



CITY OF  
**PORTLAND, OREGON**  
BUREAU OF POLICE

**TOM POTTER, MAYOR**  
Derrick Foxworth, Chief of Police  
1111 S.W. 2nd Avenue  
Portland, Oregon 97204

**Integrity      Compassion      Accountability      Respect      Excellence      Service**

August 22, 2005

Ms. Leslie Stevens, Executive Director  
Independent Police Review  
B 131 City Hall

SUBJ: Police Bureau Responses  
Police Assessment Research Center

Dear Ms. Stevens:

I am pleased to provide you with our responses to the ten recommendations from the Police Assessment Research Center's (PARC) July 2005 report.

Since the first report from PARC with 89 recommendations, we have completed 78, one was referred, six are in progress and we have rejected four. I believe the Bureau has made significant progress on revising our policies and procedures regarding officer-involved shootings. We conducted a great deal of research and studied other agencies' policies and practices, and also conferred with many of our community partners on what would work best for Portland. We continue to have our community more and more involved in reviewing and providing feedback on our directives and new procedures and I regularly meet with organizations such as the Albina Ministerial Alliance, our policy advisory committees, and business and neighborhood groups to continue discussions on how to improve this agency.

This community policing foundation has helped our agency work with the community to identify areas where we can improve and to work together on those improvements. It is important that the Bureau and the community get there together.

Here are a few highlights on the progress we have made:

- Directive 1010.10 Deadly Physical Force has been significantly revised and includes sanctity of life preface and restrictions on shooting at moving vehicles.
- Directive 335.00 Performance Review and Use of Force Review Boards and Directive 341.00 Discipline Process now includes citizens and peers as voting members on the Use of Force Review and Performance Review Boards.
- We created a use of force report form to track and document all use of force incidents.
- New standard operating procedures are in place in Detectives, Internal Affairs and Training divisions to better document communications restrictions, investigative protocols, crime scene management and review board procedures.

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- The Training Division created a Citizens Training Council to provide feedback on training and tactics and continues to monitor the use of the Taser.

Below are the Police Bureau responses to the ten recommendations from PARC.

**Recommendation 2005.1: The PPB should set a firm deadline for making its early intervention system operational and should prioritize its resources so as to ensure meeting that deadline.**

We are in agreement with this recommendation. In order to implement, the Early Intervention System needs additional dedicated resources. The Police Bureau is currently considering a proposal offer to begin design of an early intervention system. Pending approval, the developer could begin implementation in September with a target date to begin full use of the system in early spring next year.

As a result of a nationwide search of other police departments, the Dept. of Justice, national law enforcement organizations and academic experts, for information on best models in early intervention systems, Phoenix Police Dept. and Denver Police Dept. have emerged among the best in the nation. After an on-site presentation by the developer of these two models, the Police Bureau has approached the developer to prepare a proposal to design a similar system for us.

The project vision is the creation of a database that will automatically interface with other data systems for the rapid, centralized collection of information on important elements of employee behavior. This would allow supervisors to see any trends or problems as they develop and suggest intervention strategies to support employees and make corrections or improve performance. In determining the need for intervention, supervisors will be able to consider data in numerous categories that will include incidents of citizen complaints, use of force, accidents, civil claims, arrests made by the officer and information on citations issued. Additional data will include employee work and assignment history, work hours and leave data.

I plan to form an Office of Professional Standards with a dedicated unit to ensure accountability and compliance. I will also recommend this as a budget add package to City Council during the next budget cycle.

**Recommendation 2005.2: The PPB should promptly draft procedures to govern the administrative investigations by the Training Division concerning officer-involved shootings, in-custody deaths, and injuries resulting in hospitalization, and it should supplement its procedures for such investigations by the Internal Affairs Division so that they are at least as thorough as its procedures for misconduct investigations.**

We agree with this recommendation. The Internal Affairs Division (IAD) has new Standard Operating Procedures (SOPs) in place and is currently developing a checklist. The Training Division has a checklist and will include in their SOPs. Detectives SOP #37 and DIR 1010.10 Deadly Physical Force already include procedures on administrative investigations.

The Police Bureau will conduct a pilot project on the Force Investigation Team (FIT) proposal this fall. The proposal will review how we investigate and review deadly physical force

incidents. We believe it is necessary for the Detective Division to remain in charge of any investigation (and to comply with Oregon requirements that the District Attorney is in charge of all homicide investigations as well as having authority over the criminal investigation of police use of deadly force). Our Portland model has Internal Affairs and Training responding to officer involved and in-custody death scenes. Both Internal Affairs and Training will be provided information from Detectives to minimize concerns over immunity or influencing the criminal investigation. Detectives will brief Internal Affairs and Training as the investigation progresses. All case files will be made available to Internal Affairs and Training at the conclusion of the criminal investigation and grand jury findings.

The Detective Division completed a survey of major cities on the issue of when the administrative investigation began in relation to the criminal investigation. Out of the 14 agencies contacted, 13 had at least one member of their administrative investigation team respond to the scene of the incident. Only three of the 13 agencies (Memphis, Newark and New York) took an active role (interviewing witnesses or officers) in the investigation. The remaining ten agencies had representatives observe the scene or may monitor interviews.

The District Attorney's office cautions the Police Bureau against allowing the administrative investigation to influence the criminal investigation. Please read attached letter from Multnomah County District Attorney Michael Schunk. We are not going to use an overlay model based on the District Attorney's letter.

**Recommendation 2005.3: PPB policy should make clear that administrative investigations of in-custody deaths and uses of force resulting in hospitalization are mandatory by eliminating the contradictory provisions from Section 335.00 that make them discretionary.**

We agree and we are making changes to DIR 335.00 Performance Review and Use of Force Review Boards to make it mandatory for Internal Affairs and Training to investigate in-custody deaths. Training and Internal Affairs will include language in their SOPs and will clarify language regarding investigations required for hospitalizations resulting in the patient being admitted. In some cases, an individual booked into jail will require hospitalization. We need to clarify the types of command notifications and we will continue to research this issue.

In DIR 335.00 Performance Review and Use of Force Review Boards, we will make a pen change to remove the words "as needed" from the Procedures section.

**Recommendation 2005.4: PPB policy should prohibit involved officers from being transported by their assigned partners and should require, when feasible, that the transportation be done by a supervisor or a detective.**

We disagree with this recommendation. Our current policy is adequate. DIR 1010.10 Deadly Physical Force, under the Involved Member Responsibilities, section g, says an uninvolved member will be assigned to transport each involved or witness member.

The Communication Restriction Order prohibits communication among members. Detective investigators also ask the involved and witness members during the interview process if anyone

has discussed the details of this case with them or have they learned information about the incident from sources other than that of their own observations. This was a question that was added at the request of PARC. We believe that there are sufficient protocols and procedures in place.

**Recommendation 2005.5: PPB procedures should require (a) that a supervisor and sufficient cover officers be present before members try to extract an apparently unarmed person from a vehicle, and (b) that tactics calculated to protect the safety of both the officers and the occupant of the vehicle be employed.**

We disagree with the requirement to have a supervisor present. While having a supervisor present is desirable, it is unreasonable to expect that all vehicle extractions would require a supervisor to be present or that one would be available.

We currently have two sergeants assigned to a shift. We thoroughly train our officers on vehicle extraction methods, cover, and high risk stop tactics. Training discourages solo officers from extracting individuals from vehicles. Depending on circumstances, we want to leave some discretion and judgment to the officer on scene. The officer's experience, training and circumstances provide the ability to make an informed decision at the time. DIR 1010.20 Physical Force includes language on extracting individuals from vehicles and the 2004-05 in-service training included tactics on extracting individuals from vehicles.

**Recommendation 2005.6: The PPB should develop a policy that prohibits it from responding to routine patient management situations in mental health facilities, and the Bureau should advise all mental health providers in the City of Portland of that policy.**

We are not in the position to refuse to respond to a call for service; however, we are putting into place appropriate protocols for officer, patients and mental health staff safety. Not showing up is not an option. Draft directive 850.25 Police Response to Mental Health Facilities outlines the Multnomah County protocols that the Police Bureau and the mental health providers follow in responding to patient management situations. The policy says that "Only those calls from crimes in progress, armed individuals on premises or property, or serious assaults to residents or staff will result in a call for police services."

Currently the Police Bureau is developing a partnership agreement with Multnomah County Mental Health Department and Project Respond that defines the roles and responsibilities of each partner in the management of patients in mental health facilities and outlines the protocols for specific calls for service.

