

Lompoc Police Department:

Review of Force and Internal Investigations

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Foreword

The Chief of the Lompoc Police Department (LPD) initiated this review in an effort to identify potential areas for improvement in his agency's internal investigative and review processes. We reviewed all of the reported force incidents for three years, as well as investigations into allegations of significant misconduct conducted by the Department's Internal Affairs Division. Our goal was not to reexamine or opine on the outcomes of any of these individual cases. Rather, our task was to use these incidents and investigations to examine the LPD's policies, protocols, and processes to assess the Department's strengths and weaknesses in these areas. The 22 recommendations we make in this report stem from this examination.

While we credit the Department and its officers for a number of things they do well, we also discuss in this report significant shortcomings, mainly in the ways in which LPD officers report and document uses of force, as well as how supervisors investigate and review force incidents. We raise concerns about the types of force that do not require written reports, and questions about the frequency with which LPD officers utilize their Tasers. We conclude that many of our concerns could be addressed if the Department were to adopt a more rigorous process for reporting, investigating, and reviewing uses of force.

Currently, the Department skips basic steps important to a thorough examination of force – obtaining an account from the person upon whom force was used, interviewing witnesses, and reviewing video and other forensic evidence. As a result, most force “investigations” primarily consist of a sergeant reading an officer's account and then signing off on the force as justified.

The absence of a meaningful investigation robs the Department of an opportunity to learn from each incident through the prisms of tactics, training, briefing, supervision, technology, and equipment. Beyond the bottom line issue of legal justification for force, each incident offers a potential opportunity for the Department to review its practices and policies in these areas to identify shortcomings. LPD does not perform this type of comprehensive evaluation; in several cases we reviewed and discuss in this report, we found tactical questions that should have been addressed.

The fact that LPD's leadership commissioned this independent review, provided open access to the materials we needed to complete it, and made this report publicly available is evidence of its commitment to meaningful reform. Indeed, the Chief's proactivity and desire to push his agency forward on his own initiative is commendable. We frequently perform similar reviews for other law enforcement agencies in the wake of high profile incidents that spur public controversy and generate substantial media attention – police shootings of unarmed citizens, in-custody deaths following uses of force, high dollar lawsuits, and citizen complaints about racially disparate policing. The Lompoc Police Department is not grappling with the fallout from any of this negative attention, but nonetheless seeks to be a progressive agency, improving its systems wherever possible in an attempt to best position itself to avoid such incidents. We look forward to a continuing dialogue with the LPD and its community as it works to meet this goal.

Use of Force

An officer's authority to use force comes with a significant responsibility to use it, at a minimum, only when reasonably necessary. It is essential that a law enforcement agency critically review and evaluate each force incident in order to determine whether the use of force complies with Departmental expectations as set out by policy and reinforced in training. An effective inquiry, however, does not end there. The Department should also assess force incidents for potential issues with performance, training, tactics, equipment, policy, or supervision. This requires a commitment to comprehensive fact-gathering and dispassionate review. Such a holistic review of force incidents will increase the tactical and decision-making capabilities of officers, promote accountability, and leave the Department with better options to address tomorrow's challenges – a goal of any forward-thinking law enforcement organization.

Unfortunately, the LPD's current policy and practice on force reporting and review does not facilitate the achievement of this goal. As detailed below, while officers often provide a good description of the force used, other basic markers of a thorough investigation are not met, and there is no established review process that ensures supervisors and executives are meaningfully examining each incident to identify performance issues – both exemplary and not– as well as any other concerns about tactics, training, equipment, or supervision.

LPD leadership recognizes the shortcomings of the current force reporting protocols and agrees in principle with the importance of a comprehensive investigation and holistic review of force incidents. Department executives understand the role force plays in officer safety, community perception, and effective law enforcement, and have willingly engaged with us on topics related to force policy and the review process. We look forward to continued cooperation and communication as the Department weighs our specific recommendations.

Force Reporting, Documentation, and Investigation

LPD policy requires an officer to prepare a written report after using any force that resulted in an injury to the officer or suspect; where the officer used a chemical agent, Taser, firearm, or struck someone with a baton or other instrument; or where a police canine bit someone. When an officer uses reportable force on a subject, LPD policy requires him or her to complete a “Use of Force Report.” This is a one-page document that contains general information on the suspect, injuries, type of force used, and a brief description of the incident. The form provides three lines for the description, and most officers complete this part by simple reference to the narrative section of the arrest report.

The inclusion of force documentation in the general arrest report is an understandable way to conserve time and other resources, but is limiting in some respects. The document must serve dual purposes – providing the legal basis for prosecution of an individual while also providing a meaningful level of detail regarding the force officers used while effecting his arrest – and the force documentation sometimes seems to be of secondary importance. Nonetheless, we generally found officers’ documentation of their force to be well written and sufficiently descriptive to allow the reader to understand the sequence of events, and to contain an appropriate explanation of the factors that led to the decision to use force.

Beyond the officer’s description of force used, however, little is done to document any attempts to investigate¹ the circumstances surrounding the use of force. The person on whom force was used is not generally interviewed regarding the force. There is no documentation by officers who witnessed the force but who otherwise have no cause to write a supplemental report. The data from the Taser deployment is not printed or attached to the report, and officers generally do not seek out or interview civilian witnesses about the force.

¹ When we refer to an “investigation” of or efforts to “investigate” a force incident, we use these terms generically, to refer to those tasks undertaken to discover all relevant evidence regarding the incident, and do not mean to suggest the LPD should conduct a formal Internal Affairs investigation, of the sort intended to address an allegation of officer misconduct.

Standards for Gathering Evidence Following Force Incidents

The first step toward a meaningful review of force is a thorough and complete collection of relevant evidence. Current LPD policy imposes a few specific and appropriate responsibilities on a supervisor who responds to a reported force incident. The supervisor is expected to obtain basic facts from the involved officer, ensure that anyone injured receives medical evaluation and treatment, take photographs of those injuries, and identify any witnesses not included in related reports.

Policy also requires the supervisor to attempt to interview the person on whom force was used, though any compliance with this policy generally was not documented in the cases we reviewed. In many cases, the only attempt to interview the subject was made by the arresting officer, who also was the one who had used force. Often there was not even a documented attempt to interview. In those cases where the subject was interviewed, questioning focused on the facts of the underlying crime, not the use of force.

