



DENVER
OFFICE OF THE
INDEPENDENT MONITOR

2013 Semiannual Report

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Independent Monitor

The Office of the Independent Monitor

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

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



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1

Overview

Policing the streets and the jails can be difficult and thankless work. Officers are called on to respond to crisis, and often see people at their worst. They are sometimes exposed to both verbally or physically abusive behavior. Although officers are trained not to show it, they are vulnerable in their interactions with the public. This day-to-day exposure to job-related stress can exact a long-term physical and emotional toll.

Community members are also vulnerable when interacting with law enforcement. We grant extraordinary powers to officers, including the power to take away freedom through arrest, to enter private property in emergency, and to use physical force, including deadly force, when conditions warrant it. Any abuse of these powers can have an enormous impact on the public. It can damage perceptions of community safety, cause large lawsuit payouts of taxpayer dollars, and erode public trust in law enforcement.

For these reasons and others, police and sheriff departments must be vigilant about proactively addressing misconduct when it occurs. This includes not only providing retraining and imposing discipline when appropriate, but also establishing the internal systems necessary to identify officers who are not meeting approved standards of conduct. Among these systems are a complaint process that the community can easily access, a robust early intervention system, an effective Internal Affairs Bureau, and a command willing to fairly apply disciplinary rules in every case of proven wrongdoing.

As we discussed in our 2012 Annual Report, we admire the message of accountability that both Denver Police Department (“DPD”) Chief Robert White and Denver Sheriff Department (“DSD”) Director Gary Wilson have promoted, and commend them on the steps they have taken to establish that standard in their departments.

Triple Crown Accreditation

The Denver Sheriff Department recently achieved “triple crown” accreditation. This means that the DSD has been certified as meeting the standards set by the American Correctional Association, the National Commission on Correctional Healthcare, and the Commission on Accreditation for Law Enforcement Agencies, Inc. This accomplishment is the result of years of hard work by the Director and his staff, and we commend the DSD for this achievement.

This is a report of six chapters. Like previous publications by the Office of the Independent Monitor (“OIM”), it includes information about individual case outcomes, disciplinary patterns, and trends in case handling in the DPD and the DSD. However, this report—particularly Chapter Two—also includes a detailed policy and practice examination of a kind that the OIM has not engaged in or reported before.

In Chapter Two, we detail our examination of the inmate grievance process in the DSD. We analyzed two-and-a-half years of data generated by that process and identified four significant issues in its design and operation. First, DSD inmates filed 54 complaints of serious deputy misconduct through the inmate grievance process between January 1, 2011 and June 30, 2013. To put this number in context, it represents slightly under 1% of the 5,979 total grievances filed during this period. Under DSD policy, allegations of serious misconduct are to be referred to and investigated by the DSD Internal Affairs Bureau (“IAB”). However, 45 of the complaints of serious misconduct—including allegations of inappropriate force, non-consensual sexual touching, and biased behavior by deputies—did not result in IAB cases. This deviates from both DSD policy and national standards on law enforcement accountability.

Second, Denver City Ordinance requires the DSD to notify the OIM of allegations of officer misconduct made by inmates to the DSD. Our examination of the grievance process revealed that during the period of our review, the DSD did not routinely notify the OIM of allegations of deputy misconduct contained in inmate grievances, as required.

Third, almost 16% of the inmate grievances that focused on officer conduct during our review period were filed against just four deputies (out of a force of over 700 total officers). This pattern may signal that these officers, or the jail areas to which they are assigned, may require more active supervision by jail administrators. In the past, the DSD has not had a systematic process for identifying patterns in inmate grievances to enable such supervisory action.

Fourth, several areas of DSD policy and practice may inadvertently impede inmate access to the grievance process. For example, the inmate population is approximately 35% Latino/Hispanic, which includes some monolingual Spanish speakers, yet Spanish language grievance forms are not currently available. Perhaps unsurprisingly, no Spanish language grievances focusing on officer conduct were submitted during the period of our review. In addition, DSD policy requires inmates to verbally present their complaints to staff before filing formal grievances. Based upon interviews with national experts and review of the United States Department of Justice (“DOJ”) findings, we are concerned that this “informal presentation” requirement may inadvertently deter inmates from filing official complaints that allege serious officer misconduct.

As we make these findings, we caution that Chapter Two should not be interpreted as an assertion that the administrators of the DSD grievance process have anything other than good intentions. No such conclusion should be inferred. Instead, we believe that Chapter Two demonstrates the value of independent civilian oversight of law enforcement. Through our independent, data-driven review of the DSD grievance system, we hope to enable the DSD to more consistently resolve inmate complaints according to DSD policy in the future. To further this goal, Chapter Two includes 11 specific and actionable recommendations that are designed to address each of our findings. We have had extensive discussions with the Director, who has indicated that he plans to make changes to the grievance process in response to certain recommendations in this report, and to convene a workgroup to consider the remaining recommendations. We look forward to working with DSD staff on this effort.

Chapters Three and Four of the report discuss trends and patterns in complaints, allegations, and disciplinary decisions in the DPD and DSD, respectively, during the first half of 2013.

Chapter Five is a detailed discussion of an inappropriate force case recently reviewed and decided by the Manager of Safety’s Office. In that case, we believed that a

preponderance of the evidence demonstrated violations of policy and procedure by the involved officer, and we recommended that the Manager of Safety's Office take disciplinary action. The Manager of Safety's Office did not accept that recommendation.

Chapter Six examines the officer-involved shootings and deaths-in-custody that occurred in the first half of 2013.

Why we are Publishing this Report

Publishing Chapter Two of this report is consistent with the OIM's legal mandate. Pursuant to the ordinance that created the OIM ("OIM Ordinance"), the OIM is required to routinely publish public reports on "trends regarding complaints, investigations, and discipline of police and sheriff department uniformed personnel."¹ These reports must include "recommendations regarding the sufficiency of investigations" and the "appropriateness of disciplinary sanctions, if any," and recommendations regarding "changes to policies, rules and training," if necessary.²

The publication of Chapter Two is also consistent with national standards for law enforcement oversight. Under national standards, where law enforcement monitors "identify systemic issues impacting the integrity, fairness, and effectiveness of internal procedures to identify and deal with" alleged misconduct, they should issue "uncensored public reports" that include recommendations for how such issues can be remedied.³ By identifying four issues associated with the DSD's handling of complaints of misconduct made through the inmate grievance process, and proposing possible solutions, we are acting in a manner that is consistent with the OIM's mandate⁴ and with national standards.

We look forward to working collaboratively with the Director and others in the DSD as they address the subjects raised in this report, and in continuing to partner with both the DSD and the DPD in their efforts to provide excellent service to the people of Denver.

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DSD Inmate Grievance Process

Our review of the DSD's inmate grievance process was prompted by two OIM observations. First, as we observed in our 2012 Annual Report, the number of inmate complaints recorded by DSD IAB declined by 55% between 2007 and 2012. In that report, we indicated that we intended to: "...conduct a more detailed evaluation of patterns in complaint filing and handling in the future, and look forward to working with the DSD on this analysis."⁵ Second, OIM staff recently learned of an inmate grievance containing several allegations of serious deputy misconduct that did not trigger a formal IAB case and did not receive a case number in DSD IAB's case handling database.

As a result, we initiated this review. Among our goals, we intended to:

1. Determine whether the DSD was recording and investigating serious inmate complaints filed through the grievance process in accordance with its existing policies.
2. Determine whether the DSD has routinely notified the OIM of complaints of deputy misconduct filed through the inmate grievance process, as required by Denver ordinance.

In conducting this review, we examined 5,979 electronic records and 861 paper grievances submitted by inmates between January 1, 2011 and June 30, 2013.⁶ We interviewed sworn DSD staff, evaluated the DSD's policies and procedures for the grievance and internal affairs processes, and examined policies in other jurisdictions.⁷ We also

interviewed several national experts on civilian oversight and corrections,⁸ and met with inmate councils at the DDC and the County Jail.⁹

As a result of this evaluation, we make four findings and offer 11 recommendations that we believe will help the DSD to ensure that allegations of serious misconduct made in inmate grievances are appropriately investigated and recorded in the future.

Background

Over the last forty years, jails and prisons in the United States have developed internal administrative systems that are designed to efficiently resolve inmate complaints and concerns about the conditions of their confinement. Often called “grievance systems,” these non-judicial processes allow inmates to communicate with jail administrators about relatively mundane concerns (e.g., the temperature of jail cells or issues with the mail system), to very serious problems related to safety or security. Grievance systems have become a standard feature of correction and detention facilities, and are widely seen as serving a number of critical functions.

First, an effective grievance system improves communication between inmates and staff by providing a structured process through which inmates can raise their concerns. This process can help staff become aware of problems experienced by individual inmates, and decreases the likelihood of inmate behavioral problems by enabling staff to rapidly respond to particular inmate issues.

Second, the routine analysis of patterns in inmate grievances can help jail administrators identify systemic problems in jail operations.¹⁰ For example, increases in inmate grievances about one part of a jail may signal a problem with policy, procedure, or personnel that requires administrative intervention. Similarly, while small numbers of inmate grievances about a particular officer may not merit supervisory action, large numbers filed by multiple inmates over a lengthy period could be an indicator that the officer may need retraining, mentoring, or other intervention.¹¹ In other words, patterns in inmate grievances provide an important source of feedback that can be used to improve operations and the performance of personnel.

Third, responding to inmate grievances can help to reduce inmate violence over time. Grievance patterns can help administrators keep abreast of the concerns of the inmate population so that systemic issues can be addressed before inmate frustration and unrest grows difficult to control.¹² In fact, many jurisdictions began to institute inmate grievance systems in the 1970s and 1980s in response to riots that resulted, in part, from inmate frustration over unresolved complaints.¹³

Finally, grievance systems may also help to reduce the risk of inmate litigation.¹⁴ Grievance processes allow jail staff to resolve inmate concerns internally, decreasing the likelihood that inmates will turn to the courts for aid.¹⁵ This, in turn, may

reduce a city's financial exposure to the legal fees and lawsuit payouts associated with inmate litigation.

Denver Sheriff Department's Grievance Process

The DSD has articulated two broad goals for its grievance process: “resolving inmate problems in a fair and just manner and enhancing communication between inmates and staff.”¹⁶ To that end, the DSD has identified five specific objectives for its grievance system:

- ◆ Promote justice and fairness.
- ◆ Provide opportunities for inmates to express grievances and receive official responses.
- ◆ Aid jail administrators in identifying institutional problems.
- ◆ Reduce litigation.
- ◆ Reduce frustration and the possibility of violence in the jails.

Procedures

The DSD grievance process contains several procedural requirements, some of which are written into official policy. First, inmates must discuss their complaint with staff before submitting a formal written grievance.¹⁷ If DSD staff cannot resolve an inmate's complaint, the inmate may then file a formal grievance.¹⁸ Formal inmate grievances must be filed within 10 days of the incident about which the inmate is aggrieved.¹⁹

To file a formal grievance, inmates may complete a pre-formatted grievance form or they may use any other kind of paper. To access grievance forms, inmates must generally ask a deputy, sergeant, or other member of DSD staff, or submit a written inmate request (also known as a KITE).

DSD policy requires that inmates include four key elements in any grievance: (1) a detailed statement outlining their complaint; (2) their requested remedy; (3) their signature; and (4) the date the grievance was submitted.²⁰ In addition, there are several procedural requirements that appear to be informal practice, rather than official policy. First, inmates are sometimes restricted to filing grievances on their own behalf; grievances filed on behalf of another inmate may be summarily rejected

without response.²¹ Similarly, grievances filed by groups of inmates may also be rejected without response. The failure to abide by any of the formal or informal procedural requirements can sometimes be grounds for the automatic rejection of an inmate’s grievance.

