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AGENDA

City of Modesto

COMMUNITY POLICE REVIEW BOARD

Chambers Conference Room, Basement Level

Tenth Street Place, 1010 10th Street

Modesto, California

Wednesday, May 20, 2026, at 5:30 PM

CALL TO ORDER

ROLL CALL - Board Members: Solorio, Bryant, Byrd, Christensen, Damrell,
Grant, Smith, Chairwoman Beasley-Day

*** Public Comment will only be in-person. Members of the public who wish to address the Board, by providing public comment, during the meeting must do so in-person. As an alternative, members of the public may also provide written public comment submitted via email as indicated in the Submitting Comments by Email instructions on this agenda. Zoom will still be available for viewing and Wordly translation.**

***Members of the public will be allowed to provide public comment through Zoom if a Board Member is participating remotely pursuant to the provisions of Assembly Bill 2449.**

***Effective March 1, 2023, if a technical issue arises with Zoom or the phone dial-in option, the Board meeting will continue unless the meeting is being held pursuant to the provisions of Assembly Bill 2449. Alternative viewing options are listed below, and the meeting is physically open to the public.**



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This Agenda is on file at the in the City Clerk's Office, Sixth Floor, 10th Street Place, and is available on the City's Web site at www.modestogov.com

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1. DECLARATION OF CONFLICT OF INTEREST

I understand that if I, my family members and close relatives, or personal friends have any direct or indirect interest in any of the items listed on the Agenda for this meeting, I will notify the Board at this time. This will be noted in the minutes.

2. PUBLIC COMMENTS IN PERSON PERIOD

Only interested persons in the audience may present these matters. Under State law, the Community Police Review Board may respond to matters being presented under the item

only as follows:

- a) Briefly respond to statements made or questions raised.
- b) Ask a question for clarification.
- c) Provide a reference to staff or other resources for factual information.
- d) Request staff to report back at a subsequent meeting.
- e) Finally, a Board member or the Board itself may take action to direct staff to place a matter of business on a future agenda.

Board Meeting Decorum:

- Please be respectful of all presenters, board members, staff, and members of the public.
- Please refrain from clapping other than following a presentation
- All speakers are encouraged to state their: Name and City of Residence
- All questions must be directed to the Chair.
- Please do not block the view of others by holding signs up during Board Meetings
- Time limits for public comments is three (3) minutes but may be limited at the discretion of the Chair to manage the business of the Board.
- Speaking over others or interrupting while others have the floor is not permitted.
- Cell phones should be turned off or shall be set to vibrate during meetings.

3. CONSENT

Information concerning the consent items listed below has been forwarded to each Board Member prior to this meeting for study. Unless some member of the audience or Board Member has a question concerning an item and asks that it be withdrawn from the consent list, the Board approves the items at one time. The action taken by the Board in approving consent items is set forth in the explanation of this individual item. Any and all of the following agenda items are subject to action by the City of Modesto Community Police Review Board.

- a. Consider approving the Minutes from the Community Police Review Board meeting on April 15, 2026. *(Simerdip K Bhangoo, Management Analyst)*

4. NEW BUSINESS

- a. Consider the Cancellation of the June 17, 2026, Community Police Review Board Regular Meeting
- b. Independent Police Auditor Annual Report January 2025-December 2025 *(Stephen Connolly, OIR Group)*
- c. Modesto Police Department (MPD) and Stanislaus County Behavior Health Services Presentation *(Cpt. Adams, MPD)*

5. STAFF COMMENTS AND REPORTS

- a. Staff Comments and Reports: At this time, Staff may make a brief announcement, or report briefly on his/her activities.

6. BOARD COMMENTS AND REPORTS

- a. Board Comments and Reports: At this time, Board Members may make a brief announcement, or report briefly on his/her activities.
- b. Community Police Review Board Annual Report 2025 Sub-Committee (*Latricia Beasley-Day, Austin Grant, Nancy Smith, and Frank Damrell*)

7. FUTURE AGENDA ITEMS

- a. TBD

8. ADJOURNMENT

- a. Next Meeting: TBD

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk (209) 577-5396. **Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.**

Posted pursuant to Government Code Section 54954.2 on the bulletin board at Tenth Street Place on _____ at _____ by _____

Date

Time

Signature



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MINUTES
City of Modesto
COMMUNITY POLICE REVIEW BOARD

Chambers Conference Room, Basement Level

Tenth Street Place, 1010 10th Street

Modesto, California

Wednesday, April 15, 2026, at 5:30 PM

CALL TO ORDER – Chairwoman Beasley-Day called the meeting to order at 5:33 pm.

ROLL CALL – Present: Board Members: Chairman Beasley-Day, Vice Chair Damrell, Byrd, Smith, Bryant, Solorio, Christensen, Grant

1. DECLARATION OF CONFLICT OF INTEREST

None

2. PUBLIC COMMENTS IN PERSON PERIOD

Speaker 1: Traveling from the Bay Area and is a former professor at California State University, East Bay. He expressed concern regarding possible elder abuse that was reported to the police department in January 2026 and stated that he is still awaiting a response or update from the assigned officer.

3. CONSENT

- a. Consider approving the Minutes from the Community Police Review Board meeting on March 18, 2026. (*Simerdip K Bhangoo, Management Analyst*)

ACTION: (Bryant/Solorio; 8/0) approving minutes.

4. NEW BUSINESS

- a. Revisit 2026 CPRB Priorities (*Scotty Douglass, CMO*)

ACTION: No Action

5. STAFF COMMENTS AND REPORTS

- a. Independent Police Auditor Update (*Stephen Connolly, OIR Group*)

ACTION: No Action

- b. Staff Comments & Reports (*Scotty Douglass, CMO*) At this time, Staff may make a brief announcement, or report briefly on his/her activities.

ACTION: No Action

6. BOARD COMMENTS AND REPORTS

- a. Board Comments & Reports: At this time, Board Members may make a brief announcement, or report briefly on his/her activities.
- b. Community Police Review Board Annual Report 2025 Sub-Committee (*Latricia Beasley-Day, Austin Grant, and Frank Damrell*)

ACTION: No Action

7. FUTURE AGENDA ITEMS

- a. OIR Annual Report January 2025 – December 2025
- b. PD & Stanislaus County Behavior Health Services Presentation

ACTION: No Action

8. ADJOURNMENT

- a. Next Meeting: May 20, 2026

There being no further business, Chairwoman Beasley-Day adjourned the meeting at 6:01 p.m.

Attest: _____
Simerdip K Bhangoo, Management Analyst

City of Modesto

Independent Police Auditor's
Third Report re: Modesto Police
Department

April 2026

OIR
GROUP

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Introduction

This is the third Report issued by the Independent Police Auditor for the City of Modesto.¹ Its annual publication is a key feature of the oversight model selected by the City in 2023. By providing information and analysis about the Modesto Police Department's primarily confidential internal investigations, the work of the IPA offers transparency into these important accountability measures. The Report also features recommendations that are based on the IPA's review of actual cases and familiarity with best practices in policing.

The Report is a corollary to the annual report issued by the City's Community Police Review Board. The nine-member CPRB is comprised of Modesto residents from a range of backgrounds, neighborhoods, and civic involvements. Its creation was the companion piece to the City's design for oversight: a vehicle to influence MPD's operations from the perspective of the community members whom the agency serves. The IPA Office is pleased to be a resource for the CPRB, and the Board's monthly public meetings have been a forum for valuable information, discussion, and insight into policing in Modesto.