**Recommendation 2005.7: The PPB should clarify its policies relating to medical attention and rendering aid to make clear that officers who have used deadly force are required to ensure that medical aid is rendered to injured persons as soon as possible, unless the circumstances clearly demonstrate that to do so would unreasonably endanger the officers or the medical personnel.**

We agree with this recommendation and have already incorporated rendering medical aid to injured persons in the following directives: DIR 630.50 Emergency Medical Aid and DIR 1010.10 Deadly Physical Force. In DIR 1010.10, under section Post Use of Force Medical Attention, it says that “When a person has been injured by the use of force by a Bureau member or there is a potential for injury to that person, a member shall continually monitor the subject, if tactically feasible or appropriate. “ It also says that “the member shall monitor the subject for changes in their skin color, breathing and levels of consciousness. If any significant changes in any of these areas are observed, the member shall notify EMS immediately.”

**Recommendation 2005.8: The PPB should promulgate the policies and procedures necessary to require an administrative investigation by Internal Affairs and a explicit determination by the Use of Force Review Board as to whether there was compliance with the policies for ensuring that medical aid is appropriately and timely rendered, following the use of deadly force and whenever a person is seriously injured.**

This recommendation is covered in the Internal Affairs reports and Internal Affairs is incorporating into their SOPs. It is included in draft DIR 940.00 After Action Reports and the Detectives checklist. All information is considered by the Use of Force Review Board.

**Recommendation 2005.9: Supervisors in the Detective Division should review the work done by investigators to ensure that deadly force cases are appropriately investigated, and the results are properly documented.**

We consider this recommendation completed. DIR 1010.10 Deadly Physical Force and the Detectives SOP #37 and the Homicide sergeant’s checklist include these protocols. The pre-interview has been eliminated. The homicide sergeants review all the investigators reports. A new interview monitoring system in place will supplement our current procedures to ensure there are checks and balances.

**Recommendation 2005.10: The PPB should adopt procedures requiring (a) that deadly force investigations be led by an officer of a rank equal to or greater than the rank of the most senior officer playing a role in an incident, and (b) that interviews of witness officers of command rank be conducted by, or in the presence of, an officer of at least equal rank to the member providing evidence.**

We consider this recommendation completed. We have adopted this procedure and it is included in the Detectives SOP #37. Internal Affairs added this procedure to their SOPs.

In addition to these responses, I am also attaching an updated matrix of the PARC report of 89 recommendations. I hope you have an opportunity to review our responses.

I believe that the Bureau’s goals and values reflect a standard of accountability. We successfully partner with the diverse communities here in Portland and our new policies reflect the communities’ feedback on improving police performance.

I reflect back on themes that emerge from a strong organization dedicated to the community policing philosophy including:

- We need to recognize the challenges to making changes within our agency that rely on commitment from the organization and the leadership.
- We need to establish a clear set of goals, values and strategies for the organization that meet the needs of everyone involved.
- A new use of force policy alone does not ensure change to any organization. While all organizations may resist change, any improvements will involve transforming the culture of the organization.
- Likewise, we need to engage the police unions as partners in moving forward.
- Partnerships within the community – the community must be involved in any and all policy decisions.

By working together, we stress the importance of being open and transparent to Bureau members and to the communities we serve.

I look forward to meeting with you to discuss the status of PARC's current review of officer involved shootings and provide you with further updates on our progress.

Sincerely,

A handwritten signature in black ink that reads "Derrick Foxworth". The signature is written in a cursive, flowing style.

DERRICK FOXWORTH  
Chief of Police

DF/mp

cc: Mayor Tom Potter  
AC Jim Ferraris  
AC Stan Grubbs  
AC Jim McDaniel  
Capt. Rod Beard, IAD  
Jane Braaten, PSD Manager

attachment: August 2005 PARC matrix

# Status of Police Assessment Resource Center (PARC) Recommendations

As of August 2005

Definitions:

**Done:** reviewed, and fully or partially implemented

**Refer:** This recommendation is considered a city responsibility.

**In progress:** has not been completed or fully implemented.

**Rejected:** Bureau disagrees with recommendation.

Summary Status of Recommendations:

**Done:** 78

**Refer:** 1

**In progress:** 6

**Rejected:** 4

Number	Recommendation	Status	Date	Assigned	Details
3.1	Add a preamble or mission statement to the written deadly force policy, underscoring the Bureau's reverence for the value of human life and its view that deadly force is to be used only where no other alternatives are reasonably available.	Done	8/1/2005	Services	We consider this recommendation completed. DIR 1010.10 includes sanctity of life statement. We have reviewed this recommendation with our partners in the City Attorney's office and in the community. Portland officers find an alternative to the use of deadly force in the majority of situations in which it is justified, and most often use deadly force only as a last resort. During many events that require an officer to consider deadly force, especially those that develop quickly, the thinking demanded by a "last resort" standard is inappropriate and dangerous for all involved. A performance standard that would force officers to engage in the thinking process required by a "last resort" standard would degrade the quality of thinking by officers during these difficult events. It would also unnecessarily expose the City to liability exposure by creating an unrealistic standard of care, and could not be successfully defended in challenges to discipline. As an agency, we will continue to search for and adopt tools, techniques and procedures that help officers avoid the use of deadly force when practical.

Footnotes:

\* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

\*\* 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
3.2	Expand written deadly force policy to provide that certain uses of force, such as strikes to the head or other vital areas with impact weapons, may not be used unless the officer is justified in using deadly force.	Done	8/1/2005	Services	We consider this recommendation completed. DIR 1010.10 states that "members must be mindful of the risks inherent in employing deadly force" and that "flashlights, baton, body parts, and other statutorily defined dangerous weapons may constitute deadly physical force." Training incorporates this policy into current lesson plans.
3.3	Revise deadly force policy to prohibit officers from using deadly force to stop a fleeing felony suspect unless they have probable cause to believe that the suspect (1) has committed an offense involving the actual or threatened infliction or threat of serious physical injury or death, and (2) is likely to endanger human life or cause serious injury to another unless apprehended without delay. In addition, the policy should make clear that even in those circumstances, deadly force should not be used where (1) other means of apprehension are reasonably available to the officers, or (2) it would endanger the lives of innocent bystanders.	Done	8/1/2005	Services	We believe DIR 1010.10 is more restrictive than the Supreme court decision in Tennessee v. Garner and more restrictive than PARC's recommended language. Deadly force may be the most reasonable of one or more options available to an officer in a particular situation. We have added more restrictive language governing the use of deadly force: "A member may use deadly force to affect the capture or prevent the escape of a suspect where the member has probable cause to believe that the suspect poses a significant and immediate threat of death or serious physical injury to the member or others."
3.4	Consider whether it would be appropriate to revise written deadly force policy to expressly require officers to refrain from taking actions that unnecessarily lead to the use of deadly force.	Done	8/1/2005	Services	We believe we have complied with this recommendation. PARC states that the "PPB is a national leader on this issue." Training lesson plans reflect our current policy. It is stated in DIR 1010.10, under the Policy section as: "Members must be mindful of the risks inherent in employing deadly force. A member's reckless or negligent use of deadly force is not justified in this policy or state statute. Members are to be aware that this directive is more restrictive than state statutes. Members of the Portland Police Bureau should ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by engaging in actions that are inconsistent with training the member has received with regard to acceptable training principles and tactics."

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
3.5	Revise deadly force policy to clearly articulate when officers may draw or point their firearms and when they should re-holster them. In addition, require officers to report in writing each instance in which they draw and point a firearm at another person.	Done	8/1/2004	Services	The Use of Force form became effective in Aug 2004. We have vetted to our Bureau members, to the community and to City Council on what are the appropriate policies. The community and the City Council agreed that officers would write a report when he/she points a firearm at a person. We would be happy to review PARC's guidelines as to when officers may appropriately draw, point and re-holster their weapons. We have a Use of Force Report form to track incidents of less lethal and deadly force uses. The current system requires the primary officer to complete a Use of Force Report form whenever he/she draws and points a firearm. We believe the new Use of Force Report form provides for the primary officer to note that the incident was a multiple officer response. We believe the multiple officer scenarios are rare, and would include incidents such as executing search warrants and high risk stops. We will continue to review and evaluate our current policies.
3.6	Require officers to record their use of force on a separate Use of Force Report. Use the information from these reports to analyze and manage officers' use of force. Log and track information from such reports in its early warning system.	Done	8/1/2004	Operations/ Services	We are in agreement with this recommendation. The Use of Force form became effective in Aug 2004. We do collect this data and have the ability to retrieve and it will be incorporated into the Early Intervention System that the Bureau is developing. In order to implement, the Early Intervention System needs additional dedicated resources. I plan to consider forming an Office of Professional Standards with a dedicated unit to ensure accountability and compliance. I will also consider recommending this as a budget add package to City Council during the next budget cycle.
4.1	Replace Homicide-only investigative model with one that takes a multidisciplinary approach to deadly force and in-custody death cases. The IA Overlay model as enhanced by the LASD, or the enhanced Specialist Team model used in Washington, D.C., may work well in Portland.	Done	9/2/2003	Investigations/ Services	The Bureau expended much time researching existing overlay models of officer-involved shootings and in-custody deaths. After our research, Portland developed the homicide plus model. Training and Internal Affairs command will respond to the scene as part of the FIT program. The officer-involved shooting investigation now includes representatives from the Training Division and Internal Affairs.