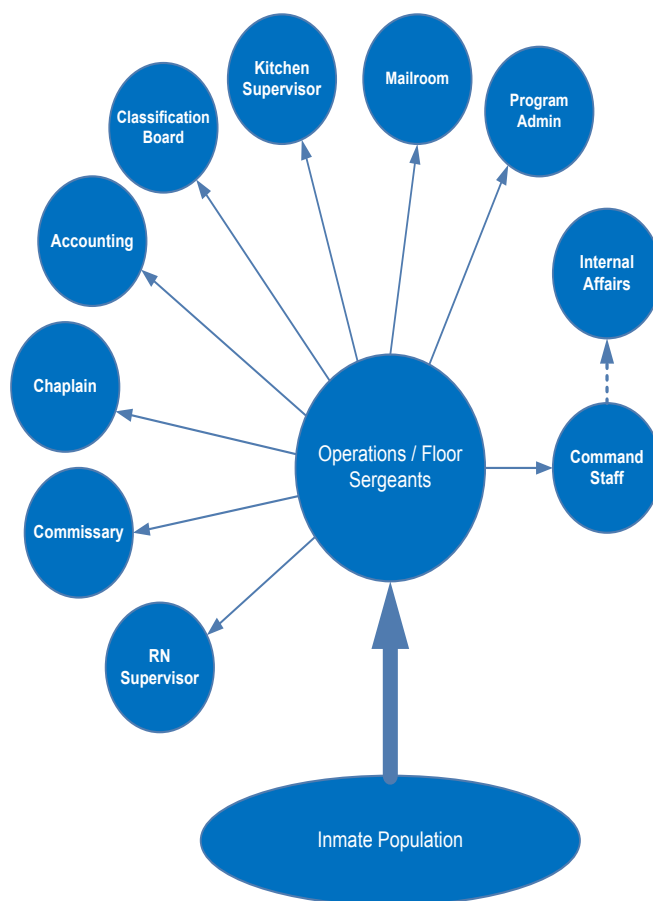
Once an inmate has completed a grievance form, s/he may deliver it to a member of DSD staff, or may place it in a locked grievance box that should be available in every inmate housing unit. These boxes are emptied daily by an on-duty DSD sergeant (or that sergeant’s designee).

DSD Handling of Inmate Grievances

Once the grievances have been collected, a sergeant decides where to route each grievance.²² For instance, medical grievances are directed to medical supervisory staff, while grievances relating to quantity or quality of food are directed to kitchen staff. The DSD does not have explicit guidelines for how and where sergeants are supposed to route grievances. Instead, employees have reported that a sergeant’s decisions about how to handle individual grievances are based on experience and individual judgment about which jail department is best suited to resolve each inmate’s complaint. Thus, sergeants have significant responsibility for ensuring that grievances are handled appropriately, and discretion for how that is achieved.

The DSD has 10 working days to respond to each grievance.²³ Once a grievance has been evaluated, a notation is made on the grievance form of the response from the DSD. This could include the rejection of the grievance for failure to meet one of the formal or informal procedural requirements.

Grievance Flow and Routing Throughout Jail



If not rejected, it may also include a note indicating an action taken to resolve the inmate's concern. Regardless of the outcome, one copy of the grievance form is returned to the inmate, while another copy is sent to the facility operations center, where it is logged on a centralized grievance spreadsheet and then filed.

If a grievance was not resolved to an inmate's satisfaction, the inmate has a right of appeal. The inmate must first appeal to the Division Chief of the jail where s/he is housed. S/he may then appeal to the Director of Corrections, who makes the final decision about how to handle each grievance that is appealed to his or her level.²⁴

Inmate Grievances and the Internal Affairs Bureau

National standards on law enforcement accountability emphasize that serious allegations of officer misconduct should be referred to and investigated by a specialized internal affairs unit.²⁵ There are several reasons for this. First, IAB investigators receive training in gathering the evidence required to address misconduct claims, including evidence collection and interviewing within law enforcement organizations. Second, as a centralized unit, IAB can apply a uniform set of investigative standards to every complaint, helping to ensure greater consistency than if individual supervisors are conducting misconduct investigations across different facilities. Third, and perhaps most importantly, internal affairs commanders report directly to the Chief or Director of a law enforcement agency, which grants them a certain level of independence in their investigation of complaints.²⁶

FINDING 1

Inmate Grievances that Allege Serious Deputy Misconduct are Often not Referred to or Investigated by DSD Internal Affairs, as Required by DSD Policy.

Jail inmates lodge misconduct complaints against officers that range from minor rudeness to serious inappropriate force. This is true in the DSD, as in other correction and detention agencies in the United States. National standards on law enforcement accountability suggest that minor allegations may be reviewed and resolved by supervisors where the complaints originate.²⁷ However, more serious allegations, such as inappropriate force, sexual misconduct, or biased behavior, should be investigated by IAB. DSD's written procedures are consistent with these national standards and place certain serious allegations under IAB's jurisdiction.

“Internal Affairs . . . will investigate all allegations of unnecessary/excessive force, law violations, sexual harassment, and racial or ethnic intimidation, improper conduct and improper procedure involving Denver Sheriff Department, its officers and civilian staff.”²⁸

DSD policy also makes clear that inmate allegations of misconduct contained in grievance forms must be referred to IAB for investigation.

“Grievances filed on matters that fall under the investigative jurisdiction of the Internal Affairs Bureau (IAB) will be referred to that unit and will be handled as complaints.”²⁹

Together, these provisions establish a framework for identifying inmate grievances that allege “unnecessary/excessive force, law violations, sexual harassment, and racial or ethnic intimidation” and referring them to IAB for investigation.³⁰ In practice, however, this written policy framework has not been consistently followed.

Certain Grievances that Allege Serious Misconduct Have not Been Investigated by IAB

During our review of the DSD grievance system, we obtained and reviewed the

paper files relating to 861 inmate grievances. Of these grievances, 54 alleged that deputies engaged in serious misconduct that falls within IAB’s jurisdiction. To put this number in context, it represents slightly less than 1% of the 5,979 total grievances recorded during the relevant period. Yet, it included 31 allegations of inappropriate force, 11 allegations of sexual misconduct, and 14 allegations of biased conduct related to an inmate’s race, ethnicity, sexual orientation, or religion.³¹

Table 2.1: Serious Allegations Filed Through the Inmate Grievance Process From January 1, 2011 ~ June 30, 2013

| Broad Allegation | Number | Percent Serious Grievances |
|---------------------|--------|----------------------------|
| Inappropriate Force | 31 | 57% |
| Biased Conduct | 14 | 26% |
| Sexual Misconduct | 11 | 20% |
| Other | 19 | 35% |

Note: There can be more than one allegation in each grievance. As a result, the total number of allegations will sum to more than the total number of grievances.

IAB cases were opened in only nine of the 54 serious grievances. Three of those nine IAB investigations were triggered by the inmate’s grievance. The other six investigations were opened after the inmates filed separate complaints through the OIM, IAB, or the Office of the Director of Corrections. Thus, 6% of the serious grievances filed from January 1, 2011 to June 30, 2013 triggered IAB cases.³²

Some of the 54 grievances that did not trigger IAB cases were looked into by jail supervisors. In certain cases, this included obtaining written statements from officers or inmates, or reviewing video evidence or DSD reports. Based on the documentation that has been provided to us, other serious grievances were not investigated at all, at the jails or otherwise.

As a result of our findings, the Director has indicated that he now plans to open IAB investigations into 47 of the 54 grievances described herein, and that the OIM will be allowed to monitor and provide input on those investigations. Since these will be open investigations, we will not discuss the specific accusations in each complaint or other information that relates to the complaints. Instead, we broadly characterize the types of allegations made in the 54 grievances. Providing quantitative information about the allegations is consistent with our legal mandate

of reporting information in “statistical and summary form,”³³ and accords with the OIM’s historical practices.

We have classified the most serious allegations in the 54 grievances into four broad categories (see Table 2.1) and also broken them down within those categories (see Table 2.2). Regarding the inappropriate force complaints, seven inmates alleged that they were inappropriately struck by officers with hands, elbows, knees or legs. Six inmates alleged that deputies slammed them into objects (e.g., walls or doors), while five inmates alleged that deputies inappropriately took them to the ground. Five inmates alleged that Tasers or pepper spray had been inappropriately used against them, while two inmates alleged that they had been choked by officers.

Of the grievances that alleged biased conduct, six inmates alleged that deputies used racial/ethnic slurs or insults against them. Five inmates alleged that deputies targeted them with slurs or insulting language related to the inmates’ sexual orientation. In addition, eleven inmates alleged that deputies engaged in acts of sexual misconduct. Of those eleven, five inmates alleged that they had been inappropriately touched by officers. Four inmates claimed that they had been sexually harassed by officers, while two inmates alleged that deputies had directed inappropriate sexual comments at them.

The 54 grievances also included serious allegations that did not constitute alleged inappropriate force, bias, or sexual misconduct. For example, five inmates alleged that deputies threatened them with violence or false disciplinary action. Two inmates alleged that they were inappropriately denied access to medical care or medication. Two inmates alleged that deputies refused to provide them with a required disability accommodation.

Table 2.2: Serious Allegations Contained in Inmate Grievances

| Allegation Type | Number | % of Serious Grievances |
|---|---------------|--------------------------------|
| Inappropriate Force Allegations | | |
| Push/Shove/Grab | 10 | 19% |
| Hand/Elbow/Knee/Leg Strikes | 7 | 13% |
| Slammed into Object | 6 | 11% |
| Inappropriate Takedown | 5 | 9% |
| Use of Taser/Pepper Spray | 5 | 9% |
| Choked | 2 | 4% |
| Threw Object at Inmate | 2 | 4% |
| Other Force Allegation | 16 | 30% |
| Bias Allegations | | |
| Racial/Ethnic Insults or Epithets | 6 | 11% |
| Bias Based on Sexual Orientation | 5 | 9% |
| Other Bias | 3 | 6% |
| Sexual Misconduct Allegations | | |
| Inappropriate Touching | 5 | 9% |
| Sexual Harassment | 4 | 7% |
| Sexual Comments | 2 | 4% |
| Other Serious Allegations | | |
| Threatened Violence/False Disciplinary Action | 5 | 9% |
| Prevented Medical Care/Medication | 2 | 4% |
| Refused Disability Accommodation | 2 | 4% |
| Other Allegation | 10 | 19% |

NOTE: Some grievances have more than one allegation. Thus, the total number of allegations sums to more than the total number of grievances.

To be clear, we are not suggesting that the allegations made by inmates in these grievances are true. To the contrary, some or all could be partially or wholly false. However, each was serious enough to merit an IAB investigation under DSD policy, but only a small number were actually investigated by IAB. This may have compromised the ability of the DSD to effectively address these claims, some of which are now over two years old. Based on our review, we believe that there are multiple possible reasons why DSD policy was not followed in these cases, which we discuss below.

Reported Policy Memo Instructs Officers not to Communicate Allegations Directly to IAB

Under DSD policy, officers are directed to report potential violations of DSD policy to IAB, their supervisor or their Division Chief immediately.³⁴ Interviews with sworn employees of the DSD, however, revealed that some officers will not refer inmate grievances that allege serious misconduct directly to IAB. Instead, three employees told us that they would bring such grievances to command staff, who would then decide whether the allegations would be shared with IAB or not. The employees reported that they were adhering to a policy memo issued by a former Division Chief of the Downtown Division that instructed DDC employees not to relay allegations to IAB without command permission. They told us that this memo was issued several years ago and was widely distributed to sworn employees of the Downtown Division.

We have attempted to obtain a copy of the memo that was described to us, or to confirm or refute its existence, without success. We have been told that the DSD is unable at this time to confirm whether or not such a document was ever issued. Our summary is thus based upon what has been reported to us by certain DSD employees, rather than review of a memo that matches their description. We are aware of no other formal DSD policies that reflect what was allegedly written in this memo.

Regardless of whether the memo was ever issued, sworn employees have indicated that they have chosen not to report serious allegations of misconduct to IAB because of this memo. Thus, we believe that officer perceptions have contributed to the problem identified in this chapter.

Recommendation 1: We recommend that the DSD issue a directive reminding officers that they may approach IAB without first seeking command permission.

This directive should help resolve any officer confusion about whether they are allowed to report allegations directly to IAB. It should make clear that no officer will be subject to punishment or retaliation for approaching IAB without approval. We have spoken with the Director regarding this matter and he intends to issue a directive clarifying this for officers. We commend him for his approach to resolving this issue.

No Clear Guidelines on Grievance Handling for Sergeants

Another potential reason for the lack of IAB investigation into some of the serious misconduct grievances is the lack of clear guidelines on grievance handling for sergeants. The sergeants on each floor are responsible for collecting and referring the grievances submitted by inmates each day. According to DSD staff, the routing of grievances is largely left to each sergeant's discretion, and there are no written guidelines that instruct sergeants where to route each kind of grievance.