The IPA scope of work in Modesto primarily covers three categories: investigations into alleged officer misconduct (many of which are initiated by members of the public), MPD's supervisory reviews of force incidents (to evaluate compliance with Department policy and training), and MPD's response to "critical incidents" (major encounters including officer-involved shootings and any in-custody deaths).

¹ In 2023, Modesto selected OIR Group, LLC as its first Independent Police Auditor. OIR Group is a team of experts in police practices. OIR Group's experience in the field of civilian oversight of law enforcement dates back to 2001. It has provided a range of services to jurisdictions throughout California and in several other states.

Last year's Report featured a discussion of two shooting incidents that had occurred in 2023, and for which the various review processes were completed in 2024. Along with a summary of the officer's actions and related findings, it was an opportunity for us to assess and discuss a new process that MPD has implemented to address these important events.

The "Major Incident Review Team" is intended to focus on critical encounters as learning opportunities for the agency. Its cornerstone is a detailed presentation that takes place within days of the incident and brings together subject matter experts and agency executives. Available evidence (including body-worn camera recordings of involved officers) is shared and then discussed in a systematic way, with a focus on identifying learning opportunities and creating responsive action items in the early aftermath of the incident.

While deferring assessment of individual officer performance, the "MIRT" process looks at a range of related components that are potentially implicated in these major cases. They include supervision, policy, training, communication, and post-incident response – a recognition that deadly force incidents are inherently worthy of the highest level of scrutiny, and often can reveal aspects of agency operations that deserve either reinforcement or refinement.

In 2025, MPD had two officer-involved shootings. The first was in March and was fatal. The second (in August) involved the wounding of a subject who struck an officer with his car while attempting to leave a crime scene.²

Both cases are still under review in the criminal justice system, and were not finalized administratively prior to the end of the IPA audit period in December. However, the Department did conduct its initial MIRT presentation for each of these events. The IPA was in attendance for both.

² Part of Modesto's commitment to transparency and oversight includes an opportunity for a member of the CPRB to respond to the scene of a shooting incident and observe the initial steps of the multi-faceted investigation and review process that ensues. The Board members also receive confidential briefings about these critical incidents, and have the opportunity to share their feedback and questions with the Chief of Police.

As with the two cases that were finalized in 2024 and featured in last year's Report, we found the MIRT process to be impressively thorough and rigorous; we also appreciated the Department's transparency and receptivity to the IPA's questions and observations. We look forward to a more complete discussion and analysis of these incidents in a future Report.

The single topic that generated the most attention and controversy for MPD in 2025 was the Department's enforcement activity on June 14 – the day of two major civic protests. A significant part of the issue was the City's Public Assembly Ordinance. Among other restrictions, the ordinance (originally passed in 2019) prohibited the wearing of face coverings at public demonstrations, under the theory that concealment of identity had the potential to facilitate unsafe activity in the context of large gatherings.³

As it happened, there were two main protests that occurred in Modesto on that day – part of a publicized initiative that spread across the entire nation. Modesto's two protests had different organizers, different locations, different starting times, and different focal points: the day's first event was focused on protesting immigration enforcement, while the afternoon's "No Kings" rally was directed more broadly at the current President and his policies.

MPD put together an operations plan and assigned numerous officers to the task of crowd control at the respective locations. Particularly since the "George Floyd" protests that swept the country in 2020 – and prompted intense scrutiny of law enforcement tactics in numerous jurisdictions – the tension between public safety tactics and protected speech activity has been a frequent source of controversy and dispute. This dynamic emerged in

³ Very recently, the ordinance itself became the basis for a lawsuit that challenged its constitutionality. That litigation is pending. The discussion of June 14 in this Report is limited to an assessment of two complaint cases that relate to how the ordinance was enforced on that day, and not the larger question of its underlying legitimacy, which will be determined by the courts.

Modesto on June 14, when the Department's arrest of seven individuals at the first protest prompted a sustained backlash.⁴

Over the course of the next few months, the public meetings of the CPRB were largely dominated by a contingent of protestors who spoke during the designated comment period and challenged the legitimacy of what the Department had done.⁵ At the risk of over-simplification, a summary of those challenges revolved around the idea that the "mask ordinance" was inherently misguided, and that the Department's decisions about enforcing it that day were improperly selective and discriminatory.

As momentum built for a reconsideration of the relevant ordinance, the CPRB considered the issue thoughtfully over the course of multiple meetings. It heard a responsive presentation from the Chief of Police and discussed its own options for weighing in on the issue. Ultimately, it promoted further information-gathering (including the agreed to addition of relevant questions to a poll that the City had been preparing about a range of subjects) and contributed to the City Council's reconsideration – and revision – of the ordinance in December.⁶

Meanwhile, the current IPA scope of work limited the avenues for our involvement, though we followed the proceedings with great interest. And, ultimately, we did have a small window into auditing the events of that day – the two public complaints about protest response that were submitted for the Department's internal investigation process.

We discuss those cases and our findings below, as part of the larger section on misconduct investigations and accountability. In both instances, the Department found that the relevant officers' conduct had been consistent with agency policy and expectations. We concurred. At the same time, we

⁴ Five of the arrests related to alleged violations of the "mask ordinance" because of face coverings. Another arrest was for unlawful use of a noise amplification device, and the other was for obstructing an officer in the performance of duties.

⁵ Soon after June 14, the charges against the seven arrestees were all dropped.

⁶ The changes were intended to provide clarification as to prohibited items, and to expand the list of specific exemptions.

appreciated the additional ways in which the Department used the intense reactions to June 14 as an occasion to assess and adjust its approach.⁷

Overall, the extensive sampling of misconduct investigations we reviewed reflect a process that has fundamental legitimacy. As we have noted before, the availability of body-worn camera recordings as evidence has made a sizable difference in both the efficiency and conclusiveness of these reviews. But the Department is also appropriately thorough – investigators routinely conduct formal interviews of witnesses and subject officers rather than simply relying on the recordings alone.

Several of the cases we looked at resulted in findings that the officers had in fact violated policy, with accountability to follow. A couple of aspects of this dynamic stood out. The first was that the Department opened some of the more serious matters on its own initiative. And another was that, in responding to complaints from the public, MPD showed a willingness to go beyond the specific issues cited by the complainant when the investigation revealed peripheral deviations from policy by the involved officers. Both of these scenarios show an emphasis on accountability and standards that should be encouraging to the public – and that counter the skepticism that can sometimes arise about a law enforcement agency's adherence to these principles.

In the discussion below about these matters, we also note areas for potential improvement and further consideration by MPD. One of these relates to the interviews of complainants: we found that the Department's investigator often used these encounters as a forum for explaining the officers' actions and/or challenging the complainant's version of events. We consider greater objectivity and a focus on listening to be the preferred approach.

⁷ Notably, only one arrest by MPD occurred during the second Modesto "No Kings" event (held in October of 2025); it involved a counter-protestor who was accused of assault.

As for the Department's force review process, it has continued to be an effective one: supervisors at different rank levels take a focused approach to the scrutiny of each case. They reach clear conclusions and, importantly, include written analysis that reflects a close engagement with the specifics of the incident.