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
4.2	Revise investigative policies regarding firearms discharges at animals and non-injury accidental discharges to require supervisors arriving at the scene to immediately notify the deadly force investigation unit of the incident. The deadly force unit should either respond to the scene and take over the investigation, or be required subsequently to review the chain of command's completed investigation for completeness and objectivity.	Done	8/1/2005	Services/ Operations	We disagree with PARC on requiring the homicide detective team to respond to the scene of animal destruction. The current oversight and review is adequate. An officer involved shooting is defined as when deadly physical force (i.e., a firearm) is used by a police officer against a person. The destruction of animals, as well as negligent discharges, are not considered officer involved shootings. All deadly physical force incidents including officer involved shootings are reviewed by the Review Level Board. The review of animal shootings and negligent discharges where no one is struck or endangered will be reviewed by the member's chain of command up through the Branch chief for disposition. If the recommendation is out of policy and suspension or greater, it should go to the Review Board. Such cases may also be reviewed by the Review boards at the discretion of the Branch chief or Chief of Police. DIR 1010.10 includes a section on the responsibilities on the destruction of animals and references DIR 631.70 Investigations of Animal Problems for further details. It also includes investigative responsibilities.
4.3	Revise policies to make clear that investigators should <i>always</i> strive to obtain a contemporaneous, tape-recorded interview of involved officers. Such a policy would not only ease doubts about officer collusion, but place officers and civilians on the same footing. In addition, in those cases where an officer declines to provide a contemporaneous interview, investigators should be required to thoroughly document their efforts to obtain the interview, including (1) when the request was made, (2) to whom it was directed, and (3) the reason(s) for the declination.	Done	8/1/2005	Investigations	We consider this recommendation completed. DIR 1010.10 Deadly Physical Force includes new language ensuring member interviews are tape-recorded. Detective SOP #37 includes language specific to tape recording interviews. We are continuing to work with the bargaining units to establish a binding agreement regarding timeliness of interviews. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. Portland has adopted its own unique model which is similar to Phoenix. As you know, Phoenix is a right-to-work state. And Portland has some challenges such as the importance of working with our collective bargaining units on these issues, the immunity issues.

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
4.4	Meet with the leadership of the police unions to work out procedures for taking voluntary statements from involved officers in the hours immediately following a shooting or in-custody death incident. Interviews would not be conducted until after the officers have been given an opportunity to consult with a lawyer and/or union representative. The unions should encourage involved officers to provide investigators with contemporaneous statements, and likewise should encourage the lawyers they furnish to their members to facilitate such prompt statements.	Done	9/2003	Investigations	Since 2004-05, in officer-involved shootings, officer statements have been taken within 24 to 36 hours. Over the past two years, we have met with union representatives to establish a binding agreement regarding timeliness of interviews. There are some challenges to work through on these issues such as immunity. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. Portland has adopted its own unique model which is similar to Phoenix. As you know, Phoenix is a right-to-work state. See referenced PPA letter dated 8/19/05.
4.5	Study the Phoenix system of obtaining contemporaneous statements, in which all involved or witness officers are ordered to speak to Internal Affairs investigators no later than a few hours after the deadly force or in-custody death incident, regardless of whether they agreed to provide a separate, voluntary statement to Homicide investigators. The IA interview, which is walled off from Homicide and the District Attorney, is used solely in connection with the agency's administrative and tactical review of the incident.	Done	8/1/2005	Investigations/ Services	We generally agree. A lot of progress has been made in the spirit of labor-management collaboration. We are continuing to work with the bargaining units to establish a binding agreement regarding timeliness of interviews. We have conducted exhaustive studies on a number of models, we have made several visits to Phoenix to review their model, and we have incorporated some of their recommendations. And Portland has some challenges such as the importance of working with our collective bargaining units on the immunity issues. We created DIR 335.00 Performance Review and Use of Force Review Boards after the Phoenix visits and our research.

Footnotes:

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\*\* 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.6	Issue a policy expressly forbidding all officers who participated in or witnessed an officer-involved shooting or in-custody death from discussing the incident with any person (including other involved or witness officers) other than their immediate supervisor, unit commanding officer, union representative, attorney, a medical or psychological professional, and investigators until they have completed comprehensive, taped interviews in the criminal and, if needed, administrative investigations. In discussing the incident with their immediate supervisor or unit commanding officer during this period, officers should provide only that information necessary to secure the scene and identify the location of physical evidence and witnesses.	Done	5/05 - CRO and 8/1/2005	Investigations	We agree that we have complied with this recommendation. Communication restriction orders have been issued since Sept. 2003. DIR 1010.10 includes language that restricts involved members from discussing the facts of the case when involved in a deadly physical force or in-custody case. The Communications Restriction Order has been modified to include new language for TIC members that restrict TIC to only discussing emotional well-being. The new language agrees with the standard operating procedures for TIC. The CRO now reads: "You should avoid directly discussing factual aspects of the incident with TIC members, as the TIC members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting you." Also, in DIR 1010.10 it reads: "f. Members may speak with Traumatic Incident Committee (TIC) members. Members should avoid directly discussing factual aspects of the incident with TIC members, as the TIC members are directed to steer the conversation away from the facts and focus instead on the emotional issues confronting the member(s)."
4.7	Issue a policy forbidding all officers from volunteering or communicating any information to involved or witness officers before the deadly force investigation has been completed. In addition, just as a judge may order jurors to avoid media and other discussions of a pending case, so too should PPB issue a policy directing involved or witness officers to avoid exposure to other accounts of the incident (even if unsolicited) until they have provided investigators with a comprehensive, tape-recorded statement. In addition, PPB should require its investigators to thoroughly cover in each officer interview what information the officer had received from other officers or outside sources.	Done	8/1/2005	Investigations	DIR 1010.10, the Communications Restriction Order and the Detectives SOP #37 include language that restricts members from viewing media coverage. The directive also restricts Bureau members from talking to involved or witness officers about the incident. The CRO now recommends that members refrain from reviewing any media coverage prior to the interview with detectives. This will help to keep their recollections fresh and is also helpful to avoiding undue duress watching inaccurate media accounts. The CRO reads: "A thorough investigation based on each individual's independent recall and perception will lend credibility to each member's testimony and the investigation as a whole. In following this theme, it is strongly recommended that you do not review media coverage or other outside information regarding this incident."

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
4.8	Require that supervisors arriving at the scene of an officer-involved shooting or in-custody death incident ask each officer at the scene what, if any, discussions regarding the incident have occurred prior to the supervisor's arrival. The supervisor should then brief investigators immediately after they arrive at the scene concerning the answers to those inquiries.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force and Detectives SOP #37 include the responsibilities of the supervisors arriving at scene. Homicide investigators assume responsibility for the scene once they arrive. The highest ranking supervisor on scene is in charge until the Homicide detail arrives.
4.9	Require that involved and witness officers be physically separated immediately after the scene has been secured, and that officers remain sequestered ( <i>i.e.</i> unable to communicate with each other) until they have submitted to a comprehensive, taped interview by investigators.	Done	8/1/2005	Investigations	We agree that the involved member's partner will not transport. The involved member should be transported by an uninvolved member. We also agree that separation, when practical, may be the better option. There are advantages to having supervisors monitor 10 witnesses in one room, rather than 10 different sites. DIR 1010.10 prohibits officers from leaving scene. DIR 1010.10 and Detective SOP #37 says the Homicide Sergeant-in-charge will ensure the involved officers remain at the scene and are kept separate. The on-scene supervisor will ensure separation of all witness and involved members. It is important to remember that physical separation is not the only option. The goal is to ensure that there is no communication between those involved about the incident. DIR 1010.10 now says "Separation of all witness and involved members is necessary in order to safeguard the integrity of the investigation. If members are separated but within sight of each other, a supervisor or detective will be posted to ensure that no communication regarding the incident takes place."
4.10	Memorialize in policies the requirement that members of the Traumatic Incident Committee (TIC) Team - and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident - remain outside of the crime scene absent express authorization from on-scene investigators.	Done	8/1/2005	Investigations/ Services	We believe our current policies (DIR 640.10 Crime Scene Procedures and DIR 1010.10) comply with this recommendation. In addition, Detective SOP #37 provides specific direction to the Homicide Sergeant-in-charge for scene management. The EAP/SOPs restrict TIC members from the crime scene. DIR 1010.10 Deadly Physical Force includes restrictions on managing personnel at the scene.