The broad discretion granted to sergeants on grievance handling leaves the DSD vulnerable to inconsistent treatment of grievances, particularly those that include claims of serious misconduct. For example, in one grievance, an inmate's allegations of misconduct were not referred to IAB. Instead, the assigned sergeant returned the grievance and informed the inmate that s/he would have to separately contact IAB in order to file his/her complaint. The DSD could help prevent future divergence from policy by publishing clear guidelines on grievance handling by sergeants.

Recommendation 2: We recommend that the DSD develop detailed guidelines on grievance handling, including clear instructions that all grievances containing allegations that fall within IAB's jurisdiction are to be sent to IAB by the reviewing sergeant, without delay.

Concerns about IAB Resources

One of the concerns that we have heard during this review is that IAB could become overwhelmed by any increase in its workload associated with investigating serious misconduct allegations in inmate grievances. We believe that these concerns are valid. DSD IAB investigators have traditionally carried a very heavy caseload when compared to investigators in DPD IAB. We believe that the size of the investigative staff of DSD IAB—which is less than half the size of the investigative staff at DPD IAB—may need to be increased.

In addition, DSD IAB's current approach to complaint triage could likely be refined to allow for more effective allocation of resources to serious cases, or those where an initial review reveals a likely policy violation. We believe that a new approach to triage could include greater use of mediation to address employee disputes, and sending other non-disciplinary cases to be investigated by the jails, rather than by IAB. We have had discussions with the Director on this topic, who recently

convened a work group to discuss possible improvements to IAB's procedures, including its approach to triage. We thank the Director for welcoming our input into that process, and we look forward to continuing to work with him to refine the triage process in IAB.

Recommendation 3: We recommend that the DSD develop detailed guidelines for complaint triage. We recommend that these guidelines make clear that decisions about potential triage of cases that fall within IAB's jurisdiction be made by IAB, rather than by supervisors at the jails.

While less serious allegations of misconduct can be investigated at each jail, we believe that DSD policy should make clear that only IAB should determine whether serious allegations of misconduct require full investigation. That is, only IAB should be able to decline to fully investigate misconduct complaints based upon an objective assessment of the evidence; individual officers or supervisors at the jails should not have the discretion to decline to send misconduct complaints to IAB. We believe that DSD policy should make this explicit in order to ensure fairness and consistency in complaint handling.

FINDING 2

The DSD is not Routinely Notifying the OIM of Misconduct Complaints Contained in Inmate Grievances, as Required by the OIM Ordinance.

Under the ordinance that established the OIM (“OIM Ordinance”), the OIM is charged with monitoring and participating in internal investigations of alleged misconduct by members of the DSD and any resulting disciplinary process. The OIM reviews completed IAB investigations to ensure that they are thorough and complete.³⁵ If the OIM determines that those investigations are not thorough and complete, we may recommend further investigation.³⁶ The OIM is granted access to files, records, and interviews that relate to internal investigations. For example, the OIM Ordinance requires that the DSD “establish by department policies that they will cooperate with the monitor’s office in actively monitoring and participating in internal investigations.”³⁷ Further, DSD policies provide for complete OIM access to “interviews of witnesses, including uniformed personnel, IAB files, personnel files, and other evidentiary items.”³⁸ DSD IAB and the OIM have consistently enjoyed a strong and collaborative working relationship.

When inmates have concerns about the conduct of DSD deputies, they may file complaints by contacting either the OIM or the DSD. Pursuant to the OIM Ordinance, when inmates complain directly to the DSD, the DSD is required to provide copies of those complaints to the OIM, and vice versa.

“Whenever a citizen files a complaint with the monitor’s office, the board, or the police or sheriff departments, the agency receiving the complaint shall, within three (3) business days, advise all of the other agencies (the board; the monitor’s office; the manager of safety . . .) that it has received the complaint and provide a copy of the complaint to each of them.” OIM Ordinance §2-386(b).

The DSD has a very broad definition of the term “complaints,” which includes inmate grievances as well as other formal verbal or written allegations of misconduct.

“The term ‘complaint’ will mean any formal verbal or written statement alleging misconduct of any employee of the Denver Sheriff Department.” D.O. § 1530.2(4).

Under these provisions, the OIM is to be notified of all inmate complaints of officer misconduct within three business days of their filing. To satisfy this requirement, the DSD has an electronic database (“IAPro”)³⁹ that catalogues complaints filed against DSD deputies and contains information about open and closed IAB investigations. The OIM has live access to IAPro, and we are thus able to monitor both new complaints filed and the progress of ongoing complaint investigations.

The DSD is not Routinely Notifying the OIM of Misconduct Complaints Contained in Grievances

As noted in an earlier section, we examined 861 inmate grievance files and identified 54 grievances alleging serious misconduct. Under the OIM Ordinance, these complaints of serious misconduct should have been shared with the OIM. However, the DSD notified the OIM of only ten of the complaints, or 19% of the total (10 of 54). We were thus unable to satisfy our mandate by recommending the investigation of the remaining complaints, examining them for trend information about officer conduct, or otherwise ensuring that they were handled according to DSD policy and national standards.

There appear to be several reasons why the DSD did not share these complaints with the OIM. First, as discussed above, IAB itself is not always alerted when inmate grievances contain misconduct allegations. When IAB is not informed of such claims, it is unable to enter them into IAPro or otherwise make the OIM aware of the inmate’s allegations.

In addition, during this review, we identified one grievance where serious allegations of deputy misconduct were referred to IAB, yet there was no record in IAPro nor any notification to the OIM. In that case, an inmate filed a grievance alleging that a deputy used a racial slur and threatened the inmate with physical injury. Another inmate, who allegedly witnessed the incident, also submitted a grievance corroborating the use of the racial slur by the accused deputy. The grievance was forwarded to IAB, but IAB did not notify the OIM of these allegations.

Recommendation 4: We recommend that the DSD develop a centralized, electronic database in which all inmate grievances are recorded, and grant the OIM live, contemporaneous access to that database to enable OIM oversight of grievances that allege officer misconduct.

We have spoken with the Director, who has indicated that he is exploring various possibilities for creating such an electronic database, with full access for the OIM, and we look forward to working with the DSD on its implementation.

Recommendation 5: We recommend that IAB's policies and procedures be clarified to make certain that all allegations of misconduct that are relayed to IAB are entered into IAPro and communicated to the OIM, without fail.

Current DSD IAB policies state that IAB will notify the OIM of “respective cases” and of “law violations, in custody deaths, incidents resulting in serious bodily injury or situations likely to provoke public interest immediately.”⁴⁰ This language does not reflect the DSD’s obligation, under the OIM Ordinance, to notify the OIM of all complaints of misconduct. IAB’s procedures should be clarified to make that requirement explicit. Further, ensuring that all inmate complaints that allege misconduct are recorded in a central IAB database is a national best practice, and will help the DSD document that all inmate complaints were evaluated and investigated in a uniform, consistent fashion.⁴¹

FINDING 3

The DSD has yet to Develop a Process for Routinely and Systematically Analyzing Patterns in Inmate Grievances to Identify Opportunities for Operational Improvement.

Law enforcement organizations are increasingly analyzing patterns in complaints to identify opportunities to improve their operations and the quality of their service to the public.⁴² Patterns in inmate grievances can also provide useful feedback when appropriate systems are implemented for identifying such patterns. For example, the New York State Department of Corrections generates regular management reports that identify trends and patterns in grievances by facility.⁴³ The goal of this type of system is to allow timely management intervention before officer/inmate tensions, or other operational problems, lead to inmate unrest, violence or litigation.⁴⁴

The DSD's grievance policy suggests that the DSD proactively review grievance data "for existing problems beyond individual grievance resolution."⁴⁵ During interviews, however, we learned that the DSD has not had a systematic mechanism for analyzing patterns in inmate grievances.⁴⁶

Patterns in Grievances Against Deputies

In many law enforcement agencies, a small number of officers have accounted for a disproportionate number of complaints, uses of force, and other signifiers of potential misconduct.⁴⁷ For this reason, patterns in complaints can help indicate whether particular officers require more active supervision or other forms of administrative intervention.⁴⁸

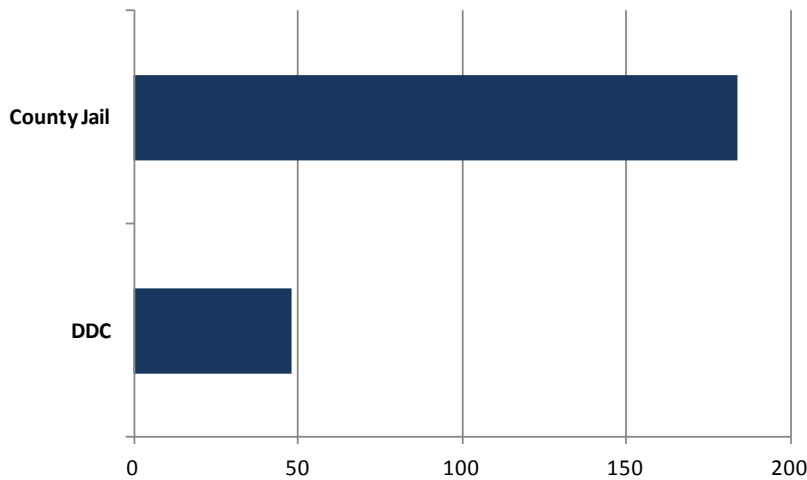
DSD grievance records reveal that a similar pattern exists in the DSD, and a small number of deputies account for a disproportionate number of inmate grievances about deputy conduct. Between January 1, 2011 and June 30, 2013, 788 grievances were filed that focused on deputy conduct issues. Of these 788 grievances, 125 were filed against just four deputies. Put another way, four deputies out of a force of over 700 accounted for almost 16% of the total number of grievances about officer conduct during a two-and-a-half year period. We believe that this pattern should have triggered a supervisory response that could have included meetings with the

deputies, attempts to identify the reasons for the continued complaints against them, and other supervisory forms of intervention, if appropriate. We understand that after our review brought this pattern to light, DSD Division Chiefs initiated discussions with these deputies to identify the reasons for the outsize percentage of grievances against them.

Not Just Theory . . .

During our review, we spoke to Professor Arnett Gaston, a national corrections expert who at one time was the commanding officer at Riker’s Island, a jail complex comprised of ten institutions with the capacity to hold 18,000 inmates and 11,000 staff. Riker’s Island is widely thought to be the largest detention complex in the world. According to Professor Gaston, systematically analyzing patterns in inmate grievances was “essential” to his success, and helped him to reduce inmate dissatisfaction and improve the quality of supervision in his detention complex over time.

Figure 2.1: Comparing Rude Conduct Grievances Between the DDC and County Jail

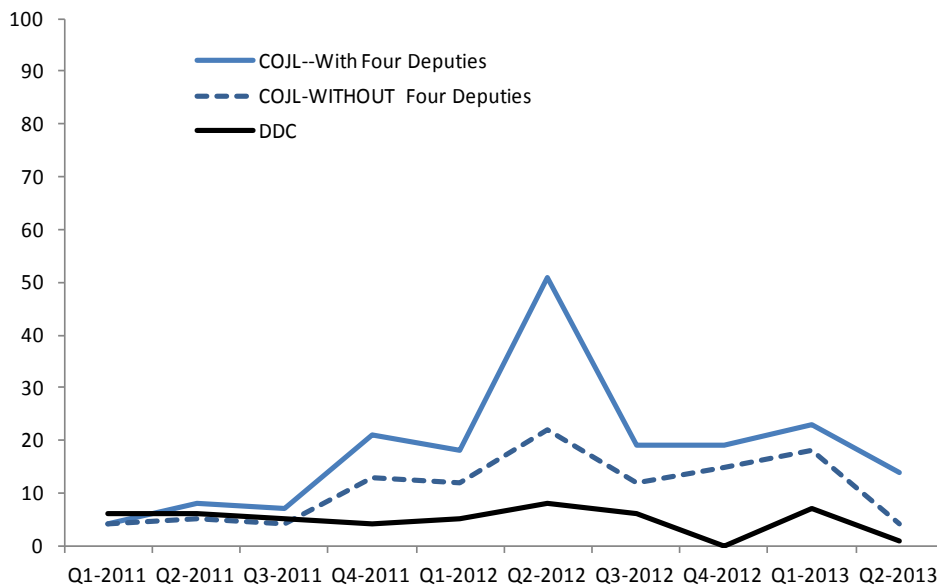


Examination of the DSD grievances also revealed notable variation in the number of particular kinds of inmate grievances filed at the DDC versus the County Jail. For example, many more inmates at the County Jail filed grievances relating to rude/unprofessional conduct than inmates at the DDC (see Figure 2.1). Indeed, during the two and a half year review period, approximately 184 rude/unprofessional deputy conduct inmate grievances were recorded at the County Jail, but only 48 such grievances were recorded against DDC deputies. Since the two facilities have

different inmate populations, the difference can also be expressed as a rate per 100 inmates. During the review period, the DDC had a rate of approximately four rude/unprofessional conduct grievances per 100 inmates. In contrast, the County Jail had a rate of roughly 24 rude/unprofessional conduct grievances per 100 inmates. This may reflect a potentially concerning pattern in the relationship of the staff at the County Jail to inmates.