As in the past, we largely agreed with the "bottom line" findings MPD makes in these cases, most of which involve physical force deployments that are minor in nature and warranted by the circumstances. We have also encouraged the Department to take a more expansive, holistic approach to its supervisory reviews, and it is gratifying to see numerous examples of this effort as applied to this year's range of cases.

We see force incidents as learning opportunities that can lead to useful refinements in future performance, even when the force itself was justified and in alignment with policy. A broader look at the encounter can often yield insights into tactics, decision-making, communication skills, coordination among partners, supervision, equipment, and other influential factors. Identifying – and addressing – the different issues within a given incident is a worthwhile investment of managerial attention.

We are pleased to note that the Department's commitment to this concept was very much apparent in the different force review packages we evaluated. While the force deployments were universally found to be justified, more often than not the supervisors' written assessments also included additional observations about the incident and potential room for improvement in some aspect of the officers' handling of it. As we discuss below, we found these insights to represent a thoughtful and thorough consideration that reflected well on the process.

We were not in *total* agreement with the Department's individual assessments in these force cases, and identify a few instances in which we saw things differently. We also question the frequency with which officers mute their body-worn cameras in the aftermath of the force deployments – an impediment to effective supervisory and oversight review that should be more limited. Overall, though, MPD's managerial scrutiny of these matters is

commensurate with their importance, and officers are appropriately held accountable for the force they use.

It has been interesting to note the evolution of the Department's different review processes since we started our work here in 2023. We have offered a number of recommendations intended to refine those processes, and have been gratified by MPD's receptivity. And, as in the past, the Department's cooperation with the annual review has facilitated our work. MPD's representatives are not only efficient in providing all requested materials but also willing to engage candidly and patiently when questions arise. Our hope, as always, is that this Report makes a constructive contribution to the work of public safety in Modesto.

Methodology

It is important to clarify that this Report is the function of an audit – a review of cases in the pre-designated categories that have been completed by MPD during the calendar year 2025.⁸ The oversight structure in Modesto – as in most jurisdictions that have an oversight model – leaves control over accountability with the Police Department. Investigations, and decisions about outcomes, are handled by the Department itself. There are important reasons for this approach. The necessary resources and expertise are certainly factors, but, more fundamentally, organizational health for a police agency depends in large part on a commitment to accountability and self-correction.

The audit process is intended to be a check on those systems of accountability. It is a way of bringing new levels of transparency to matters that are otherwise mostly confidential, and it introduces an outside perspective that can identify issues and propose potential improvements for the future.

The stipulated categories for this review, and the preset "sample sizes" for each, are as follows:

- All uses of deadly force or in-custody deaths;
- All bias-based policing complaints;
- All administrative investigations in which the subject employee holds the rank of sergeant or higher;
- A random selection of 1/3 of all administrative investigations;
- A random selection of 1/3 of all citizens complaints; and
- A random selection of 1/4 of all use of force reviews.

In the misconduct arena, the above criteria led to a "pool" of 48 cases – a significant increase over last year's 28. Most of this was attributable to a rise in the number of public complaints.

⁸ Accordingly, some of the incidents covered below occurred in 2024, but the resulting investigations were completed by MPD after January 1, 2025. And the investigative process for a number of 2025 incidents carried over into 2026, and thus were not included as part of the audit sample.

For our use of force audit, we followed a similar pattern of "blind" selection off a listing of completed cases. We ended up reviewing a total of 55.

The Department then produced the associated case files for each of the investigations. This included police reports and other documentary materials, investigative evidence and supervisory memos, and body-worn camera recordings. A review of these otherwise confidential files and records formed the basis for the findings and recommendations that follow.

Once the selection process was complete, the Department provided us with full access to the materials that comprised the investigation files for each case. We looked at those materials as a concrete basis for evaluating the strengths and limitations of the *process* – and not with an eye toward providing a case specific judgement regarding the resolution of individual matters.

The discussions that follow were prompted by our assessment of the Department's investigations, and the collective impressions that emerged from that assessment.

Complaints and Allegations of Misconduct

Overview

Effective investigations into possible officer misconduct are central to a law enforcement agency's operational wellness and community credibility. Officers are rightly held to a standard of behavior that is commensurate with the authority they possess. And while actions that violate internal policy and public expectations are at the very least disappointing, those shortcomings are greatly compounded if an agency lacks the will or ability to investigate allegations and impose appropriate consequences on its own personnel.

One important line of demarcation relates to whether a misconduct case is generated externally (based on a complaint from a member of the public) or internally (based on issues identified from within the agency). Both can generate outside skepticism or concern. Many members of the public question the viability of complaints that are made by outsiders and handled (in largely confidential fashion) by the Department itself – with the idea that a "home field advantage" of favoritism will always benefit the officer in a disputed encounter. As for internal cases, people doubt the rigor and initiative with which an agency will make trouble for itself in the first place by investigating issues the public may not be even aware of.

We looked at numerous examples from each category for this year's audit. As mentioned above, the overall number of public complaints to the agency has risen considerably of late. Most, however, were not supported by the evidence.

It is hard to know how much significance to ascribe to the reality of the spike in complaint cases. One factor may be increased accessibility: the Department added a new online portal in January for the submission of complaints, and 26 of the cases that were processed in 2026 came in through that method.

There is merit to looking at cases collectively in search of possible trends that warrant further consideration (and we note a couple of these in the following discussion). And significant increases or decreases year over year are, on some level, inherently noteworthy (if attributable to a range of possible explanations and subject to a "small sample size" problem). Ultimately, though, the careful investigation of each case on its own terms is the primary element of legitimacy.

The Department opened a number of its own complaint cases. Unfortunately, some involved significant acts of misconduct that were both off-duty and on-duty in nature. While these lapses are obviously problematic, MPD's willingness to address them – often with severe disciplinary consequences – is an important counter.

We continue to find that MPD takes the investigative process seriously and addresses misconduct allegations with objectivity, thoughtfulness and thoroughness. The investigative memos are lengthy and detailed, describing both the original evidence (particularly the contents of body-worn camera recordings) and the interviews that were conducted.⁹ The case file provides a strong foundation for appropriate assessment by agency executives. Decision-making is documented and explained appropriately.

Externally Generated Complaints

Holistic Review

While most of the complaints were disproven, there were instances in which the Department's review also led to the identification of additional performance concerns – not raised by the complainant but that nonetheless led to accountability or other interventions (such as training or counseling). MPD's willingness to "expand the frame" in this way reflected a pro-active mentality toward the discipline process as a broader mechanism for improvements.

⁹ We also noted enhancements to the organization and efficiency of the case files – an issue we had identified last year as a potential point of improvement.

While a few different examples of this related to deficiencies in involved officers' compliance with body-worn camera policy that were corrected appropriately, others were more substantive. For example, after one complaint related to a contentious encounter, officers received counseling about when to summon a supervisor to a scene; in another, involved officers were reminded about the importance of photographing property damage (as opposed to just relying on body-worn camera recordings).

In one case, a man alleged that an officer had intentionally caused him to trip and fall in a parking lot while escorting him. The man also said the officer had spoken to him discourteously, and had been inaccurate in his reporting about the incident (an arrest for DUI). The Department found that the fall had been accidental – but that the other allegations were sustained. It then went on to add (and sustain) an allegation relating to the following of expected procedures for a DUI arrest and vehicle tow. The officer received a disciplinary consequence accordingly.