Footnotes:

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\*\* 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
4.11	Memorialize in policies a rule expressly prohibiting members of the Traumatic Incident Committee (TIC) Team - and any other officer not charged with securing or investigating the scene of an officer-involved shooting or in-custody death incident - from discussing the incident with involved or witness officers until the officers in question have submitted to a comprehensive, taped interview with investigators.	Done	8/1/2005	Services	We agree that we have complied with this recommendation. The Communications Restriction Order has been modified to include new language for TIC members that restrict TIC to only discussing emotional well-being. In DIR 1010.10, the section on communication restrictions have been revised and clarifies the role of TIC team members. TIC team members are still encouraged to provide peer support after traumatic incidents, while following the guidelines in the communication restrictions. DIR 1010.10, is new language that reads: "e. Members not involved in a deadly force or in-custody death incident, shall not communicate with a member who has been designated as an involved or witness member, about factual aspects of the investigation at hand, unless authorized to do so and until the involved or witness member is no longer under a CRO."
4.12	Revise policies to ensure that all officer witnesses submit to a taped interview and that all civilian witnesses are interviewed whenever possible. Transcripts of all interviews should be included in the case file.	Done	8/1/2005	Investigations	We tape record all interviews in its entirety. In DIR 1010.10, under Witness Member Responsibilities, it reads: "f. Witness members will be required to submit to an interview prior to going off shift. If injured, the witness will be interviewed when medically stable. Exceptions must be approved by the Detective Division Commander. Those exceptions must be limited to those situations where the number of witnesses or the complexity of the crime scene, make it necessary for the investigators to obtain additional details of the incident prior to beginning an interview." Regarding transcripts of all interviews to be included in case file, the DIR 1010.10 reads: "f. Complete a Summary Report and case notebooks to include all transcripts of taped statements." Detective SOP #37 states that all interviews of involved members where facts of the case are discussed will be tape recorded. Transcripts of all interviews are included in the case file. Every attempt will be made to tape-record civilian interviews.

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
4.13	If a civilian witness refuses to submit to a taped interview, investigators should (1) not begin the interview until the witness has signed a form acknowledging that he or she has refused to be interviewed on tape; and (2) present the civilian with a written copy of the investigator's summary if the interview and allow the citizen to review and sign the investigator's summary for accuracy. The civilian should be permitted to make any corrections or amendments to the statement he or she feels is necessary. A copy of both the original and corrected/amended witness summary should be included in the investigative file.	Rejected	8/1/2005	Investigations	We do not believe that this is an appropriate investigative technique for our purposes. This technique raises the following concerns. 1. Witness may recant their statement. 2. Witness may be influenced by outside entities. 3. It is not an investigative best practice. 4. No sufficient research to substantiate recommendation. Homicide investigators tape record interviews with civilian witnesses unless they refuse. Detectives SOP #37 says to document incidents where witnesses refuse. Some delays are necessary in order to prepare interview questions, prepare for multiple officers interviews, manage an extensive crime scene, or deal with physical or emotional incapacitation of witnesses. DIR 1010.10 and Detective SOP #37 have been amended to require transcripts of all taped statements to be included in the case file.
4.14	Investigators should seek to video- or audiotape all officer walk-throughs. If the interview is audio- rather than video-taped, all gestures and relevant physical actions by the officer doing the walk-through should be described on the tape. By taping all walk-throughs, subsequent reviewers (from the grand jury to PPB executives) will be able to assess the quality of the walk-through, including the quality of investigators' questions. In addition, taping the walk-through will enable reviewers to identify any inconsistencies between an officer's statement at the scene and his later, more detailed interview with Homicide. Transcripts of the officers' statements during the walk-through should be included in the case file.	Rejected	8/1/2005	Investigations	Due to the legal and contractual context of the on scene briefing, it is necessarily limited and intended to gather general information on the location of evidence, direction of fire, field of fire, location of witnesses, and officer position. Mandatory tape recording will jeopardize the participation of the involved member. Of particular concern with an involved member, participation in the on-scene briefing is voluntary. Mandating recordation could jeopardize the participation of the involved member. The PPA or the member's attorney may refuse to allow the member to participate if the on scene briefing is recorded. It is also difficult to appropriately capture all necessary information from the on scene briefing on tape. Regardless, all of the information garnered from the on scene briefing is covered in detail during the tape recorded interview with the investigating detectives. To tape the on scene briefing would be redundant.

Footnotes:

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Number	Recommendation	Status	Date	Assigned	Details
4.15	Video- or audio-tape the entirety of all interviews with officers and civilians. Eliminate policy and practice of conducting untaped "pre-interviews" of officers or civilians.	Done	8/1/2005	Investigations	DIR 1010.10 and Detective SOP says that Investigators will not conduct pre-interviews. Detective SOP #37 states that all interviews of involved members where the material facts are discussed will be tape recorded. We do not conduct pre-interviews of officers or civilians. In addition to the above comments, we want to emphasize that the procedural process is the same regardless of citizen or Bureau member. Our current practice of explaining procedures off tape is helpful to both citizens and Bureau members. Individuals need to be aware of the process and will be more comfortable when responding to a taped interview if they understand the process that they will be going through. It is prudent to have investigators have that latitude of explaining the process. However, we want to emphasize that 100% of the investigative interview is taped. We will research this to find out what other agencies have this practice. We concur that there should be no disparity. Transcripts of all interviews are provided to the Multnomah County District Attorney and the City of Portland attorney.
4.16	Improve the already useful existing Deadly Force Interview Checklist by adding policy and tactical questions, including: (1) whether the officers can think of (a) alternative approaches that might have minimized risk to themselves and others, and (b) potential improvements in training; (2) a description of when and why the officers decided to (a) draw their guns; (b) point their guns; or (c) lower or re-holster their guns; (3) describing the grip and shooting stance used by the officers, including gun/flashlight technique; (4) indicating whether the shots were sighted; (5) describing the availability and use of cover and concealment; and (6) identifying distances from suspects with weapons other than guns, and opportunities for tactical retreat.	Done	8/1/2005	Investigations	We agree that we have complied with this recommendation. Lower and re-holster, grip and shooting stance have been added to the interview checklist. The checklist has been modified and adopted in Detective SOP #37 on officer involved shootings.

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Number	Recommendation	Status	Date	Assigned	Details
4.17	Require investigators to cover all areas on the modified interview checklist in all interviews.	Done	8/1/2005	Investigations	The checklist has been modified and adopted in Detective SOPs on officer involved shootings. We current assign the following personnel to complete the checklists: Interview checklist – homicide detectives Investigative checklist – homicide sergeant (admin) Supervisor checklist – on-scene supervisor/command
4.18	Prepare an Interview Checklist, similar to the Deadly Force Interview Checklist, to be used during in-custody death and serious force investigations.	Done	8/1/2005	Investigations	We agree with this recommendation and have added a section to the Detectives SOP #37 and interview checklist that is specific to in-custody deaths. We did not develop a stand alone checklist for in-custody deaths because many of the same questions asked for an officer involved shooting are asked in the investigation of an in-custody death.
4.19	Establish policies that ensure that each officer who was involved in or witnessed an officer-involved shooting or in-custody death incident does not participate in a Critical Incident Stress Debriefing (CISD) meeting prior to submitting to a comprehensive, tape-recorded interview in the investigation of the incident.	In progress	8/1/2005	Services/ Investigations	Detective SOP #37 requires tape recorded interviews and written communications restrictions. Members do not participate in a Critical Incident Debriefing until after the tape recorded interview, the Grand Jury renders a decision and the Communications Restriction Order is lifted.
5.1	Adopt strict rules forbidding non-essential personnel from entering or remaining within the inner or outer perimeter of an officer-involved shooting or in-custody death.	Done	8/1/2005	Investigations	DIR 640.10 Crime Scene Procedures and DIR 1010.10 Deadly Physical Force, Use Of, Including Reporting Requirements requires the exclusion of unauthorized persons. Detective SOP #37 requires the Homicide Sergeant-in-charge to manage the scene and ensure a log is kept. DIR 1010.10 states that the on-scene supervisor will establish a single entry point into and out of the scene and that a crime scene log is maintained at the entry point.
5.2	Ensure officials investigating officer-involved shooting and in-custody death cases promptly collect all relevant physical evidence at the scene. Such mechanisms should include, without limitation, (a) written guidelines, such as investigators' manual, that specify investigators' evidence collection duties; (b) annual refresher training for investigators (and their supervisors) in forensic techniques and crime scene investigation; (c) on-scene investigation checklists and Incident Summary Forms to be included within each case file; and (d) methods for holding investigators accountable for their errors or omissions.	Done	8/1/2005	Investigations	<b>a.</b> DIR 1010.10, the detective checklist, and the on-scene checlist specify investigator's evidence collection duties; <b>b.</b> Training for investigators and supervisors includes detective academy of 80 hours, basic homicide class, bringing trainers to division, hosting homicide training. The Bureau continues to research and identify additional training and funding to support that training; <b>c.</b> Detective SOP #37 include checklists and summary forms; <b>d.</b> A review process is in place and any identified omissions will be discovered in the review process. Supervisory oversight is outlined in the directives.

