

SYRACUSE

CRB

CITIZEN REVIEW BOARD

**Fourth Quarter & Annual Report
2015**

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SUMMARY OF 2015 OPERATIONS

The close of 2015 marked another active year of oversight by the Syracuse Citizen Review Board. The following information provides a summary of the CRB's 2015 operations. A more detailed discussion of the data is available in the body of this report:

- 74 complaints received
- 16 hearings held
- **The annual Sustain Rate for 2015 was 17.5% (of the 74 complaints received, 13 resulted in one or more sustained findings). The Sustain Rate for 2014 was 19%.**
- There was a significant decline from prior years in the number of complaints filed alleging excessive force and the number of excessive force complaints that were sustained by the CRB:
 - In 2013, the CRB received 49 complaints of excessive force and sustained 12 (24%) excessive force allegations.
 - In 2014, the CRB received 43 complaints of excessive force and sustained 18 (41%) excessive force allegations.
 - In 2015, the CRB received 26 complaints of excessive force and sustained 6 (23%) excessive force allegations.
- The majority of this decline is explained by a drastic drop in allegations of excessive force following a suspect fleeing from police (the topic of a forthcoming special report).

2015 CRB Disciplinary recommendations:

- 9 recommendations for retraining
- 2 recommendations for counseling
- 5 recommendations for written reprimand
- 10 recommendations for suspension
- 1 recommendation for termination

SPD Disciplinary Action Rate: **Unknown – Not able to report due to refusal by the Chief of Police to provide written responses to all cases sustained by the CRB.**

- The CRB received only seven responses from the Chief of Police to the 13 hearings in which a CRB panel sustained an allegation. In the seven responses received from the Chief of Police, no discipline was imposed.
- The CRB has developed a new reporting mechanism designed to track repeated complaints against individual officers. The ***Complaint Intensity Index***, found on the following page, demonstrates the number of officers with three or more complaints and at least one allegation sustained by the CRB since being reestablished in 2012.

COMPLAINT INTENSITY INDEX

OFFICERS WITH REPEATED COMPLAINTS

The CRB tracks complaints by officer name and records the final disposition of all completed cases. The chart below indicates the number of officers with three or more complaints and at least one allegation sustained by the CRB. Officers with multiple complaints but no sustained allegations are not included in this chart. The chart includes 43 instances of excessive force sustained by the CRB and 11 distinct officers with two or more sustained allegations of excessive force. For the complaints included in the chart, discipline was imposed by the police department in two instances.

Complaint Intensity Index Table

Number of Officers	Number of Complaints Filed with at least one Sustained Finding by the CRB*
2	9
1	8
5	7
4	6
8	5
13	4
12	3

*Based on complaints filed with and investigated by the CRB between January 1, 2012 and December 31, 2015.

MISSION & OBJECTIVES

The purpose of the Citizen Review Board, all of whose members are volunteers, is to provide an open, independent, and impartial review of allegations of misconduct by members of the Syracuse Police Department; to assess the validity of those allegations through the investigation and hearing of cases; to recommend disciplinary sanctions where warranted; and to make recommendations on Syracuse police policies, practices and procedures.

In fulfillment of its legislative purpose and mission, the Board is committed to:

- Creating an institution that encourages citizens to feel welcome in filing a complaint when they believe that they have been subject to police misconduct;
- Making the public aware of the CRB's existence and process through ongoing community outreach events and coverage by local media;
- Completing investigations and reviews of complaints in a thorough, yet timely fashion;
- Remaining unbiased, impartial, objective and fair in the investigation, evaluation, and hearing of complaints;
- Engaging in community dialog that encourages citizen input with the CRB;
- Respecting the rights of complainants and subject officers;
- Upholding the integrity and purpose of the CRB's enabling legislation;
- Reporting to the Mayor, the Common Council, the Chief of Police and the public any patterns or practices of police misconduct discovered during the course of investigation and review of complaints; and
- Operating in an open and transparent manner to the extent permitted by applicable municipal and state laws, regulations and ordinances.