We found the above interventions to be a positive result of the process. At the same time, we also noted limited examples where we saw room for improvement that MPD did not appear to capture. One of these related to a complaint by a woman who questioned the effectiveness of an investigation into a domestic dispute. She also took exception to officer efforts at getting her to come outside her home after she made it clear that she did not intend to cooperate further with them. (Part of the issue was that she had become a suspect in the matter, based on earlier evidence-gathering by the officers.)

We agreed with the finding that the officers' investigation of the underlying domestic confrontation had been reasonable. However, we questioned the propriety of one officer's attempts to re-establish dialogue with the woman after she closed her door: it took the form of threatening to break the door down, and then of continuously ringing the doorbell and/or knocking for more than three minutes.

This allegation of rude, harassing behavior was also deemed "unfounded" in a way that seemed to put the onus on the woman's lack of compliance. In our view, the woman's actions were within her rights, however disappointing or frustrating they may have been, and the officer's response was less a tactic than a seemingly retaliatory gesture that reflected poorly on him. While it may

not have risen to the level of policy violation, MPD should have questioned it more pointedly – and made it clear that a different approach should have been chosen.

Similarly, officers generated a complaint after detaining an elderly man in the parking lot of a shelter; he accused them of wrongful detention and excessive force. While the man was certainly disagreeable, he was also uninvolved in the crime at issue. And the officers' contention that he "fit the description" of their suspect was questionable, given the 45 year-age gap between the complainant and the person they were looking for.

While the complaint was reasonably determined to be unfounded under the totality of the circumstances (and the clearly minimal nature of the force), we thought the lead officer (who was with a trainee) could have done more to ameliorate the situation once the misunderstanding had become apparent. Instead, the interactions remained tense on both sides. We wished MPD had taken the time to add a note of non-disciplinary correction.

We recognize that "nit-picking" by supervisors can certainly be counterproductive, and that perfection is an elusive standard. However, the complaint process at its best is a constructive feedback loop as well as a basis for formal accountability. We encourage MPD to continue looking for ways to maximize counseling and training opportunities that emerge from complaint incidents.

RECOMMENDATION # 1:

MPD should continue to embrace opportunities to provide non-disciplinary but worthwhile adjustments to officer performance that arise from the review of public complaints, even when the core allegations are unfounded.

Interactions with Complainants

While actual case outcomes are one obvious factor that shapes a complainant's impression of the process, we also believe that the overall experience matters to perceptions of legitimacy. Simply put, when people

have the sense that they are being heard and taken seriously, it is validating in important ways. Accordingly, we have made recommendations in the past regarding different stages of the process, from the accessibility of complaint forms to the personalization of the notification letters that the Department is obligated to provide at the conclusion of the case.

A major component of this dynamic is the interview by an investigator. The Department is generally conscientious about following up with complainants for interviews after receiving written submissions. As we noted last year, unsuccessful attempts are documented within the case file; we were especially impressed with one show of diligence that brought the investigator to a park where an unhoused complainant was known to often spend time.

We listened to a number of "intake" interviews from this year's cases. The investigators were consistently respectful and patient in their demeanor, and often did a fine job of eliciting details from the complainant's perspective and getting clarification about the different concerns that were being raised.

We did, however, note several examples in which the interviewer made an effort to either explain why officers were justified in taking the action that was being disputed, or else challenged the complainant's version of events based on the investigator's own review of evidence (frequently the body-worn camera recordings). Both of these approaches are potentially problematic.

- In a case in which the complainant believed she had been wrongly singled out for an illegal window tint, the investigator got into a lengthy exchange about the relevant Vehicle Code Section and "reasonable suspicion." It proved to be upsetting to the woman – and seemed to miss part of the point as to her contentions. She ended up saying, "You haven't given me any information other than trying to clear your colleague from getting in trouble."
- A man submitted a complaint based on an officer's response to a custody dispute. The investigator repeatedly cited a relevant court order to challenge the man's contention that the officer had been wrong.
- A woman believed that officers had treated her with bias and otherwise mishandled a dispute between her and her ex-husband. The

investigator made repeated references to having "watched the videos" in order to refute some of the characterizations she was making.

- A man alleged that his detention by the police for loud music coming from his car was motivated by harassment and bias. The investigator challenged several aspects of the man's version of events based on his own review of recordings, and explained that excessively loud music was a valid basis for a stop.
- When a man alleged racial bias in the context of his traffic stop, the investigator asked how the officer could have discerned his race if he was wearing a hoodie. However, the officer later acknowledged in his own interview that he was in fact aware of the complainant's race (though it hadn't influenced his enforcement decisions).
- A man accused an officer of a "false report" about an incident in which he thought he was a crime victim. The investigator ended up in repeated "debate-style" dialogue with the man, prompting the complainant to say at one point, "Well, if you're asking me questions, you should let me finish.")
- In another case, a couple that had been involved in a traffic collision (as pedestrians) wished to complain about the report that was prepared by the responding officer – and later added a complaint against the supervisor who first interviewed them about the issue, alleging that he had been intimidating and unduly focused on diverting them from the formal complaint process.

To be clear, these exchanges are occurring in the context of lengthy conversations and are not necessarily reflective of the overall dynamic of the interview. It is also true that the course of some interviews – and the stated preferences of the complainants themselves – lent themselves to the interviewer taking a more active role in providing information.¹⁰ We did not have the impression that the intent was ever to chill or discourage; nor was the information itself inaccurate or misleading. Unfortunately, though, the effect on complainant confidence in the process was likely to be a detrimental one.

¹⁰ We noted one case in which the investigator took pains to say he was happy to explain procedures but did not want the complainant to feel like he was not impartial or that her concerns were not valid. She overtly requested him to discuss the relevant protocols.

The above examples (particularly insofar as some of them provoked a negative response) are a reminder that neutrality matters, not only to the substance of the investigation but also to public trust in its credibility. Accordingly, an emphasis on listening and on soliciting the complainant's version of events should be the goals at this phase of the process. We have previously recommended that MPD reinforce this idea with its investigators, and reiterate it here.

RECOMMENDATION # 2:

During intake interviews, MPD investigators should focus on ensuring that the complainants' concerns are fully described and understood, and should avoid justification of officer performance or challenge to the complainants' version of events.

Complaints about Biased Policing

The Department identified 12 different complaints in this cycle that featured an allegation of bias as part or all of the claimed misconduct. A variety of races – and other categories (including sexual orientation and socioeconomic status) were represented.

We reviewed each of them in keeping with our aforementioned selection criteria. None of the allegations were substantiated, and we concurred with these results.

This is consistent with our past experience in Modesto as well as many other jurisdictions around the country. Some of this is surely attributable to the actual lack of explicit bias with which a great many officers perform their duties. And the challenges raised here were often premised on the complainant's demonstrably mistaken assumptions (such as a mishearing of a comment) or otherwise unsupported assertions. We also noted that bias was not the central articulated concern in several of the cases.

At the same time, and as we have explained before, these allegations are notoriously difficult to confirm, even when there is real legitimacy to the experience of unfairness. This is because so much turns on the subjective intent of involved officers, who would obviously be disinclined to admit to this kind of misconduct – if they were even conscious of the bias they may possess.

For this reason, it is important for agencies to be thorough and resourceful in exploring these issues and ensuring that bias is not influencing approaches to enforcement in the field. It is one thing for an officer to straightforwardly deny having a racial motivation for stopping a car that also had a broken taillight, or detaining a bicyclist for rolling through a stop sign on an otherwise deserted street.¹¹ It is another to look at whether a history of complaints is perhaps relevant, or whether cumulative patterns of traffic stops and self-initiated contacts are reflective of significant disparities.

