective was assigned to conduct a follow-up investigation of a cold case. The District Attorney's Office requested that the detective obtain an arrest warrant for the suspect, but the detective did not obtain the warrant in a timely manner. The detective was suspended for ten days.

■ An officer spent excessive amounts of time visiting and attempting to flirt with female civilian DPD employees, causing multiple employees to feel uncomfortable. The officer also sent non-work-related and possibly inappropriate emails to one of the employees. During one interaction, the officer touched this employee's hair several times, making her feel uncomfortable. He also commented on her appearance and massaged her shoulders. The female employee's supervisor twice told the officer he needed to leave, and instead the officer walked behind the female supervisor and inappropriately tickled her waist. The officer was suspended for ten days and fined two days' pay.

■ On July 26, 2014, an officer working off-duty in a bar downtown escorted an intoxicated male patron out of the establishment. The officer placed the male in handcuffs and called for a vehicle to take him to detox. The male's brother attempted to discuss the situation with the officer and asked the officer to reconsider. When the officer refused, the brother allegedly began verbally abusing the officer. Although the brother did not make any threatening gestures, the officer advanced on him and aggressively shoved him to the ground, causing him to fall backwards onto concrete steps. The use of force was captured by a nearby HALO camera. The sergeant investigating the use of force was briefed by the

officer, reviewed the HALO footage, and determined that the use of force did not require further investigation. Several weeks later, the male and his brother filed a complaint alleging inappropriate force, resulting in an IAB investigation of the incident. The officer was ultimately suspended for 30 days for the inappropriate use of force, and the sergeant received a written reprimand for failing to recommend further investigation into the incident. The officer appealed this decision, and in August 2015, a Hearing Officer reversed the discipline order. The Office of the EDOS has appealed this decision to the Denver Civil Service Commission.

■ On September 2, 2014, several officers responded to a disturbance call between two families. A victim mistakenly identified an individual as being involved in the disturbance. When officers attempted to contact him, he fled into a home where officers restrained him and placed him into custody. During the encounter, an officer confronted a female at the scene who was upset with the police actions. The officer yelled and inappropriately continued to escalate the argument. The officer also failed to provide his name and badge number in writing after individuals at the scene requested it. The officer has prior sustained complaints, and was thus suspended for ten days and fined two days' pay.

■ On October 2, 2014, several officers and an ambulance responded to an office to assist with a male who was thought to be a suicide risk. One officer entered the office carrying a pepper ball gun without the safety engaged. The officers handcuffed the man without incident. While waiting for the elevator to transport the man from the building, the officer accidentally discharged the weapon and a single pepperball projectile was fired in the hallway. Several parties who were in the area, including the handcuffed individual, were exposed to the oleoresin capsicum ("OC") from the pepper ball. The officer was suspended for ten days and fined four days' time, to run concurrently. The officer appealed this decision, and a Hearing Officer affirmed the four days of fined time but reversed the suspension. The Office of the EDOS appealed the Hearing Officer's decision, and the suspension was reinstated by the Civil Service Commission.

■ On January 14, 2015, an officer responded to a hit-and-run accident involving property damage to a residential fence. The officer failed to conduct a thorough investigation and failed to accurately complete a required report. The report omitted the presence of broken auto parts at the scene and potential video evidence from a nearby surveillance camera. This information could have helped to identify the make and model of the suspect's vehicle and otherwise assist in the investigation. The officer, who had an extensive disciplinary history, received two

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ten day suspensions to run concurrently. The officer appealed one aspect of this decision, and a Hearing Officer affirmed the discipline. The officer has appealed this decision to the Civil Service Commission.

■ On February 11, 2015, several officers were involved in a sting operation targeting prostitution customers. During a break, a male officer made an inappropriate comment to a female officer about her involvement in the operation. Although a supervisor ordered the male officer to have no further contact with the female officer, the male officer contacted her through text messages. The officer received a ten day suspension for disobeying an order and was fined two days' pay for failing to demonstrate respect for a fellow officer.

■ On July 2, 2015, an officer was in an elevator with a civilian employee of the police department and other individuals. The officer drew his knife from its sheath and displayed it while allegedly looking the civilian employee in the eye. The employee felt intimidated and unsafe. DPD policy requires officers to keep pocket knives completely concealed when not in use. The officer, who had a significant disciplinary history, received two ten day suspensions to run concurrently. The officer has appealed this decision.

■ On July 3, 2015, an officer removed his handgun from his holster and placed it on a table in front of his coworkers for no legitimate purpose. The next day, the officer was upset and pointed his handgun at a computer exclaiming, "They can take my gun, they can take my badge! I don't care anymore." The officer said it was just a joke. Several days later, the officer drew his handgun and pointed it at a fellow officer's car while she was transporting a prisoner. The officer once again described this as a joke. The officer was suspended for ten days and fined two days' pay.

## Appeals on Significant Discipline Cases Closed Prior to January 1, 2015, and Decided or Pending With the Civil Service Commission in 2015<sup>106</sup>

■ In July 2009, an officer used inappropriate force by inappropriately grabbing a female citizen, taking her to the ground, and punching her in the face. The officer then lied to IAB about the incident. The Manager of Safety at the time terminated the officer for Commission of a Deceptive Act and suspended him for 30 days for the use of inappropriate force. The officer appealed this decision. A panel of Hearing Officers upheld his 30 day suspension for inappropriate force but overturned his termination and reinstated the officer.<sup>107</sup> The Manager of Safety appealed this decision to the Civil Service Commission, which upheld the panel's decision to reinstate the officer. After appeals to both the District Court and the Colorado Court of Appeals, the officer's case was remanded back to the Civil Service Commission and, in August 2015, his termination for Commission of a Deceptive Act was reinstated. He has appealed this to the Denver District Court.

■ In 2013, two officers (Officers A and B) engaged in repeated sexual acts while on duty. Officer B admitted to engaging in sexual acts with Officer A while on duty, and resigned prior to a disciplinary finding. Officer A lied about that conduct during an IAB investigation. Officer A was also later criminally charged with crimes characterized by domestic violence and entered into a plea agreement whereby she pled guilty to revised charges in return for a deferred judgment and sentence in that case. In April 2014, Officer A was terminated for her misconduct, appealed, and a Hearing Officer reversed the discipline decision and reinstated her employment. The Office of the EDOS appealed that decision, and in March 2015, the Civil Service Commission reversed the Hearing Officer's decision and reinstated Officer A's termination.

■ In March 2013, a detective failed to properly investigate a theft case resulting in an innocent citizen being unnecessarily arrested. The detective overlooked important exculpatory information that another detective had previously added to the case file, and failed to provide the victim with a photographic array from which the victim could attempt to identify the guilty party. In October 2014, the EDOS ordered a suspension of ten days, and the detective appealed the decision. In April 2015, a Hearing Officer determined that the level of seriousness of the misconduct was misclassified by the EDOS's office, and purported to remand the case back to the Deputy Director of Safety

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to determine an appropriate penalty under a lesser misconduct category. The Office of the EDOS appealed this decision, and the Civil Service Commission reversed the Hearing Officer's decision and reinstated the original suspension.

■ In January 2014, an officer failed to properly investigate a DUI contact, and then also failed to properly document the incident and the reasons for the lack of investigation. The officer had prior cases involving the failure to make or file reports or take police action on incidents. The officer was suspended for ten days. The officer appealed the decision, and it was upheld by a Hearing Officer. The officer appealed that decision, which was upheld by the Civil Service Commission. The officer appealed that decision to the Denver District Court, but subsequently withdrew that appeal.

■ In March 2014, an officer was confronting a suspect who had fled from a traffic stop and entered another vehicle. The officer was drawing his handgun and turning on the attached flashlight as he stepped out of the car. The police vehicle's door swung back and threw him off-balance, causing him to unintentionally discharge a round. The bullet entered the suspect vehicle's windshield, and the suspect sustained minor injuries from the flying glass. In November 2014, the officer was suspended without pay for 18 days. He appealed the decision, and a Hearing Officer upheld the suspension in June 2015. He appealed the Hearing Officer's decision, which was affirmed by the Civil Service Commission in February 2016.

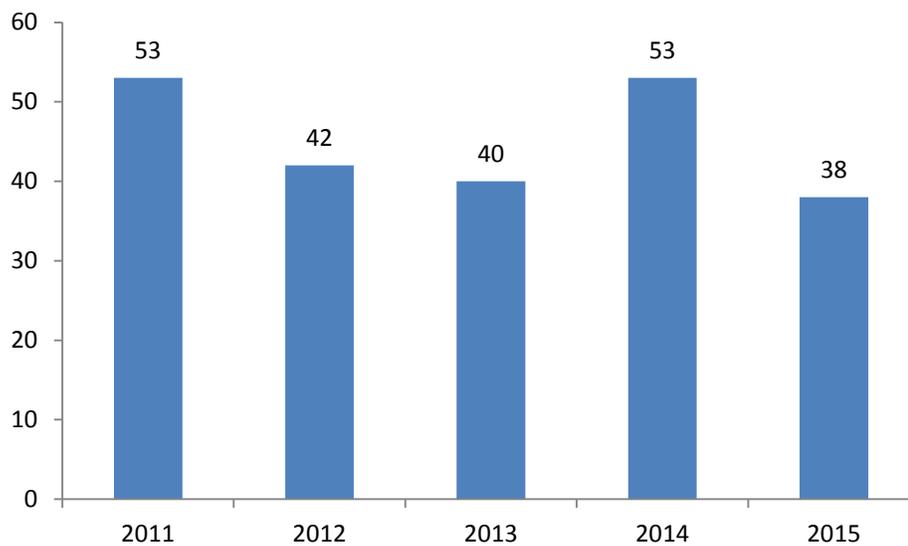
■ In May 2014, an officer requested time off to attend an out-of-town family event. After being denied part of the time requested, she engaged in dishonest and manipulative conduct by talking to different supervisors, and misleading them regarding what others knew and had already approved in regard to her request. She then made deceptive statements to IAB investigators. In October 2014, the officer was terminated for two separate violations of DPD policy, and appealed that decision. In May 2015, a Hearing Officer modified the discipline on one rule violation from termination to 90 suspended days, but affirmed the termination on the other rule violation. The officer appealed that decision as did the Office of the EDOS. In January 2016, the Civil Service Commission reversed the Hearing Officer's decision to modify the discipline for the first rule violation to a 90 day suspension, and the termination findings on both violations were upheld.

■ An officer was accused by a citizen of sexual misconduct after he was called to a homeless shelter on a disturbance call in July 2014. The officer made contact with the woman allegedly causing the disturbance, then drove her to find temporary lodging for the night. He drove her to several hotels and motels in and out of Denver looking for a vacancy, finally finding an available room at approximately 3 a.m. He helped her check-in to her room and left the hotel 40 minutes later. The officer failed to call out his mileage as required when transporting a female, failed to get permission to travel outside of city limits, and failed to notify dispatch of his arrival at the destination. While the evidence was inconclusive about the allegation of sexual misconduct, the officer was suspended 20 days for his violations of DPD policy. He appealed the decision, and it was upheld by a Hearing Officer in April 2015. He appealed that decision as well, which was upheld by the Civil Service Commission in November 2015.

## Mediation

The complaints handled by IAB and the OIM range from allegations of criminal conduct to less serious misunderstandings between community members and police officers, including alleged rudeness. Although allegations of inappropriate force or serious constitutional violations require the investment of significant investigative resources, complaints alleging discourtesy and other less serious conduct can often be resolved more effectively through mediation. Mediation is a voluntary program. In 2015, the OIM/DPD mediation program resulted in 38 completed officer-community member mediations.<sup>108</sup>

Figure 3.4: Completed Community-Police Mediations



Denver continues to have one of the most successful complaint mediation programs in the country (Table 3.3). New York City's Civilian Complaint Review Board completed the largest number of mediations in 2015 (205). Relative to the size of each police agency, however, Denver had one of the highest mediation rates in the country, with approximately 26 completed mediations per 1,000 officers in 2015.

Table 3.3: Mediation Rates per Officer for Select Agencies, 2015

City	Agency	Sworn Officers	Mediations Completed	Mediations Per 1,000 Officers
Denver	Office of the Independent Monitor	1,442	38	26.4
San Francisco	Office of Citizen Complaints	2,208	45	20.4
Washington D.C.	Office of Police Complaints	3,789	42	11.1
New York	Civilian Complaint Review Board	34,500	205	5.9
Kansas City	Office of Community Complaints	1,354	6	4.4
Aurora	Community Mediation Concepts	682	3	4.4
Minneapolis	Civilian Police Review Authority	848	1	1.2
Seattle	Office of Professional Accountability	1,820	1	0.5

Table Notes: Washington D.C. Office of Police Complaint’s mediation counts are for the fiscal year October 1, 2014 to September 30, 2015. All other figures are based on the 2015 calendar year. Kansas City, MO also completed 29 conciliations.<sup>109</sup>

## Timeliness

Table 3.4 reports the mean and median processing time, in days, for complaints recorded by IAB in 2015.<sup>110,111</sup> These figures exclude the number of days required for the OIM to review investigations and discipline. On average, IAB cases are closed within 42 days. Complaints still open when the OIM extracted data for this report had an average age of 71 days.

Table 3.4: Mean and Median Case Age for Community and Internal Complaints Received in 2015

Case Type	Mean	Median
All IAB Cases	42	35
Declined/Administrative Review/Informal/Service Complaint/Mediation	35	30
Full Formal Investigations	63	54

## Complainant Demographics and Complaint Filing Patterns

The demographic characteristics of the 435 complainants who filed complaints against DPD officers in 2015 are presented in Table 3.5 (note that a single complaint can be associated with multiple complainants). Ninety-eight percent of complainants filed only a single complaint, while 2% filed two or more complaints.<sup>112</sup>

*Table 3.5: Complainant Demographics and Filing Patterns<sup>113</sup>*

Gender	Count	Percent
Male	222	51%
Female	174	40%
Missing	39	9%
<b>Total</b>	<b>435</b>	<b>100%</b>
Race	Count	Percent
White	144	33%
Black	82	19%
Hispanic	55	13%
Asian/Pacific Islander	2	< 1%
Missing	152	35%
<b>Total</b>	<b>435</b>	<b>100%</b>
Age	Count	Percent
0 - 18	8	2%
19 - 24	30	7%
25 - 30	64	15%
31 - 40	85	20%
41 - 50	59	14%
51+	62	14%
Missing	127	29%
<b>Total</b>	<b>435</b>	<b>100%</b>
Filed More than One Complaint?	Count	Percent
One Complaint	426	98%
Two or More	9	2%
<b>Total</b>	<b>435</b>	<b>100%</b>

## Officer Complaint Patterns

### Complaints per Officer

Table 3.6 shows the number of complaints lodged against DPD officers from 2011 through 2015.<sup>114</sup> This table includes citizen and internal complaints (regardless of finding), but excludes scheduled discipline complaints and complaints against non-sworn employees. In 2015, 65% of DPD sworn officers did not receive any complaints, while 25% received one complaint.

*Table 3.6: Number of Community/Internal Complaints Per Officer by Year*

Number of Complaints	2011	2012	2013	2014	2015
0	67%	62%	61%	59%	65%
1	23%	24%	24%	25%	25%
2	7%	9%	9%	11%	7%
3	2%	3%	3%	3%	2%
4	1%	1%	1%	1%	< 1%
5	< 1%	< 1%	1%	< 1%	< 1%
6	< 1%	0%	< 1%	< 1%	0%
7 or More	< 1%	< 1%	< 1%	< 1%	< 1%
Total Sworn Officers*	1,418	1,384	1,388	1,420	1,442

\*Note: Counts of sworn officers provided by the DPD Data Analysis Unit

## Inappropriate Force Complaints per Officer

Table 3.7 shows the number of inappropriate force complaints lodged against DPD officers from 2011 through 2015. Seven percent of DPD officers received one inappropriate force complaint in 2015. Slightly more than one percent of officers received two or more inappropriate force complaints in 2015.

*Table 3.7: Officers Receiving Inappropriate Force Complaints by Year*

Number of Complaints	2011	2012	2013	2014	2015
0	92%	92%	92%	88%	92%
1	7%	7%	7%	10%	7%
2	1%	1%	1%	2%	1%
3 or More	< 1%	< 1%	< 1%	< 1%	< 1%
Total Sworn Officers*	1,418	1,384	1,388	1,420	1,442

\*Note: Counts of sworn officers provided by the DPD Data Analysis Unit

## Sustained Complaints per Officer

Table 3.8 reports the number of sustained complaints for officers between 2011 and 2015 (grouped by the year the complaints were closed). Four percent of officers had one complaint sustained in 2015 and fewer than one percent had two or more sustained complaints.

*Table 3.8: Percentage of Officers with One or More Sustained Community/Internal Complaints by Year of Case Closure*

Number of Complaints	2011	2012	2013	2014	2015
0	93%	95%	95%	94%	96%
1	6%	5%	5%	5%	4%
2	1%	1%	1%	< 1%	< 1%
3 or More	0%	< 1%	0%	< 1%	0%
Total Sworn Officers*	1,418	1,384	1,388	1,420	1,442

\*Note: Counts of sworn officers provided by the DPD Data Analysis Unit

## Commendations and Awards

Every year, there are noteworthy examples of officers engaging in actions that reflect departmental values of honor, courage, and commitment to community service. Table 3.9 presents the number and type of commendations awarded to DPD officers in 2015. Table 3.10 provides definitions for select commendations.

*Table 3.9 Commendations Awarded to DPD Officers in 2015*

Commendations	Number	Percent
Commendatory Action Report	258	44.4%
Official Commendation	95	16.4%
Citizen Letter	90	15.5%
Commendatory Letter	41	7.1%
Unspecified	19	3.3%
Life Saving Award	16	2.8%
STAR award	15	2.6%
Letter of Appreciation	14	2.4%
Other than DPD Commendation	5	0.9%
Distinguished Service Cross	5	0.9%
Leadership Award	4	0.7%
Top Cop	4	0.7%
Merit Award	4	0.7%
Medal of Valor	2	0.3%
Community Service Award	2	0.3%
Citizens Appreciate Police	2	0.3%
Chiefs Unit Citation	1	0.2%
Excellence in Crime Prevention	1	0.2%
Outstanding Volunteer Award	1	0.2%
Service Award	1	0.2%
Unit Commendation	1	0.2%
<b>Total</b>	<b>581</b>	<b>100.0%</b>

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*Table 3.10: Commendation Types and Descriptions*

Commendation Type	Description
Commendatory Action Report	A Commendatory Action Report is generated when the Department receives complimentary information about an officer from a member of the public; the commendable action generally does not rise to the level of an official Departmental award.
Community Service Award	Awarded to an employee who, by virtue of sacrifice and expense of time, fosters or contributes to a valuable and successful program in the area of community affairs, or who acts to substantially improve police/community relations through contribution of time and effort when not involved in an official police capacity.
Department Service Award	Awarded to an individual who, through personal initiative and ingenuity, develops a program or plan (for non-leadership type of actions) which contributes significantly to the Department's objectives and goals.
Distinguished Service Cross	Awarded to employees who are cited for gallantry not warranting a Medal of Honor or a Medal of Valor.
Leadership Award	Awarded to an individual in a position of command or supervisory authority for a single or a series of incident(s)/event(s)/initiative(s) where the leadership and management actions of the individual were such that the successful outcome of the incident/event/initiative was greatly influenced by the timely, accurate, and decisive nature of the individual's actions, and which contributed significantly to the Department's mission, vision and values.
Life Saving Award	Awarded to employees who, through exceptional knowledge and behavior, perform a physical act which saves the life of another person and there is no danger to the officer's life.
Medal of Honor	Awarded to employees who distinguish themselves conspicuously by gallantry and intrepidity at the risk of their lives above and beyond the call of duty.
Medal of Valor	Awarded to employees who distinguish themselves by extraordinary heroism not justifying the award of the Medal of Honor.
Merit Award	Awarded to employees who distinguish themselves by exceptional meritorious service who, through personal initiative, tenacity and great effort act to solve a major crime or series of crimes, or through personal initiative and ingenuity, develop a program or plan which contributes significantly to the Department's objectives and goals.
Officer of the Month	Awarded to employees who represent the Department in all facets of law enforcement with a commitment to excellence, in support of the values of the organization, and a desire to represent the department in the manner in which they were sworn.
Official Commendation	Awarded to employees, who by exemplary conduct and demeanor perform their assigned functions in an unusually effective manner.
Purple Heart	Awarded to employees who are killed, seriously wounded or seriously injured in the performance of an official action.
STAR Award	Awarded to employees who, through exceptional tactics, act to successfully resolve a critical incident, thereby setting a standard for safety and professionalism to which all officers should aspire.