Subjects who have been arrested are understandably often hesitant to talk to officers who were involved in their arrest because everything they say will go to the prosecuting authority. In addition, a subject is not likely to perceive an officer who has used force on him as someone to whom he should complain that the force was inappropriate or excessive. Best practice is to have an uninvolved supervisor interview the subject on tape and out of the presence of the officer(s) who used force, and only on matters related to the use of force, not the underlying criminal allegations. When a supervisor who was uninvolved in the incident attempts to question a subject only about the force used in a neutral way, subjects will more likely respond with voluntary statements.

In order for force incidents to receive the attention they require, the Department should adopt minimal investigative standards and require sergeants assigned to review force to do the following, at minimum, in addition to gathering and reviewing the officers' reports:

- Conduct or attempt to conduct recorded interviews of subjects that had force used on them out of the presence of any officer(s) who used force.
- Interview any civilians who witnessed the force and the events leading up to it.

- Obtain medical records of any injuries or treatment to involved staff and/or subjects.
- Secure photographs documenting any injuries or the absence of injuries, where relevant.
- Collect and analyze any forensic evidence, including clothing and officer weapons.
- Locate, obtain, and attach any video footage of the incident.
- Where a Taser was used, download and attach to the report data regarding that deployment.

In addition to significantly increasing the amount of information gathered, the force investigator must ensure that the officers' written reports are detailed enough for a comprehensive review. Those reports must contain thorough narratives of the events leading up to the force, the observations and actions that formed the basis for the use of force, and what happened after the force application, when the subject was secured. If an officer's report does not contain sufficient detail, supervisors should return the report to its author with instruction to provide the additional information.

Recommendation 1: *LPD should modify its force investigation/review protocols to require a supervisor to interview the person upon whom force was used. In those incidents where the supervisor used force, policy should require an uninvolved individual to conduct the interview, absent shift staffing exigencies that make this infeasible. This interview should be conducted separate from any effort to gather information about the crime he is alleged to have committed.*

Recommendation 2: *LPD should develop standards for investigating all uses of force that go beyond collecting officers' narrative reports and meet minimal investigative standards for thoroughness and objectivity (enumerated in this report).*

Two other pieces that we consider to be important to a full and accurate accounting of force also were missing from many LPD reports. First, officers who witness force are not required to report what they saw. In some cases we reviewed, officers who witnessed but did not use force documented their observations on a supplemental report that becomes part of the arrest report.

However, officers wrote these supplemental reports generally only when they had some reason apart from witnessed force to do so, such as participating in the booking of evidence, photographing the subject, or performing a drug test.

Recommendation 3: *LPD should make clear through policy and training that an officer who witnesses another officer use force is required to document his or her observations in a supplemental report.*

We also found situations where officers who used a minor amount of force in the context of a broader incident in which he or she was not the primary involved officer did not write reports documenting their actions. While other officers' reports mention those minor uses of force so that the force is generally accounted for, best practice requires each officer to document his or her own uses of force. In addition, because officers who use even minor amounts of force during a broader encounter also have witnessed others' uses of force, those officers should be writing reports documenting what they saw, consistent with our prior recommendation.

Recommendation 4: *LPD policy should require all officers who use force to document their actions, even when their use of force is a minor part of a broader use of force incident.*

We also saw instances where an officer who used force assumed responsibility for transporting a subject on whom force was used, either to a medical facility for treatment or to jail. While this is sometimes unavoidable given staffing realities, it is better practice to have an officer uninvolved in the incident drive the subject, to avoid allegations of further force or any inappropriate comments or conduct.

Recommendation 5: *LPD policy should require, where feasible, that a subject on whom force was used be transported by an officer uninvolved in the use of force.*

One force incident we reviewed provided an example of the downside of having the involved officer provide transport, and also highlighted many of the weaknesses in the investigative process identified above:

- A domestic violence victim called to report that her estranged husband – the subject of a restraining order – had been to her home in a trailer park threatening her. One officer responded and spoke with the victim, but then wisely waited for backup before trying to locate the suspect elsewhere in the trailer park. The officers eventually became engaged in

a frightening fight with the suspect and his adult son, with a large number of onlookers seemingly cheering the suspects on in their assault of the officers. During the fight, one officer briefly lost consciousness from repeated punches to the head.

Fortunately for the officers, backup arrived to assist, though it is not clear from the reports how officers were dispatched to the location, since one officer's attempt to initiate an emergency broadcast was interrupted by one suspect dislodging his radio's microphone.

Multiple officers ultimately participated in securing the suspects, though the reports contain few details about who did what to accomplish this result. Officers eventually transported the suspects to the hospital, with the initial responding officer participating in the transport of one suspect, who continually targeted him with threats to kill both him and his family. This officer stayed with the suspect at the hospital, and attempted to photograph him. The suspect's hostility and threats to this officer continued, until he finally realized it would be best to leave other officers in charge of the suspect.

Officers returned four days later to interview witnesses, and five days later to look at the area for possible surveillance cameras. When speaking with witnesses, investigators acquired two cell phone videos that bystanders had taken, depicting parts of the incident. Fortunately, the witnesses had maintained the videos despite LPD's delay in identifying and securing them.

This was a serious incident, involving numerous officers who faced substantial threats, suffered injuries, and used significant force. Nonetheless, the form of the report and its emphasis on documenting the criminal allegations left a number of unanswered questions about the details of the officers' actions and response.

Many of the shortcomings identified above could be remedied if LPD created a separate force reporting mechanism, in which all of the investigative materials surrounding a force incident were collected in one package. Having force documented only in the crime report sometimes creates confusion, obscures the force report, and makes it difficult for supervisors to identify gaps in reporting by officers who used or witnessed force (so that even if the intent is to have all

officers report what they saw or did, it is not always easy to evaluate if this is the case).

The existing use of force form employed by LPD would allow the Department to flag those arrests that involved force, both to facilitate tracking and data collection and to trigger supervisory review. It is a good first step toward a meaningful documentation of force, but its scope should be expanded to include a greater level of detail, including identification of all officers involved; types of force used; pertinent information regarding the subject, location, and injuries; and identification of any witnesses and evidence. Ideally, the form would be completed by a supervisor, and should reference and attach the officers' narrative reports of their uses of force. An expanded, improved force reporting form also should walk supervisors through a basic analysis of the force in a straightforward way that makes it easy to identify anything problematic about the force and anything missing from an officers' account.