While we reiterate that we did not differ from the Department's conclusion in any of these cases, the investigative approach was often quite direct (if not perfunctory). Officer denials, for example, were given much prominence. Accordingly, we take this occasion to repeat a recommendation from last year's Report, and encourage MPD to remain thoughtful and flexible in addressing these concerns when they arise.

RECOMMENDATION # 3:

MPD should explore the use of additional investigative strategies to evaluate allegations of bias, including the evaluation of patterns of stops and arrests by individual officers or the description of additional, non-discriminatory factors where applicable.

¹¹ In our review of one body-worn camera recording, a woman who was stopped for tinted windows made an impression by pointing out the several cars that passed by during her detention and that appeared to be similarly tinted. *Selective* enforcement is, of course, another potential vehicle for the biased treatment of a particular group.

Recurring Issues

To the extent we noticed "mini-trends" in the group of complaints that we reviewed for this cycle, two categories were represented to a noticeable extent: five cases were in the context of searches of residences, and four related to child custody exchanges that one parent considered mishandled.

The search complaints usually involved (or came from) family members of the target individuals, and took exception to officer tactics, property damage, or even the legal validity of the search. In two instances, locked doors were kicked open.

One complaint was based on the early morning search for evidence in a theft case that the Department conducted on a private residence, thereby disrupting the complainant and his family. The underlying warrant was based on an investigation that was flawed in unintentional but significant ways. MPD conducted a thorough review and found that the lead officer had in fact failed to meet expectations of care in reaching his conclusions and pursuing the warrant. But it also identified related but distinctive shortcomings on the part of an involved officer (who failed to share relevant information that he learned during the warrant service, and failed to write a proper report) and supervisors at two different levels (who failed to adequately manage the event prior to and during the search).

The officers were exonerated in the other instances – a finding with which we concurred. But we were also sympathetic at times to the confusion and frustration that these third parties experienced. (One case, for example, involved the main subject's sister – who was handcuffed – and elderly, infirm mother.)

Pro-active policing, investigative thoroughness, and officer safety are certainly values worth prioritizing. But we also encourage efforts at clear communication and respectful sensitivity to affected family members.

As for the custody cases, we recognize the inherent tensions that can arise in these adversarial situations, and the attendant challenges when law enforcement is called upon to "referee." A few of the incidents that led to

complaints involved older children who physically refused to go with the designated parent, leading to clashes between court orders and the practical realities of the moment. (One such exchange resulted in force being used against a 16-year-old female who was arrested after a lengthy stalemate between the parties.)

The identified concerns in these cases ranged from fundamental decision-making to passing comments that a parent interpreted as inappropriate. And the officers themselves were often clearly – and understandably – frustrated as they attempted to navigate difficult dynamics.

No easy answers presented themselves to us. But the prevalence of these two different situations – and the predictable nature of their future recurrence – seems to make them topics that are worthy of the Department's attention in terms of training and supervision. To the extent the officers can benefit from reminders about their legal standing and approaches to effective communication and conflict resolution, MPD supervision should consider facilitating them.

RECOMMENDATION # 4:

MPD should consider options for further preparing officers and supervisors to manage the distinctive, adversarial dynamics that can arise in the specific contexts of residential searches and custody exchanges.

Major Misconduct Cases

As noted above, we looked at several serious misconduct issues that were investigated and addressed by the Department – and, where appropriate, led to significant disciplinary consequences. Among the cases were the following:

- An investigator was disciplined – and removed from his assignment – after repeated lapses in timely completion of reports and follow-ups in ongoing cases.
- A supervisor was demoted after an off-duty DUI incident.

- Several civilian employees received suspensions – or left the agency in lieu of discharge – after an investigation established that they had engaged in a pattern of shirking work responsibilities.
- An investigator received a lengthy suspension after acknowledging that he had used his Department vehicle improperly while off duty.

Perhaps the most significant investigation – which resulted in severe consequences for four different Department members – involved the treatment of a person in custody.

Officers responded to a call for service involving the alleged discharge of a gun, and ended up in the traffic stop and arrest of a subject who was highly intoxicated. While the man was handcuffed and in the back of a police vehicle, he apparently passed out, as an officer discovered while attempting to Mirandize him. Officers attempted to wake him verbally and with a sternum rub, without success.

At that point, Officer # 1 suggested to Officer # 2 that he should tap the subject in the groin. He later asserted that he had been hoping that hearing this statement would prompt a reaction from the subject, whom he suspected was feigning sleep, and that he did not mean it seriously. Unfortunately, the less experienced Officer # 2 did not realize this and flicked the subject's groin area a few times in an effort to wake him.

These initial contacts had no apparent effect, and at that point Officer # 3 stepped in to ensure that the tactic would not be repeated. At that point, the officers collectively decided that the man – though breathing well and not in apparent medical distress – was not likely to be responsive to questioning, and therefore should just be transported to jail.

Department awareness of the problematic conduct emerged in phases. Officer # 3 was the one who eventually brought it to a supervisor's attention – only to have that person fail to make notifications up the chain of command in an ill-considered effort to address the matter at his level. That supervisor did, however, reach out to the District Attorney's Office to flag the issue as a potential concern for the pending prosecution. Eventually, a representative

from the D.A.'s Office brought the matter to the attention of MPD's Chief, who immediately ordered an investigation.

We found that investigation to be appropriately thorough and rigorous, and the sustained allegations (against Officers # 1 and #2, the supervisor, and a fourth officer who was present and failed to take responsive action) to be well-supported by the evidence. The substantial discipline that resulted was also a reflection of both the embarrassing nature of the misconduct and the rigor of the MPD response.

Complaints Arising from June 14 Protest Activity

As noted above, MPD's approach to policing the civic protests on June 14 attracted significant attention and prompted an organized protest effort of its own in the weeks and months that followed. Much of the subsequent conversation was focused on the City's "Public Assembly Ordinance," which had provided the basis for most of the seven arrests made by the Department on that day. Challenges to the fairness and even the legality of the law persisted through the fall and ultimately led to revisions authorized by the City Council. But interested parties also raised questions about MPD tactics and the possibility that the two different events that day had been subjected to disparate treatment for reasons that were problematic.

While the larger issues continued to generate public attention and prompted a detailed response from the Police Department at a CPRB meeting (as well as consideration by the City Council), the specifics of MPD conduct on that day resulted in only two formal complaints. They were both made by the same person, a third-party attendee of the protests who questioned aspects of two separate arrests that she personally observed on that day.

We reviewed both investigations. This included listening to the recording of her interview with an investigator,¹² watching the body-worn camera videos of

¹² Unlike some of the interviews that prompted the concerns noted above, the tenor of this one was cordial, objective, thorough, and careful about ensuring that the complainant's perspective was understood.

the questioned encounters, reviewing the relevant police reports and radio transmissions, and assessing the multiple interviews that were conducted with the MPD personnel who were directly involved as well as supervisors who planned the Department's enforcement strategy for the day.

First Complaint

The first complaint related to the arrest of a "young man...who was standing peacefully" according to the complainant. Her impression was that the man had been arrested with no warning, and also cited the fact that the officers had not provided badge numbers.