However, more detailed examination of this pattern revealed that some of the difference between the County Jail and the DDC resulted from the disproportionate number of grievances filed against the four deputies discussed above, all of whom worked at the County Jail. In Figure 2.2, the bottom line represents the number of rude/unprofessional conduct grievances filed at the DDC. The top line represents the number of rude/unprofessional conduct grievances filed at the County Jail including the four deputies, while the middle line—which is dotted—represents the same number not including those four deputies. By removing the grievances filed against these four deputies, it becomes clear that the difference between the number of rude/unprofessional conduct grievances at the County Jail and the DDC was partly driven by the four deputies discussed above.

Figure 2.2 Number of Rude/Unprofessional Conduct Grievances by Quarter



More importantly, by looking at trend information, it was possible to identify particularly concerning spikes in the number of inmate grievances alleging rude conduct. For example, there was a notable spike in rude/unprofessional conduct grievances filed at the County Jail during the second quarter of 2012, which could have triggered a review by supervisors. If DSD administrators had examined that spike in detail, they would have determined that inmate grievances filed against one deputy, in particular, were responsible for the surge in inmate complaints about rude conduct during that quarter.⁴⁹

Again, the existence of these patterns, by itself, does not necessarily indicate wrongdoing by the accused deputies. However, trends and spikes in grievance activity of the kind demonstrated here could have triggered supervisory review to identify whether there was a need for additional training or supervision of the accused deputies.

Pattern Analysis Can Help Identify Inmates Who Abuse the Grievance System

Pattern analysis may also help to identify inmates abusing the grievance system to unfairly retaliate against deputies.⁵⁰ During the period of our review, approximately 583 inmates filed 788 grievances about officer conduct. Not surprisingly, some inmates filed more complaints than others, with six inmates accounting for 50 of the 788 deputy conduct grievances (6.4%).⁵¹ One inmate filed 13 separate minor grievances during the two and half year review period alleging that deputies refused to provide specific services s/he requested. During the same period, another inmate filed eight grievances, which generally alleged that officers engaged in rude conduct. A third inmate filed eight grievances, most of which alleged unprofessional deputy conduct. Three other inmates filed seven grievances each.

We make no judgments about whether the allegations in these grievances are true or false. However, by identifying patterns in outsize grievance filings by individuals or groups of inmates, the DSD may help protect officers from potential retaliation through the grievance system. We believe that engaging in analysis of patterns in inmate grievances will thus benefit deputies, as well as helping the DSD to refine or improve its operations over time.

Current Obstacles to Systematic Analysis

We have discussed these matters with the Director, who has responded by incorporating the inmate grievance process into the recently established early intervention system. We commend the Director and believe that such a system, if properly implemented, may help to address some of the issues discussed here. However, without improvement of the DSD's data collection practices, the DSD's ability to meaningfully analyze patterns in grievances will be constrained. In particular, while both the County Jail and the DDC recorded a limited amount of information about grievances in spreadsheets, we found the following issues during our review:

- ◆ There are no written policies that govern how grievance data are entered into the DSD's grievance spreadsheets.
- ◆ Data collection about inmate grievances was inconsistent between the DDC and County Jail, and varied considerably over time, making comparison between facilities and across time difficult.
- ◆ Key pieces of information were not regularly captured in DSD spreadsheets, including the names of subject deputies, the inmate's race, gender, or ethnicity, or the location of the incident that led to the inmate grievance.

These data quality issues will be an obstacle to effective pattern analysis unless changes are made in how grievance information is collected. In order to conduct the limited pattern analysis we report above, OIM staff had to reformat and re-code the DSD grievance spreadsheets so that they could be systematically analyzed. This included collecting the names of some accused deputies from paper grievance forms.

Recommendation 6: We recommend that the DSD develop internal policies and procedures that govern data collection about inmate grievances to improve the quality of information collected and standardize it across jails.

These policies should be written to ensure that grievance information is recorded in a reliable and standardized manner across the DSD's detention facilities. They should also require the collection of the following significant case details for each grievance:

- ◆ Unique case number.

- ◆ Case dates (date filed, date assigned, date of response).
- ◆ Names of the involved deputies, if known.
- ◆ The inmate's name and ID number.
- ◆ Inmate demographic information, such as gender, race, and ethnicity.
- ◆ Location of the incident that led to the grievance.
- ◆ A brief summary of the inmate's complaint written in an objective, neutral tone.
- ◆ Consistent collection of the inmate allegation categories (e.g., rude conduct, sexual misconduct, excessive force, racial discrimination).
- ◆ Deputy assignment information.
- ◆ Finding/resolution.
- ◆ Whether the inmate previously filed a grievance relating to the same incident.
- ◆ Whether referred to IAB, and if so, an IAB case number.

Recommendation 7: Once improved data collection is in place, we recommend that the DSD produce routine analytical reports on patterns and trends in grievances for DSD command staff.

These reports, which could be produced by the DSD Research and Special Projects Division, should be designed to:

- ◆ Identify patterns and trends in inmate grievance allegations and resolutions by facility and housing unit, inmate demographics, and any notable spikes in grievance activity across the facilities or inmate groups.
- ◆ Identify individual deputies who are the subject of a disproportionate number of inmate grievances (when compared to peer officers) or where the pattern of inmate grievances may suggest particular areas of concern (e.g., use of force, sexual misconduct, or other kinds of serious complaints).
- ◆ Identify inmates that may be filing duplicate complaints or who may be seeking to use the grievance system to retaliate against individual deputies.

Overall, we believe that these changes would build upon the DSD's significant efforts to further become a performance-driven organization. For example, in working

towards “triple crown” accreditation by the American Correctional Association (“ACA”), the National Commission on Correctional Health Care (“NCCHC”), and the Commission on Accreditation for Law Enforcement Agencies (“CALEA”), the DSD now collects extensive information about a wide range of outcome measures, from workplace injuries to housing for inmates with disabilities. Conducting further routine analysis of inmate grievances will only help the DSD achieve its mission of ensuring safe, secure, efficient, and humane detention facilities.

FINDING 4

DSD Policies and Practices may Inadvertently Limit Inmate Access to the Grievance Process.

During the course of this review, we examined inmate grievance policies from other jurisdictions, reviewed reports from the United States Department of Justice relating to inmate grievance processes, and consulted with local and national experts in civilian oversight of law enforcement and corrections. It is widely-recognized that jail grievance policies should be structured to be accessible to all inmates,⁵² yet current DSD policies and practices may inadvertently limit inmate access to the grievance process.

Grievance Forms Should be Made Available in Spanish

Latino/Hispanic inmates comprise approximately 35% of the DSD's inmate population⁵³ and at least some of those inmates are monolingual Spanish speakers. Moreover, the DSD's detention facilities routinely house inmates drawn from other immigrant communities who are not yet English language proficient (e.g., recent Vietnamese and Russian immigrants). Grievance forms are not currently available in Spanish. During this review, we examined 861 paper grievance forms and none had been completed in either Spanish or other languages common to Denver's immigrant communities. The DSD may be able to provide broader and more inclusive access to the grievance process by making grievance forms available in languages that are common to inmates who are not yet English proficient.

Recommendation 8: We recommend that the DSD print grievance forms in Spanish and make them available upon request. We also recommend that the DSD evaluate whether there are other inmate groups that would benefit from access to grievance forms in languages other than English.

DSD Policy Requiring “Informal Presentation” of Complaints Should be Revised

DSD policy requires inmates to verbally present their complaints to DSD staff before filing formal grievances. Only if an inmate is unable to resolve his/her complaint through discussion with an officer may s/he file an official grievance seeking assistance.

“An inmate will informally present his/her complaint to the staff. The staff will attempt resolution of the issue before the inmate files a written grievance.” DSD D.O. 4810.1D(4)(B).

Most grievances concern the conditions of an inmate’s confinement. For such grievances, this “informal presentation” requirement makes sense—it allows DSD staff to efficiently address inmate concerns without expending significant time or resources, or triggering a formal administrative review. Indeed, when we spoke with an Inmate Advisory Council at the DDC, some of the inmates indicated that many of the routine operational concerns they had could be dealt with informally and efficiently by front line deputies and supervisors, without the need to trigger the formal grievance process.

However, for complaints of officer misconduct, our concern is that the informal presentation requirement may deter inmates from reporting such allegations at all. When inmates have complaints about the deputies in their pod, it is those very deputies (and their supervisors and co-workers) with whom the inmates are most likely to be in routine contact. Requiring inmates to attempt to present their complaints to these officers before registering them as official grievances is likely to deter some inmates from reporting their complaints.

Informal presentation requirements are not uncommon in jail grievance policies around the United States. In examining certain jail grievance systems, the United States Department of Justice (“DOJ”) has recognized that they may inadvertently deter inmates from reporting allegations of deputy misconduct, and has recommended that such requirements be eliminated for grievances alleging misconduct.⁵⁴

Recommendation 9: We recommend that the DSD revise both the grievance policy and the Inmate Handbook to make clear that inmates should attempt to resolve grievances informally unless the grievance alleges officer misconduct, in which case no attempt at informal resolution is required before a formal grievance is submitted.

Grievances Alleging Misconduct Should not be Rejected due to Procedural Flaws

Under DSD policy and practice, grievances may be summarily rejected due to procedural flaws associated with their submission. For example, DSD supervisors have rejected misconduct grievances that were filed by groups of inmates rather than individual prisoners. Similarly, inmate misconduct grievances that were submitted by one inmate on behalf of another have been rejected. In practice, this has meant that in certain cases, relatively serious allegations have gone unaddressed. This includes complaints alleging inappropriate force, inappropriate comments about an inmate's body, and bias related to an inmate's national origin or ethnicity.

In addition, some grievances have been rejected when the grieving inmate has been released and is no longer in DSD custody. This includes the rejection of grievances that alleged inappropriate force and slurs related to an inmate's sexual orientation, without investigation, as the complaining inmates were no longer in custody.

There is no doubt that the release of an inmate could make it difficult, and potentially impossible, to investigate an allegation of misconduct. However, this is not always the case. Much of the DDC and some of the County Jail are monitored by video, and the footage from these video cameras is often an integral part of many IAB investigations. Even where an inmate has been released, IAB could obtain the video on serious cases, and make a determination as to whether additional investigation, including possibly contacting the complaining inmate outside of the facility, is warranted.

For most grievances, which concern conditions of confinement, rejecting grievances for failing to comply with the procedural rules that govern their filing may be appropriate. However, where grievances allege serious misconduct that falls within IAB's jurisdiction, the DSD should make every attempt to determine whether the allegations are true or false, without regard for the manner in which the allegations are raised.

Recommendation 10: We recommend that the DSD revise its grievance policy to make clear that the failure to adhere to the procedural requirements of the grievance policy is not grounds for rejecting grievances that allege deputy misconduct.

Inmates are not Adequately Informed of their Right to File Complaints with IAB and the OIM

During this review, we also became aware of another means by which inmate access to the complaint process can be improved. When inmates are first booked into DSD custody, they are given a copy of the “DSD Inmate Handbook: A Guide to Help You Adjust to the Jail Environment.” The Inmate Handbook is a 42-page guide to life in DSD jails. It includes sections on inmate rights and responsibilities, communicating within and outside the jail, healthcare, commissary, and housing, among other subjects. The Inmate Handbook also includes a detailed explanation of the inmate grievance process. In a section discussing the DSD’s policies on the Prison Rape Elimination Act, it alerts inmates that they can report “incidents of sexual behavior” to the OIM, DPD, IAB or any DSD staff member. However, the Handbook does not include any information about filing other types of complaints directly with IAB or the OIM. It does not alert inmates to the fact that they can contact IAB directly from inside DSD jails, or send written communications to the OIM without charge.