BOARD MEMBERS & TERMS

The Board Members serve staggered three-year terms and are all unpaid volunteers. Board members devote an average of ten hours per month to CRB matters. This includes their attendance at monthly meetings, preparation for and participation in panel hearings, training, and community outreach. Biographies of each Board member are available on the CRB website at www.syracuse.ny.us/CRB_Members.aspx.

Current Members of the Syracuse Citizen Review Board

*as of December 31, 2015

Mayoral Appointees

- Open seat - term expires December 2017
- Joseph Masella - term expires December 2015
- Diane Turner - term expires December 2017

District Councilor Appointees

- Peter Christiana, Board Vice-Chairman - 1st District - term expires December 2017
- Carole Horan - 2nd District - term expires December 2015
- Bill Barber, Board Chairman - 3rd District - term expires December 2015
- Open seat - 4th District - term expires December 2017
- Louis Levine - 5th District - term expires December 2017

At-Large Councilor Appointees

- Mallory Livingston - term expires December 2015
- Leah Moser - term expires December 2016
- Douglas Bullock – term expires December 2018

FILING A COMPLAINT WITH THE CRB

The Syracuse CRB accepts complaints against members of the Syracuse Police Department (SPD) involving allegations of misconduct that may violate SPD rules and regulations, as well as state, local and/or federal law. The CRB accepts complaints on active misconduct – such as excessive force, constitutional violations, harassment, racial or gender bias, poor demeanor, search & seizure violations, theft or damage to property, untruthfulness, and false arrest – as well as passive misconduct such as failure to respond, failure to intercede or refusal to take a complaint.

Any member of the public can file a complaint with the Syracuse CRB; a complainant need not be a resident of the City of Syracuse or a US citizen. There are several ways a complaint can be filed. A complainant can walk in to the CRB office in City Hall Commons at 201 East Washington Street, Suite 705, to fill out a complaint, contact the CRB office to have a complaint form mailed to their address, download the complaint form from the CRB website, or request a home visit if necessary. The complaint form can be hand delivered or mailed to the CRB office. The CRB website is www.syracuse.ny.us/CRB.aspx. The CRB office telephone number is 315-448-8750. The CRB can be reached by e-mail at crb@syr.gov.

PUBLIC MEETINGS

The CRB meets on the first Thursday evening each month at 5:30 PM in Common Council chambers in City Hall. The meeting schedule is posted at area libraries, on the CRB website, and on the calendar on the City's main webpage. These meetings are open to the public with a public comment period that begins no later than 6:30 PM. The purpose of the public meeting is to develop and refine CRB policies and procedures in an open, transparent and accountable fashion and to conduct the ongoing business of the CRB. The Board meetings typically include a vote on items that require Board approval, a series of items presented by the Chairman for the Board's consideration, a report on the CRB's monthly activities by the Administrator, a variety of committee reports and an opportunity for public comment. After the conclusion of the public comment period, the Board continues its meeting in a confidential Executive Session to deliberate and vote on whether or not to send investigated complaints to a hearing. During 2015, the Board processed on average six to seven complaints per month depending on the current case load.

OUTREACH

During the last quarter of 2015, the CRB hosted three outreach events at area libraries: Betts Branch Library on October 14, White Branch Library on October 15, and Mundy Branch Library on October 28. Each event provided an opportunity to introduce the CRB process to the public and respond to any questions. The CRB Administrator also participated in a panel discussion on community and law enforcement at the Syracuse Neighborhood Action Conference on November 17. Additionally, the CRB Administrator was invited to speak to a coalition of community members in Rochester seeking to improve their city's civilian oversight process. This presentation occurred on November 13.

The CRB legislation requires the agency to conduct at least five outreach events annually, one in each council district. Throughout the course of 2015, the CRB conducted 11 outreach events including at least one in each council district, surpassing the minimum requirement. Outreach events that the CRB participated in this year included the Juneteenth Celebration, CNY Pride Festival and the Near West Side Initiative Block Party.

In 2015, the CRB also initiated a public awareness campaign that included the production of professionally designed public awareness posters, the placement of the posters inside 55 Centro buses for three months and the development and distribution of an e-newsletter.