During the interview, the investigator was able to clarify the specific arrest that the woman was focused on, and then evaluate the radio traffic and body-worn camera that captured what was happening before and during those moments. We also reviewed that material.

There were different examples of officers providing warnings or notification, both to individuals who were in apparent violation of the ordinance and to the group gathered in the plaza. One of the protest organizers also met briefly with police to question the confiscation of a bullhorn, and was given a copy of the ordinance to review. Soon after, and as the protest was effectively starting, police made relevant announcements in English and Spanish through patrol car loudspeakers.

The arrest itself was calm and uneventful. Two officers approached the subject and reached out to take him into custody. He had been described to them over the radio and had received an individualized warning several minutes earlier. The subject was cooperative and refrained from speaking, other than to ask for a lawyer. He was driven to a nearby location, when the officer who had warned him came by to make a positive identification.

To the complainant's point, the arrest was abrupt, and – in the absence of additional context – seemed to occur without apparent provocation or explanation. However, the ordinance as then written was in fact being violated, and warnings of different kinds had happened and seemingly been ignored. Nor was it apparent that anyone had asked the involved officers for

badge numbers in the brief moments of the arrest (which was a component of the woman's concerns).

We did take note of ambiguities in the situation. For example, we saw individuals who were wearing face coverings of different kinds but were not cited. (This could account for some of the confusion and resentment that the arrests ultimately generated.) And we thought that the extremely terse warning that the subject personally received (from an officer who was speaking out the window of his radio car) could just as easily have been misunderstood or misheard as it was willfully disregarded.¹³

The larger group warnings (by loudspeaker) that preceded the arrest were also subject to differing views. On the one hand, they were clear, accurate, and constituted a reasonable attempt to gain voluntary compliance. On the other, they were in direct competition with the remarks and chanting that had been initiated as part of the protest – a reality that presumably both dimmed their effectiveness and reflected the seeming tension between law enforcement as an entity and many of the participants.

While we agreed with the Department that no policies had been violated, the dynamics noted above were certainly worthy of further consideration and potential future adjustments. Ideally, maximizing the clarity of efforts at "fair warning" (which themselves are commendable) should be a priority in these challenging situations.

RECOMMENDATION # 5:

MPD should continue its ongoing consideration of ways to strengthen relevant notification efforts before and during demonstrations in order to eliminate misunderstanding or confusion as a basis for violations.

¹³ It also did not reflect particularly well on the Department when that same officer, while positively identifying the then-arrested subject, responded to the man's saying, "I wear masks all the time," by answering, "Yeah, well, you're going to jail, have a nice day."

Second Complaint

This related to the seventh and final arrest from the morning protest; it occurred approximately one hour after the first arrest cited by the complainant. Here, the woman again did not understand what the provocation for the arrest would have been, based on her observations of the subject's behavior.¹⁴ She also found the officers' physical actions in grabbing him and taking him into custody were excessive.

Once again there was a significant amount of recorded evidence that showed the moments leading up to and through the man's arrest. The man attracted police attention by apparently responding to another person being taken into custody for violation of the public assembly ordinance.

MPD officers had left an unmarked vehicle, seized the first subject, and then placed him in a different, trailing vehicle. The second man (whose arrest prompted the complaint) moved between the two MPD vehicles in the roadway with his phone extended, apparently taking photographs or recording, and very briefly impeding the intended egress of the second car. He then trailed the second car in the street for several steps as it pulled away.

The decision to arrest the man for this conduct was discussed over the radio, and a team was designated to do so.¹⁵ Four different officers (including one carrying a less lethal bean bag shotgun) surrounded the man on a sidewalk and took control of his arms as he repeatedly asked why he was being arrested, and as a large crowd observed from across the street. The man was upset but not physically resistant, and the officers were able to handcuff him and escort him to the back of a police vehicle without incident – though the man cited a previously injured shoulder and admonished the officers about

¹⁴ Again, the investigator was able to use her description to connect the complaint to a specific incident, though the complainant did not know the person arrested.

¹⁵ The formal charge was for obstruction of officers in the performance of their duties, as well as an alleged municipal code violation for congregating with the purpose of interfering. As noted above, no prosecutions resulted from this or other arrests during the protest.

twisting his body.¹⁶ He was then quickly driven away from the scene as part of the overall strategy to avoid exacerbating any tensions with the other protestors.

The arrest of the man took place approximately three minutes after the actions in question, a gap which perhaps contributed to the complainant's perception that there had been no discernible basis for taking him into custody. As for her other concerns, the officers' efforts to take control of the man did not require overcoming any resistance – though again, they could have seemed "excessive" based on the number of officers and the rapidity with which the removal of the man from the scene was expedited.

In short, while the woman's complaint seemed both sincere and understandable, the Department's finding that it was unfounded was a reasonable one. Although the man's alleged "obstruction" was very brief in duration and did not end up posing a significant challenge to involved officers, it was viewed with added concern in the context of a charged atmosphere and a largely disapproving protest group. The officers' physical handling of the man also seemed limited and appropriate to the objectives.

Allegations of Biased Policing:

A significant overlay to the woman's dual complaints emerged from her interview with the investigator: she expressed her belief that the first protester had been discriminated against due to the "ICE Out" political message that animated it. She pointed out that she had attended the "No Kings" protest later that day and did not observe the same sort of enforcement activity taking place.¹⁷

The Department addressed this as part of its investigation, and considered the allegation to be unfounded. The issue of political bias was raised in several interviews with involved personnel. Along with consistent denials that an

¹⁶ The man later publicly alleged that officers had broken his finger during the encounter, but – unlike the shoulder injury issue and a claim that he had been unnecessarily "roughed up" – there were no apparent contemporaneous references to this concern.

¹⁷ There were, in fact, no arrests at the second protest.

intentional targeting of the first protest had been expressed or encouraged, the interviewees focused on the specific violations of law that they were attempting to address in making the seven arrests at the morning event.¹⁸

Other relevant differences were noted as potential contributors to the contrasting dynamics. One was simple: the "ICE Out" event was both first and (correctly) anticipated to be smaller, and the Department's leadership believed that addressing potentially problematic issues early was important to ensuring that no "carry over" would complicate the larger protest. Another was the effective pre-event communication that MPD representatives were able to conduct with the organizers of the second protest – in contrast to the reported lack of response from Ice Out organizers to a similar outreach. Lastly, the Department noted that its experience at the second event was that the "warning" strategy that it had adopted as a precursor to enforcement had proven to be a more successful one in the afternoon. The compliance of potential violators had eliminated the need to address the conduct through arrest.

Changes in Strategy

The tension between free speech rights and public safety in the crowd control context is longstanding, but has seemingly intensified in recent years.¹⁹ Law enforcement is often responsible for maintaining order while simultaneously being the direct or indirect *subject* of the protest in the first place – a particularly challenging situation. Adapting to new community expectations, state and local laws, and evolving technologies requires effective agencies to have a culture of self-scrutiny and adjustment.

¹⁸ One involved officer actually appeared to mix up the "themes" of the respective gatherings, and others were consistent in their stated disregard of/disinterest in any political differences between the protests.

¹⁹ As noted above, the Modesto City Ordinance (and its mask provision) that came under intense scrutiny after June 14 dated back to 2019 – preceding both the COVID pandemic and George Floyd police reform movement of 2020 that ushered in significant changes in public perspective.

