



ANAHEIM POLICE DEPARTMENT

TO MAINTAIN A SAFE COMMUNITY TO LIVE, WORK, AND PLAY

Response to OIR Group Independent
Review June 2021 Report

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ANAHEIM POLICE DEPARTMENT

JORGE CISNEROS, CHIEF OF POLICE

July 2021

To Our Community,

The Anaheim Police Department is committed to remaining guardians who work in partnership with our community. We will continue to provide exceptional public safety service to Anaheim's residents, business owners, and visitors. We will accomplish this service by enhancing community relationships, proactively impacting crime, and striving to be a high performing organization. I am committed to delivering to you law enforcement professionals who uphold our Department mission of maintaining a safe community to live, work, and play.

As your Chief of Police, I am committed to innovation, while maintaining the highest level of transparency, accountability and inclusiveness to our community. I am proud of our community engagement projects such as the Chief's Advisory Board, our District Policing Teams, Cops4Kids, Senior Volunteers, Youth Police Explorers and PACE programs, which help to illustrate the law enforcement philosophy of the Anaheim Police Department. Our mechanisms for transparency; such as our Data Release Unit (AB748 & SB1421), as well as, the Anaheim Police Review Board and our partnership with the Office of Independent Review serve as models for the law enforcement community. There are few agencies more self-critical than the Anaheim Police Department. To ensure our accountability, we review all uses of force, hold Critical Incident Community Briefings, internally examine incidents using our Major Incident Review Team, and support the Orange County District Attorney's Office to conduct independent officer-involved shooting or in-custody death investigation.

Our success can only be achieved through continuous self-improvement, innovation, and the continual refinement of our approach to the challenges of policing. Recently we began the journey of seeking National Accreditation through the Commission of Accreditation for Law Enforcement Agencies (CALEA), as well as, creating a new Professional Standards Detail, which will focus on internal audits, operational improvements, and quality control.

At the end of the day, our core foundation of developing trust cannot happen through policies, initiatives, technology or oversight alone. Trust is built through daily interaction and engagement. Every day, in every contact our women and men are engaging and serving our community and strengthening trust through the delivery of professional and highly competent service.

I am humbled and honored to serve as your Chief of Police, and proud of the amazing work being done on a daily basis by our women and men serving you, our community!

Thank you,

JORGE CISNEROS
CHIEF OF POLICE

INTRODUCTION

As first responders, the law enforcement profession is accustomed to dealing with crisis. We are frequently called to bring control to chaos, protection to those being victimized, and comfort to those in despair. Oftentimes our heroic women and men put their own lives in imminent jeopardy to safeguard those in need. For their actions, officers are judged and critiqued for the split-second decisions made in life-threatening situations. The stress and pressure has always been there, but never to the extent we have seen in 2020. From a global pandemic, to National civil unrest, to waves of social and political conflict, to include calls for reform and defunding the police, the policing profession has been weathering multiple massive storms.

The members of the Anaheim Police Department have been able to withstand these storms because of their unwavering commitment to their oath, the profession and to our community. Their dedication and devotion are truly remarkable. Despite the attempt by some to paint law enforcement with a broad and negative brush, the reality is, the vast and overwhelming majority of those that wear the Anaheim Police uniform are noble, dedicated, selfless, and honorable individuals.

As government officials, we welcome and expect scrutiny, which is justifiably warranted given the immense authority and responsibility law enforcement is bestowed. There is truly no other profession with the extent of accountability and oversight than the law enforcement profession.

Within the law enforcement community, there are few agencies more self-critical than the Anaheim Police Department, which is why in any officer involved shooting, we not only ensure that policies were adhered to, but gain valuable insight in terms of training, tactics, procedures, equipment, policy, command & control and post-incident community recovery.

Effective policing requires the trust and partnership of the community we serve, and the Anaheim Police Department recognizes the critical role transparency plays in strengthening trust. For well over a decade the Office of Independent Review has had unfettered access to and has produced regular reports on our entire department operations, notably internal affairs, all use of force and critical incidents including officer-involved shootings and in-custody deaths.