Recommendation 6: *The Department should adjust its force reporting requirements to facilitate creation of a comprehensive document gathering all relevant evidence and reports in a designated and focused location.*

Reporting Force

LPD policy defines "reportable force" as: (1) any force resulting in an injury to the suspect or officer, or where medical attention is required as a result; (2) use of oleoresin capsicum (OC) spray or other chemical agent; (3) striking the subject with a baton or other instrument; (4) police canine bite; and (5) use of Taser or firearm. Use of force report forms only need to be completed when an officer uses a Taser or firearm, or when the force results in an injury requiring medical treatment. Otherwise, the report of force may be an oral report to the officer's supervisor, with the details of the force included in the officer's narrative arrest report.

Notably absent from the LPD policy is a requirement to report any takedowns, punches, kicks or other strikes, or other uses of physical force where the force does not result in injury. This limitation means that many substantial uses of force may go unreported and are not reviewed by anyone within LPD leadership ranks. In our view, any use of physical force beyond the unresisted restraint of a subject should be reported as a use of force.

The limited definition of reportable force also results in questionable data regarding the use of force by LPD. We reviewed all of the use of force report forms and underlying narrative reports for three full years – 41 incidents from July 1, 2013 through June 30, 2016. All but five of these incidents involved the use of a Taser. Many of these incidents included use of other types of force in addition to the Taser – takedowns, punches, and control holds – but it is not clear whether any of that force would have been reported absent the Taser use. One might conclude from the fact that 88% of reported force incidents by LPD officers over this time period involved the Taser that LPD officers use the Taser at a higher rate than most other law enforcement agencies, or that they use other types of force at an exceedingly low frequency. The more likely explanation, however, is that the failure to require formal written reporting of takedowns and punches skews the numbers so that Taser usage seems disproportionately high.

Recommendation 7: *The Department should change its force reporting policy to include within the definition of reportable force all uses of physical force against a resistive subject.*

Recommendation 8: *The Department should change its force reporting policy to require officers to complete a Use of Force Report form for all reportable force.*

Beyond the definitional issues, another important aspect of a force reporting policy is the expectation of when an officer will report a use of force. The LPD policy requires that a use of force “be documented promptly,” but does not provide officers guidance on what is considered to be “prompt.” Absent extenuating circumstances (if, for example, an officer is injured and needs medical treatment), reports of an officer’s activities, including any use of force, should be written before the officer goes off duty at the end of a shift. This is generally recognized as a best investigative practice, to ensure that a report captures an officer’s purest memory regarding the details of a particular incident. In order to provide clear guidance to officers that this is LPD’s expectation, the Department should amend its policy to explicitly require that officers generally complete all use of force reports prior to the end of their shifts.

Recommendation 9: *The Department should change its force reporting policy to require officers to complete a Use of Force Report form for all reportable force prior to the end of the officer's shift, absent documented extenuating circumstances.*²

Reviewing Force

After all relevant facts regarding an incident have been gathered, a law enforcement agency should critically assess those facts to determine whether an officer's use of force complies with Department standards and expectations. There is no evidence that LPD regularly engages in this type of assessment. The Use of Force Report form must be approved by a sergeant and is distributed to both the Chief of Police and the Division Commander, but there is no indication that any of the individuals who review the form make any judgment about the appropriateness of the force. In fact, in most cases, it is not possible to fairly make such an adjudication.

Sergeants tasked with reviewing the Use of Force forms and the associated narrative reports currently have no basis beyond these written reports for determining whether officer performance was consistent with legal and policy guidelines. Such a factual review rarely provides a full picture of what happened during an incident and fails to meet law enforcement industry standards for any investigation, let alone one in which an officer has invoked his or her authority to use force. An investigative process that only includes officers' version of events cannot be considered thorough, objective and neutral.

Consequently, most uses of force have little chance for a meaningful review in the LPD and the Department misses the opportunity to monitor and correct behavior in this critical arena. Until LPD has an investigative process following force incidents that meets basic investigative standards, its force review process necessarily will fail to meet standard benchmarks for assessing officer performance.

In addition to shortcomings in the process for determining issues of accountability, there is also room for improvement in the way the LPD reviews, analyzes, and

² The need to work or authorize overtime in order to complete the form should not qualify as an "extenuating circumstance".

evaluates force incidents for learning opportunities, to identify institutional shortcomings, or to reinforce positive practices.

We saw lost opportunities for this type of critical self-analysis in a number of the force incidents we reviewed. For example:

- In one case, an officer pursued a suspect who had violated several traffic laws while riding his bike. While in his patrol car, the officer pursued the fleeing subject for numerous blocks before the suspect fell off his bike while attempting to navigate through a closed gate. The officer was following so closely in his patrol car that he ran over the rear wheel of the suspect's bike. The suspect then fled on foot. The officer ran after him for an unspecified distance before deploying his Taser on the fleeing suspect, causing him to fall to the ground.

Once he had the suspect in custody, the officer found he was carrying a significant quantity of methamphetamine, but the only legal basis for the initial pursuit was the cyclist's violation of traffic rules.

A thorough examination of this incident could have included discussion of the decision to initiate a pursuit for no articulable reason other than improperly crossing lanes on a bicycle; the wisdom of pursuing a bicyclist with a car at such a close distance; the decision to engage in a one officer foot pursuit, for no reason other than vehicle code violations; and the use of a Taser on a fleeing suspect (discussed further below).

- In another case, an officer pursued a subject riding a bicycle for vehicle code violations and because he believed the individual matched the description of a wanted subject. The subject did not follow commands to stop, so the officer ran at him and tackled him off his bike, onto the ground, where the subject and officer fought. During the struggle, the officer reported that the subject continually reached for something in his waistband, so the officer punched him in the face in an attempt to distract him.³ A backup officer eventually arrived and, after one deployed his Taser in drive-stun mode, the suspect ultimately surrendered and was taken into custody for drug possession.

³ See discussion of "distraction blows" below.