## **Highlighted Commendations**

### **OFFICIAL COMMENDATION**

An officer responded to a family disturbance in which the complainants indicated that their adult son, who suffered from mental health issues and was currently off his medication because of financial difficulties, was threatening their lives. The officer quickly de-escalated the situation and recognized that the son's hunger was aggravating the situation. In addition to providing resources and information to assist the family, the officer accompanied the son to a nearby restaurant and shared a meal with him. The officer was commended for de-escalating a volatile situation.

### **COMMENDATORY LETTERS/CITIZEN LETTERS OF APPRECIATION**

Officers received multiple commendatory letters and citizen letters of appreciation for their participation in the FBI Denver Rocky Mountain Innocence Lost Task Force. The task force recovered six minors from commercial sexual exploitation and arrested two traffickers in the week preceding and during the 2015 National Western Stock Show. In recent years, the task force has recovered more than 100 minors and helped train numerous community members and law enforcement officers.

### **COMMUNITY SERVICE AWARD**

A tree was uprooted and stolen from a privately funded park in Denver. Upon learning of the theft, an officer and police dispatcher donated a larger, more expensive replacement tree along with several additional trees and bushes. In addition, the officer and dispatcher volunteered their Saturday to help plant the trees and bushes in an effort to enhance the park. For his selflessness and community spirit, the officer was awarded the Community Service Award.

### **OFFICIAL COMMENDATION**

Officers responded to a report of a suicidal female who had barricaded herself inside the women's restroom of a restaurant. The officers quickly established communication with the individual and confirmed that she was emotionally distraught and threatening suicide. While maintaining verbal dialogue, the officers bypassed the locked door and positioned the camera from a body worn camera over the top of the door. The officers could see the female laying on the bathroom floor cutting her wrists with a razor blade. They implemented a sound

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tactical plan, entered the bathroom, and took the woman into custody where she received the necessary medical and mental health care. The officers were commended for bringing a dangerous situation to a peaceful resolution using their CIT training and a creative tactical response that included the use of new technology.

### CITIZEN LETTER OF APPRECIATION

A resident wrote to commend two DPD officers who assisted her and her mother when their vehicle lost power on Peña Boulevard on the way to the airport. A tow truck was unavailable for two hours and the two were running late for a flight to visit a critically ill family member. The resident's mother had undergone a recent hip surgery in addition to requiring full time oxygen. Officers arranged for their car to be towed, drove the two to the airport, and helped push the mother's wheelchair and portable oxygen tank, arriving at the gate with five minutes to spare. The resident relayed that the kindness shown to her and her mother was extremely comforting in a difficult situation.

### LIFESAVING AWARD

Officers were dispatched to an intersection where a victim was found on the ground. The individual was bleeding profusely from his chest and had stopped breathing. The officers responded quickly by ensuring the victim's airway was clear, performing CPR, and applying clotting powder and bandages to the wound. They continued to work for several minutes until paramedics arrived and took over. Several medical professionals contacted the DPD to commend the actions of the officers, who were given Lifesaving Awards for their quick response and selfless actions.

### EXCELLENCE IN CRIME PREVENTION

An officer assigned to the Sex Crimes Unit attended a conference that included a presentation about the Start by Believing ("SBB") campaign, which is a public awareness campaign designed to change the way communities respond to victims of rape and sexual assault. The officer obtained permission to bring the campaign to Denver and served on a committee of members of the DPD and other Denver agencies. Among other activities, the committee and the SBB campaign worked to create advertisements on outdoor billboards, bus shelters, cabs, and magazines; develop public service announcements; and obtain a trauma-based training video that was used by the DPD as mandatory training in 2015. For his personal

initiative to help develop a program that contributes to the DPD's mission, the officer was awarded a commendation for Excellence in Crime Prevention.

### **LIFESAVING AWARD**

Two officers arrived to a scene where multiple parties appeared to be using narcotics within a vehicle. One individual passed out and stopped breathing. The officers requested medical personnel and removed the individual from the vehicle. After confirming that the individual had no pulse, one officer initiated cardiopulmonary resuscitation while the other injected Narcan (an opioid antidote) into the individual's nasal passage in an effort to counteract the potential ingestion of suspected heroin. Shortly after, a pulse was detected and the individual began breathing again. The individual was stabilized and transported to a medical facility for additional care. The officers were given Lifesaving Awards for their actions.

### **MEDAL OF VALOR**

While assisting with the large outgoing crowd following the closing of local bars, an officer noticed an SUV slowly driving through a crowded alley. As he approached the vehicle, the officer noticed the front passenger leaning across the driver with what appeared to be a semi-automatic handgun pointed out the window. The officer ordered the suspect to drop the gun and the individual eventually complied. Upon arrival of cover officers, the individual was placed in custody without incident and the firearm was recovered from under the passenger seat. Because his actions brought an end to a potentially violent incident without any shots being fired or bystanders injured, the officer was awarded the Medal of Valor.

### **CITIZEN LETTER OF APPRECIATION**

A resident wrote to commend a lieutenant for the support and assistance he had provided to the Jewish community in District 1. The lieutenant displayed the utmost respect towards Jewish religion and culture. Examples included offering kosher food during Commander's Advisory Group meetings, traveling to Jewish institutions to meet with community leaders, and organizing a safety awareness seminar. The resident expressed appreciation for the lieutenant and the deep impact he has had on the community.



# 4

## Denver Sheriff Department Monitoring

### Introduction

The OIM is responsible for monitoring and reporting on patterns in DSD complaints and commendations. In this chapter, we review statistical and workload patterns relating to the DSD's 2015 complaints, investigations, findings, and discipline.<sup>115</sup>

### Highlights

- The DSD is in the midst of a comprehensive reform that is addressing nearly every area of the Department's operations. The Denver City Council and Mayor included an additional \$24 million in the City's 2016 budget to advance this reform. Among the many recent efforts, the DSD gained new leadership in Sheriff Patrick Firman, announced structural changes to the internal organization of the department, began training its largest-ever class of 83 recruits, and will begin department-wide training on a new Use of Force Policy in March 2016.
- The number of complaints recorded by the DSD in 2015 declined substantially. In 2014, 421 complaints were recorded against DSD sworn staff, compared to 232 in 2015.
- The percentage of complaints closed with one or more sustained allegations remained largely the same between 2014 and 2015. In 2014, 19% of the closed complaints had one or more sustained allegations compared to 18% in 2015.
- Four DSD deputies were terminated in 2015 and seven deputies resigned or retired while an investigation or disciplinary decision was pending.

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- In 2014, the DSD hired six civilian investigators with law enforcement experience (along with former Arapahoe County Sheriff Grayson Robinson) to help clear a backlog of cases that were taking too long to reach resolution.<sup>116</sup> Most of those investigators have since left the Internal Affairs Bureau (“IAB”). The DSD is in the final stages of a recruitment process to fill those vacancies and bolster IAB’s capacity to conduct timely investigations.
- In January 2016, the OIM notified the DSD of concerns over several data quality issues in the IAPro database regarding cases closed in 2015. IAB quickly responded by conducting a data audit of all formal investigations closed by the DSD in 2015, and making a number of corrections to the data. The OIM appreciates the hard work of Sheriff Firman, Major Jodi Blair, IAB Manager Armando Saldate, and the IAB staff in conducting this audit.

### Receiving Complaints against DSD Deputies

Complaints against sworn members of the DSD generally fall into four categories: community complaints, inmate complaints, management complaints, and employee complaints.

#### Community Complaints

Community complaints are allegations of misconduct against deputies that are filed by community members. See Appendices C and D which describe how complaints and commendations can be filed, and where OIM complaint/commendation forms are located.

#### Inmate Complaints

Complaint/Commendation forms are available to inmates housed at DSD correctional facilities. These forms can be completed and mailed to the OIM at no charge to the inmate. Inmates may also file complaints by contacting the OIM by telephone, without charge, from inside any DSD jail.

#### Management Complaints

DSD management complaints are those filed by a supervisor, command officer, or IAB (as opposed to a community member or inmate).

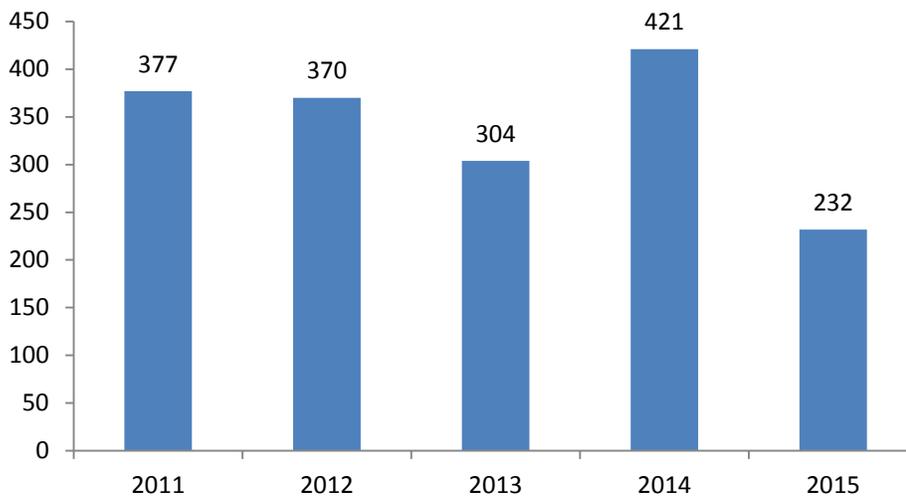
### Employee Complaints

Employee complaints are those filed by civilian or non-supervisory sworn employees of the DSD against deputies.

## Complaints Recorded in 2015

Figure 4.1 reports the number of complaints recorded by the DSD by year.<sup>117</sup> In 2015, the DSD recorded 232 total complaints against deputies. This represents a 45% decrease from 2014, when 421 complaints against deputies were recorded.

*Figure 4.1: Total DSD Complaints Recorded by Year*



As we have noted in previous reports, it is very difficult to explain fluctuations in the number of complaints filed over time. Patterns in complaints can change as the result of improvements in organizational policy, practice, or training. Complaint numbers can also increase or decrease in response to a range of other factors, including but not limited to media coverage, changes in complaint triaging practices, and/or changes in the types of complaints that are recorded. We will be monitoring this trend in the future.

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Figure 4.2: Complaints Recorded by Year and Complaint Type

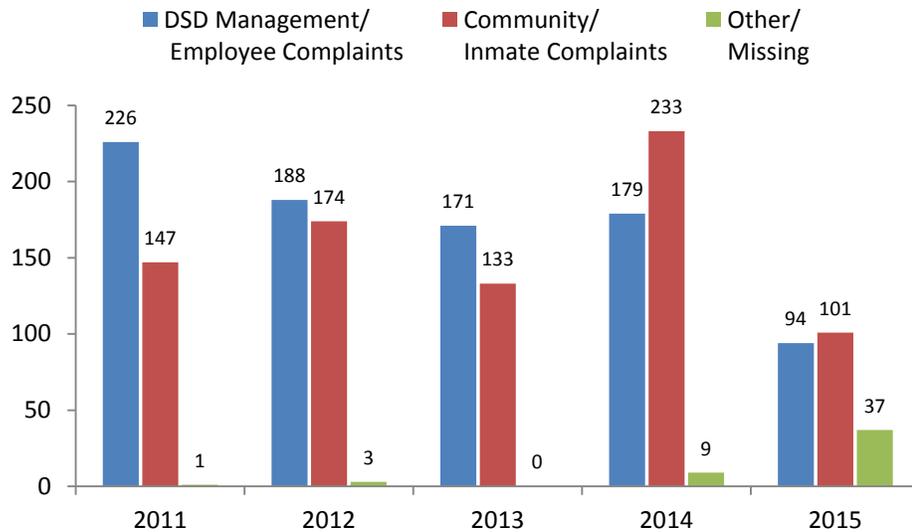


Figure 4.2 shows the number of complaints recorded against deputies by complaint type and year.<sup>118,119</sup> The number of complaints by DSD management and other employees that were recorded in 2015 declined by 47% when compared to 2014, while the number of complaints by community members and inmates declined by 57%. The decline in recorded community member and inmate complaints is particularly striking and the OIM will continue to monitor the trend.

OIM Unable to Ascertain Proper Handling  
of a Large Number of Complaints

There has been considerable turnover in the command staff of IAB in the past two years, which, we believe, has had a significant impact on the work of the unit. We previously reported in the 2015 Semiannual Report that a prior IAB commander had marked a large number of inmate complaints as requiring formal investigation (in internal tracking documents), presumably due to their level of seriousness, but many of these complaints were never entered into IAPro (the DSD's complaint tracking database) and/or reviewed by the OIM.<sup>120</sup> After the most recent leadership transition in IAB, the new IAB command expressed their belief that some of these complaints may have been duplicates or otherwise did not require formal investigations.<sup>121</sup>

To ensure that potentially serious complaints were being properly handled, in June 2015, the OIM met with the EDOS and IAB personnel to request copies of each of these complaints. The OIM reiterated this request in meetings with IAB staff in July and October 2015, and in an email in September 2015.<sup>122</sup> While IAB staff did respond in October 2015 with a letter discussing the issue, the complaints themselves were never provided to the OIM nor, in many cases, entered into IAPro.<sup>123</sup> We were thus unable to ascertain the seriousness of these complaints, whether they had been properly handled, or whether it was appropriate that many of them were not, apparently, being recorded within IAPro or investigated by IAB.

## Most Common Complaint Specifications

Table 4.1 reports the most common specifications recorded against DSD deputies in 2015.<sup>124,125</sup> The most common specification was Unauthorized Leave, which prohibits the use of “unauthorized leave in violation of Departmental Orders.”<sup>126</sup> The second most common specification, Inappropriate Force, prohibits the use of “inappropriate force in making an arrest, dealing with a prisoner or in dealing with any other person.”<sup>127</sup>

*Table 4.1: Most Common Specifications in 2015*

Specifications	2015
Unauthorized Leave	13%
Inappropriate Force	13%
Unassigned	9%
Failure to Perform Duties	6%
Ensuring Care and Treatment of Ill or Injured Prisoners	6%
Discourtesy	6%
Harassment of Prisoners	5%
Discrimination, Harassment or Retaliation against Prisoners	4%
Full Attention to Duties	3%
Disobedience of Rule	3%
All Other Specifications	32%
<b>Total Number of Specifications</b>	<b>372</b>

\*Note: Columns may not sum to 100 due to rounding.

## Complaint Location

Table 4.2 reports the location of the incidents about which complaints were recorded between 2011 and 2015. The largest percentage of recorded complaints (53%) related to incidents occurring at the Downtown Detention Center (“DDC”). This is not unexpected since the DDC houses the greatest number of inmates in DSD custody. The County Jail had the second highest percentage of recorded complaints at 27%.

*Table 4.2: Location of Complaints by Year Received*

Location	2011	2012	2013	2014	2015
DDC	51%	49%	54%	62%	53%
County Jail	24%	26%	22%	18%	27%
Other Location	25%	25%	20%	14%	13%
Missing Location	0%	0%	3%	5%	7%

## Intake Investigations and Screening Decisions

When complaints are filed directly with the OIM, the role of the OIM in the intake process is limited to collecting the complainant’s contact information and the general nature of the complaint. The complaint is then forwarded to DSD IAB for its review and screening decision, which can include any of the following:

### Decline

The complaint does not state an allegation of misconduct, or the intake review reveals that the facts alleged did not occur as described by the complainant. No further action will be taken.

### Informal

If founded, the complaint results in a debriefing with the subject deputy. This outcome does not necessarily indicate that the deputy engaged in misconduct.

### Resolved

DSD IAB or a DSD supervisor was able to resolve the issue without a full, formal investigation or the subject deputies resigned, retired, or were otherwise determined to be disqualified from sworn service while the investigation was pending. No further action was deemed necessary.

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### Referred

The complaint is referred to another agency or division for review and handling.

### Mediation

The complaint states a relatively less serious allegation of misconduct, such as discourtesy, and those involved might benefit from the opportunity to discuss their interaction. Due to security concerns, the DSD does not mediate complaints filed by inmates.

### Formal

The complaint states an allegation of misconduct under DSD policy that requires a full investigation and disciplinary review.

The OIM monitors DSD IAB case screening decisions.<sup>128</sup> If the DSD resolves, declines, or treats the complaint as an informal, the OIM reviews the completed case and makes any recommendations that may be necessary. If the OIM agrees that the case handling was appropriate, the DSD IAB writes a letter to the complainant that explains the outcome. The OIM then forwards DSD IAB's letter to the complainant along with a letter from the OIM.

If a case is referred for a formal investigation, it is assigned to a DSD IAB investigator.<sup>129</sup> In some serious cases, the OIM may actively monitor and participate in the investigation. In the majority of cases, the OIM will review the formal investigation once DSD IAB has completed its work.

## Disciplinary Process and Findings

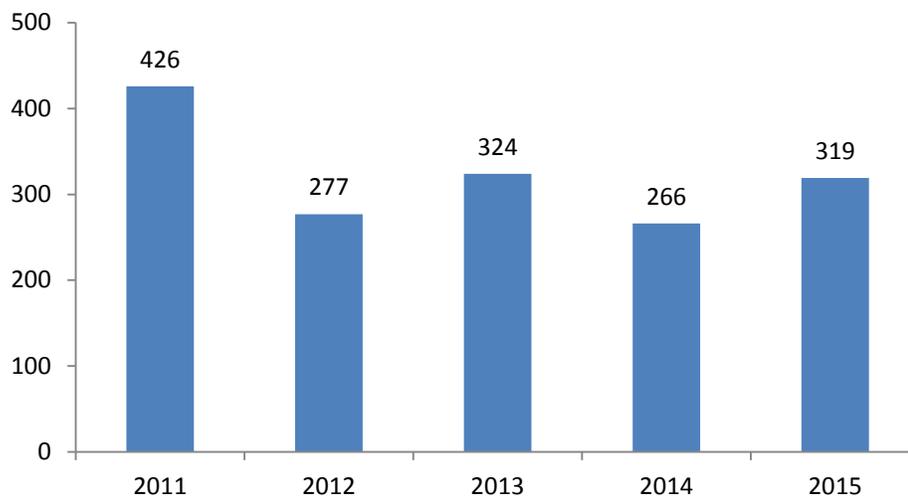
After the completion of the DSD IAB investigation, the case is reviewed by the DSD Conduct Review Office ("CRO"). The CRO makes an initial finding regarding policy or procedural violations. The OIM then reviews the CRO findings. When the CRO and/or the OIM initially recommend that discipline greater than a written reprimand be imposed or when there is a disagreement between the OIM and CRO about the findings, a Sheriff's meeting will be held. At this meeting, the Sheriff, Independent Monitor (and/or his representative), the CRO, and the EDOS (and/or her representative) discuss the case and provide input to the Sheriff to assist him in making his disciplinary recommendations, if any, to the EDOS.

If discipline greater than a written reprimand is contemplated following the Sheriff's meeting, the deputy is entitled to a "pre-disciplinary meeting." At this meeting, the deputy can present his or her side of the story and any mitigating evidence to explain the alleged misconduct. After this meeting, the Sheriff and the Independent Monitor each make a final recommendation to the EDOS, independently. The EDOS is closely involved in the process of advising the Sheriff as he formulates his recommendation. The EDOS then makes a final decision as to findings and discipline. If the deputy disagrees with the discipline imposed by the EDOS, the deputy may file an appeal with the Career Service Board's Hearing Office.

## Closed Complaints

Figure 4.3 reports the number of complaints closed between 2011 and 2015. The DSD closed 319 complaints in 2015, representing a 20% increase from 2014, when 266 complaints were closed.<sup>130</sup> The OIM believes that this increase in closed cases reflects the efforts of IAB and the CRO to address the backlog of cases discussed in the OIM's 2015 Semiannual Report.<sup>131</sup>

Figure 4.3: Complaints Closed by Year Closed



## Findings on Complaints

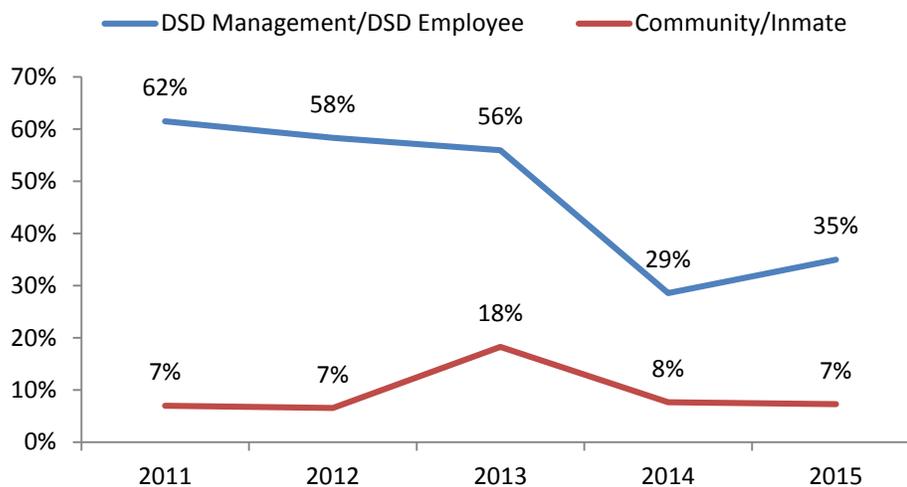
Table 4.3 reports the final disposition of complaints closed between 2011 and 2015. 18% of the cases closed in 2015 resulted in one or more sustained findings. As in the previous four years, the rate of cases declined after an initial review increased from the prior year. In 2014, 42% of complaints were declined while 54% percent of complaints closed in 2015 were declined.