The Police Review Board, is the Department's civilian oversight board. The only one of its kind in Orange County, this Board provides a forum and process for community concerns and complaints to be brought forward, and a public platform whereby greater awareness and understanding of department operations can be achieved.

We also welcome the new California Department of Justice statewide protocol of conducting independent criminal investigations on officers involved in shootings involving special circumstances.

As public servants, we will always be evolving, changing, and improving based on the needs and expectations of the community we serve. As always, we welcome the opportunity for feedback and constructive criticism and in this document, we will be responding to OIR's most recent recommendations.

RESPONSE TO RECOMMENDATIONS

RECOMMENDATION #1

In every officer-involved shooting, the MIRT process should evaluate planning, communication, and tactical decision-making with an eye toward reinforcing effective performance and remediating (at the officer or Department-wide level) where necessary.

The Anaheim Police Department not only agrees and supports this recommendation, but the Department has also been consistent in following this practice through the Major Incident Review Team (MIRT). APD Policy #301.1, under Purpose and Scope, states:

“The Anaheim Police Department is charged with the responsibility of objectively evaluating the use of deadly force. This policy establishes the process to investigate and review the use of deadly force by employees of this Department, as well as the process for reviewing highly significant incidents. The intention of this policy and these investigations is to identify any areas where improvement can be made, and to better prepare and equip officers to meet the challenges they face in the field through improved tactics, training, policies, equipment, communications, and command and control. When a critical incident such as an officer-involved shooting or other police-related traumatic event occurs in a community, the Anaheim Police Department is committed to mitigating the impact of these events through community post-incident recovery measures. The identification and implementation of these measures will be included in the MIRT investigation and review.”

After a MIRT presentation, there are often action items or projects that may have been identified, as areas of improvement. When these action items are completed, the work is documented and added to the final MIRT Report.

RECOMMENDATION #2

APD should survey the use of weapon-mounted lights on authorized weapons, and determine whether modifications are needed regarding approved equipment and/or training.

The Anaheim Police Department agrees and supports this recommendation and has incorporated this recommendation into our Department Policy. APD Policy #307.6.3, under Weapon Mounted Lights, states:

“A weapon mounted light is a lighting device specifically designed to be affixed to a weapon and illuminate areas or subjects. Weapon mounted lights are subject to the following requirements:

- a. Weapon mounted lights attached to duty handguns or rifles must be approved by the Weapons Training Unit.*
- b. Officers must attend the Department’s weapon mounted light training course before they will be authorized to carry a weapon mounted light on a duty handgun. The training course will include a review of policy, proper light use guidelines and a qualification course.*
- c. Handgun weapon mounted lights must be affixed to the weapon and remain in place for the duration of the officer’s shift. A holster that is designed for the weapon in conjunction with the light must be worn by the officer while carrying the weapon mounted light.*
- d. Weapon mounted lights are not a substitute for the Officer’s hand-held light. Searches of persons, vehicles or property, when no threat can be articulated, must be conducted with a separate hand-held light.*

e. The use of a weapon mounted light is restricted to those situations where an officer would be authorized to have his/her weapon drawn.

f. Handgun weapon mounted lights and holsters are optional equipment, purchased at the officer's expense. All equipment must be purchased prior to training.

Any violation of this policy or the weapon mounted light outside of the training guidelines will result in discipline and/or the removal of the weapon mounted light."

RECOMMENDATION #3

APD should revise its investigative protocols to ensure that any officer involved in a shooting is interviewed prior to the end of shift.

The Anaheim Police Department disagrees with this recommendation, as it did when OIR brought this same recommendation up in 2019. The Department follows state law, industry standards, evidence-based best practices, and Orange County protocol concerning officer-involved shootings.

As an example, the U.S. Department of Justice and International Association of Chiefs of Police (IACP) authored a report entitled, "Officer-Involved Shootings: a Guide for Law Enforcement Leaders" published in 2016. Regarding interviewing officers involved in shooting, the report states:

"At a point following the incident (shooting), investigators should conduct an interview with each involved officer. Some law enforcement agencies require these interviews to be conducted as soon as is practical. The IACP Police Psychological Services Section recommends delaying personal interviews from 48-72 hours in order to provide the officer with sufficient recovery time to help enhance recall. This interval is particularly recommended for officers who were directly involved in the shooting, but in may also be necessary for officers who witnessed the incident but did not discharge their firearm."