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Number	Recommendation	Status	Date	Assigned	Details
5.3	Require criminalists to bring to the scene of officer-involved shooting and in-custody death cases all tools necessary to identify and collect physical evidence at the scene. Such equipment should include, among other items, (a) metal detectors to help locate weapons and ammunition, and (b) bullet trajectory analysis equipment sufficient to track and document the trajectory of ammunition regardless of caliber or make.	Done	2001	Investigations	Major crime scene vehicles contain all the mentioned equipment.
5.4	Collect muzzle Gun Shot Residue (GSR) evidence in officer-involved shooting and in-custody death cases in which the location and angle of gunfire is relevant. Such evidence should be collected not only from skin, hair, and clothing, but from hard surfaces believed to be in close proximity to the weapon at the time of discharge. In addition, PPB should collect primer GSR evidence in all officer-involved shooting or in-custody death cases where there is (1) some dispute about the identity of the person(s) who fired a gun or (2) a claim by a civilian that an officer planted a gun at the scene. If Oregon State Crime Laboratory remains unable to perform primer GSR analysis, then the PPB, like numerous agencies across the country, should seek to have the analysis performed at commercial or university laboratories.	Done	9/2003	Investigations	It is not our practice to go outside of the Oregon State Police Crime Lab. An exception would be if there was a special analysis or request made by the District Attorney. The current practice is to obtain Gun Shot Residue (GSR) evidence under applicable circumstances. Examples to consider are clothing, bullet entry holes. Per Oregon State Police Crime Lab, Gun Shot Residue examination of hands is extremely unreliable due to false positives, time values of collection and environmental factors. Oregon State Police Crime Lab has not done GSR (Dermal Nitrate) since 1999.
5.5	Enforce the requirement of Section 1010.10 that investigators conduct a bullet trajectory analysis for each shot in an officer-involved shooting where the bullet strikes one or more areas of the crime scene. The PPB should do so even where there is no dispute among witnesses regarding the underlying incident.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force, Use of, Including Reporting Requirements includes a section on Detectives Responsibilities that states: "collect and submit all weapons involved in a deadly force incident, including SERT weapons, to the Oregon State Crime Lab for appropriate testing, documenting their condition as found to include serial number, rounds in chamber, and number of rounds in each magazine. Detective SOP #37 requires that trajectory analysis will be conducted and reported in accordance to the directive and the Homicide Sergeant-in-charge will ensure compliance.

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Number	Recommendation	Status	Date	Assigned	Details
5.6	Develop detailed checklists or Incident Summary Forms - one for officer-involved shootings and one for in-custody deaths - along the lines used by the Miami-Dade Police Department and the Los Angeles County Sheriff's Department, which require investigators to report key information regarding every officer-involved shooting or in-custody death case.	Done	8/1/2005	Investigations	Detective SOP #37 and DIR 1010.10 include checklists and summary reports for officer-involved shootings.
5.7	Prepare detailed crime scene sketches of the entire crime scene (or scenes). Such sketches should identify physical evidence at the scene and provide all relevant measurements. In all cases, investigators should include the sketches in the investigative file.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force, Use of Including Reporting Requirements includes requirements of crime scene sketches. Detective SOP #37 require crime scene sketches and maintenance in the Bureau incident file.
5.8	Require investigators to ask all involved parties and all witnesses to draw their own sketches of the scene (or annotate sketches already prepared by the investigative team) during their taped interviews. In addition, investigators should ensure the witnesses note the movement of the involved parties (e.g., note the positions taken by Officer A as A-1, A-2, etc.). Finally, investigators should verbally describe on tape when the witness makes or refers to a particular notation (e.g., "the witness is now noting his location as B-1 on the sketch.").	Done	8/1/2005	Investigations	Detective SOP #37 include this practice when necessary and they are required to be maintained in the official file.
5.9	Investigations should focus not only on whether the officers' use of deadly or high-risk force was appropriate, but also on the officers' policy and tactical decisions that led to the incident. A principal goal of investigations should be to collect evidence sufficient for managers and executives to assess whether the officers could have met legitimate law enforcement objectives in a manner less likely to have lead to the use of deadly or other high-risk force.	Done	8/1/2005	Investigations/ Services	DIR 1010.10 Deadly Physical Force, Use of Including Reporting Requirements, Detectives SOP #37, DIR 335.00 Performance Review and Use of Force Review Boards, DIR 341.00 Discipline Process and IADs/SOPs include requirements for officer-involved shooting investigation. Detectives now ask a broad range of questions per the recommendation. The Use of Force Review Board will consider the following issues identified in the investigation: policy; training; supervision; tactics; medical aid; and equipment.

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Number	Recommendation	Status	Date	Assigned	Details
5.10	Identify and conduct thorough, unbiased, and tape-recorded interviews of all witnesses - including emergency and medical professionals who performed examinations or rendered treatment - in deadly force or in-custody death incidents. In addition, PPB should also carefully monitor the quality and fairness of interviews conducted by members of the East County Major Crimes Team assisting them in such investigations.	Done	8/1/2005	Investigations	Detective SOP #37 requires that all interviews of involved members be tape recorded. Investigations relies on the written reports submitted by emergency and medical professionals. The Homicide Sergeant-in-charge will supervise all investigative functions including those agencies who assist. This will also be reviewed up the chain of command. The Use of Force Review Board will consider the following issues identified in the investigation: policy, training, supervision, tactics; medical aid; and equipment.
5.11	Include in the file for an officer-involved shooting or in-custody death all relevant evidence and information, including, without limitation, (a) color copies of pertinent crime scene photographs;(b) all videotapes taken of the scene; (c) all autopsy, toxicology, and medical reports obtained by investigators (or memorandum explaining why it was impossible to obtain such reports); (d) transcripts and audiotapes of all 911 calls and radio broadcasts (as well as relevant MDT transcripts); and (e) a memorandum presenting in summary fashion certain background information on the involved officers including (i) date of hire and prior law enforcement experience; (ii) training history; (iii) assignment and promotion history; (iv) prior shootings or in-custody death cases, if any; and (v) a record of any discipline, pending investigations, and awards or commendations.	Done	2002	Investigations/ Services	DIR 1010.10 and Detectives SOP #37 cover a through d. Evidence or case file protocols have been implemented by the Detective Division. The Bureau tracks and has available access to the information contained in section e. The report would include date of hire, training history from checklist and relevant information would be included.
5.12	Each investigative file should contain a detailed, comprehensive summary of the investigation. Although the summary should be impartial and take a neutral tone, it should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.	Done	8/1/2005	Investigations	DIR 1010.10 Deadly Physical Force and Detectives SOP #37 include this information.
5.13	Completed investigative files should (a) number each page sequentially; (b) contain a detailed index; and (c) include an Investigator Log identifying each investigator's day-to-day work on the case.	Done	8/1/2005	Investigations	The pages of completed investigative files are numbered sequentially and the files contain a detailed index. The Bureau uses a detective homicide checklist.

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5.14	Keep all records, documents, and materials obtained or created in connection with an investigation of an officer-involved shooting or an in-custody death as part of the official file.	Done	9/2/2003*	Investigations	Detective SOP #37 state that all records, documents and materials obtained, prepared or created in connection with an investigation of an officer-involved shooting or in-custody death will be made and remain part of the official Bureau file on the incident. City archiving guidelines will be followed. DIR 335.00 Performance Review and the Use of Force Review Boards specifies that materials will be maintained by the Use of Force Review Board Coordinator for presentation to the Board. Copies are sent to IPR.
5.15	Create an independent, professionally staffed, and adequately funded mechanism for civilian oversight of investigations of administrative issues and analyses of tactical decisions arising out of officer-involved shootings or in-custody deaths. At a minimum the oversight mechanism would monitor (a) Crime scene processes and procedures (this would involve rolling out to the scenes of officer-involved shootings and in-custody deaths); (b) Evidence collection and preservation; (c) Witness identification and interviewing; (d) Investigative file integrity and preservation; and (e) Presentation of evidence to the Review Level Committee.	Refer	2003	Services	Refer to IPR for a response. We consider this a recommendation to the City of Portland. The City of Portland has a mechanism in place with the creation of IPR and PARC. The Bureau's has new directives on the Use of Force Review Boards and Discipline Process. IAD and Training are included as non-voting members on the Review Boards and IPR sits on the Review Board as a non-voting member.
6.1	Extend policies relating to reviews of deadly physical force - both after action reports and Review Level Committee - to include in-custody death incidents.	Done	7/5/2005	Services	The Use of Force Review Board reviews in-custody deaths. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports include review policies for in-custody deaths.
6.2	Ensure after action reports are completed in all officer-involved shooting and in-custody death cases, and that unit commanders are held accountable if the reports are not completed in a timely fashion.	Done	7/5/2005	Operations/ Services	We consider this to be ongoing. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports state that commanders are responsible for reports in use of force incidents.
6.3	Enforce policy that requires unit commanders, rather than their subordinates, to prepare and sign after action reports in deadly force cases.	Done	7/5/2005	Operations/ Services	We consider this to be ongoing. DIR 335.00 Performance Review and Use of Force Review Boards and draft directive 940.00 After Action Reports state that commanders are responsible for reports in use of force incidents.
6.4	Create a model after action report - from an actual or a hypothetical case - to demonstrate to unit commanders both the form and type of analysis that such reports should employ.	Done	8/1/2004	Operations/ Services	An after action report form was created and posted to Intranet in August 2004. Draft directive 940.00 After Action Reports is in review.