There is no discussion of the officer's decision to tackle the fleeing subject off his bicycle, a tactic fraught with danger of injury to both suspect and officer. A complete review also would have examined the officer's decision to engage the suspect alone. If the suspect actually had a firearm in his waistband, or was able to get the best of the officer before backup arrived, this officer's life could have been in peril.⁴

- In yet another cases involving a subject on a bicycle,⁵ an officer attempted to detain a person riding a bike after darkness without a light. The subject failed to stop, despite the officer's activated overhead lights and siren. The officer then steered his patrol vehicle to block the subject's path and, while the subject tried to navigate around the vehicle, the officer got out and confronted him. The officer grabbed onto him while the subject was still on his bike, and then called for backup, as it was apparent the subject was going to fight. In the ensuing struggle, the officer sustained lacerations and contusions, as well as a sprained wrist. The backup officer arrived and, after also struggling with the subject, deployed his Taser before officers were able to take the subject into custody. The subject also sustained abrasions and contusions, as well as the Taser dart punctures, and the backup officer had a laceration on his hand.

The subject in this incident was issued a citation for resisting a peace officer. There was no discussion or analysis of the officer's decision to pursue the subject, the way in which he tried to apprehend him, or officer safety issues that in this case actually resulted in injury. The Department could have used this incident as an opportunity to export lessons learned to all of its officers, especially with regard to the officer safety issues surrounding the way the subject was apprehended and resulting injuries to those involved.

⁴ It is not clear from the report whether the location where the officer fought the suspect was isolated or remote, or whether backup officers had any difficulty locating them.

⁵ See discussion regarding force incidents involving bicycle-riding subjects below.

Taser Use

The majority of force incidents we reviewed – 36 out of 41 – involved an officer’s use of the Taser. “Taser” refers to an “Electronic Control Weapon” or “Conducted Energy Device” manufactured by Taser International. It fires two small electrodes that are intended to penetrate a subject’s skin like probes or darts, but remain connected to the weapon by wires. The darts deliver an electric current and, when both are fully embedded, cause incapacitation of the affected muscles. It also causes considerable pain and involuntary muscle contraction that ends after an initial standard five-second cycle. Officers can apply additional cycles by redeploying the trigger on the Taser. A Taser’s incapacitating effect often causes a subject to fall to the ground.

Tasers can also be used in “drive stun” mode, in which the device makes direct contact with a subject without the probes. This causes localized pain but generally not incapacitation. In this mode, the Taser often is used as a method of “pain compliance” in which the goal is to gain control of a subject by compelling him to surrender to stop the pain. Drive stun mode can also be used to complete the electronic circuit when only one probe has successfully made contact with an individual and the other is either ineffective or dislodged.

The LPD has adopted a standard policy on the use of Tasers authorizing Taser use in both the probe and drive stun modes. The policy covers many of the typical concerns about use of the Taser device, including regulations about where and how to carry the Taser, the use of verbal warnings prior to its use, factors in determining the reasonableness of a Taser application, and limitations on its deployment.

However, there are some provisions we believe could be tightened and strengthened, and some new restrictions we advocate adding to current policy. In addition, some of the force incidents we reviewed evidence a lack of enforcement of some important Taser policy restrictions.

Policy Issues

Current LPD policy contains a list of special deployment considerations, where Taser use should “generally be avoided” unless the officer believes the need to control the subject outweighs the risk. These special situations include pregnant women, the elderly and juveniles, handcuffed subjects, and those close to

flammable materials, operating a motor vehicle,⁶ or located on a rooftop. The risks inherent in applying the Taser to people in any of these categories are so significant, the policy language should be strengthened to nearly always prohibit Taser application in these situations.

In a policy section addressing multiple applications of the Taser, the LPD articulates factors an officer should consider before applying the Taser to an individual beyond the initial five-second cycle, including whether the probes have made proper contact, whether the individual is able to comply, and whether other tactics may be more effective. The policy then specifically grants officers permission to deploy “multiple, reasonable” Taser applications.

This permissive language is at odds with recent studies of Taser use – including a 2011 report by the National Institute of Justice⁷ – that caution against prolonged or multiple uses of Tasers or simultaneous use of multiple Tasers on a single subject because of the significantly increased health risks. The LPD policy also does not require the officer, before engaging in additional Taser deployments, to assess whether the subject continues to pose the threat that justified the initial Taser use, an omission that is potentially at odds with case law suggesting the Taser should be used only when there is an imminent threat of harm. We recommend the Department tighten its existing Taser policy to address these concerns.

Recommendation 10: *The LPD should modify its Taser guidelines to prohibit use of the Taser on particularly vulnerable individuals, absent exceptional articulable circumstances.*

Recommendation 11: *The LPD should modify its Taser guidelines to require officers to re-assess the threat posed by an individual prior to any successive Taser application.*

Recommendation 12: *The LPD should modify its Taser guidelines to preclude officers from deploying more than three Taser applications on an individual, or a prolonged single application lasting longer than five seconds, absent exceptional articulable circumstances.*

⁶ The limitations should also restrict using a Taser on a person riding a bicycle for the same reasons it is disfavored for use on someone operating a motor vehicle.

⁷ National Institute of Justice, “Study of Deaths Following Electro Muscular Disruption,” (May 2011).

Recommendation 13: *The LPD should modify its Taser guidelines to preclude multiple officers from simultaneously deploying their Tasers on an individual absent exceptional articulable circumstances.*

In addition to these limitations, the LPD should consider placing specific limitations on use of the Taser in drive stun mode. The 2011 Electronic Control Weapons Guidelines published as a joint project of the Police Executive Research Forum (PERF) and the U.S. Department of Justice’s Community Oriented Police Services (COPS) questions the value of using an Electronic Control Weapon in drive stun mode. The Guidelines suggest that drive stun mode should generally be discouraged unless the device is being used to complete the electronic circuit if only one probe has successfully lodged, or to create distance between an officer and a subject in close quarters conflicts. Except in these situations, the purpose of drive stun mode is to gain compliance through administration of pain. The PERF/COPS report concludes that: “Using the ECW to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject.”⁸ This may be particularly true for mentally ill or severely intoxicated subjects.

Because many of the Taser applications in drive stun mode that we reviewed were used as a pain compliance tactic, we recommend the Department modify its training and policy to address this tactic and more closely monitor officers’ use of the Taser in this mode.