OPERATIONS

Between October 1 and December 31, 2015, the CRB membership held three monthly business meetings that were open to the public. Quorum was met for each meeting and all regular operating business was able to be conducted. During this quarter, the CRB received a total of 19 new complaints and fully processed 21 new and existing cases. The CRB received a total of 74 complaints in 2015 and completed processing of 72 cases.

BOARD TRAINING AND DEVELOPMENT

On February 28, 2015, the CRB held a training and strategic planning seminar for its Board members from 9:00 AM to 5:00 PM. The CRB brought in several speakers who are experts on topics relevant to the work of the CRB, including: Dr. Dave Karam who spoke on effective responses to crisis behavior; Assistant District Attorney Geoff Ciereck who presented on New York State Search & Seizure laws; and retired Sheriff's Deputy Toby Shelley who discussed the role of sergeants as first line supervisors. CRB Chair and former police officer William Barber reviewed strategies and tactics for evaluating a witness' credibility, and CRB Administrator Joseph Lipari provided an overview of emerging issues regarding body worn cameras.

On October 3, 2015, five members of the CRB participated in the SPD's Citizen's Police Academy. The first half of the day included a presentation and discussion by Detective Derek McGork on use of force as well as search and seizure laws, training, and policies. Detective Mark Rusin then led a discussion on the department's approach to de-escalation. The second half of the day involved scenario-based exercises in which participants were placed in the role of police officer responding to various challenging situations. The Citizen's Police Academy proved to be a useful and beneficial experience for CRB members and provided an opportunity for the CRB and members of the SPD to engage with each other and exchange perspectives.

HEARINGS & DISCIPLINARY RECOMMENDATIONS

Once the full CRB votes to send a case to a panel hearing, a panel is composed of three members of the CRB (one mayoral appointee, one district councilor appointee, and one at-large councilors' appointee) and the hearing is typically held within two to three weeks based on the availability of the complainant and witnesses.

During the fourth quarter of 2015, the CRB held four hearings to examine a variety of complaints. Three of those hearings resulted in a sustained finding against one or more officers. The CRB made disciplinary and training recommendations to the Chief of Police in those three cases. The CRB's fourth quarter disciplinary recommendations included one verbal warning, one written reprimand, three recommendations for retraining, and three suspensions without pay.

During 2015 the CRB held 16 hearings. Thirteen of the hearings resulted in sustained findings against one or more officers. For the year, the Board made nine recommendations for retraining, two recommendations for verbal warning, five recommendations for written reprimand, ten recommendations for suspension, and one recommendation for termination.

A sustained finding means that the panel found that there was *substantial evidence* that the alleged misconduct did occur. **The CRB's sustain rate for 2015 was 17.5%.** The sustain rate is calculated by dividing the number of hearings that resulted in sustained findings (13) by the number of complaints received in the year (74).

DISCIPLINARY ACTION RATE

The disciplinary action rate (or rate of agreement) is the rate at which the Chief of Police imposes discipline when the CRB recommends it. Local Law 1 of 2012 requires the CRB to report to the public the number of times that the Chief of Police imposed disciplinary sanctions when the CRB sustained an allegation against an officer and recommended discipline. Out of the 13 cases involving sustained findings by the CRB in 2015, the Chief of Police provided responses to seven of the cases. In the seven responses received from the Chief of Police, no discipline was imposed. However, since the CRB did not receive all of the Chief's required responses in 2015, the CRB is unable to fulfill this public reporting obligation.

CHIEF OF POLICE REFUSES TO PROVIDE REQUIRED RESPONSES TO CRB FINDINGS AND RECOMMENDATIONS IN CASES THAT EXCEED THE 60-DAY TIME FRAME

In 2012 when the CRB was first reestablished, the CRB Administrator informed Corporation Counsel's office that the investigation and hearing process for many of the more complex cases that are sent to hearings would be impossible to fully complete within the 60-day timeframe. An Assistant Corporation Counsel told the Administrator that as long as the CRB operated in good faith and made progress in processing its caseload that the 60-day time frame would not be a problem. The CRB operated consistent with that notion for almost four years. It should be noted that the 60-day time frame contained in Local Law 1 of 2012 refers to calendar days (weekdays and weekends) and not business days.