Table 4.3: Findings for Complaints Closed in 2015

Outcome	2011	2012	2013	2014	2015
Declined	11%	15%	26%	42%	54%
Sustained	41%	34%	36%	19%	18%
Informal/Referred/Resolved	15%	16%	9%	11%	16%
Not Sustained/Exonerated/Unfounded	33%	35%	29%	27%	11%
Mediation	0%	1%	0%	1%	1%

Patterns in sustain rates vary considerably across different case types. Complaints that are initiated by DSD management or employees tend to result in sustained findings at much higher rates than complaints initiated by community members or inmates (see Figure 4.4).<sup>132</sup> In 2015, 7% of community member and inmate complaints had one or more sustained findings. The 2015 sustained rate for complaints filed by DSD management or other employees was 35%.

Figure 4.4: Complaints that Resulted in One or More Sustained Findings



## Patterns in Discipline

Table 4.4 reports the number of deputies who retired/resigned prior to a discipline finding or who were disciplined for sustained allegations from 2011 through 2015.<sup>133,134</sup> The most common forms of discipline in 2015 were suspensions and written reprimands, followed by verbal reprimands.

*Table 4.4: Discipline Imposed by Year of Case Closure*

Discipline	2011	2012	2013	2014	2015
Termination	4	2	5	8	4
Resigned/Retired Prior to Discipline	9	8	4	4	7
Demoted	0	0	0	0	1
Suspended Time	21	35	26	21	24
Written Reprimand	46	22	15	14	21
Verbal Reprimand	64	23	39	21	19

## Significant Disciplinary Cases Closed in 2015<sup>135</sup>

### Terminations

■ On May 7, 2014, a jail camera captured video of an incident involving three deputies. One deputy (“Deputy A”) allowed two inmate workers to conduct pat searches of numerous other inmates. The inmate workers also restrained inmates in physical holds to prevent their free movement. One inmate worker is seen on video kicking an inmate’s foot, causing the inmate’s knee to buckle. This behavior took place in front of Deputy A’s desk while he remained seated and failed to intervene, despite the protests of multiple inmates. Deputy A and another deputy (“Deputy B”) also made deceptive statements to IAB during its investigation of the incident. In a separate incident, Deputy A allegedly failed to write a required report after being present when force was used on an inmate. Deputy A was terminated for the first incident, thus a disciplinary decision was not reached for the second incident. Deputy B was also terminated. A third deputy (“Deputy C”), who was also alleged to have been involved in the incident, resigned prior to the completion of the investigation. Deputies A and B have appealed their terminations.

■ On June 15, 2014, an off-duty DSD captain was arrested for an alleged domestic violence incident. Following an arraignment on June 16, 2014, the captain was issued a personal recognizance bond with pre-trial services as a condition of the bond. Although a DSD acting division chief had been given direct orders by the Sheriff not to give the captain any preferential treatment, certain evidence indicated that he allowed the captain to leave the courtroom without following the proper procedure for releasing inmates, which would have required the captain to return to the jail to complete paperwork and to check in with pre-trial services. The acting division chief also allegedly made deceptive statements during IAB’s investigation of the incident. He was terminated, appealed this decision, and his termination was upheld by a Hearing Officer. He has appealed that decision, and a decision by the Career Service Board is pending.

■ A deputy had multiple cases in which misconduct was alleged. In June 2014, while on unpaid leave, the deputy was off-duty when he engaged in a confrontation with his neighbor after his neighbor stomped on the floor. The deputy responded by pounding on the neighbor’s door, brandishing his badge, calling the neighbor a derogatory name and threatening to have the neighbor falsely arrested for domestic violence if he ever stomped on the floor again. The deputy also later lied to police investigating the incident, stating that the neighbor

had kicked him. In September 2015, the deputy was terminated for his misconduct in this case, and he appealed that decision. In February 2016, the deputy entered into a settlement agreement with the EDOS and resigned in settlement of his appeal.

The deputy had three other pending investigations at the time of his termination. In April 2014, the deputy allegedly failed to conduct required rounds prior to an inmate attempting suicide. In August 2014, the deputy was again alleged to have failed to conduct and document required rounds around the time another inmate attempted suicide. The deputy is also alleged to have violated department policy by carrying an unapproved knife into the jail. He also allegedly made misleading statements in a report. In November 2014, the deputy allegedly used inappropriate force against an inmate.

### Demotions

■ On September 14, 2014 a captain, a major and several other deputies responded to the cell of a severely mentally ill inmate who needed to be moved to a cell with a video camera. The inmate was disoriented and incoherent, and was repeatedly saying the word “cigarette.” The major obtained a cigarette (a contraband item inmates are prohibited from possessing) and gave it to the captain to use to coax the inmate from the cell without having to use force. After the inmate had already accompanied deputies to a camera cell without any use of force the captain gave the inmate the cigarette. Two deputies wrote reports about the incident omitting that a captain had given the inmate a cigarette. The major and the two deputies were suspended for two days. The captain was demoted to rank of sergeant and appealed that decision. A Hearing Officer reversed the demotion. The Office of the EDOS has appealed that decision.

## Resignations and Retirements

■ See “Deputy C” in first termination case above.

■ A deputy had two separate cases alleging misconduct. In the first case, on May 10, 2013, a female inmate was found unresponsive in her cell. She was transported to the hospital and pronounced dead the following day. The deputy allegedly failed to conduct and document his required rounds during his shift. In the second case, on September 10, 2014, the deputy was arrested and charged with Driving Under the Influence of Alcohol and other traffic infractions. The deputy’s driver’s license was subsequently revoked. Prior to the determination of discipline in either case, the deputy entered into a settlement agreement with the EDOS and resigned.

■ On multiple days in June 2013, a deputy brought an unauthorized cell phone into the jail while on her shift, in violation of DSD policy. Several inmates allegedly got access to the phone. The deputy resigned prior to a discipline finding.

■ A deputy had three cases alleging misconduct. In April 2014, the deputy was arrested for Felony Criminal Trespassing. During an investigation into the alleged trespassing, the deputy was allegedly

### The OIM Recommends Continued Focus on Developing an Effective Early Intervention System

Conventional wisdom and national research suggest that a small percentage of law enforcement personnel are responsible for a disproportionate amount of the misconduct within a department.<sup>136</sup> The discipline histories for several deputies who resigned or were terminated in 2015—a number of whom had multiple active misconduct investigations—suggest that the DSD is no exception to this pattern. Early Intervention Systems (“EIS”), which are a requirement in recent reform efforts led by the Department of Justice, are one way law enforcement agencies address this issue.<sup>137</sup> EISs are proactive, data-driven management tools that identify officers who may be developing problematic behavior, and intervene with training or enhanced supervision (among other possible interventions), to save officers’ careers before serious disciplinary sanctions become necessary.

In multiple prior reports, the OIM has identified the deployment of a strong EIS as a critical need within the DSD.<sup>138</sup> In 2014, the DSD drafted an EIS policy, but it has not implemented an EIS to date.<sup>139</sup> In November 2015, the DSD Reform Implementation Team, led by EDOS O’Malley, determined that the Human Resources Action Team should lead the EIS effort in the DSD.<sup>140</sup> The OIM continues to believe that this is a critically important effort, and anticipates evaluating the DSD’s EIS once it is in operation.

untruthful to law enforcement. The deputy was also allegedly operating a business without the required permission of the DSD. In the second case, the deputy is alleged to have harassed an inmate. In the third case, the deputy was alleged to have verbally taunted an inmate. The deputy resigned before a disciplinary decision was reached in the three cases.

■ A deputy had two separate cases alleging misconduct. In the first case, the deputy was alleged to have taken unauthorized leave in May of 2014. In the second case, on July 7, 2014, the deputy allegedly failed to follow proper procedures when counting out his intake cash drawer. Despite being given a direct order, the deputy also failed to cooperate with IAB investigations related to both cases. The deputy resigned prior to the completion of either investigation.

■ In June 2014, a deputy responded to a medical emergency in an eight-man cell when he allegedly used inappropriate force against an inmate. The deputy resigned before a disciplinary decision was reached.

■ A sergeant had two cases alleging misconduct. In August 2014, the sergeant allegedly harassed a deputy. On December 4, 2014 the sergeant allegedly used inappropriate force against an inmate. The sergeant resigned prior to the completion of the investigations.

## **Other Separations, Including Disqualifications**

■ A deputy had two separate cases alleging misconduct. In the first case, in January 2014, the deputy loaned a rented vehicle to his girlfriend and her friend. They were involved in a car accident in another jurisdiction; the deputy was not present. During a search of the vehicle, drugs and “drug items” were found. In addition, the deputy’s girlfriend told an officer who responded to the accident that she allegedly met the deputy while she was an inmate at the Downtown Detention Center. In the second case, the deputy pled guilty to domestic violence related harassment charges. As a result of the guilty plea, a Mandatory Protection Order was issued prohibiting the deputy from possessing a firearm, a violation of a condition of his employment with the DSD. He was disqualified from his position before a final decision was made regarding his alleged misconduct, ending his employment with the DSD.

■ On December 17, 2014, a deputy was arrested in another jurisdiction on domestic violence related harassment and assault charges. A Municipal Protection Order was issued listing the deputy as the defendant. A provision of

the Protection Order prohibited the deputy from possessing a firearm or other weapon. Given that the deputy was unable to possess a firearm, which was a condition of her employment, she was disqualified from her position, ending her employment as a DSD deputy.

## **Other Significant Cases, Including Suspensions for Ten or More Days**

■ In September 2013, a deputy (“Deputy A”) found a deceased inmate in his cell at 9:56 a.m. Deputies A, B, and C all worked in the inmate’s housing unit in the hours between when the inmate was last seen alive and the discovery of his death hours later. During her shift, Deputy A failed to turn on the housing unit lights at 6:00 a.m., as required, and did not turn them on until shortly before the inmate was discovered. Deputy A also failed to conduct two of her required rounds to check on the inmates and failed to document her rounds and the reason why some rounds were not completed. Deputy A was suspended for six days.

Deputy B also failed to turn on the housing unit lights when required, failed to document which inmates had not left their cells to eat breakfast, failed to conduct multiple rounds, failed to document his rounds, and abandoned his post, leaving the unit unattended. Deputy B was suspended for ten days. Deputy C also failed to complete multiple rounds, failed to document why rounds were missed, and abandoned her post, leaving the unit unattended. Deputy C was suspended for ten days.

■ An inmate submitted two written requests, also known as “kites”—one to his attorney and another requesting a move due to unsanitary conditions in the housing unit. On October 6, 2013, video surveillance revealed a deputy opening and removing these kites from the kite box, reading them and then walking directly to the inmate’s cell. The deputy is seen knocking on and standing at the cell window. The video shows him speaking to the inmate and then tearing up the kites at the window and walking away. The deputy was suspended for 30 days. The deputy filed an appeal and a Career Service Hearing Officer modified the suspension to ten days.

■ A sergeant working as an instructor at the department’s academy made sexually inappropriate and harassing comments to a number of new recruits in 2014. The sergeant was suspended for 38 days, and appealed that decision. The case was resolved with a settlement agreement with the EDOS that reduced his suspension to 24 days, with 5 additional days held in abeyance.

■ Two deputies were working in a unit at the jail that houses mentally ill inmates, as well as inmates in segregation or in corrective custody. Some of these inmates are designated “sep all,” which means that they are not permitted to have physical contact with other inmates at any time. On February 19, 2014, one deputy allowed the cell doors of two “sep all” inmates to be opened concurrently while two other inmate workers were also near the cells. This allowed the “sep all” inmates to have contact with each other and with the inmate workers. While the deputy was distracted, one of the “sep all” inmates entered the cell of the other and physically attacked him, causing injury. The deputy was suspended for 16 days, and has appealed this decision. A second deputy allegedly failed to write a required report after being present when force was used on an inmate; he was terminated on an unrelated case prior to the completion of this investigation (see “Deputy A” in first termination case).

■ On March 14, 2014, a deputy from a neighboring jurisdiction was at the Denver County Jail to transport an inmate to the other jurisdiction. While the deputy was attempting to take custody of the inmate, the inmate refused to cooperate and became involved in a physical struggle with the deputy. A DSD deputy who was standing in close proximity failed to offer any assistance during the struggle, which lasted for at least three minutes. The DSD deputy was suspended for ten days, and has appealed that decision.

■ In June 2014, a deputy used a racial epithet multiple times when referring to an inmate.<sup>141</sup> This was overheard by other inmates who began yelling at the deputy, causing unrest in the housing unit. In writing a report about the incident, the deputy failed to include the derogatory comment or the related disturbance in the housing pod. The deputy instead attempted to blame the inmate to whom the comment was made for the unrest. The deputy was suspended for 30 days, and has appealed this decision.

■ In July 2014, a deputy was working in a housing unit at the jail while a nurse dispensed medication to inmates in the unit. An inmate became upset with the nurse, cursed at her several times and threatened, “I’m going to get you.” The inmate then approached the nurse aggressively and raised his arms, knocking items from the nurse’s medical cart before walking away. During the altercation, the deputy remained seated at his desk several feet away and failed to provide aid to the nurse. By remaining seated, the deputy was also not in a position to observe the inmate’s mouth to make sure that he had swallowed his medication. The deputy was suspended for ten days.

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■ In July 2014, while being tasked with providing courtroom security during a murder trial, a deputy was instead seated, with her head down, looking at two cell phones and visiting internet sites. The deputy was suspended for ten days, and has appealed this decision.

■ In August 2014, two deputies transporting juvenile inmates from the courthouse to the juvenile detention center failed to notify dispatch at the beginning and end of the trip, as required. Upon arrival at the juvenile detention facility, the deputies failed to secure their firearms in storage lockers and instead stored them in the side compartments of the driver and passenger side doors of the transport van. While the deputies were unloading the inmates, a juvenile inmate escaped from custody. Each deputy was suspended for ten days.

■ In October 2013, an inmate who had made a threat of suicide was brought to the medical unit and placed on suicide watch. The following day, the inmate was taken off suicide watch, and was instead reclassified as “X03a” (which includes inmates who are deemed “psychotic and disorganized mentally ill” and who are “violent and pose imminent risks to others or themselves,” but who are not on suicide watch).<sup>142</sup> He was returned to a single-man cell that was under video surveillance in a special management unit so that he could be closely monitored.

While in that cell, the inmate engaged in a series of troubling behaviors. The inmate told one of the two deputies assigned to the unit that he had a razorblade inserted in his penis, and threatened self-harm. The deputy notified a nurse of this threat, and the inmate was put on a sharps restriction, but he was not searched for the razorblade. The inmate later began to throw feces and smear it on his cell’s walls and windows. He also covered the cell camera’s lens with feces, obscuring the deputies’ views of his actions. Both deputies were aware of this behavior, and one deputy was at the cell window when it began. The deputy instructed the inmate to clean the cell camera. The cell’s water supply had previously been turned off, and the camera remained obscured for approximately 94 minutes. According to the deputies, they conducted rounds during this period, but the rounds were not documented.

The inmate eventually uncovered the camera and began making cutting gestures on his arm within view of the camera. One of the deputies said that he saw the inmate “rub on his arm” but did not see blood at that time. The deputy did not check on the inmate until he conducted a routine round through the housing unit, 17 minutes after the cutting behavior began. By that time, the inmate was bleeding and the floor was covered with blood trails left during the inmate’s

repeated pacing of the cell. The inmate was removed from the cell and treated for minor injuries by medical staff.

Under DSD policy, housing deputies are responsible for the care, custody, and supervision of the inmates assigned to their housing units.<sup>143</sup> They are also charged with checking for unusual behavior, and taking immediate corrective action upon discovering any safety or security breach.<sup>144</sup> The OIM was concerned that this inmate, who was supposed to be closely monitored, and had made a threat of suicide and stated that he had a razor with which to carry out the threat, was allowed to remain in a cell with an obscured camera for approximately 94 minutes. The OIM was also concerned by the length of time it took to respond to his self-cutting behavior after the camera was uncovered. In July 2015, the OIM recommended that discipline be imposed on the deputies for their failures to take sufficient corrective action to address the inmate's dangerous behaviors, a recommendation that was not accepted.<sup>145</sup> The deputies, who had been issued P.R.I.D.E. awards by the DSD for their actions during this incident,<sup>146</sup> received written reprimands for failing to properly document their rounds in August 2015, and no further disciplinary action was taken.

### **Appeals on Significant Discipline Cases Closed Prior to January 1, 2015, and Decided or Pending With the Career Service Board in 2015<sup>147</sup>**

■ In July 2012, a deputy called a supervisor an inappropriate derogatory name while on duty and in the presence of other DSD staff. The deputy also acted in an insolent manner after the supervisor questioned the deputy about it. The deputy was suspended for ten days and appealed the decision. In July 2015, a Hearing Officer modified the deputy's discipline to a four day suspension. Both the deputy and the Office of the EDOS appealed that decision and in February 2016, the Career Service Board further reduced the deputy's discipline to a written reprimand.

■ In October 2012, a deputy managing a housing pod in the jail violated a number of departmental rules, including failing to do required rounds, failing to do roll calls, bringing cigarettes into an unauthorized area, allowing inmates to watch music videos on the deputy's computer, letting inmates disobey the dress code, and leaving the housing lights off. The deputy also had an extensive history of violating other departmental rules. The deputy was terminated, and a Hearing Officer upheld the termination. She appealed that decision to the Career Service

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Board, which upheld her termination in July 2015. The deputy has appealed that decision to the District Court.

■ In December 2012, a deputy used inappropriate force when he struck an inmate in the face after the inmate pushed a phone towards him on the desk. The deputy then wrote a misleading and inaccurate report about why he used force and the amount of force used on the inmate. In a criminal investigation, the deputy also made a deceptive statement by stating that the inmate picked up a phone and threw it at him, striking him in the shoulder. The deputy also failed to state that he struck the inmate in the face. Video footage showed that the statements that the deputy made in both the administrative and criminal investigations were deceptive and/or misleading. The deputy was terminated, appealed, and the disciplinary decision was upheld by a Hearing Officer. He then appealed to the Career Service Board, which upheld his termination in January 2015. He has appealed that decision to the District Court.

■ On February 28, 2013, a deputy bumped into an inmate with his shoulder and then grabbed the inmate by the neck after the inmate called him names. The deputy was suspended for ten days, appealed, and the disciplinary decision was upheld by a Hearing Officer. The deputy appealed this decision to the Career Service Board, which upheld his suspension in 2015. The deputy has appealed to the District Court.

■ On July 21, 2013, a deputy in a housing pod made racist remarks towards an African-American female inmate. The comments upset a number of inmates and another deputy, resulting in racial tension in the pod, which the deputy failed to note in her log books. The acting captain did not ask the deputy to write a report before the end of the shift, and allegedly told the deputy that no report was needed. When the deputy was questioned by IAB about the incident, she made deceptive statements. The deputy was terminated in September 2014 and appealed. In February 2015, a Hearing Officer modified the discipline to a six day suspension. The Office of the EDOS appealed and the Hearing Officer's decision was upheld by the Career Service Board. The case is now pending in the District Court. The acting captain retired from the department before a disciplinary finding was made.

■ In September 2013, a deputy used inappropriate force when he applied pressure to an inmate's neck or upper chest, causing the inmate to collide with a wall prior to coming to a seat on a sally port bench. The force was used to punish the inmate for comments the inmate made in the housing unit and for not complying

with the deputy's order to sit down. The deputy was suspended for ten days, appealed, and the disciplinary decision was upheld by a Hearing Officer. He then appealed to the Career Service Board, which upheld his suspension in February 2015. He appealed that decision to the District Court, and the Court denied his appeal.

■ In September 2013, a sergeant entered a cell with other deputies to confront an emotionally distraught inmate who had been repeatedly striking his head against the cell wall and not complying with orders to stop. Once the deputies and sergeant entered the cell, the inmate remained seated on the bench. The sergeant ordered the inmate to stand up, turn around and put his hands behind his back so they could place him in a restraint chair. The inmate did not comply, and the sergeant ordered the deputies to tase the inmate. Video footage shows that the inmate was still seated when the deputies were ordered to tase him and was not engaging in conduct that could reasonably be viewed as attempts to hurt himself or others. The sergeant was suspended for ten days, appealed, and the discipline was upheld by a Hearing Officer. He then filed an appeal with the Career Service Board, which upheld his suspension in September 2015.