Recommendation 14: *The Department should modify its Taser policy to limit Taser deployment in drive stun mode to those situations in which officers have a specific, articulable purpose beyond mere pain compliance.*

Enforcing Existing Policy

In general, officers’ reports on their Taser use demonstrate a proficiency in using the device. The frequency with which officers deploy their Tasers apparently contributes to a level of confidence in the device and their ability to use it that serves to highlight its usefulness.

⁸ Police Executive Research Forum and Community Oriented Police Services of the U.S. Department of Justice, Electronic Control Weapons Guidelines (2011).

Some cases we reviewed demonstrated a willingness to use the Taser as a less-lethal alternative in situations where the use of deadly force may have been technically justifiable but not necessary or advisable.

- Officers responded to a scene of an ongoing robbery/fight in a known gang area. One officer chased a fleeing person (who turned out to be the victim), leaving his partner alone with two suspects. Those suspects – both physically larger than the officer – began to advance on the officer while loudly challenging the officer’s orders to get down on the ground. The officer deployed his Taser at the closest suspect. This did not initially stop the threat, so the officer deployed a second cycle, which was effective. The second suspect then at least initially complied with the officer’s command to get on the ground, and the officer’s backup arrived to help maintain control.

This incident raises some tactical concerns that would be ripe for the type of critical self-analysis we recommend above. Nonetheless, we found the officer’s decision to use the Taser in this situation, as well as his very clear articulation of his reasons for doing so and detailed description of the device’s functioning in this scenario, to be exemplary.

- Officers responded to an apartment complex where the suspect was yelling, behaving bizarrely, and throwing himself against an apartment door in an apparent attempt to enter. When officers confronted him, he yelled at them in Spanish and put one hand in his pocket and struggled to withdraw something. One officer struck the suspect’s arm with a baton in an attempt to get him to remove his hand from his pocket. He pulled his hand out of his pocket, clenching an unknown object in his fist. One officer deployed his Taser, to little effect. The suspect – later confirmed to be on methamphetamine – pulled at the wires and probes. The other officer deployed his Taser as the suspect continued to reach into his pocket and pulled out what the officer initially believed could have been a knife (but turned out to be a silver watch). The Taser was effective at incapacitating the suspect while it cycled, but he continued to struggle with officers when

the Taser cycle ended. Officers eventually employed “several” Taser applications before they were able to handcuff the suspect.⁹

- Officers responded to a domestic violence call in which the suspect was reported to have a gun. When they arrived, the suspect had left the premises, but they quickly located his vehicle in the area and initiated a traffic stop. By this time, there were a total of six officers involved. The suspect refused to come out of his vehicle, and instead told officers to shoot him. He shut off his car and tossed his keys out the window. Officers surrounded the suspect’s vehicle and gave commands to keep his hands on the steering wheel. The suspect would comply, but then move his hands to his lap. He repeated this action multiple times. Officers made a plan to Taser the suspect through the open passenger window. One officer fired his Taser, striking the suspect in the torso. This officer then saw the suspect’s gun in his lap and leaned into the car through the passenger window, retrieving the gun while the suspect was incapacitated by the Taser. Other officers then removed the suspect from the vehicle, taking him into custody without further incident.

Despite the positive outcome, this case, too, provides ample opportunity for discussion and analysis of the officers’ tactical decision making that is not part of the LPD process for reviewing force incidents. Nonetheless, the officer’s decision to deploy the Taser in these circumstances demonstrates an uncommon level of confidence and proficiency in the device.

In a number of cases, however, the Taser deployment raised issues about its use. There is no documentation that the supervisors who reviewed any of these cases identified the potentially problematic use of force or took any measures to address this issue with the officers or others in the chain of command.

For example, we reviewed a number of cases in which officers fired their Tasers at subjects who were fleeing, despite the admonition against this in the LPD guidelines, in the absence of a violent or physical threat.

⁹ The lack of specific information about the number of Taser deployments could be remedied if the Taser data had been downloaded and saved with the report, as discussed below.

- In one case, an officer recognized an individual standing on the street using a cell phone as someone who previously had been wanted on a warrant. The officer confirmed with dispatch that the subject still had an outstanding warrant – for violation of probation. The officer and his partner (a probationary officer) detained the subject while trying to confirm his identity. The subject, however, got up and fled. The officers chased him for a short distance until one officer caught up and attempted to pull him to the ground. The subject shook him off, causing the officer to fall to the ground, and the other officer deployed his Taser. The prongs struck the still fleeing subject in the lower back and upper arm and he immediately fell to the ground, fracturing his elbow.
- An officer recognized a suspect who was wanted in a commercial burglary and began pursuing him on foot. The suspect ignored the officer's commands to stop running, so the officer deployed his Taser. The Taser probes struck the suspect's lower back and he immediately fell to the ground and was taken into custody.

Finally, we note that none of the cases we reviewed included printouts of the Taser memory downloads, which record the time and duration of each Taser deployment. LPD guidelines require that a supervisor download this data and save the printout with the related reports. Our review found that supervisors did not consistently meet this obligation, in part, because the Department may not have had the proper equipment and software. The Department should ensure that supervisors have the proper technology and training to perform Taser data downloads, and should hold them accountable should they fail to preserve and document this important evidence.

Recommendation 15: *The LPD should develop accountability mechanisms to ensure that officers and supervisors adhere to Department policies regarding Taser applications, reporting, and data preservation.*

Foot Pursuits

When a person runs from an officer who is attempting to detain him, the officer's instinctive reaction is to immediately give chase and catch the suspect at all costs. This common scenario, however, creates untenable safety risks to officers, the public, and suspects being pursued.

The dynamic of most foot pursuits is inherently unsafe for the officer. The suspect determines the path of the pursuit. If the suspect is armed, he can draw the officer in and then turn and shoot the pursuing officer before the officer has an opportunity to react. Even worse, if the armed suspect has an opportunity to turn a corner, jump a fence, or enter a building, causing the officer to lose visual contact, the suspect then has a tactical advantage and can ambush the pursuing officer. Running with an unholstered gun places an officer in a better position to react to an ambush, but creates additional problems, including the possibility of an accidental discharge and hampering the officer's ability to engage in a hand-to-hand fight with the suspect. A long foot pursuit can leave an officer (who is weighed down by the necessary gear on his or her belt) winded, and the exhaustion can compromise the officer's tactical skills and decision-making ability.

