



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 5, 2022

TO: David Nisleit, Chief, San Diego Police Department

FROM: Brandon Hilpert, Chair, Commission on Police Practices *BH*
via Sharmaine Moseley, Interim Executive Director *SM*

SUBJECT: **Recommendations to San Diego Police Department's Policies and Procedures**

At its Open Session meeting on April 26, 2022, the Commission on Police Practices (Commission) voted unanimously (11-0-0) to send the following recommendations regarding the San Diego Police Department's (SDPD) Policies and Procedures to you for your consideration. We believe these changes, if implemented, will help foster the proper handling of complaints, discipline, and investigations.

1. **Body Worn Camera (BWC) Buffering Enhancements**

BWCs have become an invaluable resource for both the Commission and Internal Affairs while investigating complaints. SDPD has been a nationwide leader in formulating its BWC procedures – first with a 30-second video only buffer and then extending it to a 2-minute video only buffer. The Commission believes that although the video is helpful, missing the audio omits valuable context to what occurs in a situation.

The AXON body worn camera technology already provides for the ability to allow for the current video-only buffer to be extended to include audio as well.

San Francisco Bay Area Transit Police Department (BART PD) has adopted this feature into their BWCs. Further, BART PD and their police officer's union have agreed that should the buffer capture the entirety of the enforcement contact, an officer will not be pursued for disciplinary action. Additionally, officers are verbally reminded of the BWC procedures and when to activate their BWCs.

The BART PD/POA MOU states:

“BPD personnel who activate their body-worn camera after the initiation of a law enforcement contact shall not be subject to discipline if audio and video recordings of the entirety of the contact are captured during the buffering period. In such instances, the employee shall be reminded by a supervisor of the activation requirements with the expectation that future activations shall be timely.”

The Commission believes that if SDPD revises its BWC policy to allow this feature, it will be a win-win for the community, Department, and officers. An enforcement contact will result in more documented evidence. We may also see fewer “sustained” findings for officers who are late to activate their cameras.

The Commission recommends that SDPD revise its BWC policy to implement a full 2-minute audio and video buffer into their BWC equipment and procedures.

2. **Investigation of Complaints Involving SDPD Leadership**

The Commission was made aware that there is uncertainty of SDPD’s process and/or procedure for investigating complaints filed against members of SDPD who are in leadership positions. The Commission believes that SDPD uses an informal and unwritten process and/or procedure on how and by whom these complaints are investigated.

To provide clarity of the complaint process and full transparency, the Commission recommends that Procedure 1.10 (Citizen Complaints etc.) be updated to incorporate this informal, unwritten process and/or procedure. Further, the Commission recommends that any complaint against an SDPD Captain or above be subject to this revised written procedure.

3. **Discipline Manual and Matrix Changes**

During the course of review and presentation of discipline, the Commission highlighted the below areas of concern that SDPD must improve to ensure that officers with “sustained” findings are appropriately disciplined.

- a. The Commission has seen discipline memos not being issued promptly by SDPD Command. In some cases, memos have been issued six months after the discipline was administered – and sometimes only after the Commission requested the status of the discipline.

The Commission believes that this is inefficient for all parties involved and shows a lack attention to detail and follow through on the disciplinary process. In worst case situations, it allows for some officers with “sustained” findings to go undisciplined due to the 1-year time limitation under POBAR, which is completely unacceptable.

Therefore, the Commission recommends that the Discipline Manual be updated to require that SDPD Command shall complete a discipline memo within 14 days after the discipline is issued.

- b. SDPD’s Discipline Manual contains errors that gives SDPD Command incorrect details about when an officer must be noticed of pending discipline as well as when an officer is served discipline. To make sure that SDPD Command can rely on the Discipline Manual, it must be updated to have correct information.

Therefore, the Commission recommends that SDPD’s Discipline Manual be reviewed to correct any errors, conflicting statements, or ambiguities to ensure that officers receive appropriate discipline per the Discipline Matrix.

- c. The Discipline Matrix references “Minor Policy Violation,” but there is no definition as to what the SDPD considers minor. The Commission has seen cases

which we do not consider “minor violations” are being disciplined under this category and resulting in just written warnings.

Therefore, the Commission recommends that SDPD create and make public a clear definition of what a “Minor Policy Violation” is, as well as, provide a non-exclusive list of examples of “Minor Policy Violations.”

- d. The Discipline Matrix lists a misconduct of “Sustained Excessive Force (Low Level/Non-Injury to Suspect)” with a first offense beginning at “Reprimand, Up to Termination.” However, there is no category for sustained excessive force that causes injury to a suspect. The Commission believes that this is a glaring oversight and must be corrected immediately.

Therefore, the Commission recommends that SDPD create one (or more) misconduct types addressing sustained force causing injury. The Commission further proposes that the discipline for sustained excessive force causing injury misconduct have a minimum discipline starting at suspension (what would be a second instance of excessive force, non-injury).

4. Formation of Disciplinary Tracking

The Commission learned that SDPD does not have a formal tracking system in place to track the disciplinary process of officers as it moves through the SDPD. Currently, once a “sustained” finding has been sent to Command for discipline, there is no tracking system to ensure that the Command issues the discipline, or that the discipline memo is completed. Additionally, there is no follow-up to ensure the Commission promptly receives the discipline memo for its evaluation of the discipline issued. Again, there have been cases where the discipline memos were only written when the Commission requested the status of the discipline memo.

The Commission recommends that SDPD correct this issue immediately by creating and sharing with the Commission for review, a tracking system of pending discipline of officers with “sustained” findings to ensure that disciplinary action is issued in an appropriate and timely manner.

5. Be On Lookout (BOLO) Flyers

“BOLO” flyers is a valuable tool for officers to be aware of persons of interest to be on the lookout for during their shifts. However, old and/or aged BOLOs can cause individuals to be unnecessarily detained.

The Commission recommends that all BOLO flyers be required to have an issue date clearly noted on any BOLO flyer provided to officers.

Transmittal of Commission’s OIS Reports to Shooting Review Board (SRB)

The Commission takes seriously its responsibility to the community as Commissioners review (and in the future, investigate) officer-involved shootings. Frequently, the Commission will make observations where we believe tactics could have been done differently or where additional training may be beneficial. Unfortunately, the Commission learned that its reports/reviews are not currently being provided to the SRB. We believe that our observations can provide additional insight to the cases being reviewed and should be included in the documents provided to the SRB. Therefore, the

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Commission approved for its reviews/reports of OIS cases be forwarded to SDPD. The Commission further recommends that SDPD update its internal procedures to include the Commission's reviews/reports in the package of information provided to the Shooting Review Board for consideration.

Thank you for your consideration on the Commission's recommendations to SDPD Policies and Procedures. We look forward to receiving your response to our recommendations. If you have any questions, please do not hesitate to contact me.



Brandon Hilpert, Chair
Commission on Police Practices

cc: Honorable Mayor Todd Gloria
Jay Goldstone, Chief Operating Officer
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