Recommendation 11: We recommend that the DSD revise the Inmate Handbook to alert inmates to various avenues by which they can contact IAB or the OIM with complaints of deputy misconduct.

Summary of OIM Recommendations Regarding the DSD Inmate Grievance Process

- Recommendation 1: We recommend that the DSD issue a directive reminding officers that they may approach IAB without first seeking command permission. This guidance should make clear that no officer will be subject to punishment or retaliation for notifying IAB of misconduct allegations without permission.
- Recommendation 2: We recommend that the DSD develop detailed guidelines on grievance handling, including clear instructions that all grievances containing allegations that fall within IAB’s jurisdiction are to be sent to IAB by the reviewing sergeant, without delay.
- Recommendation 3: We recommend that the DSD develop detailed guidelines for complaint triage. We recommend that these guidelines make clear that decisions about potential triage of cases that fall within IAB’s jurisdiction be made by IAB, rather than by supervisors at the jails.
- Recommendation 4: We recommend that the DSD develop a centralized electronic database in which all inmate grievances are recorded, and grant the OIM live, contemporaneous access to that database to enable OIM oversight of grievances that allege officer misconduct.
- Recommendation 5: We recommend that IAB’s policies and procedures be clarified to make certain that all allegations of misconduct that are relayed to IAB are entered into IAPro and communicated to the OIM, without fail.
- Recommendation 6: We recommend that the DSD develop internal policies and procedures that govern data collection about inmate grievances to improve the quality of information collected and standardize it across jails.
- Recommendation 7: Once improved data collection is in place, we recommend that the DSD produce routine analytical reports on patterns and trends in grievances for DSD command staff.

- Recommendation 8: We recommend that the DSD print grievance forms in Spanish and make them available upon request. We also recommend that the DSD evaluate whether there are other inmate groups that would benefit from access to grievance forms in languages other than English.

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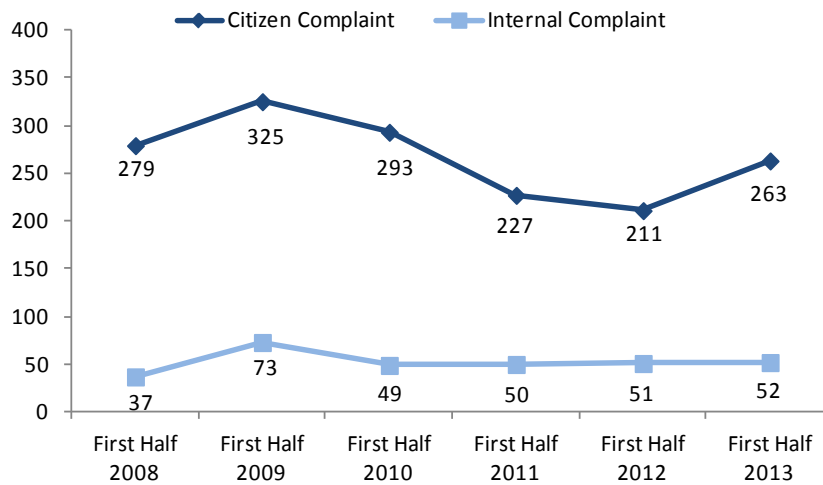
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Denver Police Department (DPD) Monitoring

New Complaints and Allegations

The following chart shows the number of DPD IAB complaints recorded during the first half of 2013, and for the same time period for each of the previous five years.⁵⁵ These figures do not include scheduled discipline cases, such as when a DPD officer violates a traffic law, gets into a preventable traffic accident, or misses a court date, shooting qualification, or continuing education class.

Figure 3.1: DPD Complaints



Most Common Complaint Specifications

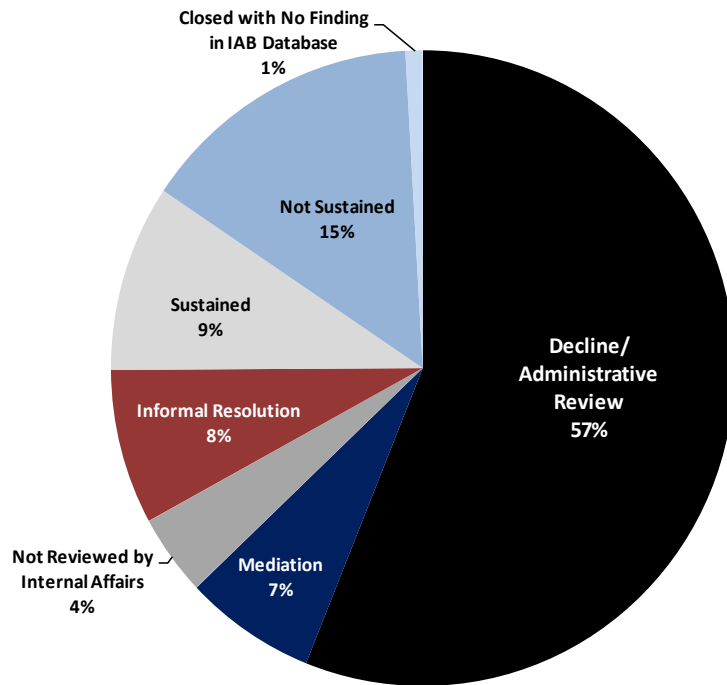
Table 3.1 shows the ten most common types of community/internal complaint specifications recorded during the first six months of 2013.⁵⁶ Single complaints may contain more than one specification.

*Table 3.1: Percentage of Cases with One or More Common Specifications
January 1 - June 30, 2013*

| <i>Specification</i> | <i>Percent of Complaints</i> |
|------------------------------------|------------------------------|
| Discourtesy | 32% |
| Responsibilities to Serve Public | 30% |
| Improper Procedure | 27% |
| Inappropriate Force | 16% |
| Not Giving Name and Badge Number | 5% |
| Conduct Prejudicial | 4% |
| Failure to File Reports | 4% |
| Conduct Prohibited by Law | 3% |
| Discrim., Harass., and Retaliation | 3% |
| Intimidation of Persons | 3% |

Complaint Screening and Outcomes

*Figure 3.2: Screening and Outcome on Individual DPD Specifications
January 1 - June 30, 2013*



Significant Discipline on Sustained Cases (January 1 - June 30, 2013)

■ An officer was terminated after it was determined that he detained a female community member and unlawfully coerced her into performing a sexual act in exchange for her release. The officer was also criminally charged and convicted in Denver District Court of Second Degree Kidnapping, Sexual Assault, and False Reporting to Authorities.

■ Two officers responded to a call regarding a loud party, which resulted in the arrest of the tenant and several community members. The tenant and community members alleged that inappropriate force was used and that a number of cell phones were destroyed by one of the officers. While there were no sustained findings related to the alleged inappropriate force or evidence handling procedures, both officers received 10-day suspensions for making inaccurate statements in their police reports. The officers' supervising sergeant was also disciplined and received two fined days for conducting an inadequate use of force investigation in this incident.

■ An officer left a loaded, department-approved AR-15 in the locked trunk of a personal vehicle. The officer's spouse then left the car in the parking lot of a high school so the officer's teenage child would have a car to drive home at the end of the school day. Because the subject officer had three prior rule violations, a 10-day suspension was imposed for the improper storage of a firearm.

■ A sergeant was responsible for completing an interview with an arrestee as part of a use of force investigation. The arrestee was detained in a police holding cell with both hands handcuffed to a bench. At the conclusion of the interview, the sergeant allegedly failed to take action to remove or alter the arrestee's restraints so that the arrestee could access the cell toilet. As a result, the arrestee urinated on himself and the floor. The sergeant also allegedly made misleading and inaccurate statements in his use of force report. The Manager of Safety's office imposed a three-day suspension for the mistreatment of prisoners and an additional 10-day suspension for misleading and inaccurate statements. The officer appealed the decision to the Civil Service Commission ("CSC"), and a CSC hearing officer reversed the discipline.

- An officer was injured in a work-related accident and allegedly made misleading and inaccurate statements about his condition and ability to return to work. The officer also allegedly engaged in unauthorized secondary work while on limited duty. The officer resigned before discipline could be imposed in this case.
- Two male officers responded to a 911 call where a female community member reported being the victim of domestic violence. The officers transported the victim to a police district station. One of those officers took photographs of her injuries while she was partially disrobed. In addition, that officer engaged in on-going unprofessional conduct by giving the victim his personal phone number, making inappropriate sexual comments about her physical appearance, and exchanging inappropriate texts and phone messages with her. That officer resigned prior to the imposition of discipline.
- An officer was alleged to have used illegal controlled substances and conducted unlawful criminal history searches on behalf of the individuals selling those controlled substances. The officer resigned during the IAB investigation.
- An officer struck a handcuffed suspect who was seated in the backseat of a patrol car twice in the face after the suspect attempted to “push kick” the officer. The Manager of Safety’s office imposed a 10-day suspension for this use of force. The officer appealed and a Civil Service Commission hearing officer reversed the disciplinary decision.
- An officer allegedly had sexual encounters with a community member while on duty. The officer also allegedly brought the community member on unauthorized ride-alongs, shared confidential information with the community member, and feigned illness to avoid work. The officer resigned during the IAB investigation.
- An officer was arrested for driving under the influence (DUI) in a county outside of Denver and had a firearm in his vehicle at the time of his arrest. This was the officer’s second arrest for DUI. The officer resigned while discipline was pending.

Commendations and Awards

Table 3.2: DPD Commendations, January 1, 2013 – June 30, 2013

| Award | Total | Percent |
|-----------------------------|------------|---------------|
| Commendatory Action Report | 129 | 47.8% |
| Citizen Letter | 54 | 20.0% |
| Official Commendation | 28 | 10.4% |
| Distinguished Service Cross | 17 | 6.3% |
| Letter of Appreciation | 14 | 5.2% |
| No Award Type Listed | 10 | 3.7% |
| Commendatory Letter | 6 | 2.2% |
| Department Service Award | 3 | 1.1% |
| Purple Heart | 2 | 0.7% |
| STAR Award | 2 | 0.7% |
| Citizens Appreciate Police | 1 | 0.4% |
| Community Service Award | 1 | 0.4% |
| Medal of Honor | 1 | 0.4% |
| Medal of Valor | 1 | 0.4% |
| Military Service Award | 1 | 0.4% |
| Total | 270 | 100.0% |

Highlighted Commendations

CITIZEN LETTER

A resident wrote to commend the professional performance of two DPD officers for helping to diffuse a grave situation involving the threat of suicide. Upon arrival at the scene, the officers displayed great skill and compassion to develop a rapport with the distressed party until he agreed to emergency hospitalization and psychiatric evaluation. The resident wrote: “it is particularly impressive to me that they were able to deal attentively, patiently and effectively with our painful situation.”

COMMUNITY SERVICE AWARD

Officers assigned to District 1/Detail 3 were recognized by the Denver Post for working alongside the Director of Denver’s Office on Aging, and Denver’s Agency for Human Rights and Community Partnerships, to clean and restore the home of a 90-year old Denver woman, who was found living in uninhabitable conditions. The officers spent several days of their off time working on the resident’s home, cleaning garbage and painting walls, while paying for her stay at a local motel until they were finished. For their selflessness and community spirit, the officers were awarded the Community Service award.

DISTINGUISHED SERVICE CROSS AWARD

Five DPD officers received the Distinguished Cross Award for exceptional teamwork that led to the successful rescue of a female victim and a small child who were held in a domestic violence incident that escalated into a barricade/hostage situation. The responding officers developed a plan in which they entered the residence, applied crisis intervention techniques toward the suspect until he was taken into custody, and secured the safe release of the victims.

STAR AWARD

An officer responded to a domestic violence incident in which officers exchanged gunfire with the suspect, and were “pinned” down by the gunman. The officer was part of the team that initiated a tactically sound search for the victim, and was commended for selfless service to fellow officers and the citizens of Denver.