In 2019, the Department established a requirement to obtain an administrative interview of the involved officer within seven (7) days of an incident. This protocol is documented in APD Policy #305.5, under Statements Given by Involved Officers, states:

"Subsequent to an officer being involved in a shooting, and not withstanding any extenuating circumstances, the officer is expected to provide a voluntary statement, subject to questioning by investigators, regarding his/her involvement in the shooting as soon as practicable.

If a voluntary statement, which is subject to questioning by investigators, has not been provided or at the very minimum scheduled within seven (7) calendar days, the Division Commander of the involved officer shall order the officer to give a statement to the Department's Major Incident Review Team..."

We remain confident the goal of obtaining a timely statement from the involved officer has and will continue to be met. Further, the omnipresent availability of body worn camera video evidence, as well as, witness statements, surveillance video and other physical evidence often provides the best evidence of what occurred before, during and following an officer involved shooting. The mindset of the officers and the associated rationale for their decisions is obtained from an interview. It is the department's position that the period for obtaining those statements has been reasonable and has not compromised the value, nor the integrity of the investigation.

RECOMMENDATION #4

APD should revise its investigative protocols to ensure that officers involved in a shooting provide a pure statement prior to reviewing any audio/video footage of the incident.

This recommendation is another repeat recommendation OIR brought forth in their 2019 report. As per Orange County protocol, the Orange County District Attorney's office is the lead criminal investigation entity regarding the investigations of an officer involved shooting. APD policy 306.6.2, under Criminal Investigation, states:

"It shall be the policy of this department to utilize the District Attorney's Office to conduct an independent criminal investigation into the circumstances of any officer-involved shooting involving injury or death."

APD does not dictate the investigative methods or process used by the District Attorney's office. Should the District Attorney's office decide to allow an involved officer to view their body worn camera footage before an interview, it is within their purview and investigative discretion.

On few occasions, based on the totality of the circumstances, APD does obtain an interview of an involved officer and when this occurs, APD follows the department protocol. APD policy 425.7, under Review of BWC Media Files, states:

"Unless prohibited by applicable law, recorded files may be reviewed in any of the following situations by the following personnel:

- l. An officer involved in the intentional discharge of a firearm, an incident where any party sustains great bodily injury, or an in custody death shall not review recorded files unless approved by the Chief of Police or the Deputy Chief of Police.*
- m. Subject to the provisions of this policy, the Chief of Police or the Deputy Chief of Police has the discretion to prohibit the review of any recordings by Department employees if it is determined it is in the best interest of the Police Department or the City of Anaheim."*

In these unique occasions where APD is the lead entity interviewing the officer, the officer is not allowed the ability to view their BWC footage, unless approval has been granted by the Chief of Police. These decisions are evaluated and determined on a case-by-case basis and weighed against many factors. The most overriding factor is the department's ability to obtain a comprehensive and detailed statement for critical examination of these events and to aid in the ultimate decision of whether the actions were within or outside of policy.

RECOMMENDATION #5

APD should incorporate supplemental administrative interviews, and an assessment of tactical considerations, into its standard approach to critical incident review.

We agree and although we strive to meet this standard, we believe there needs to be a more precise delineation as to the roles and responsibilities of MIRT. As a result, we have implemented a procedure where all officer-involved shootings will generate an independent administrative investigation, separate from the MIRT and the criminal investigation. Internal Affairs will conduct the Administrative Investigation and look at the officer's adherence to policy and procedure. This direction will allow the MIRT review to focus on the tactics, training, policies, equipment, communication, command & control, and community

recovery. The criminal investigation will continue to investigate any criminal culpability by the involved individuals.

RECOMMENDATION #6

The Department should review critical incident interviews with an eye toward identifying and addressing insights into officer mindset or response that may emerge, as well as identify comments that raise issues of professionalism or mindset and address as needed.