■ On July 13, 2014, a deputy ("Deputy A") was having an animated discussion with an intoxicated and seated inmate for several minutes while performing other duties. He walked across the room towards the inmate, and as he got closer, dropped a container from his right hand. The inmate stood up, and without hesitating or breaking stride, the deputy raised his right arm up, struck the inmate in the face, and knocked him to the floor.

In a written report, Deputy A stated that he defended himself because the inmate got up and approached him in an aggressive manner. However, video evidence showed that the inmate did not advance or present himself in a threatening manner. Although another deputy ("Deputy B") witnessed the use of force, he did not immediately report it to his supervisor as required by DSD policy. When Deputy B prepared a written report at a later time, he did not report that he saw Deputy A strike the inmate, and he made similarly inaccurate and deceptive statements to IAB. In September 2014, both deputies were terminated and appealed the decisions. In March 2015, a Hearing Officer upheld Deputy A's termination, and modified Deputy B's termination to a six day suspension. Deputy A appealed the Hearing Officer's decision to the Career Service Board. In September 2015, the Board reversed Deputy A's termination and reinstated him. The Office of the EDOS has appealed that decision to the District Court. Regarding Deputy B, the Office of the EDOS appealed the

Hearing Officer’s decision to modify his termination to a six day suspension. The Career Service Board upheld the Hearing Officer’s decision, and the matter was not appealed further.

## **Timeliness**

Timeliness in the investigation and disciplinary review of misconduct complaints is critical for ensuring public confidence in the ability of a department to hold itself accountable. Allowing administrative investigations to languish may prevent a department from acting to quickly correct or deter deputy misconduct, may lower morale, and tends to undermine public and department trust in the complaint process.

Table 4.5 shows mean and median processing times, in days, for different case types for cases recorded by the DSD in 2015.<sup>148,149</sup> On average, IAB cases recorded in 2015 were closed within 153 days. Complaints still open at the time the OIM extracted data for this report had an average age of 181 days.

*Table 4.5: Mean and Median Processing Days, by Case Type*

<b>Case Type</b>	<b>Mean</b>	<b>Median</b>
All IAB Cases	153	147
Declined/Informal/Referred/ Resolved/Mediation	85	71
Full Formal Investigations	102	80

## Complainant Demographics and Complaint Filing

Table 4.6 presents the demographic characteristics for the 104 unique inmate and community complainants whose complaints against sworn members of the DSD were recorded in 2015. Complainants who filed multiple complaints were counted only once in this table. Table 4.6 also reports the number of community members with multiple complaints against DSD deputies recorded in 2015. Most complainants filed only a single complaint (96%) while four complainants filed two or more complaints.

*Table 4.6: Complainant Demographic Characteristics*

Gender	Count	Percent
Male	76	73%
Female	23	22%
Missing	5	5%
<b>Total</b>	<b>104</b>	<b>100%</b>
Race	Count	Percent
Black	28	27%
White	25	24%
Hispanic	19	18%
Asian	0	0%
American Indian	2	2%
Missing	30	29%
<b>Total</b>	<b>104</b>	<b>100%</b>
Age	Count	Percent
0 - 18	0	0%
19 - 24	6	6%
25 - 30	12	12%
31 - 40	29	28%
41 - 50	8	8%
51+	16	15%
Missing	33	32%
<b>Total</b>	<b>104</b>	<b>100%</b>
Filed More than One Complaint?	Count	Percent
One Complaint	100	96%
Two or More	4	4%
<b>Total</b>	<b>104</b>	<b>100%</b>

## Deputies Receiving Multiple Complaints

### Complaints per Deputy

Approximately 73% of DSD deputies had no complaints recorded against them in 2015 (this analysis excludes a number of complaints where IAB did not identify the subject deputy or the subject deputy was unknown). Approximately 20% of DSD deputies received one complaint and nearly 7% of deputies had two or more complaints.

*Table 4.7: Number of Complaints Recorded Against Deputies by Year Received*

Number of Complaints	2011	2012	2013	2014	2015
0	73%	73%	74%	62%	73%
1	19%	20%	21%	24%	20%
2	6%	5%	4%	9%	5%
3	2%	2%	1%	3%	1%
4 or More	1%	< 1%	< 1%	2%	< 1%
Total Sworn Officers*	726	717	707	722	690

\*Note: Counts of DSD sworn employees provided by the DSD administration

### Force Complaints per Deputy

Approximately 6% of DSD deputies received one or more complaints that included an inappropriate force allegation in 2015 (see Table 4.8).

*Table 4.8: Deputies Receiving Inappropriate Force Complaints by Year Received*

Number of Complaints	2011	2012	2013	2014	2015
0	99%	98%	96%	88%	94%
1	1%	2%	4%	10%	6%
2	0%	< 1%	< 1%	1%	< 1%
3 or More	0%	0%	0%	< 1%	0%
Total Sworn Officers*	726	717	707	722	690

\*Note: Counts of DSD sworn employees provided by the DSD administration

## Sustained Complaints per Deputy

The majority of DSD deputies (88%) had no sustained complaints in 2015, while 11% had one sustained complaint. Fewer than 2% had more than one sustained complaint in 2015 (see Table 4.9).

Table 4.9: DSD Deputies with Sustained Complaints by Year Closed

Number of Complaints	2011	2012	2013	2014	2015
0	82%	89%	86%	93%	88%
1	13%	10%	12%	7%	11%
2	4%	1%	1%	0%	1%
3 or More	1%	< 1%	< 1%	0%	< 1%
Total Sworn Officers*	726	717	707	722	690

\*Note: Counts of DSD sworn employees provided by the DSD administration

## Commendations and Awards

Table 4.10: Commendations Awarded to DSD Deputies in 2015

Commendations	Number	Percent
P.R.I.D.E. Award (Personal Responsibility in Delivering Excellence)	79	40%
Letters of Appreciation (from Supervisors/Sheriff)	71	36%
Employee Of The Month	24	12%
Other	9	5%
Commendations (from Supervisors/Sheriff)	6	3%
GOALS Award	6	3%
Employee Of The Quarter	2	1%
Deputy Of The Year	1	1%
Total	198	100%

\*Note: Columns may not sum to 100 due to rounding.

## **Highlighted Commendations**

### **LETTER OF APPRECIATION**

Three deputies, a sergeant, and a major received letters of appreciation for volunteering their time to represent the DSD at Mayor Michael B. Hancock’s “Cabinet in the Community” meeting. The event gave community members an opportunity to interact with DSD staff as well as the Mayor, the EDOS, and members of City Council.

### **LETTER OF APPRECIATION**

Two sergeants, three deputies, and a civilian employee received a letter of appreciation for volunteering their time to participate in the “Read Across America” event held at an elementary school. The event gave students an opportunity to positively interact with DSD representatives and to strengthen the department’s relationship with the community.

### **LETTER OF COMMENDATION**

A sergeant received a commendation from his supervisor for brainstorming a creative fix after an inmate destroyed the nurse call button in his cell, leaving an exposed electrical box that created a safety concern. The sergeant collaborated with other staff to determine a solution, which ensured the safety of the inmate.

### **LIFE SAVING AWARD**

On July 27, 2015, an inmate was observed vomiting and appeared to be having a seizure. Once the inmate stopped seizing, two deputies observed that the inmate was not breathing and did not have a heartbeat. The deputies began CPR and continued for approximately ten minutes while responding medical staff provided additional treatment. Prior to the inmate being removed from the cell by paramedics the deputies were able to restore the inmate’s heartbeat with the assistance of medical staff.

# 5

## Critical Incidents

### Introduction and Overview

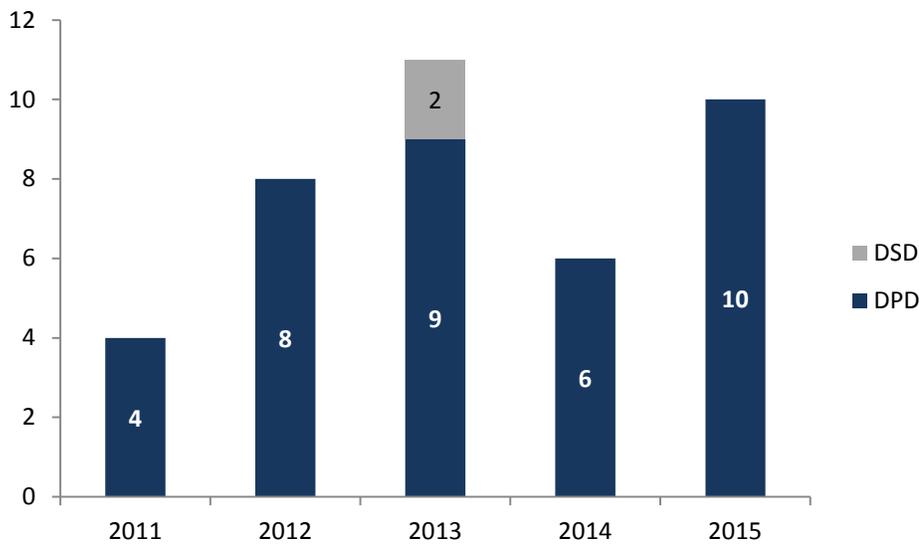
Officer-involved shootings and deaths in custody (collectively “critical incidents”) can have a profound impact on the lives of both officers and community members, and on the overall relationship between law enforcement and the community. All investigations into critical incidents should be completed thoroughly and efficiently, with a goal of determining whether the incidents were handled lawfully and according to Departmental policy. To promote transparency in the investigation and review of critical incidents, the OIM publishes regular reports regarding the status of investigations into critical incidents.

In all critical incidents, DPD’s Major Crimes Unit and the Denver District Attorney’s Office immediately respond to the scene to begin an investigation to determine whether any person should be held criminally liable. The OIM also generally responds to the scene for a walk-through and debriefing from command staff. Major Crimes detectives interview civilian witnesses and involved officers, and obtain video and documentary evidence. The OIM monitors all interviews by video and may suggest additional questions at the conclusion of each officer interview. After the criminal investigation is complete, the administrative review process begins.

## Patterns in Officer-Involved Shootings

On pages 85-89 of this chapter, we summarize every 2015 shooting and examine those that have been through the administrative review process for adherence to Departmental policy. Prior to describing each individual shooting, we examine patterns in the number of intentional shootings (“Officer-Involved Shootings” or “OISs”) of citizens by the DPD and DSD annually, as well as key characteristics of shootings that occurred in 2015.

Figure 5.1: DPD and DSD Officer-Involved Shootings by Year



In 2015, there was an increase in the number of OISs among DPD officers compared to previous years (see Figure 5.1). There were ten shootings involving DPD officers, and no shootings involving DSD deputies. The DPD completed its critical incident administrative review for five OISs from 2014 and three OISs from 2015, and all were found to be within policy. Table 5.1 presents characteristics of officers and subjects involved in the intentional shootings that occurred in 2015, as well as other summary data about these incidents.

Table 5.1: 2015 Officer-Involved Shooting Characteristics

<b>Intentional Shootings (OISs)</b>	
Total Officer-Involved Shooting Incidents	10
Citizens Involved	10
Officers Involved	15
<b>Results of Shots Fired</b>	
Citizen Fatalities	4
Citizen Non-fatal Injuries	5
No Injury	1
<b>Rank of Officers</b>	
Officer	10
Technician	4
Detective	1
<b>Years of Service of Shooting Officers</b>	
0-5 years	2
6-10 years	7
11-15 years	1
16-20 years	4
20+ years	1
<b>Assignment of Shooting Officers</b>	
District 1	1
District 2	3
District 4	1
District 5	1
District 6	2
Gang Section	2
Metro/SWAT	4
Vice/Drug Section	1
<b>Race/Gender of Shooting Officers</b>	
White Male	8
Hispanic Male	2
Hawaiian /Pacific Islander Male	1
Black Male	4
<b>Location of Shooting Incidents</b>	
District 1	2
District 2	3
District 4	2
District 5	2
District 6	1
<b>Race/Gender of Subject Citizens</b>	
White Male	3
Black Male	3
Hispanic Male	2
Native American Male	1
Hispanic Female	1

## **Critical Incidents: Denver Police Department**

### **Administrative Review of Critical Incidents Involving DPD Officers**

Once the District Attorney's Office has made a decision regarding the filing of criminal charges against anyone involved in an incident, the Major Crimes Unit reports are submitted to DPD IAB to commence the administrative review. The OIM confers with IAB to determine whether further investigation is necessary to assess potential violations of Department policy. Once all relevant evidence is gathered, the case is submitted to a DPD Use of Force Review Board to determine whether there were any violations of the DPD's use of force policies. The OIM is present at all Use of Force Review Board proceedings and deliberations.

If the Use of Force Review Board finds that the officer's actions were in compliance with DPD policy ("in-policy"), the case is forwarded to the Chief of Police. If the Chief and the OIM agree that there were no policy violations in non-fatal shootings, the case is closed and no further administrative action is taken. In fatal shootings, the EDOS makes the final determination.

If the Use of Force Review Board finds that the officer's actions were in violation of any Department policy ("out-of-policy"), the officer is given an opportunity to respond to the allegations and provide mitigating evidence at a Chief's Hearing. Both the Chief's disciplinary recommendation and that of the OIM are forwarded to the EDOS for his or her consideration.

If the OIM disagrees with a recommendation made by the Use of Force Review Board or the Chief of Police, the OIM recommendation will be forwarded to the EDOS, who makes the final decision regarding critical incidents.

## DPD Officer-Involved Shootings (OISs) in 2015

### Incident #1

On January 9, 2015, officers from the Gang Unit began to follow a Jeep after it was seen running a stop sign. The Jeep drove erratically, including stopping in multiple driveways. Based on the stop sign violation and the unusual activity of pulling into driveways, the officers decided to conduct a traffic stop.

Three officers approached the Jeep from different sides, requested the driver's identification, and asked him to exit after he failed to provide identification. The driver turned the engine on and Officer A opened the driver's door to attempt to remove him. With the door open, and Officers A and B stuck inside the wedge area between the door and the body of the car, the driver began driving in reverse. Officer A fired four rounds at the driver, and was then forced into the push bumper of his police vehicle. The Jeep continued in reverse, and Officer A found himself in front of the suspect's vehicle. Officer A believed the driver attempted to shift gears and drive forward to strike him, and he fired one more round at the driver. The driver exited the vehicle and fled on foot. Officers B and C chased him and captured him shortly thereafter. The driver survived the shooting.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officer. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>150</sup> The Use of Force Review Board met on July 27, 2015, and evaluated the shooting under the policy on shooting into moving vehicles that was in effect at the time of the shooting, which has since been significantly modified (see Chapter 1 of the OIM's 2015 Semiannual Report). The Use of Force Review Board determined the shooting to be in-policy. While noting tactical concerns about the shooting, the OIM concurred with that assessment. The Board did not send the case to the Tactics Review Board since the tactics had been addressed by the change in policy regarding shooting into moving vehicles.

### Incident #2

On January 26, 2015, two DPD officers responded to a 911 call regarding a suspicious vehicle in an alley in the Park Hill neighborhood. When the officers approached the vehicle, it began to move. One officer perceived that the vehicle was driving at him at a high rate of speed. Both officers fired multiple shots at the driver, who died as a result of her gunshot wounds. None of the other passengers in the vehicle were struck. The Denver District Attorney reviewed the

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incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>151</sup> The case is currently under administrative review.

### Incident #3

On March 20, 2015, two DPD officers responded to a report of a man with an outstanding warrant who possibly wanted the police to kill him. When the officers approached the suspect, he resisted their commands and efforts to get him out of the car and he began making a pulling motion from his waistband as if he was going to draw a weapon. The officers reportedly saw a silver metal object come out from the front of his jacket. One officer deployed OC spray, but it was ineffective. Believing the silver object to be the barrel of a gun, the other officer fired one shot, striking the suspect in the right shoulder/arm area. The suspect survived. The Denver District Attorney reviewed the incident and declined to file charges against the officer. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>152</sup> The Use of Force Review Board met on November 3, 2015, and determined the shooting to be in-policy. The OIM concurred with this assessment.

### Incident #4

On May 25, 2015, shortly before midnight, two District 6 police officers in separate vehicles responded to a 911 call related to a man brandishing a semi-automatic pistol at bystanders in downtown Denver. The officers spotted the suspect and Officer A exited his vehicle and moved around to the rear passenger side of the police car for cover. The officer drew his service weapon and yelled, "Police, drop the gun!" He saw the suspect raise his gun hand up and then Officer A heard a gunshot. Both he and Officer B (the cover officer) returned fire, and the suspect ran away. Minutes later, other officers apprehended the suspect. The individual sustained a gunshot wound in the lower right arm. The suspect survived. The Denver District Attorney's office declined to press charges against the two officers; the DA decision letter can be found [here](#).<sup>153</sup> The case is currently under administrative review.

### Incident #5

On July 12, 2015, officers responded to a 911 call that a mentally ill man had used a knife to poke his relative in the neck. The police made contact with the relative and were following her to her home when she saw the man and pointed him out. The officers attempted to make contact with him and he ran away. The officers pursued him into a trailer park where kids were present outside. The man eventually stopped, turned, and started walking towards the officers, while holding a knife to his own neck. One of the officers retreated as the man got closer to him. Once the man got close, this officer fired his service weapon three times, striking the man twice in the chest. The man died from his gunshot wounds. The Denver District Attorney's office declined to press charges against the officer who fired his weapon; the DA decision letter can be found [here](#).<sup>154</sup> On December 16, 2015, the Use of Force Review Board met and determined the shooting to be in-policy. As the OIM has noted in prior reports, including the [2013 Annual Report](#), the OIM is concerned about potential patterns in officer-involved shootings involving mentally ill individuals, and ensuring that appropriate training and tools are being provided to officers to avoid such shootings, when possible. Notwithstanding these concerns, the OIM did not believe that the Use of Force Review Board's assessment of this particular shooting as in-policy was unreasonable.

### Incident #6

On August 22, 2015, Officer A, while driving an unmarked police car, observed a vehicle commit a traffic infraction. The officer learned that the vehicle had been forcibly stolen at gun point earlier that morning in a carjacking. The officer drove into an alley and saw the suspect vehicle in the alley heading toward him. The officer called for police assistance and a marked police car with two officers soon pulled into the alley behind the suspect vehicle, boxing the car in. The suspect vehicle backed into the marked unit, hitting it. Three males then quickly exited the suspect vehicle, with one allegedly pulling out a gun as he ran towards Officer A. All the officers had exited their vehicles, and Officer B saw one of the suspects pull out a gun and point it in the direction of Officer A. Officer B yelled "gun!" Officer A recognized the object in the male's hand as a gun and both Officers A and B fired their service weapons at the suspect. The male was shot, but survived. The Denver District Attorney's office declined to press charges against the two officers; the DA's decision letter can be found [here](#).<sup>155</sup> The shooting is currently under administrative review.

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### Incident #7

On November 22, 2015, officers responded to a 911 call of a family disturbance. After attempting to negotiate with a man who was in possession of a gun, the officers breached the door of the location and exchanged gunfire with him. The man was struck, and pronounced dead at the scene. The Denver District Attorney's office declined to press charges against the officers; the DA's decision letter can be found [here](#).<sup>156</sup> The shooting is currently under administrative review.

### Incident #8

On December 2, 2015, while officers were attempting an arrest on a warrant, an officer-involved shooting occurred. Both an officer and the suspect were shot. The officer was wounded but survived, and the suspect did not survive. The shooting is currently under review by the District Attorney.

### Incident #9

On December 8, 2015, in the late morning, an officer (who was subsequently promoted to sergeant) initiated a vehicle stop. The driver came to a stop in a liquor store parking lot, exited his vehicle, and began shooting at the officer. The officer was shot six times—first in his chest, where the bullet was stopped by a ballistic vest, then in his arms and legs. Despite being forced to the ground by his wounds, the officer moved to a position near or behind his car and returned fire, shooting the driver in the ankle. The driver drove away, abandoned his car, fled on foot to a bank, and carjacked a vehicle. He then drove away in the carjacked vehicle, and two cover officers who had established a perimeter successfully stopped him. The driver was taken into custody, transported to Denver Health, and survived. The officer sustained life-threatening injuries and survived, possibly due, in part, to another officer placing a tourniquet on his leg while they waited for an ambulance to arrive.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officer. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>157</sup> The incident is currently under administrative review.

### Incident #10

An officer-involved shooting occurred on December 14, 2015, after officers responded to a 911 call at an apartment. The incident is currently under review by the District Attorney.