The dynamic is also unsafe for the public and the suspect being pursued, as the heightened sense of danger faced by officers in this scenario may cause the officer to perceive any ambiguous move by the person being chased – such as grabbing at his waistband – to be an indication that the suspect is armed. Because officers are trained to anticipate lethal threats, the stress of a foot pursuit and insufficient distance between the officer and subject sometimes causes an officer to use deadly force in response to perceived aggression when, in fact, it turns out that the person being chased was not armed after all.

Guidance to police agencies and their officers on how to respond in these situations has evolved over the years, and more progressive agencies – the LPD included – have adopted some form of policy in an attempt to mitigate these risks. The LPD policy provides comprehensive guidance to officers on the dangers of foot pursuits, factors to consider in deciding whether to initiate or continue a pursuit, and how to balance officer safety considerations with the objective of apprehending a suspect.

It is important for officers and members of the public to remember that the decision to not engage in a foot pursuit does not equate to letting the “bad guy” go. Rather, it is an acknowledgment that there often are safer, smarter ways to apprehend suspects than chasing them down. As the LPD policy notes, an officer who is chasing a suspect and properly communicating can continue to pursue in a surveillance mode while coordinating the response of fellow officers to establish a containment of the area, attempting to trap the suspect within known parameters.

Often, officers have identified the person being chased, and rather than continuing a dangerous pursuit, can use available resources to locate the suspect at a later time in a safer, smarter way.¹⁰

The LPD policy sets out guidelines for the conditions under which officers “should consider alternatives to engaging in or continuing a foot pursuit.” Among other enumerated factors, the officer should consider foregoing or ending a pursuit when:

- The officer is alone.
- Officers become separated, lose visual contact, or are unable to immediately assist each other should a confrontation ensue.
- The officer is unsure of his location or direction of the pursuit.
- The officer loses radio contact.
- The suspect enters a building, structure, confined space or isolated area.
- The danger to the officer or the public outweighs the necessity for immediate apprehension.
- The officer is disarmed.
- The suspect’s location is no longer known.
- The identity of the suspect is established or officers have information that would allow for apprehension at a later time.

While the policy does set out the basic precepts to be considered and the situations in which foot pursuits should not be initiated or continued, there are a couple of important provisions missing. First, the Department should consider inserting a restriction on pursuing a suspect that officers know to be armed. In addition LPD should include in its policy a caution about continuing to chase when the pursuing officer loses visual contact with the suspect.

In addition, some language in the current policy creates overbroad exceptions to the restrictions. The guidelines do not apply when an officer believes the suspect poses a “serious threat” to officers or members of the public. This exception is large enough to swallow the rule, allowing potential justification for virtually all

¹⁰ The numerical deployment of officers at any one time in the City of Lompoc presents challenges faced by all smaller police agencies. For example, officers are less likely to have immediate backup allowing for a two-person foot pursuit (which is safer than a solo pursuit). On the other hand, the size of the Lompoc community makes it more likely that the officer will know the suspect, so that a safer apprehension can be effectuated at a later time.

pursuits in Lompoc, and especially the most dangerous ones (for example, when a suspect is armed).

The value of the LPD policy also is limited by its advisory nature, in that there is no formal review process established and no mechanism for holding accountable those officers who engage in foot pursuits at odds with the guidelines. In our review of force cases, we noted some such pursuits:

- An officer attempted to initiate a stop on an individual who failed to stop his bicycle at an intersection. Despite the officer's lights and sirens, the subject failed to stop and the officer continued to pursue him. At some point during the pursuit, the officer identified the subject as someone he knew to be wanted for a violation of probation. When a second LPD unit joined the pursuit, the subject dropped his bicycle and began to run through an apartment complex. The initial involved officer got out of his patrol vehicle and began to chase on foot.

The officer's report does not indicate how long the pursuit lasted, or what route it took. The officer eventually caught up to the subject and pushed him from behind, causing him to go to the ground. The officer then got on top of the subject, and struggled to control him as the subject swung his arms at the officer. The officer punched the subject once in the face, and was able to keep him pinned to the ground until the backup officer arrived.

While the report contains few details about this pursuit, many aspects of it raise questions about compliance with the LPD foot pursuit policy. Though he knew backup was in the area, the officer was pursuing the subject alone, into an apartment complex, where the subject likely had a tactical advantage had he wished to ambush the officer. The officer then closed the distance on the subject and initiated the physical confrontation. There is no evidence the officer was in radio communication during his pursuit. Further, the subject had been identified and likely could have been located and apprehended through other, safer means. All of these issues should have been identified and addressed as part of the process reviewing this incident.

- An officer identified a suspect driving a vehicle the officer knew to have been stolen by the suspect one day earlier. Following a circuitous vehicle pursuit, the suspect crashed and then began running from the car with what the officer reported looked like a firearm in one hand. The officer pursued on foot. There were a number of other officers in the area who had been responding to the vehicle pursuit, and the officer broadcast that he was in foot pursuit. At one point during the pursuit, the officer saw the suspect throw something in the air. The officer continued to run at the suspect, giving him commands to get on the ground. The suspect stopped, and was holding a backpack in his hand. The officer continued to move toward the suspect, and then slipped and fell to the ground when he was approximately five feet from the suspect. With the suspect standing over him, the officer fired his Taser, effectively incapacitating him until backup officers arrived.

This situation demonstrates the dangers of a foot pursuit. Despite the fact that other officers were in the area and the pursuing officer was in radio communication, his decision to chase an armed suspect alone, and then to close the distance in an attempt to singlehandedly apprehend him, put the officer in grave danger. Had the suspect still been armed (officers later found a rifle on a rooftop near where the officer reported seeing the suspect throw something), he could easily have shot the officer before any backup could have arrived. As in the first example, officers had identified this suspect and likely could have apprehended him in a manner more conscious of officer safety concerns.

Recommendation 16: *The LPD should consider modifying its foot pursuit to more expressly discourage or prohibit pursuits in the most dangerous circumstances – including when a suspect is armed and when the officer loses visual contact with the suspect – and should not limit the effectiveness of the policy by carving out exceptions based on an officer’s belief about the type of threat posed by a suspect.*

Recommendation 17: *The LPD should develop accountability mechanisms to address situations in which officers engage in foot pursuits that are not consistent with Department expectations and standards.*

Other Force and Policy Issues

Force Prevention Concepts

The statement of philosophy that precedes the LPD Use of Force policy contains some commendable phrases regarding the gravity of the authority to use force and the value of life:

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties. . . .