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6.5	Ensure after action reports rely on the facts developed by the investigation of the incident (unless the unit shows that those facts are erroneous or incomplete), and that copies are distributed to the RU manager.	Done	8/1/2004	Operations/ Services	After action report forms are distributed to the RU manager. Draft directive 940.00 After Action Reports is in review.
6.6	Devise an accountability process to ensure after action reports comply with the content requirements of Section 1010.10 and engage in meaningful analysis.	Done	8/1/2005	Operations/ Services/ City Attorney	We consider this to be ongoing. DIR 1010.10 references after action reports. Draft directive 940.00 After Action Reports is in review.
6.7	Revise Section 1010.10 to make the unit commander a non-voting member of the Review Level Committee when it reviews officer-involved shootings, other deadly force cases, and in-custody death incidents.	Rejected	7/5/2005	Chief's Office	We disagree with this recommendation. DIR 1010.10 Deadly Physical Force and DIR 335.00 Performance Review and Use of Force Review Boards includes the RU manager as a voting member. RU managers are individuals who hold certain positions and levels of responsibility to the organization and should be accountable in officer involved shootings, in-custody deaths and other deadly force cases. This issue was vetted to our community and they agreed that RU managers need to be included as a member of the Review Level Board.
6.8	Make a civilian from outside the Bureau a voting member of the Review Level Committee. The outside committee member should be chosen in a manner decided by the City's elected officials.	Done	7/5/2005	Services	We consider this completed. DIR 335.00 Performance Review and Use of Force Review Boards includes citizens and peers as voting members.
6.9	Amend policy and practice to make the commanding officer of the unit conducting administrative investigations of officer-involved shootings and in-custody deaths, and the commanding officer of the Training Division, non-voting members of the Review Level Committee.	Done	7/5/2005	Services	We disagree with the recommendation to have RU managers as non-voting members. RU managers should be accountable in officer-involved shoots, in-custody deaths and other deadly force cases and should be included as a voting member in Review Level. In DIR 335.00 Performance Review and Use of Force Review Boards, we have clarified the roles and our practices to include Training and Internal Affairs. Command personnel from the Training and Internal Affairs divisions have never been <del>non-voting members</del>
6.10	Present all officer-involved shooting and in-custody death incidents to the Review Level Committee. Develop a tracking system to ensure that all such incidents are presented.	Done	7/5/2005	Services/ Investigations	Officer-involved shootings and in-custody death incidents are reviewed by the Review Level Board. The Review Board Coordinator tracks cases through the Administrative Investigative Management software system.

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6.11	Amend policy to require full written findings be provided to the Chief to explain and document each Review Level Committee determination of officer-involved shooting or in-custody death cases.	Rejected		Services	We disagree with this recommendation. Our system includes a review by the Services Branch chief who meets with the Chief on the recommendations from the Review Level Committee. The Chief does receive a full report. We reject the recommendation about the voting logs, the citizen members were concerned that their names would be made public.
6.12	Develop procedures for the Review Level Committee that require members to vote based on their best judgment of the relevant facts and circumstances and that encourage dissent when appropriate.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards outline procedures for the Review Level Committee and it states: " Board members' votes are based on their best judgment of the relevant facts and circumstances and dissenting points of view will be noted."
6.13	Investigators who conduct the administrative investigations should take the lead in presenting officer-involved and in-custody death cases to the Review Level Committee.	Done	7/5/2005	Chief's Office	Investigators are taking the lead in presenting cases to Review Level and are the lead in presenting to the Review Level Board.
6.14	Administrative investigators present a complete file - regardless of the form of the evidence, and specifically including video and audiotapes and photographs - to committee members in advance of the committee meeting, and should likewise present all evidence deemed pertinent to the Review Level meeting, regardless of the form that evidence takes.	Done	7/5/2005	Services/ Investigations	DIR 335.00 Performance Review and Use of Force Review Boards states that IAD will prepare a review file for each case that contains all reports and documents from Detectives, IAD, and Training.
6.15	Before a meeting of the Review Level Committee on an officer-involved shooting case or an in-custody death incident, the Training Division should prepare a written analysis of the tactical and training issues involved and circulate that analysis to committee members in advance of the meeting.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards states that Training will provide copies of all reports and documents to Review Level Board. Internal Affairs Division's SOPs state that these documents are provided to the Review Level Board. Training's draft SOPs states that documentation will be provided.
6.16	Amend policy to increase the options the Review Level Committee has for outcome determinations so that those options cover different levels of review: legal, policy and tactical.	Done	7/5/2005	Services	DIR 335.00 Performance Review and Use of Force Review Boards under section UFRB Functions, c. states that the UFRB may make recommendations on the completeness of the investigation, the findings, the charges and level of discipline. UFRB may also suggestion action items on training or policy issues.
6.17	Review Level Committee should seek to obtain additional information whenever the committee determines that such information would assist it in fulfilling its responsibilities.	Done	7/5/2005	Services	The Review Level Committee determines what additional information is necessary on a case-by-case basis. The Use of Force Review Board Coordinator facilitates information gathering for the Board members.

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6.18	Create systems that ensure all lessons learned - both successes and failures - are systematically identified and followed-up on.	Done	7/5/2005	Services/ Operations	Reports and follow-up are tracked and maintained by the Review Board Coordinator through the Administrative Investigative Management (AIM) software system.
6.19	Revise awards policy and procedures in officer-involved shootings and in-custody death cases to ensure that the Award Review Committee and the Chief are aware of all facts and circumstances relevant to the appropriateness of an award that were revealed in the investigation of the incident, in the after action report, and in the Review Level Committee proceedings.	In progress		Services	The draft DIR 210.90 Recognition and Awards says that any use of force findings will be attached to the Awards Committee's recommendations to the Chief. This is forwarded to the Branch chief for review before forwarding to the Chief. The Chief will review all information and will make the final determination of awards.
6.20	Revise awards and Review Level policy and procedures in officer-involved shooting and in-custody death cases to require the Awards Review Committee facilitator to advise the Review Level Committee in writing of any information revealed in the awards review process that was not in the investigative file, the after action report, or the Review Level Committee's records. Upon receipt of notice of such new information, the Review Level Committee should consider whether to reopen its review of the incident, with or without further administrative investigation.	In progress		Services	The Awards Committee does not conduct an investigation of use of force cases. This committee reviews the same written materials in the Review Level Board process. If the Awards Committee facilitator knowingly comes across information not provided to the Review Level Committee, that information will be forwarded to the Services Branch chief for review.
7.1	Ensure that operational personnel devise a sound plan before action is taken in response to critical incidents whenever it is feasible to do so.	Done	1997	Operations/ Services	We consider this ongoing. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 "post shooting procedures" under approach and control. This was updated in 2003. Plans are also documented in an after action report. This was reinforced in the 04-05 in-service training and include the six fundamentals of patrol tactics: have a leader, have a plan, communicate, be adaptable, correct mistakes and do not assume.
7.2	Reduce the risk generated by deficiencies in communication; PPB must take steps to ensure that their occurrence is minimized.	Done	2000	Services	We consider this ongoing. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 and defines areas of control, assignment of tasks such as cover, custody, less lethal. This was reinforced in the 04-05 in-service training. This will be covered in the 2005-06 in-service as well.