OFFICIAL COMMENDATION

Three armed males forced entry into a home during a child’s birthday party. They went to a back room, pistol-whipped an elderly male, and left with a blue duffel bag. An officer responded to the scene, quickly assessed the situation, called for medical assistance, and aired a description of the suspects and their vehicle. Another officer spotted the suspect vehicle and aired this information. He pulled the vehicle over and waited for cover. Once other officers arrived they executed a felony stop and took three suspects into custody. The officers were commended for being part of a team that demonstrated excellent teamwork, communication, and officer safety.

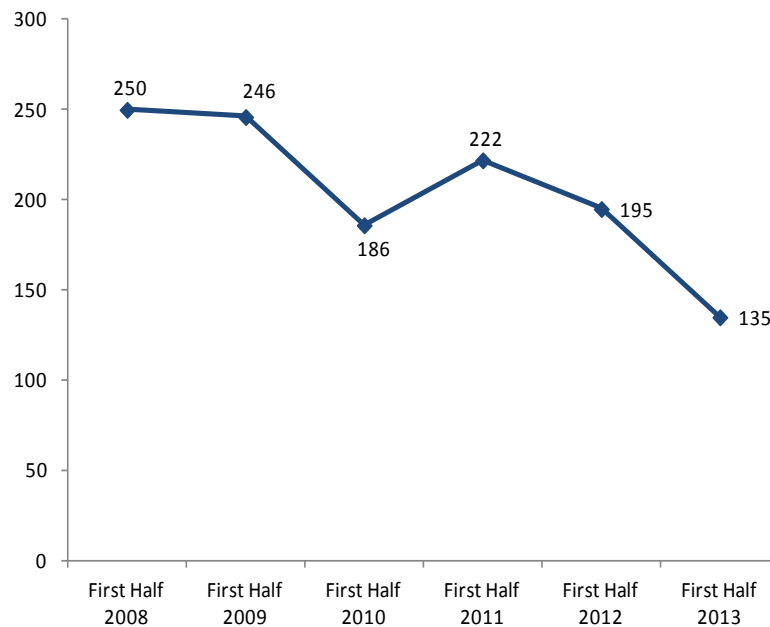
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Denver Sheriff Department (DSD) Monitoring

New Complaints and Allegations

The following chart shows the number of DSD IAB complaints recorded during the first half of 2013, and for the same time period for each of the previous five years.⁵⁷ The complaint counts do not include “reprimand”⁵⁸ cases or complaints filed against civilian DSD employees.

Figure 4.1: DSD Complaints



Most Common Complaint Allegations

Table 4.1 lists DSD IAB complaint allegations recorded in the first half of 2013. Single complaints may contain one or more allegations.

Table 4.1: Allegations Received, January 1 - June 30, 2013

| <i>Allegation</i> | <i>Number</i> | <i>Percent</i> |
|------------------------------|---------------|----------------|
| Not recorded in DSD Database | 67 | 29.0% |
| Lost/Missing Property | 32 | 13.9% |
| Unauthorized Leave | 17 | 7.4% |
| Failure to Shoot | 17 | 7.4% |
| Improper Procedure/Conduct | 10 | 4.3% |
| Excessive Force | 13 | 5.6% |
| Discourtesy | 7 | 3.0% |
| Service Complaint | 4 | 1.7% |
| Obedience to Traffic | 3 | 1.3% |
| Other | 61 | 26.4% |
| Total | 231 | 100.0% |

Outcomes on DSD Internal Affairs Cases

In past reports, we have reported quantitative information about the outcomes of DSD complaints and allegations. However, the DSD recently adopted a new internal affairs database (“IAPro”), and has yet to resolve several data collection issues as a result of that change. Until those issues are resolved, we will not be able to report on statistics related to the outcomes of DSD cases. We look forward to working with the DSD to solve these data collection issues.

Significant Discipline on Sustained Cases (January 1 - June 30, 2013)

- A deputy was terminated for using excessive force on an inmate, failing to report that use of force, and making misleading and deceptive comments about the incident during the IAB investigation and disciplinary process. The decision has been appealed.

- A sergeant was terminated after pleading no contest and entering into a deferred judgment and sentence for charges relating to misdemeanor child abuse. The decision has been appealed.

- A sergeant received a 10-day suspension after it was found that the sergeant logged on to a work computer and then left that computer unattended for an extended period of time. An unprofessional and inappropriate entry was made into a DSD database under the sergeant's computer profile. It was unclear who made the entry. The penalty in this case was increased due to the sergeant's previous disciplinary history. The decision was appealed and the City negotiated a settlement decreasing the discipline from a 10-day suspension to a 3-day suspension.

- A deputy conducted a "welfare check" and entered the home of a community member without a warrant or legal authorization in order to serve court documents. The deputy was suspended for 10 days in a negotiated settlement agreement.

- Two sergeants were disciplined for failing to follow protocol to initiate drug and alcohol testing for a potentially intoxicated civilian employee who was at work at the jail. The two sergeants then failed to prevent the employee from driving away from work in his personal vehicle. The sergeants also did not record any pertinent details about the employee's vehicle, the direction in which the employee drove, nor did they notify the Denver Police Department. The first sergeant, who did not accept responsibility for the incident, received a 10-day suspension. The second sergeant accepted responsibility and received a four-day suspension. Both decisions have been appealed.

- A deputy was alleged to have released confidential information to a news reporter. The deputy retired during the IAB investigation.

- A deputy was terminated after it was determined that the deputy knowingly made inaccurate and deceptive statements about an inmate's actions in a use of force report and during an IAB interview. The deputy appealed and was allowed to resign in settlement of the appeal.
- A deputy was terminated for allowing two inmates to harass, dump dirty water on, spray chemicals on, and hose down a third inmate who was in a locked shower cell. The incident lasted for an extended period of time.
- A deputy was disciplined in two complaints arising from incidents that occurred during the deputy's probationary period. In the first case, the deputy was found to have spent an inordinate amount of time on the internet and failed to conduct required rounds. In the second case, the deputy failed to prevent three inmates from assaulting a fourth inmate in an unlocked cleaning closet. The deputy was demoted to security specialist in the first case, and terminated as a result of the second case. The termination decision has been appealed.
- A deputy resigned after allegedly conspiring with an inmate and helping him illegally escape from a DSD facility. This deputy was criminally charged and recently pled guilty to attempting to influence a public servant, which is a class-four felony. The former deputy is currently awaiting sentencing.

Commendations and Awards

Table 4.3: DSD Commendations (January 1 - June 30, 2013)

| Award | Total | Percent |
|---|------------|---------------|
| Letters of Appreciation (from Supervisors/Director) | 97 | 41.8% |
| P.R.I.D.E. Award (Personal Responsibility in Delivering Excellence) | 71 | 30.6% |
| Commendations (from Supervisors/Director) | 23 | 9.9% |
| Merit Award | 8 | 3.4% |
| Community Service Award | 7 | 3.0% |
| Employee of the Month (Downtown) | 6 | 2.6% |
| Employee of the Month (COJL) | 6 | 2.6% |
| Distinguished Service | 3 | 1.3% |
| Employee of the Quarter | 2 | 0.9% |
| Commendation Award | 2 | 0.9% |
| Unit Citations | 2 | 0.9% |
| #1 Physical Fitness Award | 1 | 0.4% |
| Most Improved Physical Fitness | 1 | 0.4% |
| Top Gun | 1 | 0.4% |
| #1 Defensive Tactic Award | 1 | 0.4% |
| #1 Academic Award | 1 | 0.4% |
| Total | 232 | 100.0% |

Highlighted Commendations

LETTER OF COMMENDATION

A security specialist observed what appeared to be a suicidal party standing on an overpass on Interstate 270, and immediately pulled off to the side of the road and telephoned 9-1-1. After an Adams County Deputy Sheriff arrived and made contact, the suicidal party fell from the overpass. The security specialist and another bystander assisted the injured party, keeping his head stable so as to prevent additional injury from occurring, while relaying the necessary information to the Adams County deputy in order to assist the paramedics responding to the incident. For attention to detail, rendering assistance and remaining on scene until the first responders arrived, the security specialist received a letter of commendation.

LETTER OF COMMENDATION

A deputy sheriff stopped to assist with a serious roll-over traffic accident. Upon coming onto the scene and observing an unresponsive female occupant in the driver seat with her seat belt on, the deputy broke the window, cut the seat belt, removed the occupant from the wreckage, helped bring her to consciousness, and ultimately escorted her to safety. For these actions, the deputy was awarded a letter of commendation.

LETTER OF COMMENDATION

A DSD Division Chief was awarded a letter of commendation for outstanding efforts with the coordination of contractors, architects, training staff, and developing policy and procedures for the successful refurbishment of Building 24. The logistics, planning and operational aspects of this project came to fruition through dedication, commitment, and attention to detail, which made the transition as seamless as possible.

DISTINGUISHED SERVICE AWARD

A deputy received a strike to the face and sustained a severe bite injury to his left thumb while trying to restrain an inmate. Despite his injury and being in considerable pain, the deputy did not withdraw from the incident to seek immediate medical attention. He remained engaged in an effort to gain control of the inmate until another deputy came to assist. For displaying extraordinary bravery under critical conditions, and for putting the safety of fellow officers and the jail facility above his own safety and well being, the deputy was honored with a Distinguished Service Award.

5

Highlighted Case

During the first half of 2013, we agreed with the Manager of Safety's Office in many disciplinary cases. However, the Manager of Safety's Office recently closed a case that we believed involved the use of inappropriate force without disciplining or retraining the involved officer.

On September 18, 2012, a DSD deputy ("Deputy A") entered the cell of an inmate who refused to get out of bed to go to court. Deputy A informed the inmate that if he did not get out of bed he would be tased. The inmate continued to refuse. Deputy A left the cell and went to an administrative office to retrieve a Taser from storage. In that office, he spoke with a sergeant,⁵⁹ and they discussed tasing the inmate due to his refusal to go to court.

Deputy A returned to the inmate's cell along with several other deputies, and again informed the inmate that he would be tased if he did not get out of bed. The inmate again refused to move. Deputy A tased the inmate, immobilizing him, and placed him into handcuffs. The inmate was then escorted for a medical evaluation.

DSD policy is clear that Tasers "will not be used . . . to effect compliance with verbal commands where there is no physical threat."⁶⁰ Utilizing a Taser to force compliance with non-emergency orders is not authorized. Moreover, the United States Department of Justice ("DOJ") has also been clear that Tasers are to be used only against subjects who are exhibiting active aggression, and should not be used to enforce non-emergency orders.⁶¹

No written decision was issued by the Manager of Safety's Office regarding its decision to take no disciplinary action in this case. However, the Manager of Safety's Office recently provided the following explanation:

“[T]he Manager did not find by a preponderance of the evidence that the deputy's use of the Taser violated policy. The Manager believed it was more likely than not that Deputy A was telling the truth in describing the events that led to his Taser use and that Deputy A was reasonable in interpreting the inmate's actions as aggressive and threatening. The Manager found that when the inmate refused to go to Court, Deputy A went to Deputy B and asked Deputy B if the inmate had to go to court. Deputy A suggested to Deputy B that they just let the inmate sleep and mitigate the whole situation given that the inmate had a history of assaultive and unpredictable behavior. Deputy B told Deputy A that the inmate had to go to court since the Judge would not postpone a court date just because an inmate refused to get out of bed. After the inmate repeatedly refused to get out of bed to go to Court, Deputy A obtained backup, entered the cell, showed the inmate the Taser in his hand, and told the inmate if he continued to refuse to go to court he would be Tased. This is an appropriate threat that can be used to get an inmate to comply with verbal orders. Deputy A and Deputy C said that the inmate rolled over quickly, started yelling, and appeared to make an aggressive move as he was getting out of the bed. The Manager determined that the evidence supported a conclusion that Deputy A found these actions threatening to himself and the other deputies, so the use of the Taser was within policy.”⁶²

In contrast, we believed that the evidence indicated that the inmate was tased due to his refusal to go to court, rather than for aggressive, threatening, or defensive resistant behavior. Deputy A wrote two reports shortly after this incident. Neither of these reports asserted that the inmate had been aggressive or was tased due to concerns about deputy safety. To the contrary, Deputy A's reports clearly state that the reason the inmate was tased was because the “Inmate refused to go to court,” and had been informed that “if he continued to refuse to go to court, he would be tased.” Four witness officers and one sergeant also completed reports related to this incident. None of these witness reports stated that the inmate had been aggressive or resistive.

The two deputies who were in the cell with Deputy A also reported that Deputy A told the inmate that he had one final chance to obey commands or he would be tased, including one deputy who heard Deputy A state “This is your last chance, are you going to court or not?”