MPD's initial public reaction to the criticism of its approach on June 14 was detailed, informative, largely persuasive – and also defensive. To its credit, the passage of time and further consideration of public perception led the Department to re-assess some of the specific tactics that had contributed to the assertions of undue aggression on June 14. This included the wearing of masks by several officers involved with the protests – a step that was intended to protect the identity of officers in special assignments but that seemed particularly ironic under the circumstances. The Department also committed to reviewing the advisability of using unmarked vehicles to deploy officers. This strategy's tactical appeal (allowing officers to get close in dynamic environments to better effectuate planned arrests) also understandably generates concerns about transparency and due process.

The June 14 protests and subsequent controversy were both a challenge to the agency and a learning opportunity. We found the complaint investigations that we looked at to be thoughtful and thorough – but also appreciate the flexibility with which MPD has modified its approach. The results in subsequent protest scenarios have been gratifying.

MPD Force Review Process

From the outset of our responsibilities in Modesto, we have found the Department's approach to the use of physical force by officers to be a match for public expectations of necessity, restraint, and accountability. This is true as a matter of substance, in terms of officer performance in the field. And it is true in terms of the thoroughness with which each force deployment is reviewed by MPD management to ensure compliance with policy and expectations.

We looked at the review packages for 55 separate incidents as this year's audit sample. As in the past, the goal is to evaluate the efficacy of that process. That said, we were largely in agreement with the Department's assessments – and were impressed with the extent to which MPD's process has become increasingly responsive to issues we have raised in the past.

Process and Holistic Review

Overwhelmingly, the uses of force were found to be justified and consistent with policy. Most were relatively low-level, with the "takedown" to the ground of resistant subjects prior to handcuffing being easily the most common force option that was utilized.²⁰ Most of the incidents also resulted in minor or no apparent injury to the subject; however, a focus on necessary medical attention and clearance was also prioritized appropriately in the aftermath of the encounter itself.

²⁰ One case that differed in terms of both the force option and policy determination was a Taser deployment that contributed to the apprehension of a subject who had suddenly fled from a detention. Because "mere flight," without active physical resistance (or the immediate threat thereof) has been characterized by case law as insufficient justification for the higher level of force that a Taser represents, the officer's actions did not meet the requisite threshold. The Department identified and addressed this violation of policy.

The Department's process continues to feature multiple layers, beginning with a first-level supervisor who generally responds to the scene upon notification and ensures that appropriate evidence-gathering is occurring. This includes an attempt to get a statement from the subject about his or her experience of the incident.

Concerns about the objectivity and effectiveness of that interview process were flagged in our first two Reports. Ideally, the goal is to capture the subject's perspective in a neutral way, and with as much detail as possible, with the overt emphasis being the review of the *officers'* actions (and not the blameworthiness or decision-making of the subject).

We were pleased to note overall improvement in this regard. Questions were generally framed in open-ended ways ("What happened here today") and follow-ups aimed at clarification rather than "cross examination." ("You say you 'freaked out.' What do you mean by that?")

At times, though, these interviews fell short of that benchmark. We still noted occasional examples of impatience, skepticism, or lecturing ("You still have to listen." "Let me see if I can explain this to you...") To MPD's credit, flaws in the interview technique were sometimes noted at the higher levels of the review process, but it is an area that merits ongoing attention.²¹

Our other concern with the initial "sergeant-level" review is that we noted several cases in which the sergeant was on-scene and involved in the Department's enforcement activity *prior* to the force being deployed. That same person was then entrusted with the review process.

While the resulting affirmations of the decision-making and officer conduct were, in our view, generally accurate and warranted, the dynamic effectively and at least in part amounted to a self-critique that is suboptimal. Though practical considerations are presumably at play here (especially when the incident is minor in nature), a better practice would be to assign the initial review to an uninvolved supervisor when practicable.

²¹ We also saw occasional examples in which no recorded interview was seemingly included in the package, and with no documentation of a subject's refusal or other impediment to conducting one.

RECOMMENDATION # 6:

MPD should strive to ensure that uninvolved personnel are given the responsibility for handling the initial investigation and assessment in the aftermath of a force deployment.

One of the more striking differences in this year's group of cases was a positive one: we saw numerous examples of supervisors identifying – and addressing for follow-up with counseling or directed training – peripheral performance issues that merited attention. The endorsement of a "holistic" approach to incident review has been a consistent point of emphasis for us, and one that MPD has seemingly embraced to a gratifying new extent.

The question of "in or out" of policy is obviously important but also quite narrow, and these encounters often feature learning opportunities that are ideally captured and acted upon. More often than not, supervisors identified one or more aspects of the response that fell into this category of holistic performance improvement.

Examples included the following:

- Officer profanity
- Insufficient report writing
- Dangerous driving
- Ineffective "arrest and control" techniques
- Delayed or ineffective handcuffing
- Failure to take photos or otherwise document relevant evidence
- Failure to wait for back up before engaging
- Issues with body-worn camera activation
- Inadequate or careless weapon-handling
- Ineffective communication or positioning among partners.

Two of the more common issues that were cited were ones we have focused on in prior reports: de-escalation efforts and body-worn camera issues. Each was noteworthy, but for different reasons.

De-escalation

"De-escalation" can generally be described as a range of techniques, approaches and tactics that can help lessen or ideally obviate the need for officers to engage in physical force in order to protect themselves or otherwise resolve an encounter. (Examples are largely situation-specific, including verbal rapport, negotiation, maintaining safe distance, protective cover and concealment, slowing the encounter down, and clear explanation/warnings.)

While law enforcement experts maintain that such concepts have been utilized for generations, recent years have given "de-escalation" new prominence – and have changed expectations accordingly. The combination of new legal standards requiring de-escalation when feasible, heightened public awareness, and increased concern about force deployments that were lawful but avoidable have all contributed to this phenomenon. As a result, conscious efforts at de-escalation – or explanation as to why it was not feasible – has become a standard part of police response.

MPD has worked to meet the new expectations – a project that seemed to be a "work in progress" last year. Toward that end, the final recommendation in the previous Report read as follows: "MPD should bring additional attention to the implementation of its new policies regarding documentation and evaluation of de-escalation efforts in the context of force incidents."

MPD responsiveness to that idea was clearly reflected in the cases we looked at for this audit cycle. When officers did not incorporate a reference to de-escalation in their reports, it was noted in the review memo – and they were ordered to complete supplements that addressed the gap. This was especially striking in the context of incidents when the officers actually *had* made appropriate efforts to avoid force. Following through on the reporting requirement ideally will further reinforce the emphasis on this important consent, with form shaping substance, and substance continuing to evolve in positive directions.

Body-Worn Camera Issues

We were less encouraged by the prevalence of identified shortcomings in body-worn camera activation at the outset of these incidents. While MPD's attention to this concern was consistent, and a step in the right direction, we wonder why these issues continue to emerge with any sort of regularity.

We do not have the sense that the delayed activation is being done nefariously, and other officers are often on-scene and capturing the incident – so the loss of evidence is mitigated to some extent.²² Still, by this advanced point in the arc of the technology, and given the importance of it to transparency and public trust, it is disappointing that officers' "muscle memory" is not more firmly established.

We also made note of another recurring issue – the intentional and intermittent muting of body-worn cameras during the course of incidents. This was a concern that we noted last year as well, and that does not seem to have abated.