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7.3	Supervisors should become involved in critical incidents at the earliest possible stage. Dispatchers should inform a sergeant as soon as any potential critical incident reports are received, and officers should be directed to inform a supervisor without delay whenever they encounter such an incident. Supervisors should also be directed to identify every potentially high-risk building search or warrant service as a critical incident requiring an effectively managed response.	Done	2000	Services	This is on-going. Critical Incident notifications are covered at the sergeant's academy, in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics. DIR 612.00 covers critical incident management which would require having adequate assets on scene for critical incidents.
7.4	Ensure that, whenever feasible, supervisors are responsible for the determination and coordination of strategic and tactical responses to critical incidents, and should direct the actions of involved offices.	Done	2000	Services	This is on-going. Critical Incident notifications are covered at the sergeant's academy, in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics. BOEC protocols outline notification process. Refer to DIR 612.00 on BOEC and radio protocols.
7.5	Hold supervisors accountable for the performance of officers under their command during critical incidents.	Done	2000	Chief's Office	The on-scene commander remains in charge until a supervisor arrives to take command and is first fully briefed and prepared to take command. DIR 315.30, DIR 720.00, draft directive 940.00 After Action reports include language that addresses how supervisors are held accountable.
7.6	Identify all high-risk building searches, high-risk warrant services, and calls regarding armed civilians as critical incidents.	Done	2003	Services	This is on-going. These high-risk searches, services are considered critical incidents and are stressed in training. Critical Incident notifications are covered at the sergeant's academy and in-service lesson plans for defensive and patrol tactics. Detectives have an assessment plan in place. SERT conducts a risk assessment. As incidents are debriefed, we are upgrading our tactics.
7.7	Future supervisory training should emphasize the relevance of critical incident training to these types of incidents, and the Bureau should ensure that supervisors consistently manage operations according to the sound principles such training promotes.	Done	2003	Services/ Operations	Supervisory academy includes critical incident management with SERT and HNT. Command staff reviews performance in critical incidents at Review Level which requires on-going communication and emphasis. This includes a tactical debriefing.
7.8	Ensure field performance consistently reflects tactical training in all areas, and particularly in relation to identified problems relating to high-risk vehicle stops, the use of cover, crossfires and bystander endangerment.	Done	1999	Services/ Operations	This is on-going. Contained in the Defensive Tactics/Patrol Tactics lesson plan manual in section 3 and defines areas of control, assignment of tasks such as cover, custody, less lethal. This was reinforced in the 04-05 in-service training.

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7.9	Ensure that supervisors consistently manage vehicle pursuits to a high standard and that officers communicate effectively during pursuits.	Done	1997	Operations	Contained in current policy in DIR 630.05 Vehicle Pursuits and in draft directive 940.00 After Action Reports.
7.10	Ensure officers maintain sufficient distance when pursuing armed suspects in a vehicle.	Done	1997	Services/ Operations	Contained in DIR 630.05 Vehicle Pursuits, and in scenario-based training. Requires on-going training commitment.
7.11	Adopt and vigorously enforce a foot pursuit policy mandating the use of sound tactics by officers who encounter fleeing suspects.	In progress		Services/ Operations	We agree with this recommendation and Training Division drafted a foot pursuit policy and it is being reviewed and staffed.
7.12	Ensure officers make appropriate use of cover when confronting threats.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.13	Ensure the incidence of crossfires is minimized.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.14	Ensure the incidence of endangerments to bystanders is minimized.	Done	2003	Services	Contained in current training practices; requires on-going training commitment.
7.15	Revise policy on the use of firearms against moving vehicles. Include preface explaining that shooting at moving vehicles is dangerous and generally ineffective, and should embody the following guidelines: Officers shall not fire at moving vehicles except to counter an imminent danger of death or serious bodily harm to the officer or another person; Officers shall only fire at a moving vehicle when no other means of avoiding or eliminating danger are available at that time; Officers shall not place themselves, or remain, in the path of moving vehicle; Officers shall take account risks to vehicular and pedestrian traffic, and to any other bystanders, before deciding whether to fire at a moving vehicle; Officers shall take into account the risks to vehicle occupants, who may not be involved (or may be involved to a lesser extent) in the actions necessitating the use of deadly force before deciding whether to fire at a moving vehicle.	Done	8/1/2005	Services	We agree with this recommendation. This criteria does not allow members to use poor tactics or positioning as justification for discharging a firearm at a moving vehicle. DIR 1010.10 is clear in its language, which says: "Members must be mindful of the following when considering the use of deadly physical force involving a vehicle: a. Bullets fired at occupants of moving vehicles are extremely unlikely to stop or disable the moving vehicle. b. Bullets fired may miss the intended target or ricochet and cause injury to officers or other innocent persons. c. The vehicle may crash and cause injury to officers or other innocent persons if the bullets disable the operator. d. In limited circumstances moving to cover, repositioning and/or waiting for additional responding units to gain and maintain a superior tactical advantage maximizes officer and public safety and minimizes the necessity for use of deadly physical force. e. Shooting accurately from a moving vehicle is extremely difficult and therefore unlikely to successfully stop or prevent a threat to the member or other innocent person.

Footnotes:

\* 9/2/03 refers to a memorandum to all Detective Division members from Commander Ferraris.

\*\* 9/11/03 organizational change went into effect.

Number	Recommendation	Status	Date	Assigned	Details
7.16	Take steps to minimize the risk of accidental discharges. Pay closer attention to the issue in training, field operations and shooting-review process.	Done	8/1/2005	Services	DIR 1010.10 requires officers to submit reports on all negligent discharges are also subject to disciplinary action. Techniques for avoiding them are incorporated into firearms training. Draft directive 940.00 After Action Reports document these incidents.
7.17	Reconsider current training in maneuvers that involve weak-handed shooting in light of experience that shows the poor level of accuracy associated with its use and find ways to reduce single-hand shooting.	Done	2005	Services	Training protocols instruct for two-hand shooting techniques. There is instruction on basic firearms, active shooter, and PRISim. In the 04-05 in-service there was 16.5 hours of firearms instruction (10 hours of Taser, 4.5 hours range, 2 hours of PRISim). For the 05-06 in-service there is 13 hours of firearm instruction (4.5 hours range, 4 hours PRISim, 4.5 hours active shooter). The Bureau believes that officers need instruction on the two-hand shooting due to tactical advantages and the primary hand/arm becomes unable to function due to injury. This comes from the Miami FBI shoot-out where two agents were killed and many more injured. There are many reasons that support teaching the skill of firearms and use of both hands.
7.18	Abandon use of term "lethal cover" in relation to less-lethal training and directives and make explicit that officers should use whatever force option is appropriate to cover officers deploying less-lethal weaponry.	Done	8/1/2005	Services	The Bureau uses the term "immediate cover." The Training Division lesson plans on use of force, patrol tactics, defensive tactics, Taser and less-lethal include immediate cover techniques and planning.
7.19	Monitor and evaluate the effectiveness of all less-lethal hardware, tailor the availability and deployment of such weaponry to ensure operational personnel have ready access to the most effective and appropriate options when called upon to use force.	Done	1997	Services	The Taser pilot project began in 2002 and as a result, in June 2005, patrol officers were provided with Tasers. All less-lethal weapons are identified by the yellow markings. DIR 1051.00 Tasers includes responsibilities and use of this less lethal weapon. In-service training conducted in 2004-05 certified all officers on the use of all less-lethal weapons. The Use of Force Report form tracks and records deployment of Taser and other less-lethal weapons. Training keeps a database and tracks each deployment.
7.20	Provide all operational personnel with a radio earpiece.	In progress	2005	Chief's Office	Fiscal reports Operations Branch has processed the purchase of 600 radio earpieces in addition to another 125 purchased earlier through Homeland Security funding.

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Number	Recommendation	Status	Date	Assigned	Details
7.21	Establish helicopter unit as an important element of a risk management program.	Done	2005	Investigations	The Bureau has recently purchased a second fixed wing aircraft. At this time, one aircraft is equipped with a 'Forward Looking Infra-red" (FLIR) unit and a second FLIR will be purchased with grant funds for the second aircraft. The FLIR equipped aircraft has been used several times to support patrol officers and SERT officers on high risk calls and incidents involving armed subjects. This aircraft has been instrumental in capturing high risk suspects by providing a tactical advantage from the air. We recognize the versatility of a helicopter unit; however, fiscal restraints and concerns from City Council and the community prohibit the Bureau from moving forward with PARC's recommendation. Currently there is no adequate funding to maintain such a unit. The Bureau has entered into a metro air support agreement which allows for sharing of our aircraft cooperatively with other agencies.
7.22	Ensure Crisis Intervention Team (CIT) officers consistently exercise their specialist skills when dealing with CIT-related incidents.	Done	2000	Services	The 2004-05 in-service officer training included 2 hours of CIT instruction with Project Respond, 1 hour of epilepsy training and 2 hours of communication. There are 125 certified officers as of June 2005. CIT is to move to Training to be sure concerns are folded into patrol tactics training. A 40-hour CIT certification training is being developed for the fall 2005. For the 2005-06 in-service, two hours of mediation, three hours of perspectives in profiling will be taught. A CIT newsletter is widely distributed and a database tracks incidents and outcomes.
7.23	Examine current practices in order to identify means of improving deployment rates of, and better capitalizing on the skills possessed by its pool of Crisis Intervention Team (CIT) officers.	Done	1995	Services	This is considered on-going. The Bureau of Emergency Communications protocols dispatch Crisis Intervention Team (CIT) officers to all known CIT-related incidents.