Further, we noted that it was only during the IAB investigation that threatening behavior was ever suggested as a reason for tasing the inmate. Of all the witness officers interviewed, only one deputy (who was positioned outside the cell) indicated that he “vaguely” remembered the inmate “shooting” out of the bed and yelling aggressively. However, this was neither consistent with the testimony of any other witness, nor corroborated in the deputy’s own report prepared shortly after the incident. During Deputy A’s IAB interview, the deputy asserted for the first time that the tasing had been prompted by a possibly aggressive move by the inmate, stating that the inmate had rolled over in bed and placed his arm on the floor, indicating a possible intention to stand up. This assertion was not corroborated by the other witness officers or any of Deputy A’s own previous statements about the incident.

We recommended that the Manager of Safety’s Office discipline Deputy A for failing to follow the Taser policy and for using inappropriate force against the inmate. The Manager of Safety’s Office did not accept these recommendations, and no disciplinary action was taken.

6

Critical Incidents

Introduction and Overview

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

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

Administrative Review of Critical Incidents Involving DPD Officers

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

If the Use-of-Force Board finds that the officer's actions were in compliance with DPD policy ("in-policy"), the case is forwarded to the Chief of Police. If the Chief and the OIM agree there were no policy violations (in non-fatal shootings), the case is closed and no further administrative action is taken. In fatal shootings, the Manager of Safety makes the final determination and issues a public report. The OIM reviews the Manager's findings and either concurs or disagrees.

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

If the OIM disagrees with a recommendation made by the Use-of-Force Board or the Chief of Police, the OIM recommendation will be forwarded to the Manager of Safety, who is the ultimate disciplinary decision-maker regarding critical incidents.

DPD Officer-Involved Shootings (January 1 - June 30, 2013)

Incident #1

On January 17, 2013, Denver's Combined Communications dispatch center received information from another county that armed suspects might be driving into Denver in a stolen red pick-up truck. The DPD was also informed that the suspects had family members in Denver and may have been involved in a shooting in Aurora. Approximately two hours later, two DPD officers spotted the suspects in Northwest Denver and initiated a pursuit, which went on for an extended period of time and came to involve a large number of DPD officers. During the pursuit, the suspects allegedly drove at a high rate of speed, drove onto a sidewalk in an attempt to run a police officer over, and allegedly fired a large number of rounds at pursuing DPD officers. One DPD officer was shot in the shoulder during the chase. The pursuit ended when the suspects crashed into a tree. After the crash, one male suspect was wounded by DPD officers after he appeared to reach into the cab of the truck, possibly for a weapon. A second male suspect was shot and killed after he allegedly pointed a black handgun at officers. Two other male suspects were taken into custody. A fifth occupant of the truck, a female witness, was transported to the hospital, treated, and released. Multiple handguns and many spent shell cases were found in and around the truck. The criminal charges filed against several of the suspects are now pending.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: www.denverda.org/News_Release/Officer-involved_shooting_investigations.htm. The DPD Use of Force Review Board reviewed the case and concluded that the shooting was justified and within policy. The OIM agreed with this assessment.

Incident #2

On May 14, 2013, the Denver Fire Department responded to a 911 call regarding a suicidal party. When Fire personnel approached the person at his house, he displayed a gun and indicated that would shoot himself if the police were called. The firefighters retreated and a number of Denver Police officers responded to the scene. The DPD officers took up positions around the subject's house and began

trying to communicate with him by loudspeaker. After a few minutes, the subject exited his house with a handgun to his head, stood in his yard, and yelled “shoot me” several times at the officers. During this time, a DPD officer repeatedly urged the suspect to put the gun down. A short time later, the subject cycled the slide of the gun, walked into the street, waved the gun in the direction of officers, and continued to yell “shoot me.” One officer shot the subject once in the torso with a round from a less lethal 40mm weapon. The round did not appear to have an effect on the subject, who picked up the projectile, threw it back at one of the other officers and yelled “shoot me again. Shoot me again.” After the subject continued to walk in the street, the DPD officer shot the subject again in the torso with a second less lethal round, which had no apparent effect. While officers continued to yell commands to drop the gun, the subject turned and began to jog toward a residence that contained civilians. Concerned that the bystanders would be harmed or that the subject would attempt to take hostages, a DPD officer shot the subject once in the back with a shotgun, killing him. It was later determined that the subject’s gun was not loaded and did not contain a firing pin.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: www.denverda.org/News_Release/Officer-involved_shooting_investigations.htm. The DPD Use of Force Review Board met on November 22, 2013 and concluded that the shooting was justified and within policy. The OIM concurred with this assessment.

Incident #3

On April 29, 2013, a Denver police officer responded to an assisted living facility after a report of a suicidal party armed with a large pair of scissors. The officer found the subject in his room at the facility in an agitated state and holding large scissors. The officer asked the subject multiple times to put the scissors down. The suspect allegedly refused and began to take steps toward the officer while opening and closing the scissors. The officer shot the subject in the ribcage with a 40mm less lethal round. The strike had no apparent effect on the subject, who allegedly threw the spent 40mm projectile back at the officer. The officer continued to order the subject not to come any closer. However, the subject continued to step toward the officer while holding the scissors. The officer switched to his handgun and shot the subject several times. The subject was hit but survived.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: www.denverda.org/News_Release/Officer-involved_shooting_investigations.htm. The DPD Use of Force Review Board met on November 22, 2013 and concluded that the shooting was within policy. The OIM concurred with this assessment.

Incident #4

On March 18, 2013, two officers responded to a report that a juvenile male suspect was “stabbing at people” and “stabbing a door” with butcher knives. Upon arriving at the scene, the officers observed the juvenile standing on a porch with a knife in each hand. They also heard people “screaming and yelling” from behind the closed front door of the house. Since they did not know whether any of the individuals inside the house had been stabbed, the officers were concerned that the subject was blocking the front door and preventing them from potentially helping the individuals inside. During the short stand-off, the officers repeatedly asked the subject to drop the knives, however, the suspect refused and told officers they would have to shoot him. He raised a knife as if to throw it at the officers, yet they still held their fire. After a brief time, the subject turned from the officers and began to open the screen door to the house. Fearing for the safety of the occupants in the house, both officers fired their handguns at the subject, who was hit and injured, but not killed.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: www.denverda.org/News_Release/Officer-involved_shooting_investigations.htm. The DPD Use of Force Review Board met on July 24, 2013 and concluded that the shooting was justified and within policy. The OIM concurred with this assessment.

DPD In-Custody Deaths (January 1 - June 30, 2013)

2013 Incident # 1

A subject died on January 5, 2013 from natural causes while being transported in a Denver Cares van after being contacted by a DPD officer. The Denver Police Department reviewed the case and determined that there were no policy violations. The OIM concurred with this assessment.

2012 DPD Critical Incidents Pending or Closed Between January 1 - June 30, 2013

2012 Incident #1

On November 6, 2012, two officers initiated a traffic stop at night. The officers approached the stopped vehicle, with one officer on the driver's side and one on the passenger's side. The suspect reached out the window and fired at the officer approaching on the driver's side. The officer on the passenger's side returned fire. The suspect sped away and, notwithstanding an extensive search that night, escaped. Neither the suspect nor the officers were injured in the shooting.

On April 17, 2013, the DPD Use of Force Review Board concluded that the shooting was justified and within policy. The OIM concurred with this assessment.

2012 Incident #2

On November 9, 2012, DPD officers became involved in a highway pursuit of a person believed to be a suspect in two separate firearms discharges at officers during traffic stops. The pursuit ended in Aurora, Colorado, when officers utilized a vehicle immobilization technique on the suspect's car. The car crashed along with two police vehicles, and a DPD officer fired multiple shots at the suspect, hitting him twice. The suspect was arrested after a physical struggle. The suspect survived. No weapon was recovered from the suspect.

Because the incident occurred in Aurora, the Arapahoe District Attorney's Office and the Aurora Police Department handled the criminal investigation into the

officer-involved shooting. The Arapahoe County District Attorney's Office determined that it would not file criminal charges against any involved officer.

The OIM reviewed the criminal investigation, and requested that the DPD conduct a more comprehensive administrative investigation to determine whether there were any violations of DPD policy. The DPD and Manager of Safety's office declined to conduct the requested investigation. We were thus unable to certify that the administrative investigation was thorough or complete or complied with national standards on officer-involved shooting investigations. On April 17, 2013, the DPD Use of Force Review Board concluded that the shooting was within policy. The OIM was unable to make a recommendation to the Use of Force Review Board due to insufficient information about this case. Charges are currently pending against the suspect involved in this incident.

2012 Incident #3

On November 9, 2012, officers responded to an individual acting strangely and causing a disturbance at a barber shop. The individual was contacted and handcuffed. He then became unconscious and unresponsive. He was transported to a local hospital, where he died days later.

The DPD Use of Force Review Board concluded that there were no policy violations. The OIM concurred with this assessment.

Denver Sheriff Department

In-Custody Death Investigation and Review Protocol

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

Administrative Review of Critical Incidents Involving DSD Deputies

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

If the Division Chief finds that the involved deputy's actions were in violation of any Department policy ("out-of-policy"), the case is referred to the Director for a "Pre-Disciplinary Hearing." That hearing is attended by the Department's three Division Chiefs and is chaired by the Director of Corrections. The OIM observes the hearing and the deliberations of the Command Staff. At that hearing, the involved deputy is given the opportunity to present his or her side of the story, including mitigating evidence, if any. After hearing from the involved deputy, the OIM makes disciplinary recommendations to the Director. Both the Director's recommendation and that of the OIM are forwarded to the Manager of Safety.

for consideration. The Manager of Safety determines whether the deputy's actions were "in-policy" or "out-of-policy" and the appropriate level of discipline, if any.

DSD Officer-Involved Shootings (January 1 - June 30, 2013)

Incident #1

On January 30, 2013, two DSD deputies assigned to the DSD Warrant Detail arrived at an apartment complex in an attempt to apprehend a female with an outstanding arrest warrant. One of the deputies observed her step out of her apartment and onto her patio with two children. This deputy approached the subject, identified himself, told her she was under arrest, and placed a hand on her shoulder. The subject, who was not facing the deputy, turned suddenly and fired one round from a pistol, causing the deputy to fall. After hearing the gunshot and seeing his partner fall, the second deputy advanced on the patio and began to return fire, killing the female. One of the deputies suffered a gunshot wound to the hand. The two children were uninjured.

The Denver District Attorney reviewed the incident and declined to file charges against the involved officers. The DA prepared a detailed letter reviewing the shooting, which can be found here: www.denverda.org/News_Release/Officer-involved_shooting_investigations.htm. Command staff from the Denver Sheriff Department reviewed the incident and concluded that the shooting was justified and within policy. The OIM concurred with this assessment.

Incident #2

On March 27, 2013, a DSD deputy was driving to work on I-25 in the early morning when he began to exchange words and hand gestures with the driver of another vehicle. Both drivers got off at an off-ramp. The deputy, who was in uniform but off-duty, indicated that he exited his car, went to the other vehicle, and saw the driver reaching for an unidentified object. The deputy grabbed the driver's arm and delivered a palm heel strike to the driver's face. The driver began to drive away, then stopped, and allegedly began to back up towards the deputy. The deputy drew his firearm and fired multiple times at the other vehicle, which then drove away. Neither the other vehicle nor its driver were ever identified.

No criminal charges were filed against the deputy. The case was reviewed by DSD command staff, the OIM, and the Manager of Safety's Office. The Manager of Safety's Office terminated the deputy after determining that the deputy's conduct violated several rules and policies, including the DSD's use of force policy. The OIM concurred with this decision.

2012 DSD Critical Incidents Pending or Closed Between January 1 - June 30, 2013

Incident #1

On September 29, 2012, an inmate discovered that a fellow inmate was not breathing and had died. The Medical Examiner's report reflects that the death resulted from natural causes. DSD command staff reviewed the incident and found no policy violations. The OIM concurred with their assessment.