#### The DPD Expands Tourniquet Training to Promote Officer Safety

Within a one-week period in December 2015, two DPD officers were shot and wounded during two separate encounters with armed suspects (see incidents 8 and 9, above). Both officers' lives were saved when other officers applied tourniquets to their legs to prevent them from bleeding out while being transported to the hospital.<sup>158</sup> Recognizing the life-saving potential of tourniquets, the DPD enlisted Denver Health to conduct a "crash course" to quickly train as many DPD officers as possible on the use of tourniquets. Throughout the week of December 14, trainings were held every 30 minutes for three days, and 375 officers were trained. To complement this training, the Denver Police Foundation generously donated over \$50,000 worth of gunshot trauma kits for the DPD to make available to front-line officers.<sup>159</sup> These initiatives are commendable, as they better prepare officers to save lives when officers or citizens are critically injured.

## **DPD Accidental Shootings in 2015**

### **Accidental Shooting #1**

On May 4, 2015, an officer responded to a report of a domestic violence assault. The reporting party stated that the suspect was last seen inside the residence and that he always carried a knife. While searching the residence, the officer accidentally discharged his service handgun, striking a closet door. The Use of Force Review Board met on November 5, 2015 and determined the shooting to be out-of-policy. The OIM concurred with this assessment. The officer was disciplined two days of fined time.

## **DPD In-Custody Deaths in 2015**

### **2015 Incident #1**

On February 15, 2015, officers responded to an armed robbery call at a store. The responding officers observed a party matching the description of the suspect and pursued him into a parking garage. The suspect pointed his weapon at the officers and the officers ordered the suspect to drop the weapon. The suspect shot himself and died as a result of the gunshot wound. The incident was reviewed by the DPD and it was determined that the involved officers did not violate any DPD policies or procedures.

### **2015 Incident #2**

On August 22, 2015, the DPD was involved in a vehicle pursuit. The male suspect crashed his vehicle and then shot himself. The suspect died as a result of the gunshot wound. The incident was reviewed by the DPD and it was determined that the involved officers did not violate any DPD policies or procedures.

## 2014 DPD Critical Incidents Closed in 2015

### 2014 Incident #1

On January 2, 2014, the DPD assisted the Thornton Police Department in a vehicle pursuit to arrest an armed individual who was allegedly involved in a domestic violence incident earlier that day. Information was aired over police radio that a shot had been fired at officers. The pursuit continued through several Denver police districts and municipalities outside of Denver. The pursuit terminated when police utilized a vehicle immobilization maneuver on the suspect's car, which resulted in the suspect's car hitting a police car. After the crash, the approaching officers saw the suspect rise up in his seat holding a gun. Three officers, including two DPD officers, fired on the suspect, hitting him multiple times, resulting in his death. Toxicology reports later indicated that the suspect had methamphetamine and alcohol in his system at the time of the encounter.

The District Attorney for Broomfield and Adams Counties reviewed the incident and declined to file charges against the involved officers. The Adams/Broomfield DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>160</sup> The Use of Force Review Board met on April 10, 2015 and determined that the shooting was in-policy. The OIM concurred with this assessment.

### 2014 Incident #2

On May 14, 2014, District 4 officers transported a handcuffed suspect, who had been searched several times, to the District 4 police substation for processing. When officers attempted to remove the suspect from the rear seat of the vehicle, he started to slide back and forth to prevent the officers from removing him. As the officers went into the car to get the suspect, who was handcuffed behind his back, the suspect fired a handgun that he had produced from an unknown location at them. Officers retreated from the car and took cover, and other officers quickly arrived. The suspect discharged the weapon two times before it jammed. An officer fired one shot, which struck the suspect. The suspect was treated and survived. He was later found to have been hiding bags containing more than three grams of methamphetamine in his rectum.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>161</sup> The Use of Force Review Board met on

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January 21, 2015 and determined that the shooting was in-policy. The OIM concurred with this assessment.

### 2014 Incident #3

On July 2, 2014, a sergeant from the Metro/SWAT unit was involved in a buy/bust narcotics operation in Overland Park with an alleged high-level narcotics and weapons dealer. The sergeant drove his team into the park's parking lot in order to arrest the suspect. When the team exited their vehicle and approached, the suspect apparently locked eyes on the sergeant, reached for his pocket, and pulled out a handgun. The sergeant fired several shots at the suspect, resulting in his death. The encounter lasted less than 10 seconds from the time the sergeant's team pulled into the parking lot.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officer. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>162</sup> The Use of Force Review Board met on May 18, 2015 and determined that the shooting was in-policy. The OIM did not believe that this conclusion was unreasonable, but voiced three concerns related to the incident. First, the OIM was concerned about the choice of arrest time and location. The potentially high-risk arrest was executed in a well-used park in the middle of a summer afternoon, which could have compromised public safety.<sup>163</sup> Second, the OIM was concerned that the sergeant had been issued a commendation in this case before the Use of Force Review Board reviewed the shooting, or made a determination of whether it was in- or out-of-policy. Third, while the suspect withdrew a firearm upon being confronted by officers, evidence suggested that he may have dropped the firearm at the front of a nearby car. Yet, because the sergeant had to make a split-second decision during a rapidly evolving situation, and had already seen the gun, had knowledge of the suspect's alleged criminal behavior and access to firearms, and was approaching the suspect from a vantage point across the hood of a parked vehicle, the OIM could not say that the sergeant's perception of imminent danger to himself or fellow officers at the time of the shooting was objectively unreasonable.

### 2014 Incident #4

In another incident on July 2, 2014, officers from the Safe Streets Task Force, Fugitive Unit and Gang Unit contacted a suspect who had felony warrants for a domestic violence incident and auto theft. The suspect parked a stolen vehicle outside a funeral home and officers boxed the vehicle into the parking space. The officers approached the suspect and tried to remove him from the car. In an

attempt to escape, the suspect backed his car up at a high rate of speed, hitting an unmarked police vehicle. A detective on the scene was struck by the car, and sustained an injury to her hamstring. Shots were fired at the suspect by multiple officers, resulting in his death.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found [here](#).<sup>164</sup> On April 10, 2015, the Use of Force Review Board met and evaluated the shooting under the policy on shooting into moving vehicles that was in effect at the time of the shooting, which has since been significantly modified (see Chapter 1 of the OIM's 2015 Semiannual Report). The Use of Force Review Board found that the shooting was consistent with that policy, and the OIM concurred with this assessment.

A separate internal review was conducted to determine whether the decisions of the sergeant who was acting as the operations supervisor before the shooting were within DPD policy. Under DPD policy, when supervising tactical, high-risk or covert operations, an operations supervisor must “continually assess the risks and hazards involved in allowing the operation to continue, and make a decision to allow the operation to continue or order it terminated.”<sup>165</sup> DPD policy further requires an operations supervisor to “authorize or cancel the operation, based on all available information and the provisions of Denver Police Department Policy.”<sup>166</sup> DPD policy notes that when planning high risk or tactical operations, “The safety of the participating officers, general public, and suspect(s) is of paramount importance.”<sup>167</sup>

The suspect had parked his vehicle in a lot full of cars and people, which was observable to the sergeant prior to the decision to make the arrest. Additionally, the suspect was a known flight risk, and was still sitting inside a running car when officers contacted him, potentially increasing the risk of flight in a crowded parking lot. The OIM recommended that a specification be sustained against the sergeant. The EDOS and DPD did not accept this recommendation, and the sergeant was exonerated of any wrongdoing.

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### 2014 Incident #5

On November 20, 2014, DPD officers joined Aurora police officers in a vehicle pursuit, during which the driver made several attempts to elude. DPD officers finally stopped the vehicle in Commerce City and the driver did not comply with commands to stop the vehicle and show his hands. Several officers were positioned between the truck and a patrol car when the driver of the suspect vehicle shifted into reverse and accelerated towards the officers. A fourth officer was in a cover position and fired three rounds through the passenger's side of the truck, fearing for the safety of the other officers. The driver was shot once, struck in both his right arm and right chest area, and the passenger was shot twice. Both survived. The driver was charged with Attempted Assault in the First Degree and Driving After Revocation Prohibited.

The District Attorney for the 17th Judicial District declined to press charges against the officer who fired his weapon; the DA's decision letter can be found [here](#).<sup>168</sup> The Use of Force Review Board met on July 27, 2015 and evaluated the shooting under the policy on shooting into moving vehicles that was in place at the time of the shooting, which has since been significantly modified (see Chapter 1 of the OIM's 2015 Semiannual Report). The Use of Force Review Board determined the shooting was in-policy; the OIM concurred with that assessment. The Board did not send the case to the Tactics Review Board because the tactics involved were addressed by the recent change in policy regarding shooting into moving vehicles.

## Critical Incidents: Denver Sheriff Department (DSD)

### In-Custody Death Investigation and Review Protocol

Similarly to situations involving the DPD, in all DSD critical incidents, DPD's Major Crimes Unit responds to the scene to begin an investigation to determine whether any person should be held criminally liable. If the incident warrants it, the OIM also responds to the scene of the incident for a walk-through and debriefing from command staff. Major Crimes detectives interview all witnesses and every involved officer, and obtain video and documentary evidence. The OIM monitors all interviews conducted by the Major Crimes Unit and may suggest additional questions at the conclusion of each interview. After the criminal investigation is complete, the administrative review process begins.

### Administrative Review of Critical Incidents Involving DSD Deputies

Once the District Attorney's Office has made a decision regarding the filing of criminal charges against anyone involved in the incident, the Major Crime Unit's reports are submitted to DSD IAB to commence the administrative review. The OIM confers with IAB to determine whether further investigation is necessary to assess whether there have been violations of Departmental policy. If, after reviewing the investigation, the Conduct Review Office finds that the involved deputy's actions were in compliance with DSD policy ("in-policy"), the case is forwarded to the Sheriff. If the Sheriff agrees there were no policy violations, the case is closed. The OIM reviews the Conduct Review Office's findings and makes recommendations to the Sheriff and the EDOS.

If the Conduct Review Office finds that the involved deputy's actions violated any Department policy ("out-of-policy"), the case is referred to the Sheriff for a "Pre-Disciplinary Hearing." The OIM observes the hearing and the deliberations of the Command Staff. At that hearing, the involved deputy is given the opportunity to present his or her side of the story, including mitigating evidence, if any. After hearing from the involved deputy, the OIM makes disciplinary recommendations to the Sheriff. Both the Sheriff's recommendations and that of the OIM are forwarded to the EDOS for consideration. The EDOS determines whether the deputy's actions were in-policy or out-of-policy and the appropriate level of discipline, if any.

## **DSD In-Custody Deaths in 2015**

### **In-Custody Death #1**

On November 11, 2015, a mentally ill inmate was involved in a physical altercation with several deputies. During the incident the inmate became unresponsive and was transported to Denver Health Medical Center. The inmate died several days later. The Denver District Attorney reviewed the incident and declined to file charges against the involved deputies. The DA prepared a detailed letter reviewing the incident, which can be found [here](#).<sup>169</sup> The incident is currently under administrative review.

### **In-Custody Death #2**

On December 7, 2015, a 54-year old man who was being treated for a terminal disease while serving a sentence at the Downtown Detention Center was found unresponsive. He was given CPR, transported to Denver Health Medical Center, and was pronounced dead shortly thereafter.

### **In-Custody Death #3**

On December 25, 2015, a deputy discovered a male hanging by a bedsheet inside his cell at the Downtown Detention Center. The inmate was transported to Denver Health Medical Center, where he died several days later. The incident is currently under review.

## **DSD Accidental Shootings in 2015**

### **Accidental Shooting #1**

On March 27, 2015, a deputy accidentally discharged her weapon while participating in required firearms training. She fired a round into the floor in front of her, but no bystanders were struck. She was suspended for two days for carelessly handling her firearm.

## **DSD 2013 Critical Incidents Closed in 2015**

### **2013 Incident #1**

On May 11, 2013, around 9:00 p.m., a nurse discovered an unresponsive inmate while administering medications at the Downtown Detention Center. The inmate was transported to the Denver Health Medical Center, where she died the following day. A deputy sheriff working in the medical unit that evening was responsible for conducting and documenting a minimum of two rounds each hour. That deputy failed to conduct and document multiple rounds between the hours of 6:00 and 8:00 p.m. The deputy resigned in a settlement agreement with the EDOS based on this incident, and another case.

### **2013 Incident #2**

On November 28, 2013, an inmate became unresponsive in the back of a DSD scout van while being transported from a DPD district station to the Downtown Detention Center. The DSD deputies transported the inmate to Denver Health Medical Center, where he later died. The case was reviewed and the department found that neither deputy involved had violated DSD policy.



# Endnotes

<sup>1</sup> Sworn DSD staff, including supervisors, are collectively referred to as “deputies” throughout this report, unless otherwise noted.

<sup>2</sup> See OFFICE OF THE INDEPENDENT MONITOR, 2013 SEMIANNUAL REPORT 5-33, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/Semiannual\\_Report\\_Final\\_2013-12-02.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/Semiannual_Report_Final_2013-12-02.pdf).

<sup>3</sup> See, e.g., Sadie Gurman, *Denver Sheriff Revamps Policy on Inmate Grievances After Harsh Report*, DENVER POST (Dec. 6, 2013), [http://www.denverpost.com/news/ci\\_2466682/denver-sheriff-revamps-policy-inmate-grievances-after-harsh](http://www.denverpost.com/news/ci_2466682/denver-sheriff-revamps-policy-inmate-grievances-after-harsh).

<sup>4</sup> See Noelle Phillips, *Move to Strengthen Denver’s Independent Monitor Advances*, DENVER POST (Feb. 3, 2015), [http://www.denverpost.com/news/ci\\_27451882/move-strengthen-denvers-independent-monitor-advances](http://www.denverpost.com/news/ci_27451882/move-strengthen-denvers-independent-monitor-advances).

<sup>5</sup> See DENVER REV. MUN. CODE art. XVIII, §2-388, §2-389.

<sup>6</sup> See *id.* §2-390.

<sup>7</sup> See *id.*

<sup>8</sup> See, e.g., OFFICE OF THE INDEPENDENT MONITOR, 2013 SEMIANNUAL REPORT, *supra* note 2, at 5-33; Letter from Independent Monitor Nicholas E. Mitchell to the Honorable Paul D. Lopez, Safety and Wellbeing Committee Chairman (Sept. 10, 2014) (on file with author).

<sup>9</sup> *Mayor Hancock Sets New Leadership and Top-to-Bottom Review of Sheriff Department*, CITY & CNTY. OF DENVER (July 21, 2014), <http://www.denvergov.org/content/denvergov/en/mayors-office/newsroom/2014/mayor-hancock-sets-new-leadership-and-top-to-bottom-review-of-sh.html>.

<sup>10</sup> See HILLARD HEINTZE, NEW VISION, BRIGHTER FUTURE: THE DENVER SHERIFF DEPARTMENT (May 21, 2015).

<sup>11</sup> *Sheriff Department Reform*, OFFICE OF DENVER MAYOR MICHAEL B. HANCOCK, <http://www.denvergov.org/content/denvergov/en/mayors-office/programs-initiatives/sheriff-department-reform.html> (last accessed Feb. 26, 2016).

<sup>12</sup> See OFFICE OF THE INDEPENDENT MONITOR, 2014 ANNUAL REPORT 4, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014\\_Annual\\_Report%20Final.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2014_Annual_Report%20Final.pdf).

<sup>13</sup> See CENTER FOR APPLIED RESEARCH IN HUMAN DEVELOPMENT, UNIVERSITY OF CONNECTICUT, EFFECTIVE POLICE INTERACTIONS WITH YOUTH: TRAINING EVALUATION (Mar. 2008), [http://www.ct.gov/opm/lib/opm/cjppd/cijjyd/jjydpublishations/police\\_eval\\_full\\_report\\_final\\_september\\_2008.pdf](http://www.ct.gov/opm/lib/opm/cjppd/cijjyd/jjydpublishations/police_eval_full_report_final_september_2008.pdf).

## Endnotes

<sup>14</sup> See OFFICE OF THE INDEPENDENT MONITOR, 2015 SEMIANNUAL REPORT 32, [https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/OIM\\_2015\\_Semianual\\_Report\\_FINAL.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/OIM_2015_Semianual_Report_FINAL.pdf); OFFICE OF THE INDEPENDENT MONITOR, 2014 ANNUAL REPORT 84.

<sup>15</sup> The OIM reports on deaths that begin or occur while the inmate is in the custody of any DSD jail. When inmates die in custodial facilities at Denver Health of natural causes (such as cancer deaths occurring in hospice), the OIM has not historically reported on those deaths.

<sup>16</sup> Due to security concerns, the DSD has not historically mediated complaints filed by inmates. DSD mediations typically involve staff member complaints lodged against other staff.

<sup>17</sup> 85% of complainants completed a mediation survey, and 93% of officers completed a mediation survey.

<sup>18</sup> PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>19</sup> *Id.* at 19.

<sup>20</sup> *Id.* at 20.

<sup>21</sup> *Id.* at 35.

<sup>22</sup> *Id.* at 45.

<sup>23</sup> *Id.* at 42.

<sup>24</sup> *Id.* at 26.

<sup>25</sup> See OFFICE OF THE INDEPENDENT MONITOR, 2014 ANNUAL REPORT 7-35.

<sup>26</sup> See *id.* at 10.

<sup>27</sup> See *id.* at 34-35.

<sup>28</sup> The DPD did not issue a written response to the OIM's recommendations.

<sup>29</sup> OFFICE OF THE AUDITOR, CITY AND CNTY. OF DENVER, AUDIT OF POLICE OPERATIONS - DISTRICT PATROL 39 (2016), [https://www.denvergov.org/content/dam/denvergov/Portals/741/documents/Audits\\_2016/PoliceOperationsDistrictPatrol\\_AuditReport\\_Jan2016.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/741/documents/Audits_2016/PoliceOperationsDistrictPatrol_AuditReport_Jan2016.pdf).

<sup>30</sup> See *id.* at 39-40 (discussing the DPD Command Staff's assessment of the implementation status of each of the nine recommendations made by the OIM).

<sup>31</sup> Jesse Paul, *Civil Rights Groups Criticize New Denver Police Policy on Body Cameras*, DENVER POST (Sept. 8, 2015), [http://www.denverpost.com/news/ci\\_28776598/denver-police-release-draft-body-camera-policy-public](http://www.denverpost.com/news/ci_28776598/denver-police-release-draft-body-camera-policy-public); Noelle Phillips, *Denver Police Moving Toward Body Camera Use for Moonlighting Officers*, DENVER POST (Sept. 22, 2015), [http://www.denverpost.com/news/ci\\_28859368/denver-police-moving-toward-body-camera-use-moonlighting](http://www.denverpost.com/news/ci_28859368/denver-police-moving-toward-body-camera-use-moonlighting); Letter from

Citizen Oversight Board to Mayor Michael Hancock and Members of Denver’s City Council (Sept. 21, 2015) (on file with author).

<sup>32</sup> Noelle Phillips, *Denver Police Officers to Wear Body Cameras While Working Off-Duty Security Jobs*, DENVER CHANNEL (Sept. 24, 2015), <http://www.thedenverchannel.com/news/local-news/denver-police-officers-to-wear-body-cameras-while-working-off-duty-security-jobs>.

<sup>33</sup> Marshall Zelinger, *Denver Police Chief Robert White Changes Mind, Says Sergeants Should Wear Body Cameras*, DENVER CHANNEL (Oct. 13, 2015), <http://www.thedenverchannel.com/news/local-news/denver-police-chief-robert-white-changes-mind-says-sergeants-should-wear-body-cameras>.

<sup>34</sup> See U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE CLEVELAND POLICE DEPARTMENT 16-17 (2014), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland\\_division\\_of\\_police\\_findings\\_letter.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf); Denver Police Department, Moving Vehicle Response Training (on file with author).

<sup>35</sup> See, e.g., Findings Letter from the U.S. Dep’t of Justice to Mayor Richard J. Berry at 32-33 (Apr. 10, 2014), [http://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd\\_findings\\_4-10-14.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf) (regarding the investigation of the Albuquerque Police Department).

<sup>36</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Chief Robert White (Jan. 27, 2015) (on file with author) (regarding OIM Review of DPD Policy on discharging firearms at moving vehicles).

<sup>37</sup> Marshall Zelinger & Phil Tenser, *Denver Conducting Two Reviews of Police Department Policies for Shooting at Suspects in Moving Cars*, DENVER CHANNEL (Jan. 28, 2015), <http://www.thedenverchannel.com/news/local-news/denver-conducting-two-reviews-of-police-department-policies-for-shooting-at-suspects-in-moving-cars01282015>.

<sup>38</sup> This analysis excluded incidents in which the use of deadly force was prompted by a threat other than a moving vehicle (e.g., an incident in which one or more passengers fired shots from a moving vehicle was excluded).