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Number	Recommendation	Status	Date	Assigned	Details
7.24	Ensure officers consistently perform according to both policy and training in order to minimize the future occurrence of in-custody deaths.	Done	2003	Services	This is considered on-going. The last in-custody death occurred in 1999, and previous to that, it was 1997. Other policies that speak to the issue of in-custody deaths are DIR 335.00 Performance Review and Use of Force Review Boards, DIR 630.50 Emergency Medical Aid, DIR 870.20 Handcuffing, Searching and Transportation of Persons Under Arrest or Detained. Draft directive 940.00 After Action Reports and DIR 1010.10 Deadly Physical Force contain policies and procedures that address this issue.
8.1	Proactively study data on officer-involved shooting and in-custody death incidents to assist its efforts to prevent avoidable shootings and deaths.	Done	7/5/2005	Services	This is on-going. DIR 335.00 Performance Review and Use of Force Review Boards, draft directive 940.00 After Action Reports and DIR 1010.10 Deadly Physical Force contain policies and procedures that address this issue. Chief is studying adding a new division of Professional Standards that include an audit function and would fold in Internal Affairs, Early Intervention System and any inspection functions.
8.2	Develop procedures and systems to accurately and completely capture and aggregate data on officer-involved shooting and in-custody death incidents in a manner that facilitates analysis of those data.	Done	2005	Services	Through the review process some of this information is collected. We are working on a management information systems as a part of the Early Intervention System. The Use of Force Report form tracks and documents officer-involved shooting and in-custody death incidents. The Bureau will continue to monitor, analyze and evaluate on an on-going basis and report on trends, training and policies.
8.3	Retain all records related to officer-involved shooting and in-custody death incidents for at least 25 years. Any otherwise applicable provision that requires longer retention than the period set for officer-involved shooting and in-custody death records should continue to be controlling.	Done	7/5/2005	Services/ Investigations	Detective SOP #37 states that records, documents and materials obtained, prepared or created in connection with an investigation of an officer involved shooting or in custody death will be made and remain part of the official Bureau file on the incident. Records permanently maintains all in-custody and officer-involved investigative reports. Copies of all case files are sent to IPR.
8.4	Create procedures and systems that allow location of whatever records it possesses.	In progress		Services	The Review Board Coordinator will develop SOPs for archiving and storage of records. The Assessment Investigations Management (AIM) system will provide for retrieval of reports. The Records Division and the City Auditor will provide guidance on implementation.

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Number	Recommendation	Status	Date	Assigned	Details
8.5	Independent Police Review (IPR), in consultation with the Bureau, should create procedures to obtain the records needed for future reviews of officer-involved shootings and in-custody deaths on a reasonably contemporaneous basis. IPR should store those records until needed for the review.	Done	2004	Services	Copies of all case files are sent to IPR to store. Review of archiving, access and distribution will be reviewed with City Auditor. The Review Board Coordinator will facilitate records requests for these investigation reports. DIR 1010.10, Detectives SOPs and draft Review Board SOPs contain the process.

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August 18, 2005

Chief Derrick Foxworth  
Portland Police Bureau  
1111 S. W. 2nd Avenue, Room 1526  
Portland, OR 97204

Dear Chief Foxworth:

You have asked this office to review the Police Assessment Resource Center's ("PARC") recommendation that whenever there is the use of deadly physical force by an officer and that officer or officers refuse to talk that the matter be turned over immediately to internal affairs. The suspect officers would be ordered to talk, and there would be a dual investigation; one criminal; one internal. The conclusion of PARC is that by involving internal affairs early they get a better idea of the crime scene and surrounding facts, they can get better information earlier, including a statement from all the officers, and therefore would be "able to influence the investigation as it proceeds."

I agree with PARC that the earlier involvement of internal affairs and compelled statements by suspect officers could result in a better and quicker understanding of what happened. However, it would likely result in the state not being able to prosecute an officer if we believed that a crime had been committed given the nature of internal affairs investigations and the law in Oregon.

The current deadly-force procedure utilized by the Portland Police Bureau has been the result of on going negotiations between your administration and this office. Part of this has been the result of the law in Oregon, which changed dramatically in the mid 1980s. In 1984-85 the Oregon appellate courts in State v. Soriano, 68 Or App 642 (1984), affirmed 298 Or 392 (1985) held that in Oregon we could only offer transactional (absolute) immunity if we were compelling someone to testify, even though we had

statutes that specifically authorized use (limited) immunity. The court outlined what it saw as the dangers of giving anything less than absolute immunity:

“First of all, use and derivative use immunity does not clearly protect against non-evidentiary as well as evidentiary use of the immunized testimony. A prosecutor who is aware of a witness’ immunized statements is likely to allow that knowledge to affect discretionary decisions: whether to pursue the investigation, what direction to take in doing so, whether to prosecute the witness, whether to plea bargain, and, if so, what to seek in the bargaining. It is hard to see how the most conscientious prosecutor could avoid letting the knowledge that the witness had admitted the crime while immunized affect these decisions.” Soriano at 662-3. (Emphasis mine)

Soriano raised the question whether immunity under Garrity v. New Jersey 385 U.S. 493 (1967) gave an officer use immunity or transactional immunity. The cases immediately following Soriano seemed to indicate that transactional immunity would be confirmed with any compelled statements.

However, the later cases backed away from that proposition. Unfortunately, there is no case on point and the question is still unresolved (See State v. Graf, 316 Or 544 (1993)). The police unions have consistently stated they want the statements to be immunized to fully cooperate. They obviously want to test the law.

The second problem is that even if you could grant use (limited) immunity our experience is that the command personnel are generally aware of the internal investigation. It is very difficult to contain this kind of information within any kind of law enforcement agency. Under the existing law neither the statements made by the officer or things derived from those statements can be used. The burden is on the state to prove that there is no improper evidence. See Soriano, above, and U.S. v. North, 910 F. 2d. 843, 863 (D.C. Cir. 1990). This can be difficult, if not impossible, to sometimes show, especially if people in the command structure were aware of the internal affairs investigation. In the North case the court made the following observation on immunized statements and criminal prosecution:

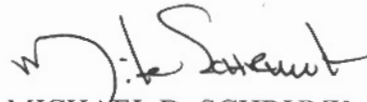
“The government must occasionally decide which it values more: immunization (perhaps to discharge institutional duties, such as congressional fact-finding and information-dissemination) or prosecution. If the government chooses immunization, then it must understand the Fifth Amendment and Kastigar mean that it is taking a great chance that the witness cannot constitutionally be indicted or prosecuted.” North at 862. (Emphasis added)

August 18, 2005

We, like PARC, would like to get the best information as quickly as possible. However, we believe that it is fundamental to a criminal investigation that the constitutional rights of the suspect officers be respected. In Oregon, unlike many other states, the effect of giving use (limited) immunity can sometimes amount to transactional (absolute) immunity. In addition, even if you can give limited immunity, the burden of proving nothing in the criminal prosecution was derived from compelled statements may be impossible. It is not our intent to find this out by losing a case where we have brought criminal charges. Our process may take longer but it ensures that if someone has committed a crime we will be able to prosecute.

If you have any further questions please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. D. Schrunk". The signature is written in a cursive style with a large initial "M" and "D".

MICHAEL D. SCHRUNK  
District Attorney

MDS:plc



**Robert J. King**  
President  
**Leo F. Painton**  
Secretary-Treasurer

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August 19, 2005

Chief Derrick Foxworth  
Portland Police Bureau  
1111 SW Second Avenue  
Portland, OR 97204

Chief Foxworth:

Recently, questions have been raised by the Police Assessment Resource Center as to the appropriate model to follow for deadly force investigations. In particular, PARC has raised questions about the timing of the statements of involved officers in the variety of models under consideration.

The Portland Police Association is committed to the principle that involved officers should give timely statements after deadly force incidents. Through the PPA's efforts, the time between a deadly force incident and the collection of statements from all involved officers has declined to, in most instances, less than 48 hours.

The PPA has only one caution with respect to this matter. For many years, the Multnomah County District Attorney's Office has made clear that involved officers should not be ordered by the Bureau to give statements about a deadly force incident. From the perspective of an involved officer, this means only one thing -- that the DA's office still considers it possible that the officer will be prosecuted for the officer's activities in the deadly force incident, and does not wish to confer on the officer the immunity that would automatically attach if an order to give a statement were issued. Since the privilege against compulsory self incrimination is a personally-held constitutional right, that right cannot be waived in any fashion by the PPA. This means that, ultimately, the decision to give a voluntary statement, and the decision as to the timing of that statement, will rest with the officer, and not with the PPA.

Thank you for your consideration of this matter.

Robert J. King