This recommendation is based on OIR's review of an officer-involved shooting. OIR does a disservice to the officers involved and the community by not thoroughly describing the officers' perceived grave threat. Officers attempted to de-escalate a volatile situation involving an uncooperative suspect when the suspect produced, what appeared to be a firearm and pointed it at the officers. This deliberate act of violence by the suspect caused an officer-involved shooting.

A sergeant involved in the incident provided a statement to investigators before the end of his shift. The sergeant was emotionally impacted by this life-threatening event that occurred moments earlier. The sergeant provided a statement describing his mindset at the time of the incident.

Although officers have extensive training to address, react, and de-escalate complex and stressful situations, the fact is, they are still human beings with the same strengths, needs, and vulnerabilities as any other human being. Victims of violent events often experience trauma – physically, mentally, and emotionally. Asking victims or officers to provide statements about their horrific experience, especially when it occurred moments earlier, can often overwhelm them with the same emotions, fear, and stress they experienced during the initial incident.

Our department pauses for a while before obtaining a statement from officers involved in a critical incident. This recovery period allows officers exposed to emotionally traumatic and life-threatening events to compose themselves and help enhance their recall. *(See response to recommendation #3 above)*

RECOMMENDATION #7

APD should re-evaluate its policy and training on restraining prone subjects using an officer's body weight.

We agree with this recommendation of continually re-evaluating our overall tactics while attempting to restrain a resistant subject. We have invited and continue to welcome OIR to attend our department defensive tactics training to help them understand our training and provide clarity to prevent any misunderstanding or lack of knowledge.

RECOMMENDATION #8

The Department should debrief the involved officer and review and update its training curriculum to correct the false perception that a subject's ability to talk indicates that his breathing is not being restricted.

We agree and will implement department training related to this issue.

RECOMMENDATION #9

APD should always consider the viability of safer tactics as a component of its standard analysis in critical incident reviews.

We agree and we continuously conduct critical analysis after critical incidents to look at many variables, which includes tactics. MIRT reviews consider the reasonableness of the actions by the officers based on the totality of the circumstances they were faced with at the time of the event.

RECOMMENDATION #10

APD should further refine its process of providing notification letters to complainants so as to maximize opportunities to provide meaningful information and strengthen community relations.

We agree with this recommendation and recognize we can always look for opportunities to strengthen community relations.

RECOMMENDATION #11

APD should review its approach to addressing transgender individuals in light of their preferred gender identity, and make formal adjustments to policy and training.

City of Anaheim employees receives mandatory training on social and cultural diversity, inclusiveness, and community awareness. In addition, California Peace Officer Standards and Training (POST) provides specific and ongoing required training for all peace officers regarding social and cultural diversity, gender identity, and implicit bias. This recommendation is based on one notification letter reviewed by OIR, in which, a transgender complainant was inadvertently addressed in keeping with their biological sex rather than their preferred gender identity. In this incident, we could have done better.

RECOMMENDATION #12

APD should consider alternatives to discipline and “days in abeyance” as concepts to enhance its ability to provide appropriate and meaningful consequences in the event of policy violations.

Anaheim Police adheres to California Peace Officer Bill of Rights, employee rights as outlined in city administrative regulations and employee association MOUs. If it is determined corrective action is necessary, APD uses progressive discipline when determining consequences in events of policy violations. Each matter is evaluated on a case-by-case basis. Any imposed discipline is intended to correct behavior, hold the employee accountable, and assure the right message is delivered. Anaheim Police uses various methods to assess consequences such as, supervisor logs, letters of reprimand, re-training, suspension, demotion, and termination of employment. APD will consider this recommendation as part of its options when correcting behavior and holding individuals accountable.

RECOMMENDATION #13

APD should take advantage of identified issues during its administrative review process and follow-up with appropriate, constructive interventions – even when underlying allegations are not substantiated.

We agree with this recommendation.

RECOMMENDATION #14

APD should require supervisors to evaluate all the circumstances surrounding a use of force before reaching a conclusion about whether the force was consistent with APD policy, and should pursue and document any related insights or lessons learned from the broader event.