<sup>39</sup> See OFFICE OF THE INDEPENDENT MONITOR, 2015 SEMIANNUAL REPORT 1-14.

<sup>40</sup> While we have referred to the new rule as a “prohibition” on shooting into moving vehicles, the revised policy acknowledges that it “may not cover every situation” and “... deviations shall be examined rigorously and on a case-by-case basis.” See DENVER POLICE DEPARTMENT, OPERATIONS MANUAL § 105.05(5) [hereinafter DPD OMS], [https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM\\_Book.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf) (revised June 2015).

<sup>41</sup> See, e.g., SAMUEL WALKER & CAROL A. ARCHBOLD, THE NEW WORLD OF POLICE ACCOUNTABILITY 146-155 (2d ed. 2014).

<sup>42</sup> See, e.g., *United States v. City of Albuquerque*, 14-CV-1025, at 68-71 (D.N.M. Nov. 14, 2014); *United States v. City of Seattle*, 12-CV-1282, at 45-46 (W.D. Wash. July 27, 2012).

## Endnotes

<sup>43</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Chief Robert White (June 13, 2013) (on file with author).

<sup>44</sup> Noelle Phillips, *Denver Officer's Long List of Public Complaints Triggers Change*, DENVER POST (Mar. 2, 2015), [http://www.denverpost.com/news/ci\\_27621823/denver-officers-long-list-public-complaints-triggers-change](http://www.denverpost.com/news/ci_27621823/denver-officers-long-list-public-complaints-triggers-change).

<sup>45</sup> DPD OMS 508.00 (revised April 2015 and July 2015).

<sup>46</sup> See Denver Police Department, PAS Review Workgroup Suggestions (on file with author).

<sup>47</sup> See Denver Police Department, Performance Development Unit Presentation (on file with author); Email from Denver Police Lieutenant John MacDonald to OIM Policy Director Jennifer Fratello (Feb. 10, 2016) (on file with author).

<sup>48</sup> OFFICE OF THE INDEPENDENT MONITOR, 2014 ANNUAL REPORT at 42; see U.S. DEP'T OF JUSTICE, GUIDANCE FOR FEDERAL LAW ENFORCEMENT AGENCIES REGARDING THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY (Dec. 2014), <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

<sup>49</sup> DPD OMS 118.02. (pre-June 2015).

<sup>50</sup> *Id.* (post-June 2015).

<sup>51</sup> NCIC is a federal database maintained by the FBI that helps law enforcement track fugitives, locate missing persons, identify terrorists, and recover stolen property, including vehicles. CCIC is the conduit by which Colorado law enforcement agencies obtain access to NCIC and other federal and international information databases.

<sup>52</sup> Specifically, the NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; Protective Interest; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System (NICS) Denied Transaction. *National Crime Information Center*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/about-us/cjis/ncic> (last accessed Feb. 25, 2016).

<sup>53</sup> *Id.*

<sup>54</sup> James Jacobs & Tamara Crepet, *The Expanding Scope, Use, And Availability of Criminal Records*, 11 N.Y.U. J. OF LEGIS. & PUB. POL'Y 177, 187-89 (2008).

<sup>55</sup> See generally *id.*

<sup>56</sup> See DPD OMS 102.8(4) (pre-November 2015 revision). In November 2015, after the OIM raised concerns about the appropriateness of reprimands for misuse of NCIC/CCIC in its review of several cases, the DPD revised this provision. It now includes a restriction on the dissemination of information from NCIC/CCIC for any non-official purpose. Around this same time, the

DPD also issued an alert in the DPD's Daily Bulletin reminding officers that "per Operations Manual Section 102.08(4) - Use of NCIC and CCIC, . . . Department personnel will not use the CCIC/NCIC system to obtain information, criminal or otherwise for personal use, gain, benefit, or remuneration and will not provide any information derived from this system to any other person unless connected to their official duties." *See* Denver Police Bulletin (Nov. 19, 2015) (on file with author). Neither the policy revision nor the bulletin update addressed the OIM's concerns regarding the need for stronger discipline for officers who misuse NCIC/CCIC.

<sup>57</sup> *See* DPD OMS 102.08(7)(d).

<sup>58</sup> *See id.* 116.30.

<sup>59</sup> In the last case, no discipline was imposed at all, and the OIM's recommendation that the DPD and EDOS sustain the allegations against the officer was rejected.

<sup>60</sup> The data reported in this section were extracted from the DPD's Internal Affairs database ("IAPro") on January 20, 2016. The DPD tracks "specifications" that capture the rule under which an officer might be punished rather than the detailed allegations made by complainants. Violations of NCIC are addressed by RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders – Operations Manual § 102.08 – Use of NCIC and CCIC. As such, the OIM identified relevant cases by searching for references to the DPD OMS 102.08 that were linked to a named subject officer. The OIM is not an IAPro administrator, however, and cannot certify that the particular complaint specifications are what they would be if the OIM were making these decisions or that its analysis identified all complaints related to NCIC misuse.

<sup>61</sup> The OIM identified 42 unique complaints alleging NCIC/CCIC misuse. One of the complaints identified two subject officers who misused NCIC. The analysis in this chapter therefore treats that complaint as two allegations of NCIC/CCIC misuse.

<sup>62</sup> Two of the 43 allegations do not have an outcome because the subject officer resigned prior to a final discipline decision.

<sup>63</sup> "Conduct Prejudicial" is conduct that is detrimental "to the good order and police discipline of the Department of conduct unbecoming an officer." *See* DENVER POLICE DEPARTMENT DISCIPLINE HANDBOOK: CONDUCT PRINCIPLES AND DISCIPLINARY GUIDELINES, Appendix G, at 7 (RR-105), [https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/DPD\\_Handbook\\_Revised\\_9-6-2012.pdf](https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/DPD_Handbook_Revised_9-6-2012.pdf) [hereinafter DPD DISCIPLINE HANDBOOK].

<sup>64</sup> *Id.* § 11.2.

<sup>65</sup> *Id.* § 15.1.4.

<sup>66</sup> *Id.* § 26.2.

<sup>67</sup> *Id.* § 26.1.3.

<sup>68</sup> *See id.*, Appendix F, at 2 (RR-802).

<sup>69</sup> *See id.*, Appendix F, at 3 (RR-126).

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<sup>70</sup> See *id.*, Appendix F, at 3 (RR-309.1).

<sup>71</sup> See *id.*, Appendix F, at 3 (RR-607).

<sup>72</sup> See *id.*, Appendix F, at 6 (RR-302).

<sup>73</sup> See *id.*, Appendix F, at 4-7 (RR-142).

<sup>74</sup> See *id.*, Appendix F, at 6 (RR-203).

<sup>75</sup> See *id.*, Appendix F, at 4-7 (RR-138).

<sup>76</sup> See *id.*, Appendix F, at 4-5 (RR-140.2).

<sup>77</sup> See *id.*, Appendix F, at 6 (RR-114).

<sup>78</sup> See, e.g., *id.* § 11.3.

<sup>79</sup> See, e.g., *id.* § 11.3.2.

<sup>80</sup> See *id.* § 11.3.5.

<sup>81</sup> See, e.g., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 85 (Mar. 4, 2015), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>82</sup> See PHOENIX POLICE DEPARTMENT, OPERATIONS ORDER 3.18, Addendum A, § (2)(B)(1)(d).

<sup>83</sup> See, e.g., Ryan Boetel, *APD Officer Improperly Used NCIC Database*, ALBUQUERQUE JOURNAL (Jan. 19, 2016), <http://www.abqjournal.com/708365/news/apd-officer-improperly-used-ncic-database.html> (Albuquerque police officer suspended for 40 hours for misuse of NCIC); David Chang, *Cop Uses Police Database to Find Woman on Facebook: Police*, NBC PHILADELPHIA (July 23, 2012), <http://www.nbcphiladelphia.com/news/local/Cop-Uses-Police-Database-to-Find-Woman-on-Facebook-Police-163474046.html> (Voorhees Township officer suspended for using NCIC to find a woman's information to friend her on Facebook); Danielle Todesco, *Did an APD Officer Get Fired for Using his Lapel Camera Too Much?*, KOB (Feb. 12, 2016), <http://www.kob.com/article/stories/s4047060.shtml> (Albuquerque police officer terminated for misuse of NCIC).

<sup>84</sup> Chris Halsne & Chris Koeberl, *Denver Police Accused of Using Excessive Force, Illegal Search*, FOX DENVER (Nov. 24, 2014), <http://kdvr.com/2014/11/24/denver-police-accused-of-excessive-force-illegal-search/>.

<sup>85</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Chief Robert White (Jan. 11, 2016) (on file with author).

<sup>86</sup> See DPD OMS 105.03(4)(d)(6)(d)(3).

<sup>87</sup> See Email from DPD Training Academy instructor to OIM Deputy Monitor Nate Fehrmann (Nov. 25, 2015) (on file with author).

<sup>88</sup> The ACT Manual describes arrest and control techniques and defense tactics that can be used by DPD officers. The ACT Manual is not a publicly available document.

<sup>89</sup> See Michael, C. DiMarino, MD, *Foreign Bodies in the GI Tract*, MERCK MANUAL, <http://www.merckmanuals.com/professional/gastrointestinal-disorders/bezoars-and-foreign-bodies/foreign-bodies-in-the-gi-tract> (last updated June 2013) (“Of the foreign bodies that reach the stomach, 80 to 90% pass spontaneously, 10 to 20% require nonoperative intervention, and ≤ 1% require surgery. Thus, most intragastric foreign bodies can be ignored.”); see also Carolina A. Klein, MD, *Intentional Ingestion and Insertion of Foreign Objects: A Forensic Perspective*, 40 J. AM. ACAD. PSYCH. L. , Jan. 2012, at 119, 123 (“In most cases, asymptomatic patients can be managed conservatively until drug packets are spontaneously passed through the GI tract.”).

<sup>90</sup> See Marshall Zelinger, *Law Enforcement Nationwide Track ‘Use of Force’ Differently; Based on Self-Reporting by Officers*, DENVER CHANNEL (Nov. 20, 2015), <http://www.thedenverchannel.com/news/front-range/denver/law-enforcement-nationwide-track-use-of-force-differently-based-on-self-reporting-by-officers> (data reported up to Oct. 16, 2015).

<sup>91</sup> Strikes include all uses of force where officers indicated in use of force reports that they used at least one of the following types of force: strike, fist, thrust/kick, or feet/leg (data extracted from IAPro on January 8, 2016).

<sup>92</sup> See generally R. Alan Thompson & Jerry L. Dowling, *Police Use of Force Against Drug Suspects: Understanding the Legal Need for Policy Development*, 25 AM. J. CRIM. JUST. 173, 188 (2001) (noting that these techniques may risk “unnecessary injury to officers, who are frequently bitten or otherwise assaulted by a physically combative suspect who is resisting the extraction of evidence from the oral cavity”).

<sup>93</sup> See SEATTLE POLICE DEPARTMENT MANUAL §8.200(2) (detailing when uses of force are prohibited).

<sup>94</sup> See *U.S. v. City of Seattle*, No. 12-CV-1282 (W.D. Wash. filed Aug. 30, 2012) (approving the settlement agreement and stipulated order of resolution); SEATTLE POLICE MONITOR, FOURTH SEMIANNUAL REPORT 19 (December 2014), <http://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/548f45e6e4b0767ae18867c4/1418675686394/Fourth+Semiannual+Report.pdf>.

<sup>95</sup> In addition, the DPD’s Body Worn Camera Policy provides scheduled discipline for first and second violations of the recording requirements set forth in the policy, with a written reprimand for the first violation and one fined day for a second violation. See DPD OMS 111.11(9).

<sup>96</sup> The data reported in this chapter were extracted from IAPro. The OIM is not an IAPro administrator and has limited control over data entry into the database. The OIM does not conduct governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the accuracy of the DPD’s Internal Affairs data. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) are what they would be if the OIM were making these decisions. Since the data were drawn from dynamic, live

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databases, the recorded complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision. The figures reported in this chapter do not include complaints against DPD civilian employees, or service complaints that were not linked to any subject officer in IAPro.

<sup>97</sup> The data included in this chapter were last retrieved from IAPro on February 3, 2016.

<sup>98</sup> Because of changes in coding and/or analysis of complaints, allegations, findings, and discipline, there may be slight discrepancies between historical data presented in this report and data presented in previous OIM reports.

<sup>99</sup> The total number of internal complaints recorded in 2015 includes 30 cases alleging violations of the section of the DPD's Secondary Employment Policy that places restrictions on eligibility for secondary employment. *See* DPD OMS 114.01(3)(a)-(c). These cases were identified through a one-time "Telestaff Audit," and were closed informally and without review by the OIM.

<sup>100</sup> Many reports related to police oversight and IAB processes refer to complainant allegations. In this chapter, "allegations" refer to assertions, in a complainant's own words, of particular kinds of purported misconduct by an officer. The DPD does not systematically track the detailed allegations made by complainants in its Internal Affairs database. Instead, it tracks "specifications" that are based upon the departmental rules and disciplinary policies implicated by a complaint. Thus, a specification captures the rule under which an officer might be punished, rather than the precise allegations communicated in the complaint.

<sup>101</sup> DPD DISCIPLINE HANDBOOK, Appendix G, at 9 (RR-127).

<sup>102</sup> Formal investigations may not receive a finding in cases where an officer resigns or retires prior to the completion of the investigation and/or a final finding determination. Such cases fall into the "Declined/Administrative Review" category in Figure 3.2.

<sup>103</sup> *See* DPD OMS 114.01(3)(a)-(c).

<sup>104</sup> Note that several cases are under appeal with the Civil Service Commission, as well as the courts. As a result, these totals are subject to revision until all appeals have been exhausted.

<sup>105</sup> The actual number of officers who resigned or retired while an investigation or discipline was pending is actually higher than the total reported in Table 3.2. The OIM reports only those resignations and retirements that are likely directly related to a pending investigation or pending discipline. For example, the OIM does not report resignations or retirements of officers with pending investigations alleging misconduct that, if sustained, would result in a low-level of discipline such as a reprimand.

<sup>106</sup> Summary data on appeals filed by DPD officers or by the Office of the EDOS regarding DPD officers were provided to the OIM by the Civil Service Commission on January 26, 2016.

<sup>107</sup> In 2013, Denver's Civil Service Commission approved a set of changes to Rule 12, the Commission Rules relating to Disciplinary Appeals, Hearings, and Procedures. Prior to these changes, an officer's first disciplinary appeal was heard by a three-member panel of Hearing Officers. Following the changes, that appeal is now heard before a single Hearing Officer. *See*

Sadie Gurman, *Despite Objections from Cops and Firefighters, Denver Changes Discipline Rules*, DENVER POST (Mar. 1, 2013), [http://www.denverpost.com/ci\\_22697707/denver-civil-service-commission-changes-police-fire-discipline](http://www.denverpost.com/ci_22697707/denver-civil-service-commission-changes-police-fire-discipline).

<sup>108</sup> The total discussed here is different from the total presented in Chapter 1, which includes two mediations of complaints involving DSD staff.

<sup>109</sup> Conciliations are complaints that are handled by division commanders, not IAB, and do not require the complainant to meet face-to-face with the subject officer. *See* Email from Senior Legal Analyst, Kansas City Office of Community Complaints, Michael Walker to OIM Senior Analyst Ena Vu (Feb. 17, 2016) (on file with author).

<sup>110</sup> The OIM adopted a new automated method for identifying the age of cases recorded by IAB to replace manual counts that were used in past reports. This method cannot be applied to cases received in prior years, however, which limits the OIM's ability to make timeliness comparisons to previous years.

<sup>111</sup> DPD Timeliness figures were calculated by measuring the number of days between the date a case was received and the date a case was completed, and subtracting the total number of days the case was with the OIM for either investigative or disciplinary review. For cases that opened in 2015 but were not yet completed at the time of the analysis, OIM analysts used the date of data extraction as the end date. Performance measures for the timeliness of OIM investigation reviews are discussed in the Citizen Oversight Board's Annual Reports.

<sup>112</sup> DPD IAB will sometimes combine multiple complaints made by one individual under a single case number, particularly if the complainant's issue stems from issues of mental health or if the complainant has a significant history of filing numerous false/trivial complaints. Regarding the "missing" data category in Table 3.5, it should be noted that complainants can choose not to provide their demographic information when filing complaints.

<sup>113</sup> Due to a transcription error in the analysis for the 2014 Annual Report, the distribution of complainant race was reported inaccurately for the Black and White categories. Twenty-two percent of complainants in 2014 were Black and 38% were White.

<sup>114</sup> Due to unresolved discrepancies in the annual sworn officer count provided to the OIM by the DPD's Data Analysis Unit in 2014, the figures presented in Tables 3.6, 3.7, and 3.8 are notably different from those presented in the OIM's 2014 Annual Report.

<sup>115</sup> Because of changes in coding and/or analysis of complaints, allegations, findings, and discipline, there may be slight discrepancies between historical data presented in this report and data presented in previous OIM reports.

<sup>116</sup> *See* Noelle Phillips, *Denver Sheriff Slashes Backlog of Internal Affairs Investigation Cases*, DENVER POST (Jan. 29, 2015), [http://www.denverpost.com/news/ci\\_27420805/denver-sheriff-slashes-backlog-internal-affairs-investigation-cases](http://www.denverpost.com/news/ci_27420805/denver-sheriff-slashes-backlog-internal-affairs-investigation-cases); Noelle Phillips, *Denver Post Review: Lengthy Delays in Sheriff's Disciplinary Process*, DENVER POST (Aug. 27, 2014), [http://www.denverpost.com/news/ci\\_26417862/denver-post-review-lengthy-delays-sheriffs-disciplinary-process](http://www.denverpost.com/news/ci_26417862/denver-post-review-lengthy-delays-sheriffs-disciplinary-process); Email from

## Endnotes

IAB Manager Armando Saldate to OIM Policy Director Jennifer Fratello (Feb. 9, 2016) (on file with author).

<sup>117</sup> Unless otherwise noted, the data for this chapter were obtained from the Denver Sheriff Department's Internal Affairs records management database (IAPro). The OIM is not an IAPro administrator and has no control over data entry into the database. The OIM does not conduct governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the complete accuracy of the DSD's internal affairs data. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) is what it would be if the OIM were making these decisions. Since the data were drawn from dynamic, live databases, the recorded complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision. The figures reported in this chapter include only complaints against sworn DSD deputies. The data included in this chapter were last retrieved from IAPro on February 4, 2016.

<sup>118</sup> Counts of complainant types for complaints recorded in 2011 and 2012 are based on data extracted from the IAB records management database used prior to IAPro because the data for these years were not carried over into the new database. The counts for 2011 and 2012 do not sum to the totals presented in Figure 4.1 because information associated with these complaints were likely updated by DSD IAB personnel in the years after their initial entry.

<sup>119</sup> In 36 of the 232 complaints recorded in 2015, the complainant or complainant type (e.g., inmate, employee, etc.) is not recorded in the IAB database so it was not possible to determine the complaint type.

<sup>120</sup> OFFICE OF THE INDEPENDENT MONITOR, 2015 SEMIANNUAL REPORT 31-32.

<sup>121</sup> Letter from IAB Manager Armando Saldate to Independent Monitor Nicholas E. Mitchell (Oct. 23, 2015).

<sup>122</sup> Email from Independent Monitor Nicholas E. Mitchell to EDOS Stephanie O'Malley, Deputy Director of Safety Jess Vigil, then-Sheriff Elias Diggins, and Major Jodi Blair (Sept. 11, 2015) (on file with author).

<sup>123</sup> See Letter from IAB Manager Armando Saldate to Independent Monitor Nicholas E. Mitchell (Oct. 23, 2015) (on file with author).

<sup>124</sup> In previous annual reports, the OIM reported common complaint allegations for the prior five years. However, the DSD has changed the method by which it records alleged misconduct. The OIM reports these improved data, but does not present information from previous years because it is not comparable. This change means that the most common allegations presented in previous OIM reports, such as improper procedure and improper conduct, do not appear as common in this report.

<sup>125</sup> Because DSD IAB finalizes each case's specifications during the discipline phase, a late stage in the investigation/review process, 34 specifications associated with complaints recorded in 2015 were unassigned at the time the OIM extracted data for this report.

<sup>126</sup> DENVER SHERIFF DEPARTMENT DISCIPLINE HANDBOOK: CONDUCT PRINCIPLES AND DISCIPLINARY GUIDELINES Appendix F, at 8 (RR 100.10.2). The OIM does not generally review these complaints.

<sup>127</sup> *Id.*, Appendix F, at 16 (RR 300.22, which prohibits “inappropriate force”). Prior annual reports from the OIM used the phrase “excessive force” to refer to such specifications.