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

Certainly, officers must have authority to use force to perform their duties, to effectuate an arrest, or to protect themselves or others from threats of harm. The goal of any progressive law enforcement agency, however, should be to eliminate uses of discretionary force to handle situations that could have been resolved peacefully if other tactics and skills had been employed. While force is sometimes required, the Department's objective should be to eliminate incidents in which officers may be "authorized" or "justified" in using force, but it is not "necessary" to use that force to complete their responsibilities. The goal is to eliminate force that is "lawful but awful"; force that is defensible but likely did not need to occur.

While LPD's current language in its philosophy regarding use of force speaks somewhat to this concept, to reinforce the idea that the Department's interest is to reduce incidents of force to a minimum, we recommend that LPD structure its use of force policy to emphasize the importance of these principles. For example, the policy could include language such as the following:

When time, circumstances, and safety permit, there may be alternatives to using force. When reasonable and safe under the totality of the circumstances, members should consider such

alternatives as advisements, warning, verbal persuasion, and other tactics.

In addition to developing a “force prevention” policy, the Department’s force training should also be modified to address this reorientation. Instead of solely brushing up on force techniques, training should include discussion about rethinking the role of force by law enforcement and how different strategies, problem solving, and techniques can be deployed to resolve situations without force. Training for supervisors needs to emphasize their role in preventing avoidable uses of force – from the obvious ways in which they direct and guide officers to use force in particular instances to the more subtle influence they can have in setting the right tone and enforcing the Department’s standards and expectations.

Recommendation 18: *LPD should promote principles of force prevention in its policy, training, and overall Department orientation and promote alternatives to force to resolve situations in the field.*

Subjects on Bicycles

A surprisingly large number of force incidents we reviewed involved subjects on bicycles and an officers’ attempts to apprehend them. Individuals on bicycles present particular challenges for officers and raise a number of tactical decision making questions: When is it appropriate or advisable to pursue a bicyclist for vehicle code violations? What is the proper distance to maintain when pursuing a bicycle? When, if ever, is it advisable to attempt to block the path of a bike with a patrol car? Should an officer attempt to tackle or take down a person riding a bike? What are the special considerations to take into account before deploying a Taser on a person on a bicycle?

The Department should evaluate its current training and then develop and disseminate training bulletins, videos, and/or protocols to address these questions (and others) to give officers guidance on how to handle these apparently common scenarios.

Recommendation 19: *LPD should evaluate its current training and policies for stopping and apprehending subjects on bicycles, and should develop and disseminate training bulletins, videos, or other protocols to address the challenges particular to these scenarios.*

Distraction Blows/Compliance Strikes

Some of the force incidents we reviewed involved an officer using what some might refer to as a “distraction blow” or “compliance strike” while bringing an individual into custody. Distraction blows are strikes to a suspect’s body intended to “distract” him so that an officer can secure his hands or apply handcuffs. In our reviews of other police agencies, we have found confusion about what was allowable as a distraction blow. The use of distraction blows has proven controversial for other agencies, and we recommend that LPD consider its position and review its training in this area to ensure its officers’ understanding of whether and when such force is permissible aligns with the expectations of its executives and the community. At a minimum, a written policy should prohibit the use of blows to the head as distraction blows.

Recommendation 20: *LPD should consider its training protocols and policy regarding the use of “distraction blows.” If distraction blows are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction blows policy should prohibit strikes to the head.*

Importance of Supervisor Ranks

The LPD organizational chart does not include the rank of Lieutenant. Above the officer rank, the Department has eight Sergeants, two Captains, and a Chief. In our view, this represents a significant dearth of command level supervision. Ideally, there should be a rank between the sergeants who conduct the first-level supervisory work and the executive-level command staff who are responsible for setting a broader course for the agency. Lieutenants typically constitute this important link in the chain of command, directly supervising Sergeants as well as giving Sergeants a buffer between them and the Captain to address issues and concerns they may otherwise feel too constrained to raise.

The lack of a mid-level supervisor rank creates a gap in both supervision and leadership. Within a police organization, Lieutenants typically are responsible for the direct supervision of Sergeants and officers, as well serving as an assistant to the Captain – ensuring appropriate deployment of resources, responding to serious incidents, and keeping the Captain informed of areas of concern. They also shoulder critical administrative functions, such as coordinating Department

training and monitoring internal investigations. All of these tasks have to be handled with a sensitivity that understandably may not come automatically to every sergeant or first level supervisor. And these mid-level supervisory tasks can be easily overlooked or minimized by the Department's two Captains, who have numerous other responsibilities that come with being second-in-command in the Department's rank structure.

Exacerbating the problem created by the lack of a mid-level supervisor rank is the reality that eight sergeants are insufficient to cover all of the Department's supervisory responsibilities. As a result, senior officers frequently fill in as "acting" sergeants, assuming important supervisory roles without any of the testing or training that a sergeant must complete. They also assume those roles without the direct supervision that a Lieutenant would provide in a more traditional police command structure.

Particularly with respect to issues raised in this report, Lieutenants assume the important task of reviewing force incidents from a broad angle – evaluating the officers' actions and tactical decision-making, the sergeant's investigative work, and any trends or systemic issues raised by the incident. Based on our review of force incidents, the lack of Lieutenant-level review is a significant deficiency within the LPD.

Recommendation 21: *The LPD should consider enhancing its supervisory structure to include the rank of Lieutenant.*

Internal Affairs Investigations

Investigating its officers and holding them accountable for potential violations of policy, allegations of misconduct, and other transgressions is a key function of any law enforcement agency. The ability to do so promptly, comprehensively, and objectively is essential for the agency to maintain its public credibility. The LPD has a Professional Standards Division that handles most of its Internal Affairs investigations, but the Chief has the discretion to send more significant or sensitive cases to an outside investigative firm.

We reviewed four significant cases completed over a one year period. Two of those four investigations were completed by the outside firm. All four cases we reviewed involved serious off duty conduct that resulted in substantial discipline for the involved officers. In all of the cases we reviewed, we found the issues to be well-defined and fully investigated. We also found the cases to be properly scoped, meaning that investigators demonstrated a willingness to look at collateral issues indicating potential problems or policy violations when those issues arose (as they did in one of the four cases).