MPD policy allows for muting during tactical discussions or periods of inactivity – and the recordings we received were often extremely lengthy. But we saw multiple example of officers muting their cameras for extended periods, for unclear reasons and without effort at attendant documentation. And our assumption is, as we noted last year, there were occasional instances in which cameras were muted with intention and then inadvertently left on silent.

Interestingly, current MPD policy does not currently require activation of body-worn cameras:

The portable recorder *should* be activated prior to the contact or initiation of the following (Emphasis added):

²²This is not always the case. In one incident we reviewed, the adequacy of warnings and commands that were provided to the subject before force was used became a point of contention. But the officer (who had failed to promptly activate) claimed he had accomplished this in part before the camera began capturing audio. Perhaps not coincidentally, we also questioned other aspects of the reporting in this incident.

With the almost universal deployment of body-worn cameras in police agencies, there is an expectation that officers will activate their cameras when they engage with the public. Changing policy to make it mandatory for officers to do so may improve MPD's track record of activation compliance.

We are familiar with different approaches to this problem; in one agency, for example, officers have taken to overtly narrating their rationale for muting before doing so. Another approach is to require the officer to explain any muting in the subsequent incident report. We recommend that MPD focus further attention on maximizing the intended benefits of recording devices and look for ways to enhance officer compliance.

RECOMMENDATION # 7:

MPD should change its body-worn camera policy to expressly advise officers that body-worn cameras “**shall**” be activated prior to, or at the initiation of, qualifying police contacts.

RECOMMENDATION # 8:

MPD should consider new approaches to enhancing compliance with expectations for body-worn camera recording, up to and including disciplinary sanctions.

Other Observations

Flawed Response to Barricaded Subject Scenario

We were concerned with different aspects of a particular deployment that ended – fortunately – with the safe apprehension of an apparently suicidal subject who was wanted for assault and threatened officers at various points. Though he was ultimately taken into custody with control holds (before being placed in a WRAP restraint device for transport to the hospital), the leadup to that conclusion was flawed in ways that the review process noted – but seemingly underreacted to.

The first of these problems was the firing of "pepper balls" into the location in an attempt to gain compliance. While the idea was not inherently objectionable, the execution went quite poorly. A trainee officer (not certified in the launcher) was given the opportunity to use the weapon, only to have it malfunction due to user error. A third attempt resulted in badly aimed rounds that hit a fence and appeared to affect the officers more than the subject. And, perhaps most notably among the defects, the action did not appear to be part of a planned, coordinated effort but was instead undertaken on the training officer's own initiative.

While the above problems were identified in the subsequent review, the involved officers were only counseled about the poor decision-making that had occurred. In our view, a stronger response was warranted.

Nor was that the only glaring shortcoming in the operation. As the officers made entry, they brought a K9 with them without a clear sense of mission. The dog was close to the team of officers that gathered to kick in the door where the subject was located. He ended up biting an officer in the leg.

K9 Deployments

MPD's K9 program attracted our attention last year when the different deployments we happened to review seemed characterized by faulty performance. Our sample size was smaller this year, but some of the same concerns applied (with the aforementioned accidental bite case the lead example).

In the only other incident we reviewed, the dog clearly assisted in the apprehension of a man who was inside a car, believed to be in possession of a knife, and completely uncooperative with efforts at securing his surrender. Officers eventually broke windows and got the dog to make entry. He bit the man on the elbow, then disengaged and bit the man on the ear. (The resulting wounds were quite minor.) Meanwhile, officers took advantage of the man's distracted state and seized him through a now-open car door.

The review focused on the justification for the deployment, which did clearly meet the threshold requirements per policy. In our view, though, there were

reasons for further scrutiny and criticism. For example, dogs are trained to set and hold a bite, and to maintain it until officers are able to secure the subject in handcuffs. That did not happen here, and the level of coordination between the dog and the arrest team was not clear. However, the supervisory memo made no mention of training or other concerns.

Similarly, the handler in the "bitten officer" seemed to lack control of the dog, even before the climactic accident. (After the team entered the residence, the handler sent the K9 up and down the stairs with no apparent purpose. And at different points on the recording, the K9 officer can be heard to say, "I can't tell what he's doing" (referring to the dog) and then "He's just not listening to what I'm telling him.") But these issues were not focal points in the subsequent review.

Last year, we recommended enhancements to the K9 program's training as well as the mechanisms with which deployments are reviewed. Given the increased scrutiny that police K9 programs have received in recent years (including repeated legislative proposals to ban them as a force option), we again encourage MPD to redouble its efforts in this area of operations.

RECOMMENDATION # 9:

MPD should more critically evaluate all aspects of K9 deployments instead of limiting its review to whether the deployment met appropriate Department criteria.

Conclusion

The events of the past year served as a reminder that law enforcement's challenges – like those of society at large – are continually evolving, and can often arise from unexpected directions. Even within the short span of our three years in Modesto, the landscape has changed in terms of state law, national political dynamics, the influence of technology, and the individual incidents that generate concern and attention. Engagement with, and responsiveness to, shifting community priorities must therefore be a fundamental feature of effective policing and public safety.

At the same time, there are also core concepts that should endure within a police organization. These include an emphasis on accountability and meaningful self-scrutiny, and a commitment to continuous improvement.

Our sense is that the Modesto Police Department is guided by these dual influences. Though individual lapses and shortcomings can be disappointing, they are happening against a backdrop of real regard for the City and its residents. And the internal review systems we assess each year are reflective of appropriately high standards and the concerted effort to uphold them. We look forward to continuing our work in monitoring those processes in the year ahead.

We also take this opportunity to thank the Community Police Review Board for its contributions to oversight in Modesto. Along with admiring their dedication and thoughtfulness as volunteers, we greatly appreciate the insights into the City that we have gained from interacting with the nine Board members: people who live and work here and who care deeply about Modesto's well-being.

Recommendations

RECOMMENDATION #1:

MPD should continue to embrace opportunities to provide non-disciplinary but worthwhile adjustments to officer performance that arise from the review of public complaints, even when the core allegations are unfounded.

RECOMMENDATION #2:

During intake interviews, MPD investigators should focus on ensuring that the complainants' concerns are fully described and understood, and should avoid justification of officer performance or challenge to the complainants' version of events.

RECOMMENDATION #3:

MPD should explore the use of additional investigative strategies to evaluate allegations of bias, including the evaluation of patterns of stops and arrests by individual officers or the description of additional, non-discriminatory factors where applicable.

RECOMMENDATION #4:

MPD should consider options for further preparing officers and supervisors to manage the distinctive, adversarial dynamics that can arise in the specific contexts of residential searches and custody exchanges.

RECOMMENDATION #5:

MPD should continue its ongoing consideration of ways to strengthen relevant notification efforts before and during demonstrations in order to eliminate misunderstanding or confusion as a basis for violations.

RECOMMENDATION #6:

MPD should strive to ensure that uninvolved personnel are given the responsibility for handling the initial investigation and assessment in the aftermath of a force deployment.

RECOMMENDATION #7:

MPD should change its body-worn camera policy to expressly advise officers that body-worn cameras “**shall**” be activated prior to, or at the initiation of, qualifying police contacts.

RECOMMENDATION #8:

MPD should consider new approaches to enhancing compliance with expectations for body-worn camera recording, up to and including disciplinary sanctions.

RECOMMENDATION #9:

MPD should more critically evaluate all aspects of K9 deployments instead of limiting its review to whether the deployment met appropriate Department criteria.