<sup>128</sup> If the OIM disagrees with a screening decision, the DSD IAB Major is notified. If the OIM and DSD IAB cannot agree on a screening decision, the OIM will discuss the conflict with the Sheriff and then, if necessary, with the EDOS.

<sup>129</sup> If a case involves allegations of criminal conduct, the investigation is conducted by the DPD’s IAB. The DPD IAB will investigate the case and present it to the District Attorney’s Office for a charging decision. If the District Attorney decides to file charges, the case will be retained by DPD IAB until the conclusion of any criminal proceedings. Once the criminal proceedings are concluded, or if the District Attorney decides not to file charges, the case will be turned over to the DSD for completion of the administrative investigation to determine if any internal procedures or policies were violated.

<sup>130</sup> The total number of closed complaints includes all complaints involving deputies that were closed by IAB with a 2015 completion date; not all cases are reviewed by the OIM.

<sup>131</sup> *See* OFFICE OF THE INDEPENDENT MONITOR, 2015 SEMIANNUAL REPORT 31-45.

<sup>132</sup> The sustained rates for complaints closed in 2011-2013 are based on data extracted from the IAB records management database used prior to IAPro because the data on complainant type for these years were not carried over into the new database.

<sup>133</sup> Note that several cases are under appeal with the Career Service Board, as well as the courts. As a result, these totals are subject to revision until all appeals have been exhausted.

<sup>134</sup> The actual number of deputies who resigned or retired while an investigation or discipline was pending is actually higher than the total reported in Table 4.4. The OIM reports only those resignations and retirements that are likely directly related to a pending investigation or pending discipline. For example, the OIM does not report resignations or retirements of officers with pending investigations alleging misconduct that, if sustained, would result in a low-level of discipline such as a reprimand.

<sup>135</sup> In this section, “deputy” refers only to those personnel with the title “deputy” at the time of the incident. Sworn staff with other titles, such as “captain” or “sergeant,” are noted throughout the summaries.

<sup>136</sup> *See, e.g.*, WALKER & ARCHBOLD, *supra* note 41, at 138.

<sup>137</sup> *See, e.g.*, *City of Albuquerque*, at 68-71; *City of Seattle*, at 45-46.

<sup>138</sup> OFFICE OF THE INDEPENDENT MONITOR, 2013 SEMIANNUAL REPORT 25; OFFICE OF THE INDEPENDENT MONITOR, 2012 ANNUAL REPORT 12, <https://www.denvergov.org/content/dam/denvergov/Portals/374/documents/2012%20OIM%20A>

## Endnotes

[nnual%20Report-Print%20Version.pdf](#); Letter from Independent Monitor Nicholas E. Mitchell to the Honorable Paul D. Lopez, Safety and Wellbeing Committee Chairman (Sept. 10, 2014) (on file with author).

<sup>139</sup> HILLARD HEINTZE, *supra* note 10, at 165.

<sup>140</sup> DSD Reform Implementation Team, Minutes of the November 16, 2015 Meeting, at 1 (on file with author).

<sup>141</sup> Though the Departmental Order of Discipline states that the deputy used a “racial epithet,” “ethnic epithet” may be a more appropriate description.

<sup>142</sup> Denver Sheriff Department Van Cise-Simonet Detention Center, Classification/Housing Post Order, at 16 (2014) (on file with author).

<sup>143</sup> *Id.* at 7.

<sup>144</sup> *Id.* at 8.

<sup>145</sup> Email from Independent Monitor Nicholas E. Mitchell to Executive Director of Safety Stephanie O’Malley and Civilian Review Administrator Shannon Elwell (July 29, 2015) (on file with author).

<sup>146</sup> *See* P.R.I.D.E. Awards issued to each deputy on October 31, 2013, “In recognition of ... professionalism, assistance, and ability to maintain your composure during an inmate suicide attempt on 10/19/13.” A P.R.I.D.E. (Personal Responsibility in Delivering Excellence) certificate is given when an employee has “demonstrated ‘personal responsibility in delivering excellence’ in the workplace by going above and beyond their normal course of duty and/or putting forth extra effort when needed.” *See* Denver Sheriff Department Order No. 2112.1G.

<sup>147</sup> Summary data on appeals filed by DSD deputies or by the Office of the EDOS regarding DSD deputies were provided to the OIM by the Career Service Hearing Office on February 2, 2016.

<sup>148</sup> The OIM adopted a new automated method for identifying the age of cases recorded by IAB to replace manual counts that were used in past reports. This method cannot be applied to cases received in prior years, however, which limits the OIM’s ability to make timeliness comparisons to previous years.

<sup>149</sup> DSD Timeliness figures were calculated by measuring the number of days between the date a case was received and the date a case was completed, and subtracting the total number of days the case was with the OIM for either investigative or disciplinary review. For cases that opened in 2015 but were not yet completed at the time of the analysis, OIM analysts used the date of data extraction as the end date. Performance measures for the timeliness of OIM investigation reviews are discussed in the Citizen Oversight Board’s Annual Reports.

<sup>150</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Mar. 5, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterDiManna.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterDiManna.pdf) (regarding the investigation of the shooting and wounding of Sharod Kindell).

<sup>151</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (June 5, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterJordanandGreene.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterJordanandGreene.pdf) (regarding the investigation of the shooting death of Jessica Hernandez).

<sup>152</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (June 16, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/2015letterCruz.pdf](http://www.denverda.org/News_Release/Decision_Letters/2015letterCruz.pdf) (regarding the investigation of the shooting and wounding of John Thomas Clark).

<sup>153</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (July 31, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%20Nwandilibe%207-31-2015.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%20Nwandilibe%207-31-2015.pdf) (regarding the investigation of the shooting and wounding of Chisom Nwandilibe).

<sup>154</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Sept. 14, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%20re%20shooting%20death%20of%20Paul%20Castaway.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%20re%20shooting%20death%20of%20Paul%20Castaway.pdf) (regarding the investigation of the shooting death of Paul Castaway).

<sup>155</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Oct. 28, 2015), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%20%20regarding%20Officer-involved%20shooting%20--%20August%2022%202015%20--%20DPD%20Det.%20Jon%20Crowe%20and%20Officer%20Jimmy%20Sheppard%20.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%20%20regarding%20Officer-involved%20shooting%20--%20August%2022%202015%20--%20DPD%20Det.%20Jon%20Crowe%20and%20Officer%20Jimmy%20Sheppard%20.pdf) (regarding the investigation of the shooting and wounding of Kylear Antonio Williams).

<sup>156</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Feb. 12, 2016), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%202015%20South%20Alcott.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%202015%20South%20Alcott.pdf) (regarding the investigation of the shooting death of Miguel Martinez).

<sup>157</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Feb. 23, 2016), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%202015%20-%203755%20N%20Federal.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%202015%20-%203755%20N%20Federal.pdf) (regarding the investigation of the shooting and wounding of Jason Wood).

<sup>158</sup> Noelle Phillips, *Denver Health Tourniquet Training has Saved Cops' Lives*, DENVER POST (Dec. 28, 2015), [http://www.denverpost.com/news/ci\\_29316273/denver-health-tourniquet-training-has-saved-cops-lives](http://www.denverpost.com/news/ci_29316273/denver-health-tourniquet-training-has-saved-cops-lives); The Denver Channel.com Team, *Commander Tony Lopez Sr., Other Denver Officers Learn Life-Saving Tourniquet Training After Shootings*, DENVER CHANNEL (Dec. 17, 2015), <http://www.thedenverchannel.com/news/front-range/denver/commander-tony-lopez-sr-other-denver-officers-learn-life-saving-tourniquet-training-after-shooting>.

<sup>159</sup> *Denver Police Department Gun Shot Trauma Kits*, DENVER POLICE FOUNDATION, <http://denverpolicefoundation.org/what-we-do/funded-projects-2/denver-police-department-gun-shot-trauma-kits/> (last accessed Feb. 25, 2016).

## Endnotes

<sup>160</sup> Decision Letter from 17th Judicial District Attorney Dave Young to Thornton Police Chief Randy Nelson and Denver Police Chief Robert White (Apr. 11, 2014), <http://adamsbroomfieldda.org/wp-content/uploads/2014/04/Decision-letter-re-officer-involved-shooting-Jan.-2-2014.pdf> (regarding the investigation of the shooting death of Wesley Maldonado).

<sup>161</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (June 16, 2014), [http://www.denverda.org/News\\_Release/Decision\\_Letters/2014SisnerosLetter.pdf](http://www.denverda.org/News_Release/Decision_Letters/2014SisnerosLetter.pdf) (regarding the investigation of the shooting and wounding of Isaac Vigil).

<sup>162</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Aug. 29, 2014), [http://www.denverda.org/News\\_Release/Decision\\_Letters/Decision%20Letter%2008-29-2014.pdf](http://www.denverda.org/News_Release/Decision_Letters/Decision%20Letter%2008-29-2014.pdf) (regarding the investigation of the shooting death of Joseph S. Valverde).

<sup>163</sup> *See id.* at 5.

<sup>164</sup> Decision Letter from Denver District Attorney Mitchell R. Morrissey to Denver Police Chief Robert White (Aug. 8, 2014), [http://www.denverda.org/News\\_Release/Decision\\_Letters/2014-4750TejonLet.pdf](http://www.denverda.org/News_Release/Decision_Letters/2014-4750TejonLet.pdf) (regarding the investigation of the shooting death of Ryan Ronquillo).

<sup>165</sup> DPD OMS 104.55 (7)(c)(2)(b).

<sup>166</sup> *Id.* 104.55(7)(c)(2)(a).

<sup>167</sup> *Id.* 104.55 (7)(b)(1).

<sup>168</sup> Decision Letter from 17th Judicial District Attorney Dave Young to Denver Police Chief Robert White (Feb. 20, 2015), <http://adamsbroomfieldda.org/wp-content/uploads/2015/02/November-20-2014-officer-involved-shooting-decision-letter.pdf> (regarding the investigation of the shooting and wounding of Joel and Carlos Jurado).

<sup>169</sup> Decision Statement from Denver District Attorney Mitchell R. Morrissey (Jan. 21, 2016), [http://www.denverda.org/News\\_Release/Releases/2016%20Release/MarshallDecisionStatement.pdf](http://www.denverda.org/News_Release/Releases/2016%20Release/MarshallDecisionStatement.pdf) (regarding the investigation of the in-custody death of Michael Marshall).

## **Appendix A**

**Letter Re: DPD Early Intervention System**



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Denver, CO 80202  
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[www.denvergov.org/oim](http://www.denvergov.org/oim)

June 13, 2013

Robert White, Chief of Police  
Police Administration Building  
1331 Cherokee Street  
Denver, CO 80204-4507

***Re: OIM Review of DPD PAS System***

Dear Chief White:

Thank you for taking the time to meet with me this week to discuss the OIM's upcoming review of the Denver Police Department's Personnel Assessment System ("PAS" or "Early Warning System"). As we discussed, the review will focus on assessing the efficiency and effectiveness of PAS and will cover the period from January 1, 2006 through December 31, 2012. The review currently has the following objectives:

- Determine whether PAS is operating as described in O.M.S. § 508.00;
- Evaluate the effectiveness of PAS at: (1) Identifying officers who are exhibiting potentially problematic patterns of conduct; (2) intervening to correct such patterns; (3) conducting effective post-intervention monitoring;
- Assess the quality and usefulness of management-level information generated by PAS;
- Explore the attitudes of line officers and supervisors toward PAS;
- Determine whether PAS incorporates national "best practices" for early intervention systems;
- Examine the impact of PAS on quantitative measures of officer performance; and
- Make specific recommendations that will enable you to take action to correct any potential issues, if any, in the design or operation of PAS.

As I conveyed during our meeting, to carry out this review, we must be able to access the data that feeds into the system, the information reviewed by the Department's PAS Board and any officer interventions of that Board, and certain relevant information about officer performance. At present, we only have access to the front-end interface of the Department's electronic PAS/EIIS database, which is not sufficient to conduct a statistical analysis of the PAS-related data. For us to effectively evaluate the impact of PAS on patterns of officer performance, we need access the underlying data that serves as a basis for the PAS system. Each piece of information being requested is either considered within the PAS system, within early intervention systems in other jurisdictions, or within national best practices on early intervention. The records that we are currently requesting are listed in

Appendix A to this letter. Depending on what we find during the initial stage of our review, we may also request additional data at a later stage to allow us to do more sophisticated statistical analysis. The additional records that we may request, based on our current understanding of the system, are listed in Appendix B to this letter.

I want to assure you that I recognize that PAS is a sensitive risk management system. Although I believe that that the OIM ordinance grants us access to PAS-related information (D.R.M.C. Article XVIII §2-375(c); §2-388-389), I understand that it also requires that our use of officer-specific data in PAS comply with the same confidentiality requirements regulating OIM access to Internal Affairs investigation files. D.R.M.C. Article XVIII §2-376(a).

Thank you again for taking the time to meet with me. I would welcome your thoughts and insights as we advance this project, and hope that we can meet again to discuss it. We hope to begin our review on or about June 21, 2013, and I would very much appreciate your thoughts on this request by that date, if feasible. Please do not hesitate to let me know if you have any questions or concerns.

Very truly yours,



**Nicholas E. Mitchell**

cc: Dr. Mary Davis, Citizen Oversight Board Chair  
Dr. Joseph De Angelis, Office of the Independent Monitor  
Deputy Chief Mary Beth Klee  
Commander Michael Battista

**Appendix A  
Records Requested**

**Initial Access and Records Request**

**A. Electronic EIS Database Records**

1. Global, read-only access to the Denver Police EIS database tables

**B. DPD Personnel**

2. Permission to talk with a sample of officers, supervisors, and command staff regarding PAS
3. Permission to talk with staff from PSU and the Data Analysis Unit, and a sample of previous and current PAS Board members that have been responsible for working with PAS

**C. PAS Case Files and Documents**

4. Internal Professional Standards Unit and Chief's PAS Board policies, standard operating procedures, or other relevant process documentation
5. Minutes of Chief's PAS Board meetings held between Jan. 1, 2006 through Dec. 31, 2012
6. Case documents relating to Level Zero, Level One, Level Two, and Level Three PAS cases initiated between Jan. 1, 2006 through Dec. 31, 2012
7. Documentation for any post-intervention follow-up for PAS cases initiated between Jan. 1, 2006 through Dec. 31, 2012

**D. Electronic Data We Are Requesting Now**

8. PAS reviews by officer—Jan. 1, 2006 through Dec. 31, 2012 (to include officer serial, review date, review type, comment)
9. SSR comments by officer— Jan. 1, 2006 through Dec. 31, 2012 (to include officer serial, positive comment effective date, positive comment reason, positive comment disposition, negative comment effective date, negative comment reason, negative comment disposition, negative comment officer response)
10. All instances where a prosecution declination or a motion to suppress was based on concerns relating to either: (1) officer credibility; or (2) evidence of a Constitutional violation— Jan. 1, 2006 through Dec. 31, 2012 (to include officer serial, date of motion/declination, court case number, declination/motion to suppress reason and outcome).
11. Letters of intent, civil lawsuits, and administrative claims relating to alleged police misconduct — Jan. 1, 2006 through Dec. 31, 2012 (to include officer serial, incident date, claim type, claim description, location, officer type, amount of claim, amount of City's ultimate liability after settlement or trial)

**Appendix B**  
**Records We May Request in the Future**

**Records We May Request in the Future**

12. All arrests and citation by officer—Jan. 1, 2006 through Dec. 31, 2012
13. Street checks by officer— Jan. 1, 2006 through Dec. 31, 2012
14. CAD Incidents— Jan. 1, 2006 through Dec. 31, 2012
15. Overtime by officer— Jan. 1, 2006 through Dec. 31, 2012
16. Police car accidents by officer – Jan. 1, 2006 through Dec. 31, 2012
17. Pursuits by officer— Jan. 1, 2006 through Dec. 31, 2012
18. Secondary employment by officer— Jan. 1, 2006 through Dec. 31, 2012
19. Continuing education by officer— Jan. 1, 2006 through Dec. 31, 2012
20. Weapons qualification by officer — Jan. 1, 2006 through Dec. 31, 2012
21. Highest educational degree achieved for officers active at any time between 2006 and 2012 (e.g., high school, some college, college degree, post-baccalaureate degree)
22. Whether officer engaged in military service either before or after being employed by the DPD for officers active between January 1, 2006 through December 31, 2012.
23. Academy academic performance information for officers active at any time between January 1, 2006 through December 31, 2012 (i.e., overall GPA or equivalent)
24. Leave by officer— Jan. 1, 2006 through Dec. 31, 2012
25. Limited duty by officer— Jan. 1, 2006 through Dec. 31, 2012
26. Work hours by officer and week— Jan. 1, 2006 through Dec. 31, 2012



**Appendix B**  
**Letter Re: DPD Use of Force to**  
**Remove Contraband**



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January 11, 2016

Robert D. White, Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80202

**Re: Recommendation to Revise DPD Policy Regarding the use of Physical Force to Remove Potential Contraband from the Mouths of Persons Being Placed Under Arrest**

Dear Chief White:

I write to follow up on my verbal recommendation at the December 18, 2015 Citizen Oversight Board (“COB”) meeting that you revise the Denver Police Department’s (“DPD”) Use of Force Policy to provide specific guidance on what types of force are permitted, and prohibited, to remove potential contraband from the mouths of persons being placed under arrest. There are various reasons to make such a policy change, including preventing officers from having to make field determinations about the types of force to use in these fast-moving situations without formal guidance from the DPD. Should you decide to revise DPD policy on this subject, I further recommend that you specifically prohibit the use of strikes to force persons to spit out potential contraband for the reasons discussed below.

Occasionally during patrol, and with greater frequency while conducting narcotics enforcement, officers may encounter suspects who place potential contraband into their mouths in an attempt to swallow it or otherwise prevent its detection or seizure by the police. This may include narcotics packaged in bags or bindles, loose drugs, and other objects that could be potentially dangerous, or may have evidentiary value. These situations present the risk of injury to citizens and officers, and also hazard that important evidence may be lost and thus unavailable to prosecutors in future criminal proceedings. Reasonable steps should therefore be taken by officers to recover that potential contraband, if it is safe and feasible to do so.

There is little consensus within policing about what types of force are permissible or effective to remove potential contraband from the mouths of arrestees. Notwithstanding this lack of unanimity, many police departments state in policy both the types of force authorized and prohibited in these situations. For example, some departments permit officers to use pressure points and other pain compliance techniques to attempt to force arrestees to spit out potential contraband, while others allow the use of Tasers (in drive-stun mode) or oleoresin capsicum (“OC”) spray to achieve the same result. As discussed below, some police departments explicitly forbid the use of physical force in these situations, instead requiring officers to promptly transport suspects who may have ingested contraband to the hospital so that medical personnel can quickly determine the safest and most effective way to obtain the swallowed material.

In contrast, the DPD’s Operations Manual (“O.M.S.”) § 105 (hereafter “Use of Force Policy” or “Policy”) is almost entirely silent on whether physical force is authorized to remove potential

contraband from a suspect's mouth and, if so, what kinds of force are permitted. The Policy's only discussion of this subject is its short notation that officers may not use Tasers to prevent arrestees from swallowing contraband.<sup>1</sup> Similarly, the DPD Training Academy does not currently provide any specific training addressing the removal of potential contraband from a suspect's mouth and, if so, what types of force should be used.<sup>2</sup> The DPD's Arrest Control ("ACT") Manual is also silent on this specific issue. Of course, no police use of force policy could possibly cover every situation that officers may face in the field. However, use of force policies should be as clear as reasonably possible in order to provide officers with practical guidance on when physical force may be used and when it is prohibited.<sup>3</sup> The DPD's Use of Force Policy, in fact, provides specific guidance about the types of force that are permitted or prohibited in other somewhat unique circumstances,<sup>4</sup> while saying almost nothing about approved or prohibited techniques for recovering contraband from the mouths of arrestees.

I believe that this gap in the DPD's current policy and training leaves officers in the unenviable position of having to make field determinations about whether to attempt to remove potential contraband from arrestees' mouths, quickly and under tense circumstances, without formal direction from the DPD. This creates various risks, including risks to citizen and officer safety, the possibility of citizen complaints, and potential liability for the City. It also creates the risk that officers' uses of force in these situations may be inconsistent with the overall goals of the Use of Force Policy, and with community expectations about the amount of force that should be used to protect a person from the risks of swallowing contraband, and to recover potential evidence. Further, this policy gap also complicates the review of uses of force that result in complaints against officers. Logically, determining whether officers adhered to DPD policy when they have used force to recover possible contraband secreted in an arrestee's mouth is significantly complicated by the fact that the DPD has never clearly articulated its policy on this issue.<sup>5</sup>

Therefore, as a threshold matter, I recommend that you revise the DPD's Use of Force Policy to provide guidance on whether force is authorized to remove potential contraband from the mouths of arrestees, and if so, what techniques are permissible. Should you agree to make such revisions, I recommend that you specifically prohibit the use of strikes for this purpose.<sup>6</sup>

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<sup>1</sup> See O.M.S. § 105.03(4)(d)(6)(d)(3).