For the first year after the CRB began making findings in June 2012, the Chief of Police did not provide the required written responses to CRB findings. In November 2013 the Chief of Police began providing written responses consistent with the CRB ordinance, but the responses were not provided to the CRB in all cases. From February 2014 – June 2015 the Chief of Police provided the required written responses for all cases sustained by the CRB, including for those which exceeded the 60 day guideline. During that period, the Chief provided responses to 19 cases which had gone beyond the 60 day timeframe.

In March of 2015, the CRB attempted to hold a hearing involving a complaint that had been filed more than 60 days earlier. Hours before the hearing was to be held, Corporation Counsel's office contacted the CRB and told the CRB that because the case had extended beyond the 60-day time frame, any hearing held at that point would be unlawful and unauthorized. It should be noted that in addition to the prior agreement between the CRB and Corporation Counsel's office that exceeding the 60-day time frame would not be a problem, Corporation Counsel's office had never previously objected to the CRB holding a hearing beyond the 60-day time frame despite the fact that many hearings were held after the 60-day time frame had expired. The CRB decided to consult with outside legal counsel before making a decision on whether to move forward with the hearing in question. The CRB's outside legal counsel, Harrison Williams of Bousquet Holstein, conducted an extensive review of existing case law to determine whether the 60-day time frame in the CRB ordinance was *directory* – meaning it is a goal to aim for, but there is no consequence if it is not met – or *mandatory* – meaning any hearing held after 60 days of receipt of the complaint could be challenged. The research led the CRB's legal counsel to conclude that the 60-day language in the CRB ordinance was *directory*, that the CRB would not be violating any law by proceeding with a

hearing after 60 days had expired, and that established case law permitted the CRB to move forward with any future hearings that would occur beyond the 60-day time frame. The CRB provided a written memorandum on the legal research and conclusions from the CRB's outside counsel to Corporation Counsel's office. In June 2015, the CRB held the hearing involving the complaint in question.

Shortly thereafter, the CRB received notice from the Chief of Police that he would no longer provide the required responses when the CRB process exceeded the 60-day time frame, despite having consistently done so from February 2014 to June 2015.

During December 2015 and January 2016, the CRB sought to resolve the 60-day issue with Corporation Counsel and the Chief of Police. On February 5, 2016, the CRB filed a lawsuit in State Supreme Court seeking the court's guidance on the interpretation of the 60-day time frame and requesting that the Chief of Police be directed by the court to fulfill the requirement that he provide written responses to all CRB sustained findings. On March 24, 2016, the court denied Corporation Counsel's motion to dismiss the CRB's lawsuit. The court found that the CRB had both legal standing and adequate cause to proceed with the lawsuit. The case is scheduled to appear before the court on May 5, 2016.

2015 ANNUAL POLICY & TRAINING RECOMMENDATIONS

In each year's Annual Report, the CRB makes recommendations on police policy, training and procedures. The recommendations are provided to the Mayor's office, the Common Council, and the Chief of Police in an effort to spur constructive dialog about how to improve particular aspects of the Syracuse Police Department. We believe that these recommendations, if adopted, will serve the interests of the public as well as the City's police officers. The CRB offers the following recommendations under the authority granted the Board by Section Three, Paragraph (6) of the CRB legislation.