Three of the four cases involved criminal allegations that were first investigated by an outside police agency. In those cases, the subsequent administrative investigations – in which LPD examined whether the officer’s conduct violated Department policy as opposed to a criminal statute, and then determined the appropriate discipline – relied heavily on the work done by criminal investigators. This is both expected and appropriate, but we caution IA investigators not to become entirely dependent on the criminal cases. While IA investigators should not be required to duplicate work already done, they should not assume that the interviews conducted in the criminal case would have thoroughly explored all of the relevant administrative concerns. Investigators in the cases we reviewed did not make such erroneous assumptions here. In one case, however, the investigator noted disappointment that the criminal investigator did not interview two witnesses who were minors while at the same time also not interviewing those witnesses (presumably deferring to the criminal investigator’s judgment not to involve them in the case).

One feature of LPD's administrative investigation practice is somewhat unique – the decision to sometimes send cases to a private investigative firm.

The LPD Chief makes a decision in each case as to whether it should be investigated by LPD Internal Affairs personnel or sent to the outside firm. There are no written criteria or standards for who will investigate which types of cases. The Chief reports that the decision is made on a case-by-case basis, taking into account the workload and abilities of his IA staff, the level of complexity of the case, the existence of internal sensitivities (in cases where a supervisor is the subject, for example), and the degree to which he feels that an internal investigation might create the appearance of bias. (For example, in a case where numerous Department members are witnesses, it may be difficult in a small Department like LPD to find an investigator who doesn't know many of the witnesses.)

We have no reason to criticize the way the Chief exercised his discretion, and find that the outside firm conducted thorough, complete investigations. Nonetheless, the Chief should consider creating a set of written criteria or factors to consider when determining when to send a case to outside investigators. These can be crafted in a way that does not unduly limit the Chief's discretion but does serve the interests of consistency, transparency, and independence.

Similarly, to the degree that outside investigators are contracted to conduct investigations, LPD should retain discretion regarding the tasks expected of those investigators. For example, if LPD prefers that the investigators only serve as fact gatherers, the contract assignment memo should specify that investigators will not opine about whether there is sufficient evidence to support a conclusion that the involved officer violated a particular policy. The contract should limit the scope of work to investigative tasks and leave it to Department executives to review all of the facts and decide whether the evidentiary threshold to sustain an allegation and impose discipline has been met.

Recommendation 22: *The LPD should consider drafting written criteria or guidelines to be considered when deciding to engage a private investigative firm to conduct a particular administrative investigation.*

Recommendation 23: *When the LPD contracts with outside investigators to conduct Internal Affairs investigations, it should specify the scope of work prior to the commencement of the investigation.*

Recommendations

1. LPD should modify its force investigation/review protocols to require a supervisor to interview the person upon whom force was used. In those incidents where the supervisor used force, policy should require an uninvolved individual to conduct the interview, absent shift staffing exigencies that make this infeasible. This interview should be conducted separate from any effort to gather information about the crime he is alleged to have committed.
2. LPD should develop standards for investigating all uses of force that go beyond collecting officers' narrative reports and meet minimal investigative standards for thoroughness and objectivity (enumerated in this report).
3. LPD should make clear through policy and training that an officer who witnesses another officer use force is required to document his or her observations in a supplemental report.
4. LPD policy should require all officers who use force to document their actions, even when their use of force is a minor part of a broader use of force incident.
5. LPD policy should require, where feasible, that a subject on whom force was used be transported by an officer uninvolved in the use of force.
6. The Department should adjust its force reporting requirements to facilitate creation of a comprehensive document gathering all relevant evidence and reports in a designated and focused location.
7. The Department should change its force reporting policy to include within the definition of reportable force all uses of physical force against a resistive subject.

8. The Department should change its force reporting policy to require officers to complete a Use of Force Report form for all reportable force.
9. The Department should change its force reporting policy to require officers to complete a Use of Force Report form for all reportable force prior to the end of the officer's shift, absent documented extenuating circumstances.
10. The LPD should consider enhancing its supervisory structure to include the rank of Lieutenant.
11. The LPD should modify its Taser guidelines to prohibit use of the Taser on particularly vulnerable individuals, absent exceptional articulable circumstances.
12. The LPD should modify its Taser guidelines to require officers to re-assess the threat posed by an individual prior to any successive Taser application.
13. The LPD should modify its Taser guidelines to preclude officers from deploying more than three Taser applications on an individual, or a prolonged single application lasting longer than five seconds, absent exceptional articulable circumstances.
14. The LPD should modify its Taser guidelines to preclude multiple officers from simultaneously deploying their Tasers on an individual absent exceptional articulable circumstances.
15. The Department should modify its Taser policy to limit Taser deployment in drive stun mode to those situations in which officers have a specific, articulable purpose beyond mere pain compliance.
16. The LPD should develop accountability mechanisms to ensure that officers and supervisors adhere to Department policies regarding Taser applications, reporting, and data preservation.

- 17.** The LPD should consider modifying its foot pursuit to more expressly discourage or prohibit pursuits in the most dangerous circumstances – including when a suspect is armed and when the officer loses visual contact with the suspect – and should not limit the effectiveness of the policy by carving out exceptions based on an officer’s belief about the type of threat posed by a suspect.
- 18.** The LPD should develop accountability mechanisms to address situations in which officers engage in foot pursuits that are not consistent with Department expectations and standards.
- 19.** LPD should promote principles of force prevention in its policy, training, and overall Department orientation and promote alternatives to force to resolve situations in the field.
- 20.** LPD should evaluate its current training and policies for stopping and apprehending subjects on bicycles, and should develop and disseminate training bulletins, videos, or other protocols to address the challenges particular to these scenarios.
- 21.** LPD should consider its training protocols and policy regarding the use of “distraction blows.” If distraction blows are to be authorized, officers should be provided more guidance on the allowable uses of force under such category. Any distraction blows policy should prohibit strikes to the head.
- 22.** The LPD should consider drafting written criteria or guidelines to be considered when deciding to engage a private investigative firm to conduct a particular administrative investigation.
- 23.** When the LPD contracts with outside investigators to conduct Internal Affairs investigations, it should specify the scope of work prior to the commencement of the investigation.