<sup>2</sup> See email from DPD Training Academy instructor dated November 25, 2015 (on file with author).

<sup>3</sup> See, e.g., U.S. Dept. of Justice, *Findings Letter Regarding Investigation of Cleveland Division of Police*, Cleveland, OH (Dec. 4, 2014) at 28 (police departments must "provide their officers clear, consistent policies on when and how to use and report force").

<sup>4</sup> See, e.g., O.M.S. § 105.03(4)(d)(5)(c)(2)(3) (prohibiting the use of pepperball weapons on pregnant females and in open wounds); O.M.S. § 105.03(4)(d)(6)(d)(5)(6) (prohibiting the use of ERD/Tasers on persons who are in positions where they may fall once incapacitated or are immersed in water); O.M.S. § 105.03(5)(b)(1) (prohibiting the use of impact weapon strikes on suspects displaying only defensive resistance).

<sup>5</sup> See DPD Disciplinary Handbook § 4.0 (noting that a fair discipline system requires providing "officers with fair notice and a clear understanding of the potential consequences of misconduct").

<sup>6</sup> I further suggest that you make clear that neither the use of impact weapons nor pressure to the neck are permissible to force arrestees to spit out potential contraband. The Policy currently advises officers not to apply pressure to the front of a person's throat, back of their neck or head area in order "to gain physical control" of that person. See O.M.S. § 105.03 (6)(c)(3). However, it does not prohibit the use of neck pressure to prevent the swallowing of contraband. Similarly, the Policy prohibits officers from intentionally using impact tools on a person's head and neck (unless deadly force is authorized), but does not discuss the use of impact tools/devices on other areas of the body or for the purpose of forcing persons to spit out potential contraband. I believe that the Policy should be amended to clearly express that pressure to the neck and strikes with impact weapons are prohibited to prevent the swallowing of contraband.

First, medical research reflects that when foreign bodies such as drug packets are swallowed, they generally pass through the body within 12-24 hours without medical intervention.<sup>7</sup> At that point, they may be recovered and used as evidence in criminal proceedings, if necessary. Thus, in many circumstances, there is a limited incentive for using serious, possibly injurious force to make a citizen spit out potential contraband that could otherwise be recovered through medical action—or no intervention at all.<sup>8</sup> Indeed, protocol in some correctional agencies is to treat an attempt to swallow contraband as a possible medical emergency, and to prohibit the use of any physical force to remove it.<sup>9</sup> Instead, if contraband is swallowed, the person is placed into a “dry cell,” under medical supervision, where the contraband may be excreted and then later recovered by correctional personnel with minimal risks of injury to citizens or staff.

Second, to be successful at forcing arrestees to spit out potential contraband, strikes may often be serious enough to risk potential injury. National caselaw includes numerous examples of injuries claimed as a result of the use of strikes or other types of physical force in these situations. In Denver, between 2013 and 2015, there were at least 2,037 incidents in which one or more DPD officers used force,<sup>10</sup> and DPD data indicates that a high proportion of the uses of force that involved strikes resulted in injury to citizens.<sup>11</sup> Similarly, the use of strikes to remove contraband from the mouths of arrestees may also be dangerous for officers, who may be bitten or otherwise assaulted during those uses of force.<sup>12</sup>

Third, some police departments have recently prohibited the use of strikes to remove potential contraband from the mouths of suspects or gone even further—prohibiting the use of any force at all for this purpose. For example, the Chandler, Arizona police department revised its use of force policy in April 2015 and now prohibits strikes to a suspect’s head or face to prevent him from swallowing potential contraband.<sup>13</sup> In addition, several years ago, the U.S. Department of Justice (“DOJ”) opened a formal investigation into patterns of unconstitutional use of force within the Seattle Police Department (“SPD”), resulting in a settlement agreement and a new use of force policy. That new policy, adopted under the auspices of the DOJ and approved by a Federal District Court, distinguishes between a suspect who is attempting to put possible contraband into his mouth, and one who has done so and is attempting

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<sup>7</sup> See Michael, C. DiMarino, MD, *Foreign Bodies in the GI Tract*, Merck Manual, June 2013 (“Of the foreign bodies that reach the stomach, 80 to 90% pass spontaneously, 10 to 20% require nonoperative intervention, and ≤ 1% require surgery. Thus, most intragastric foreign bodies can be ignored.”); see also Carolina A. Klein, MD, *Intentional Ingestion and Insertion of Foreign Objects: A Forensic Perspective*, J Am. Acad. Psych. Law 40:1:119-126 (Jan. 2012) (“In most cases, asymptomatic patients can be managed conservatively until drug packets are spontaneously passed through the GI tract.”)

<sup>8</sup> In Denver, ambulances generally arrive fewer than 15 minutes after dispatch, thus medical aid is usually available to assist officers in these situations within a short period of time. See *Denver Health Report to the City of Denver 2014* at p. 50.

<sup>9</sup> See, e.g., *California Department of Corrections Operations Manual* § 52050.19.4 at p. 385 (“When an inmate is suspected of having secreted contraband in their mouth or attempts to swallow the evidence, no attempt shall be made to retrieve the contraband by force.”)

<sup>10</sup> See Marshall Zellinger, *Law Enforcement Nationwide Track ‘Use of Force’ Differently; Based on Self-Reporting by Officers*, The Denver Channel, Nov. 20, 2015 (data reported up to Oct. 16, 2015).

<sup>11</sup> Strikes include all uses of force where officers indicated in use of force reports that they used at least one of the following types of force: strike, fist, thrust/kick, or feet/leg (data extracted from IAPro on January 8, 2016).

<sup>12</sup> See generally, R. Alan Thompson & Jerry L. Dowling, *Police Use of Force Against Drug Suspects: Understanding the Legal Need for Policy Development*, Amer. Jour. Of Crim. Justice, Vol. 25 (2001) (noting that these techniques may risk “unnecessary injury to officers, who are frequently bitten or otherwise assaulted by a physically combative suspect who is resisting the extraction of evidence from the oral cavity”).

<sup>13</sup> See Chandler Police Department General Orders E-01 Use of Force, 200. Options, § N. Preventing the Swallowing of Substances, attached as Exhibit A.

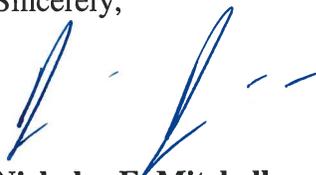
to swallow it.<sup>14</sup> SPD Officers are permitted to use reasonable force to prevent a suspect from putting possible contraband into his mouth. Yet, once contraband is in the suspect's mouth, officers are required to treat the incident as a medical emergency, and are prohibited from using any force to recover the substance. Specifically:

An officer may not use physical force . . . to stop a subject from swallowing a substance that is already in their mouth. Officers may use reasonable force, not including hands to the neck or insertion of any objects or hands into a subject's mouth, to prevent a suspect from putting a substance in their mouth. In the event that a suspect swallows a harmful substance, officers shall summon medical assistance.<sup>15</sup>

I note that the SPD's policy of prohibiting the use of any force at all, including pressure points or other techniques that present minimal risks of injury, to remove contraband may be unduly prohibitive. Yet, I believe that its overall framework—of treating these situations as medical emergencies and avoiding the use of serious force—is useful, and the adoption of a similar policy would likely improve safety for both citizens and officers in Denver.

Thank you for the opportunity to make these recommendations to you. Please let me know if I can be of further assistance as you consider them.

Sincerely,



**Nicholas E. Mitchell**  
**Independent Monitor**

cc: Ms. Stephanie O'Malley, Executive Director of Safety  
Dr. Mary Davis, Citizen Oversight Board Chair

Encl.

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<sup>14</sup> *U.S. v. City of Seattle*, No. 12-CV-1282, Settlement Agreement and Stipulated [Proposed] Order of Resolution, Document 3-1 (Exh. A), (W.D. Wash. filed July 27, 2012).

<sup>15</sup> See Seattle Police Department Manual §8.200 – Using Force, (2) Use Of Force: When Prohibited, attached as Exhibit B.



**Appendix C**  
**How to File a**  
**Complaint/Commendation**

## How to File a DPD Complaint/Commendation

- Postage-paid Complaint/Commendation Forms: The OIM distributes complaint/commendation forms at government offices, libraries, and police facilities throughout Denver, and they can be mailed to the OIM at no charge.
- OIM Online Complaint/Commendation Form: Complaints and commendations may also be filed through online forms on the OIM, COB, DPD and DSD websites. See [www.denvergov.org/oim](http://www.denvergov.org/oim).
- Email and FAX: The OIM and COB also accept complaints and commendations through email at [OIM@denvergov.org](mailto:OIM@denvergov.org) and by FAX at 720-913-3305.
- Walk-ins and Telephone: Community members can drop off complaint/commendation forms during normal business hours on the 12th floor of the Webb Municipal building at 201 W. Colfax Avenue. In addition, every District police station in Denver is required to accept walk-in and telephone complaints. IAB also accepts complaints by telephone (720-913-6019) and walk-in (1331 Cherokee Street), during normal business hours.
- Tort and Civil Rights Claims: Investigations may also be initiated when a community member alleges officer misconduct in a claim or lawsuit filed against the City.

## How to File a DSD Complaint/Commendation

- Postage-paid Complaint/Commendation Forms: The OIM distributes complaint/commendation forms at government offices, libraries, and police facilities throughout Denver, and they can be mailed to the OIM at no charge.
- OIM Online Complaint/Commendation Form: Complaints and commendations may also be filed through an online form on the OIM, COB, and DSD websites. See [www.denvergov.org/oim](http://www.denvergov.org/oim).
- Email and FAX: The OIM and COB also accept complaints and commendations through email and fax at [OIM@denvergov.org](mailto:OIM@denvergov.org) and 720-913-3305.
- Walk-ins and Telephone: The DSD also accepts complaints and commendations by telephone (720-865-3888).
- Tort and Civil Rights Claims: Investigations may also be initiated as a result of allegations of deputy misconduct in a claim or lawsuit filed against the City.

**Appendix D**  
**Complaint /Commendation**  
**Brochure Locations**

## City Council Offices

City and County Building, 1437 Bannock St., Room 487:

- Rafael Espinoza, District 1 City Councilman
- Paul D. Lopez, District 3 City Councilman
- Mary Beth Susman, District 5 City Councilwoman
- Paul Kashmann, District 6 City Councilman
- Jolon Clark, District 7 City Councilman
- Wayne New, District 10 City Councilman
- Robin Kniech, City Councilwoman At-Large
- Deborah Ortega, City Councilwoman At-Large

Other Locations:

- Kevin Flynn, District 2 City Councilman – 3100 S. Sheridan Blvd., Denver, CO
- Kendra Black, District 4 City Councilwoman – 3540 S. Poplar St., Suite 100, Denver, CO
- Christopher Herndon, District 8 City Councilman – Arie P. Taylor Municipal Building, 4685 Peoria St, Suite 245, Denver, CO
- Albus Brooks, District 9 City Councilman – Elbra M. Wedgeworth Building, 2855 Tremont Pl., Suite 201, Denver, CO
- Stacie Gilmore, District 11 City Councilwoman – Arie P. Taylor Municipal Building, 4685 Peoria St., Suite 245, Denver, CO

## Government Agencies

- Denver Public Library – Central Branch 10 W. 14th Ave. Pkwy. Denver, CO
- Denver Public Library – Corkey Gonzalez Library, 1498 N. Irving St., Denver, CO 80204
- Department of Safety, City and County of Denver –1331 Cherokee St. Room 302, Denver, CO
- Human Rights & Community Partnerships – Wellington E. Webb Building, 201 W. Colfax Ave. 2nd Floor, Denver, CO
- Office of The Independent Monitor – Wellington E. Webb Building 201 W. Colfax Ave. 12th Floor, Denver, CO
- Parks and Recreation – Wellington E. Webb Building 201 W. Colfax Ave. 6th Floor, Denver, CO

## **Community-Based Locations**

- Barnum Recreation Center – 360 Hooker St., Denver, CO
- Centro Humanitario – 2260 California St., Denver, CO
- Colorado Progressive Coalition – 700 Kalamath St., Denver, CO
- Denver Indian Center – 4407 Morrison Rd., Denver, CO
- Greater Park Hill Community Center– 2823 Fairfax St., Denver, CO
- Inner City Parish – 1212 Mariposa St., Denver, CO
- Meyer Law Firm – 1029 Santa Fe Dr., Denver CO
- Mi Casa Resource Center – 360 Acoma St., Denver, CO
- Newsed Housing Corporation – 901 W 10th Ave. Suite 2A, Denver, CO
- Servicios De La Raza– 3131 West 14th Ave., Denver, CO
- Southwest Improvement council– 1000 S. Lowell Blvd., Denver, CO
- Su Teatro – 721 Santa Fe Dr., Denver, CO
- True Light Baptist Church – 14333 Bolling Dr., Denver, CO

## **Jails**

- County Jail – 10500 E. Smith Rd., Denver, CO
- Denver Detention Center – 490 W. Colfax Ave., Denver, CO

## **Police Stations**

- District 1 Station – 1311 W. 46th Ave., Denver, CO
- District 2 Station – 3921 Holly St., Denver, CO
- District 3 Station – 1625 S. University Blvd., Denver, CO
- District 4 Station – 2100 S. Clay St., Denver, CO
- District 5 Station – 4585 Peoria St., Denver, CO
- District 6 Station – 1566 Washington St., Denver, CO
- West Denver Cop Shop – 4200 Morrison Rd., Denver CO
- Police Headquarters – 1331 Cherokee St., Denver, CO

## **Schools**

- Bruce Randolph 6-12 – 3955 Steele St., Denver, CO
- Center For 21 Century Learning – 1690 Williams St., Denver, CO
- Colorado Heights University – 3001 S. Federal Blvd., Denver, CO
- East High School – 1600 City Park Esplanade, Denver, CO
- Escuela Tlatelolco– 2949 Federal Blvd., Denver, CO
- Manual High School – 1700 East 28th Ave., Denver, CO

- South High School – 1700 E. Louisiana Ave., Denver, CO
- Swansea Elementary School – 4650 Columbine St., Denver, CO
- West High School – 951 Elati St., Denver, CO

## **Courts/Criminal Justice Locations**

- Colorado Juvenile Defender Center – 2026 Stout St., Denver, CO
- Colorado State Public Defender – Courtrooms 2100 and 2300, 1560 Broadway Suite 300, Denver, CO
- Community Re-entry Project – 2505 18th St., Denver, CO
- Denver District Court Criminal, Civil & Domestic – City & County Building 1437 Bannock St. Civil & Domestic, Room 256, Denver, CO
- Denver Municipal Court General Session – City & County Building 1437 Bannock St. Room 160, Denver, CO
- Denver Municipal Court Traffic Division – City & County Building 1437 Bannock St. Civil & Domestic, Room 135, Denver, CO
- Lindsay-Flanigan Courthouse – 520 W. Colfax Ave., Denver, CO
- Safe City Kids Office – 303 W. Colfax Ave. 10th Floor, Denver, CO

**Appendix E**  
**Citizen Oversight Board**  
**Biographies and Meetings**

## Citizen Oversight Board (COB)

The Citizen Oversight Board (“COB”) is responsible for assessing whether the Office of the Independent Monitor is effectively performing its duties, making recommendations regarding policy and training issues, and addressing issues of concern to the community and other interested stakeholders. The COB will meet at least quarterly in public with the Manager of Safety, the Chief of Police and the Undersheriff and will conduct at least three meetings annually for public comment. The COB will also make an annual report to the public, Mayor and City Council and may furnish additional public reports as necessary.

### 2015 COB Members

- Dr. Mary Davis is the Chair of the COB. She has been actively involved in civic and community-improvement activities since arriving in Denver more than 30 years ago. She began her career in healthcare as a registered nurse and moved into the education sector as an undergraduate and graduate faculty member. Davis was the Director of Administration at the Regional Transportation District for 10 years prior to launching McGlothlin Davis, Inc., an organizational effectiveness consulting firm in 1995. She has served on numerous nonprofit boards including the Denver Chapter of the American Cancer Society, The Denver Hospice, The Learning Source, and Goodwill Industries of Denver, serving as board chairperson of the latter two organizations. Other community-based activities include serving on school accountability committees, nonprofit scholarship committees, higher education advisory committees, and as director of Children’s Church at two churches.
- Francisco “Cisco” Gallardo is the Vice Chair of the COB. In his teen years, he joined what has been one of the largest gangs in Denver’s north side. Since that time, after facing a possible 48 years in prison, he has dedicated his life to undoing the damage he helped cause. By redefining respect, power and pride and making a commitment to help the youth heal, he has helped countless young people, over the past 20 years, to redefine their own lives through his work in the community.
- Nita Gonzales is a native of Denver and the oldest daughter of Rodolfo “Corky” Gonzales and Geraldine Gonzales. She is the President/CEO of Escuela Tlatelolco Centro de Estudios, the forty-one year old Chicano school founded by her father. She received her Bachelor’s of Science in Accounting and Master’s in Education from Antioch University, in Yellow Springs,

Ohio. Her work includes being one of the founders and organizers of the Chicano/Chicano/Mexicano Education Coalition comprised of 23 community organizations and groups. She has also provided essential leadership in the All Nations Alliance, a coalition of over 80 social justice organizations from Denver-Boulder. Ms. Gonzales is the recipient of many awards and honors for her work in educational and community empowerment, and she continues to work as a community-builder, visionary, and mentor across color boundaries, across cultures, and across age groups.

- Pastor Paul Burleson is the president-elect of the Greater Metro Denver Ministerial Alliance. He founded Denver's Friendship Baptist Church of Christ Jesus in 1974 and continues to serve as its pastor. He also spent 28 years as an engineer with U.S. West Communication and four years in the U.S. Air Force. A former dean of the United Theological Seminary's Denver Extension, Burleson is experienced in the prevention, identification, and counseling of individuals and families with substance abuse and other at-risk behaviors.
- Mark Brown is the Agent-In-Charge for the Colorado Department of Revenue, Division of Racing Events; a regulatory law enforcement agency. His duties include management of administrative judges, law enforcement officers, licensing personnel and veterinarian staff. In addition to those duties, he also conducts firearms and arrest control technique training.
- Roger Sherman is chief operating officer of CRL Associates, a Denver-based government relations, public affairs and strategic communications firm. Highly respected for his skills in coalition building, community outreach and public positioning, Roger is experienced at forging links between diverse interests and groups. He is on the board of directors of SafeHouse Denver, which serves victims of domestic violence and their children through both an emergency shelter and a non-residential Counseling and Advocacy Center. He also is a member of the State Commission on Judicial Performance. Roger earned a bachelor's degree in communications from Colorado State University. He resides in Denver's Congress Park neighborhood.
- Rabbi Steven E. Foster took his first position as an ordained rabbi at Temple Emanuel in 1970 and became the Senior Rabbi in 1981. He brought to his rabbinate a deep commitment to social justice, Jewish education and Jewish continuity. His work in founding the Temple Emanuel Preschool and Kindergarten, Herzl Day School, Stepping Stones to a Jewish Me (an outreach program for interfaith families) in addition to his far reaching community work such as serving on the boards of Planned Parenthood of the

Rocky Mountains, United Way, and Allied Jewish Federation to name a few, demonstrate his commitment to the Jewish and secular community alike. Rabbi Foster retired as Senior Rabbi in June, 2010, and now serves as Rabbi Emeritus of Temple Emanuel as well as chaplain for The Denver Hospice.

## **Regular COB Meetings**

COB meetings are usually held on the first and third Fridays of each month on the 12th floor of the Wellington Webb Building at 201 W. Colfax Avenue. It is advised that you call to confirm in advance if you plan to attend to ensure the Board will be meeting.

## **2015 Quarterly Public Forums**

COB public forums are usually held in the evenings from 7-8:30 p.m. in rotating police districts in Denver. In 2015 public forums were held on the following dates and in the following locations:

1. March 19, 2015 – District 1 – Cheltenham Elementary School, 1580 Julian Street
2. June 4, 2015 – District 3 – Cory Elementary School, 1550 South Steele Street
3. September 24, 2015 – District 4 – Barnum Recreation Center, 360 Hooker Street
4. December 3, 2015 – District 5 – Rachel B. Noel Middle School, 5290 Kittredge Street

## **Proposed 2016 Public Forums**

1. March 31, 2016 – District 6 – Parr-Widener Room, City and County of Denver Building, 1437 Bannock Street
2. June 16, 2016 – District 2 – Location to be announced
3. September 22, 2016 – District 1 – Location to be announced
4. December 8, 2016 – District 3 – Location to be announced





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