1. ***The SPD Should Adopt a Modern Comprehensive Use of Force Policy*** similar to the one developed by the CRB (see Appendix I). The policy should be based on national best practices, model policies from other police departments, and requirements outlined by the U.S. Department of Justice in consent decrees with other cities. The policy should include:
 - A delineation of all force options, including all department-approved lethal and less-lethal weapons, and specific guidance on when each force option is appropriate and not appropriate;
 - Precise definitions of key terms including but not limited to imminent threat, force transition, de-escalation, reportable force, and the definitions and correlation of various levels of subject resistance (passive, active, aggressive and aggravated aggressive) to levels of force;
 - A discussion of what constitutes "objectively reasonable" force under the U.S. Supreme Court's *Graham v. Connor* (1989) decision;
 - Specific prohibitions on when certain forms of force should not be used;
 - A more prominent emphasis placed on the limitation of the use of impact weapons to strike the head or neck area to deadly force situations;
 - The limitation of respiratory restraints (i.e. "chokeholds") and vascular (or carotid) restraints only to situations where deadly force is justified.
 - A "Duty to Intervene" and a "Duty to Report" policy which dictates that any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force and promptly report these observations to a supervisor;
 - A prohibition on officers firing at or from a moving vehicle when the moving vehicle constitutes the only threat.
2. ***The SPD Should Install Seatbelts and Cameras in the Rear Compartment of Police Transport Vans*** that can record and store for a reasonable time period audio and video. The transport vans are currently equipped with holding straps and cameras which do not record audio or video.
3. ***The SPD and the City of Syracuse Should Engage in a Concerted Effort to Secure Funding for Police Body Cameras and Develop a Policy on their Usage.*** In September 2015, the Bureau of Justice Assistance announced that the

SPD did not receive a federal grant for body cameras. However, the SPD and the City should continue to explore funding options for body cameras and should continue to develop its policy on the use of body cameras. In doing so, the SPD should seek input from the public and police officers on the composition of such a policy. The policy should include:

- Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed;
- The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured;
- Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited;
- The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion;
- The method for documenting chain of custody;
- The length of time recorded data will be retained by the agency in various circumstances;
- The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed; and
- The process and policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests.¹

4. ***The SPD Should Purchase and Install Dashboard Cameras and Audio Mics in all SPD Patrol Vehicles.*** Currently, only seven department vehicles are equipped with dashboard cameras and these vehicles are used primarily for traffic enforcement. The in-car dashboard cameras and audio mics could be fully integrated with a new body camera system providing maximum possible coverage of interactions between police and the public.
5. ***The SPD Should Include in their Rules and Regulations a Policy which Outlines the Proper Procedures for Conducting Eyewitness Identifications*** including photo lineups, live lineups, show up identifications, and field view identifications (see Appendix II).

¹ See the Police Executive Research Forum's *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (2014) available at <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

REAFFIRMATION OF 2012, 2013 & 2014 POLICY RECOMMENDATIONS

The CRB made a series of policy recommendations in its 2012, 2013, and 2014 Annual Reports. Those recommendations are restated here in an effort to encourage the SPD to adopt these recommendations:

2014 POLICY RECOMMENDATIONS

1. ***Revise the Existing Use of Force Policy*** to make it consistent with the city’s new well-developed Taser policy. The city’s current use of force policy simply states, “It is the responsibility of each officer to be aware of the requirements of Article 35 [of the NYS Penal Law] and to guide their actions based on that law and department policy and training.” Article 35 provides no specialized guidance to police officers on the appropriate uses of force and does not constitute a use of force policy. A new use of force policy should be based on recommendations provided by the U.S. Department of Justice in consent decrees reached with other cities.² The new policy should include:
 - A. A delineation of all force options, including all department-approved lethal and less-lethal weapons, and specific guidance on when each force option is appropriate and not appropriate;
 - B. Precise definitions of key terms including but not limited to imminent threat, force transition, de-escalation, reportable force, and the definitions and correlation of various levels of subject resistance (passive, active, aggressive and aggravated aggressive) to levels of control (low level, intermediate, and deadly force);³
 - C. A discussion of what constitutes “objectively reasonable” force under the U.S. Supreme Court’s *Graham v. Connor* (1989) decision;
 - D. Specific prohibitions on when certain forms of force should not be used;
 - i. A more prominent emphasis placed on the limitation of the use of impact weapons to strike the head or neck area to deadly force situations;⁴
 - ii. A clear prohibition against respiratory restraints (i.e. “chokeholds”) and the limitation of vascular (or carotid) restraints to situations where deadly force is justified.⁵
 - E. A “Duty to Intervene” policy which indicates that any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable

² In the DOJ’s most recent findings of the Cleveland Division of Police, in a section titled, “Systemic Deficiencies Cause or Contribute to the Excessive Use of Force,” the DOJ concludes that police departments “must provide their officers clear, consistent policies on when and how” to use force. See U.S. DOJ Civil Rights Division, Investigation of Cleveland Division of Police, December 2014, pg. 28.