We agree with this recommendation. APD requires supervisors to evaluate the circumstances surrounding a use of force, in addition to determining if the use of force was in or out of policy. All use of force incidents are investigated by a supervisor and documented in the Force Analysis System (FAS). The use of force investigation is then reviewed by lieutenant, as outlined in Policy 300.7.1, under Management Responsibility, which states:

“A lieutenant or above shall review each use of force by any member to ensure compliance with this policy and to address any training issues. At the completion of the management review process, the use of force review shall be forwarded to the MIRT Sergeant for final disposition.”

All use of force investigations are forwarded to the Major Incident Response Team (MIRT) Sergeant for final disposition. Policy #300.10, under Use of Force Analysis states:

“At least annually, the MIRT Sergeant should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects or case numbers, and should include:

- a. The identification of any trends in the use of force by members.*
- b. Training needs recommendations.*
- c. Equipment needs recommendations.*
- d. Policy revision recommendations.”*

Finally, APD focuses on training on this policy to assure knowledge, understanding and proficiency of the protocol. Policy #300.9, under Training states:

“Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

Subject to available resources, the Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include (Government Code § 7286(b)):

- a. Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.*
- b. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.”*

Although, according to OIR, we may have had a few “missed opportunities”, such as commending officers for positive performance, very few agencies are as self-critical as APD and we will continue to strive for improvements.

RECOMMENDATION #15

APD should develop policy that instructs officers who use force to describe any attempts to de-escalate the situation prior to the application of force, and if no de-escalation efforts were attempted, to explain why such efforts were not feasible.

We agree with the recommendation. Additional language was added in Policy #300.3.1, under Alternative tactics – De-Escalation, which states:

“Officers who use force should describe in their report whether any de-escalation strategies were deployed or attempted prior to the application of force. If not used, explain why de-escalation was not feasible.”

RECOMMENDATION #16

APD should develop policy that instructs supervisors who are reviewing use of force incidents to consider and include in their analysis the officers’ use of de-escalation techniques, and if none were attempted, to evaluate the officer’s decision-making under the circumstances.

We agree with the recommendation and have recently incorporated this recommendation into our policy on March of 2021. Policy #300.7 section c, under Supervisor Responsibility states:

“Conduct a use of force investigation for all use of force incidents via the Force Analysis System (FAS). The investigation should include a review of de-escalation tactics or attempts pursuant to this policy.”

RECOMMENDATION #17

APD should tighten its “Supervisor Responsibility” section of its use of force policy to require supervisors to interview the person upon whom force was used, absent clearly documented extenuating circumstances.

We agree with the recommendation. The existing policy clearly outlines the supervisor’s responsibilities when conducting a use of force review, which requires a recorded interview of the person upon whom force was used, absent clearly documented extenuating circumstances. We agree there needs to be clarity in the policy of the responsibilities of a supervisor, when the supervisor is not able to obtain a statement. For clarity purposes, an addition to Policy #300.7, under Supervisor Responsibility was added, which states:

“n. If a supervisor is not able to obtain an interview of the person upon force was used, they will need to clearly document the extenuating reason, which should also be recorded by the Sergeant body worn camera.”

In addition, updated training will be provided to all supervisors regarding the addition language listed above.

RECOMMENDATION #18

In cases where a sergeant uses or directs force, APD should assign the task of completing the FAS entry and analysis of policy compliance to an uninvolved sergeant or lieutenant.

We agree with this recommendation and have incorporated this recommendation into our Department Policy. APD Policy #300.7, under Supervisor Responsibility, states:

“o. A supervisor cannot conduct a use of force review if they applied force in the incident or directed the force to be used. When a supervisor uses force or directs force to be applied, another supervisor or lieutenant will be required to complete the use of force review.”

It should be noted, the mere request by a supervisor for additional specialty equipment is not, in itself, considered a direction or order for an officer to use force. Supervisors should be assessing and assuring the proper resources and safety equipment are present in order to safely and effectively resolve a critical incident. Each officer is required to make the independent decision to use force, based on the totality of the circumstances. In extreme circumstances, when a supervisor directs an officer to use force, another supervisor or lieutenant will complete the use of force review.