Endnotes

1. D.R.M.C art. XVIII § 2-375(a).
2. *Id.*
3. National Guidelines for Police Monitors, Police Assessment Resource Center (2008), at 16-17 and 77 (“monitoring reports should examine performance on a systemic as well as a case-by-case basis” and to determine “whether the monitored agency’s investigative protocols and practices as a whole produce fair results on a consistent and repeated basis”) available at: http://www.parc.info/client_files/monitoring%20guidelines.pdf.
4. *Id.* at 1.
5. Office of the Independent Monitor, 2012 OIM Annual Report (2013), at 51-52.
6. The OIM requested access to DSD electronic records relating to inmate grievances, and the DSD provided us with 46 electronic worksheets used to record information about the inmate grievances filed between January 1, 2011 and June 30, 2013. To analyze these data, OIM staff collapsed and aggregated the separate spreadsheets into one analyzable data file, then reviewed the DSD’s grievance summaries to identify complaints that appeared to relate to the conduct of sworn DSD staff. We then requested access to the paper case files relating to 898 grievances (out of 5,979) that appeared to relate to officer conduct, or where the grievance summary was ambiguous or blank. The DSD provided us photocopies of the paper files for 861 grievances.
7. This chapter is not a performance audit of the DSD grievance process overall, nor is the OIM an audit agency.
8. We thank Prof. Annett Gaston (University of Maryland), Prof. Joseph Sandoval (Metropolitan State University of Denver), and Prof. Margo Schlanger (University of Michigan Law School) for their willingness to talk with us about national best practices in civilian oversight and inmate grievance processes and law enforcement oversight.
9. This council of inmates at the DDC was generally familiar with the inmate grievance process, and reported no strong concerns about its overall function or effectiveness.
10. See American Bar Association, *ABA Standards for Criminal Justice: Treatment of Prisoners*, 3rd Edition (Washington, DC: American Bar Association, 2011) at 198 and 200-201; *see also* David Bierie, *Procedural Justice and Prison Violence: Examining Complaints Among Federal Inmates*, 19 *Psych., Pub. Pol., and Law*, 15-27 (2013).
11. For a discussion of the value of early intervention, *see* Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies*, (Community Oriented Policing Services, Department of Justice, 2003), at 54-70.
12. See Van Swearingen, *Imprisoning Rights: The Failure of Negotiated Governance in the Prison Inmate Process*, 96 *California L. Rev.* 1335 (2008).

Endnotes

13. For example, one of the central demands of the inmates who participated in the riots at Attica was that the prison grievance process be reformed. *See* Bierie, *supra* note 10, at 15; *see also* E. Flynn, *The Ecology of Prison Violence*, in *Prison Violence*, Albert Cohen, George Cole, and Robert Bailey (eds.), 115-133 (Lexington, MA: D.C. Heath).
14. Swearingen, *supra* note 12, at 1359.
15. In fact, under federal law, inmates are generally required to exhaust an inmate grievance process before they can file a lawsuit. 42 U.S.C. § 1997e(a).
16. DSD D.O. 4810.1D(1).
17. The DDC asks inmates to try and resolve their concerns informally with a housing deputy and a supervisor before filing a written grievance. The County Jail adds another layer of required informal resolution and directs inmates to informally discuss their concerns first with a housing deputy, then a supervising sergeant, and then with a Watch Captain. DSD Inmate Handbook, at 13-14.
18. Notwithstanding this directive in DSD policy, we were told during interviews that in practice, an inmate's failure to attempt "informal resolution" will often not prevent them from filing a formal grievance.
19. DSD D.O. 4810.1D(4)(A).
20. DSD D.O. 4810.1D(4)(C).
21. The Inmate Handbook includes explicit language that inmate KITES will not be accepted by one inmate on behalf of another inmate, or accepted by more than one inmate. It contains no similar restrictions for inmate grievances. DSD Inmate Handbook, at 13.
22. At the County Jail, a sergeant within the operations center is responsible for determining how to route each inmate grievance. At the DDC, a floor sergeant decides how to route each grievance.
23. DSD D.O. 4810.1D(4)(C).
24. DSD D.O. 4810.1D(4)(D-E).
25. *See* U.S. Department of Justice, *Principles for Promoting Police Integrity*, (Washington, D.C.: U.S. Department of Justice, 2001) ("Misconduct investigations of serious misconduct allegations, including allegations of excessive force, false arrest, improper search or seizure, or discriminatory law enforcement, should be conducted by an entity that has special responsibility for conducting misconduct investigations."), at 8.
26. U.S. Department of Justice, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, (Community Oriented Policing Services, U.S. Department of Justice, 2009), at 31.
27. *See* Lou Reiter, *Law Enforcement Administrative Investigations*, Third Edition, (Indianapolis, IN: Public Agency Training Council, 2006), at 3.4.

28. DSD IAB Procedures Manual § 300.
29. DSD D.O. 4810.1D(2).
30. Although “improper conduct” and “improper procedure” are included within IAB’s jurisdiction, we believe that these categories are too broad, and encompass too many of the grievances filed by inmates to be useful for the purposes of defining what grievances should be referred to IAB. We therefore omitted grievances that fell within these categories from our selection of grievances that should have been referred to or investigated by IAB, unless they alleged “improper conduct” or “improper procedure” that could have had a significant impact on inmate safety or if the “improper conduct” or “improper procedure” allegation, if true, could result in significant discipline under DSD policy.
31. Only a fraction of the grievances related to concerns about deputy misconduct. For example, based on the grievance summaries recorded in the DDC and County Jail spreadsheets, only 13% of the grievances related to inmate concerns about deputy conduct. Most grievances related to other more mundane topics, such as medication/medical care (14%), property (11%), access to services (11%), the quality/quantity of facility food (9%), facility fees/accounts (9%), housing/classification (7%) or other various concerns (26%).
32. The Director has indicated his belief that the process used for handling the 54 grievances accords with National Accreditation Standards and with the general approach to the triage and filtering of complaints that is discussed in the Manager of Safety’s Disciplinary Handbook. We note, however, that we do not challenge complaint triage as a general approach or principle. To the contrary, the OIM has long advocated for fair and consistent triage of complaints as a way of managing the workload of IAB. However, we believe that giving individual jail supervisors the discretion to determine whether serious complaints—including inappropriate force and sexual misconduct—merit investigation or not could expose the DSD to the risk of mishandling serious inmate claims.
33. D.R.M.C art. XVIII § 2-375.
34. DSD D.O. 2440.1.N(9)(A).
35. D.R.M.C. art. XVIII § 2-388(b).
36. D.R.M.C. art. XVIII § 2-388(c).
37. D.R.M.C. art. XVIII § 2-388(a).
38. D.R.M.C. art. XVIII § 2-388(a).
39. IAPro was implemented in March 2013. Before IAPro, the database was known as “CUFFS.” For ease, we refer to both databases as “IAPro” throughout this report.
40. DSD IAB Procedures, rev. May 2013, at §§ 201.0 and 303.0.
41. Standards and Guidelines for Internal Affairs (Community Oriented Policing Services, U.S. Department of Justice, 2009) at 17 (“A reliable complaint tracking system is a means not only

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- of managing cases but of providing public accountability for the follow-through on intake complaints. Absent a tracking system, an agency has no way of efficiently verifying that its cases are properly assigned, that investigators are providing due diligence, or that cases have been completed”).
42. See U.S. Department of Justice, *supra* note 25 at 10 (“Many agencies have developed data-based personnel management systems (often called “early warning” systems), to identify problem behavior and allow early intervention to correct that behavior...Agencies should monitor information relating to the actions of individual officers, supervisors, and specific units or divisions of the agency.”)
 43. Department of Corrections and Community Supervision, Inmate Grievance Program: Annual Report 2011, (2011), <http://www.doccs.ny.gov/Research/Reports/2012/InmateGrievanceAnnualReport2011.pdf>.
 44. Swearingen, *supra* note 12, at 1359; *See* Bierie, *supra* note 10, at 27.
 45. DSD D.O. 4810.1D(4)(I).
 46. Since the OIM review of the grievance process began, we understand that the DSD has begun to do quantitative analysis of its grievance spreadsheets for certain limited information about grievance patterns.
 47. See Samuel Walker, Geoffrey Alpert, and Dennis Kenney, *Early Warning Systems: Responding to the Problem Officer* (Washington, D.C., National Institute of Justice, 2001).
 48. Walker, *supra* note 11, at 55-72.
 49. During that quarter, more than two dozen inmates filed grievances against a deputy resulting from a single incident during which the deputy allegedly revoked an entire housing unit’s privileges and used profanity.
 50. Interview with Professor Joseph Sandoval, Metropolitan State University (October 10, 2013).
 51. If we expand the pool of grievances to include non-deputy conduct issues, then some inmates filed a truly outsized number of grievances during the review period. For example, one inmate filed 33 grievances relating to medical and missing property issues. A second inmate filed 31 grievances, many of which related to court issues and the quality of facility food.
 52. See American Correctional Association standard 4-ALDF-6B-01 (“An inmate grievance procedure is made available to all inmates and includes at least one level of appeal.”).
 53. This figure was calculated by averaging race/ethnicity for all DSD inmates across three separate days: December 31, 2011, December 31, 2012, and October 16, 2013. The data used in this calculation was provided by the Denver Sheriff Department’s Technology Management Statistical Unit.
 54. See, e.g., Nov. 19, 2009 United States Department of Justice Findings Letter re: the Westchester County Jail, 16-17 (“Requiring a detainee to pursue the matter informally compromises the

- review and investigative processes, especially in those instances in which unlawful actions may have occurred. Detainees who may have been subjected to unlawful force will at best be reluctant to seek resolution from those who may have witnesses or been involved in the very actions that would form the basis of their grievance”).
55. The data reported in this chapter were extracted from IAPro. The OIM is not an IAPro administrator and has no control over data entry into the database. The OIM does not conduct governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the complete accuracy of the DPD’s data entry. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) is as it would be if the OIM were making those decisions. Since these data were drawn from dynamic, live databases, the reported complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision until all of the cases for a particular period are investigated and closed. The figures reported in this chapter include only complaints against sworn DPD officers. Community and internal complaint numbers do not include “scheduled discipline” cases (e.g., when a DPD officer allegedly violates a traffic law, gets into a preventable traffic accident, or misses a court date, shooting qualification, or continuing education class).
56. Many reports relating to police oversight and IAB processes talk about complainant “allegations.” Allegations are assertions, in a complainant’s own words, of particular kinds of purported misconduct by an officer. The DPD does not systematically track the detailed allegations made by complainants in its IAB database. Instead, it tracks “specifications.” Specifications are rule violation categories that are based upon the departmental rules and disciplinary policies implicated by a complaint. Thus, a specification captures the rule under which an officer might be punished, rather than the precise allegations communicated in the complaint.
57. The data reported in this chapter were extracted from IAPro. The OIM is not an IAPro administrator and has no control over data entry into the database. The OIM does not conduct governmentally approved audits of the database for accuracy. As a result, the OIM is unable to certify the complete accuracy of the DPD’s data entry. Finally, because the OIM is not the final arbiter of what allegations to record in IAPro and against which officers, the OIM cannot certify that the data presented (with respect to specific complaint allegations) is as it would be if the OIM were making those decisions. Since these data were drawn from dynamic, live databases, the reported complaint, allegation, and outcome numbers will fluctuate over time and are subject to revision until all of the cases for a particular period are investigated and closed. The figures reported in this chapter only include complaints against sworn DSD deputies.
58. Historically the OIM has included DSD “reprimand cases” in its count of complaints against DSD deputies. Reprimand cases are a type of management complaint filed by an employee’s immediate supervisor that allege a minor rule violation, such as the failure to wear an appropriate uniform or losing department property. Reprimand cases are not generally investigated by Internal Affairs, but have been historically recorded in the IAB database. Unfortunately, it is not clear whether the DSD is continuing to systematically record reprimand cases in its new IAPro database. For example, only 14 reprimand cases were recorded in 2012, as compared 149 in 2007, a 90.6% drop. Only two reprimand cases were reported in the entire first six months of

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2013. As a result, we have chosen to exclude reprimand cases from these counts.
59. The sergeant has since retired from the DSD.
60. DSD D.O. 5014.1(I)(2).
61. U.S. Department of Justice and Police Executive Research Forum, 2011 Electronic Control Weapons Guidelines, 20 (2011), <http://cops.usdoj.gov/Publications/e021111339-PERF-ECWGb.pdf> (Tasers “should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer’s judgment, is likely to result in injuries to themselves or others. [Tasers] should not be used against a passive subject.”).
62. Email from Manager of Safety Ashley Kilroy (November 26, 2013).



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