³ DOJ’s consent decree with the city of New Orleans in 2012 provides many of these definitions, see pgs. 4 – 11; as does Syracuse’s new Taser policy.

⁴ Current SPD policy reminds officers that under certain circumstances the use of a less lethal weapon may constitute a use of deadly physical force; the head and neck are then mentioned in parentheses, see Volume 1, Article 4, Section 6.12. Volume 1, Article 4, Section 2.00 also notes that “deadly physical force can be expanded to include the use of other weapons and force if the intent is to cause serious physical injury. This shall include, but is not limited to, impact weapons such as batons, flashlights, motor vehicles, and bare hands.” A clearer prohibition would simply state that strikes to the head or neck with an impact weapon are defined as deadly force and shall be limited in use to situations where deadly force is legally justified.

⁵ For more on the definitions and danger of various styles of “chokeholds,” see A MUTATED RULE: Lack of Enforcement in the Face of Persistent Chokehold Incidents in New York City, NYC CCRB, 2014, pgs. 11-18.

under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another officer use force that exceeds the degree of force permitted by law should be required to promptly report these observations to a supervisor.⁶

2. ***Commence Development of a Comprehensive Body Camera Policy*** ready to be implemented upon the eventual acquisition of body cameras.⁷ This policy should be developed with input from both the public and the officers who will use them.

In addition to acquiring body cameras, the SPD should increase the number of dashboard cameras installed in police vehicles. Currently, only seven SPD vehicles are equipped with dashboard cameras; these vehicles are typically used for traffic enforcement.

3. ***Develop and Implement a Disciplinary Matrix*** to bring consistency and predictability to the department's disciplinary process.⁸ A matrix, a common disciplinary tool used by employers both inside and outside of policing, categorizes violations into various levels of severity and provides disciplinary options for each level. A degree of administrative discretion can be built into the matrix by including mitigating and aggravating factors that can increase or decrease the level of discipline.
4. ***Adopt a Policy to Immediately Retrieve and Secure Video*** from the COPS Platform cameras or nearby private surveillance cameras anytime there is a use of force incident within range or as soon as a complaint has been made against an officer (either through 911, at the scene, or later through OPS).

The CRB also recommends that the SPD extend the timeframe that COPS Platform camera videos are available from 15 days to 45 days so the videos will more likely be available for complaint investigations.

5. ***The Office of Professional Standards should Conduct Recorded Interviews with Subject Officers and Acquire Police Radio Transmissions*** as a routine part of their internal affairs investigations. The recording of interviews with officers who are the subject of a complaint or who are a witness to the incident is a widely accepted best practice for internal affairs investigations. The recording of interviews tends to improve the quality of the interview and preserves the interview for review by outside agencies when necessary. The routine acquisition of police radio transmissions would provide investigators with additional context and the ability to verify critical aspects of an officer's account of a given incident. If

⁶ Model "Duty to Intervene" or "Duty to Report Misconduct" policies can be found in the Las Vegas and Los Angeles departmental policies and procedures. See also legal obligations under prior court precedents such as Warren v. Williams, 2006 U.S. Dist. LEXIS 18900 (D. Conn. 2006), O'Neill v. Krzeminski, 839 F.2d 9, 11 (2d Cir. 1988), Anderson v. Branen, 17 F.3d 552, 557 (2d Cir. 1994), and Randall v. Prince George's County, 302 F.3d 188, 203 (4th Cir. 2002).

⁷ Guidance on the development of a comprehensive body camera policy can be found at the Americans for Effective Law Enforcement (AELE) website. Washington, D.C.'s Office of Police Complaints also recently produced a very useful guide for developing such policies. In addition, Seattle Police policy on body cameras can be accessed here.

⁸ For more on the application of a disciplinary matrix, see *The Police Chief*, October 2006, "Employee Disciplinary Matrix: A Search for Fairness in the Disciplinary Process."

adopted, both recommendations would serve to improve the quality and thoroughness of OPS investigations.

2013 POLICY RECOMMENDATIONS

1. ***Develop a Policy on the Use of Police Vehicles when Chasing a Suspect who is on Foot or Bicycle.*** In 2013 the CRB reviewed two different cases in which an individual alleged that police used their vehicle to bump or cut them off as they were either running or riding a bike. The SPD has a clear policy in regards to the use of police vehicles while in pursuit of a suspect in a vehicle, but the CRB could find no policy concerning the use of police vehicles while in pursuit of a suspect on foot or on bike. Current policy only allows officers to use a police vehicle to hit or box-in another vehicle with the permission of a supervisor. The CRB panel thus recommends that the SPD develop a policy for the use of police vehicles when pursuing suspects on foot or bicycle.
2. ***Initiate a Review of SPD's Use of Force Policy.*** The CRB recommends that the police department conduct a review of the SPD's use of force policy to ensure that it meets current best practices encouraged by the U.S. Department of Justice and increasingly adopted by police departments throughout the country.⁹ The current SPD use of force policy states, "It is the responsibility of each officer to be aware of the requirements of Article 35 [of the NYS Penal Law] and to guide their actions based on that law and department policy and training." Article 35 provides the legal justifications under which any citizen of New York can use force within the law, with a few additional qualifications for police and peace officers. It is not a law that provides any specialized guidance to officers for the fluid and fast moving situations they confront every day.

Lack of specific policy guidance on the appropriate use of force may lead officers and supervisors to believe that they are justified in using force in situations in which it would be unreasonable or unnecessary. Conversely, unclear or overly general policies may result in officers refraining from using necessary and appropriate force out of a fear of being accused of using excessive force.¹⁰

A comprehensive use of force policy would include all force techniques, technologies, and weapons, both lethal and less lethal that are available to officers. It should clearly define and describe each force option and the circumstances under which use of such force is appropriate.¹¹ To ensure consistency in the application of the use of force, an effective use of force policy should among other things define key terms such as levels of resistance (passive, active, aggressive and aggravated aggressive resistance) and the appropriate force counter-responses available to officers (low level, intermediate level, and deadly force options).

⁹ See DOJ finding letters to the cities of Austin, TX. (2008, pgs. 3-27), Seattle, WA. (2011, pgs. 23-34 and 37-38), and the territory of Puerto Rico (2012, pgs. 86-90). See also the DOJ's Consent Decree with the city of New Orleans, (2012, pgs. 14-23 and 33-34). All available online at www.justice.gov/publications. See also the DOJ COPS offices' Collaborate Reform Process for Las Vegas, NV. (2012, pgs. 24-25, 60-63 and 126-130), available online at www.cops.usdoj.gov.

¹⁰ DOJ finding letter to the City of Austin, pg. 4.

¹¹ DOJ finding letter to the City of Austin, pg. 6.

The current SPD use of force policy was put in place prior to the present SPD and mayoral administrations and prior to the current efforts by the U.S. Department of Justice to improve police policies and procedures around the country. Syracuse officials presently have the opportunity to improve the city's use of force policy with little or no cost to taxpayers. Jurisdictions whose policies do not comport with the practices encouraged by the DOJ leave themselves vulnerable to the possible imposition of DOJ mandates that can include significant financial costs to area taxpayers.

In addition to protecting taxpayers' financial interests as well as constitutional rights, addressing this issue should lead to an increase in officer safety. Our police officers work under extremely difficult and stressful circumstances. A clearer set of rules for the use of force coupled with extensive training on those rules would give officers more confidence in reacting to a variety of different forms of subject resistance, expand their range of responses, and ultimately produce a more flexible and appropriate force response to a given situation. Officers need to be as prepared as possible for the multitude of situations that they face.

2012 POLICY RECOMMENDATIONS

1. ***Securing Entryways following a Forced Entry.*** Current SPD policy states that subsequent to a forced entry in which an entryway is damaged, an officer must ensure that the building is physically secured before leaving the scene. It states that officers *can* contact the Department of Public Works (DPW) for assistance in securing the premise. In 2012, the CRB identified an instance in which an entryway was not sufficiently secured by an officer after the main door and lock was damaged during a legally warranted forced entry by police that resulted in the arrest and removal of the occupants of the residence. An officer did attempt to secure the door but only used two nails to affix the damaged door to the door frame. The nails were subsequently removed by burglars and the residence was burglarized. The CRB discussed the issue with personnel from DPW who are responsible for boarding up structures. The board-up crews from DPW use at least five *screws* on each side of a damaged entryway to fully secure the premise. The CRB recommends that the SPD adopt a similar policy and has suggested language that requires the officers to use a similar number of *screws* (as opposed to nails) or *requires* officers to request the assistance of DPW if no officer on scene possess the required tools or hardware.
2. ***Provision of Property Receipts for Seized Currency.*** Current SPD policy details the process by which seized currency shall be entered into the Property Division, but it provides little guidance to officers on the provision of property receipts to the individual whose money was seized. Property receipts (Form 5.4) are typically provided to individuals from whom police officers seize money due to the presence of other illegal contraband (such as drugs). Occasionally, an officer may not have in his or her possession the required Form 5.4. In the course of past investigations, the CRB identified an instance in which an officer failed to provide a property receipt to an individual after seizing a substantial sum of money during a traffic stop in which drug paraphernalia was also discovered. The officer did not have a copy of Form 5.4 and did not request one from police dispatch. No property receipt was issued at the point of seizure to document the amount seized. Subsequently, the officer was accused of stealing a portion of the money. To protect officers from false accusations of theft and to ensure that the public's interest is fully protected, the CRB recommends that the SPD make the provision of property receipts (Form 5.4) mandatory at the point of seizure, provided doing so does not

jeopardize the safety or security of the officer or any other person. If the officer does not have a property receipt at the point of seizure, then the officer should request one through dispatch and the officer's supervisor should ensure that the necessary form is delivered to the scene without delay.

3. ***Inclusion of a Non-Retaliation Clause in the SPD's Complaint Procedures.***
Current SPD policy for accepting complaints against police officers contains no non-retaliation clause. The CRB recommends the inclusion of an unambiguous clause that restricts any manner of retaliation or intimidation against any individual who files a complaint, seeks to file a complaint, or cooperates with the investigation into a complaint against a member of the SPD.

CASE SUMMARIES OF 4th QUARTER SUSTAINED FINDINGS

Out of the 21 complaints processed during the fourth quarter of 2015, three resulted in a sustained finding against one or more officers. The CRB provides summaries of the sustained cases below in an effort to afford the public an accurate understanding of the cases sustained by CRB panels. Summaries of the sustained cases from the first, second and third quarters of 2015 are available in the quarterly reports posted on our website. Consistent with Local Law 1 of 2012, no identifying information is included in the summaries to protect the identity of the complainants and officers involved.

- **Failure to Act and Poor Demeanor Sustained against One Officer**

A female complainant reported that an officer refused to complete a police report regarding a harassment allegation because the complainant had previously failed to appear in court for a domestic violence prosecution of her partner that was investigated by the same officer.

The complainant's son was at her home and became engaged in an argument with his former girlfriend. There was no physical contact between the parties, but the girlfriend kicked the outside of the front door, knocking the bottom door hinge out of the door frame. The son called 911 to report the incident. When two officers arrived, the girlfriend was gone, but the complainant (the boy's mother) was now on scene.

The complainant reported that one of the officers who responded refused to let her press charges on the girlfriend. She further reported that this officer told her that he would not place the charges against the girlfriend because he had responded to her (the complainant's) home before when she was the victim of domestic violence by her boyfriend but she later did not show up in court to pursue the charges. She reported that the officer further stated, "You did not show up in court for him, so why would you show up for this one?" She reported that the officer told her that if he did the paperwork for this and she did not show up in court, a warrant would be issued for her arrest. She reports that he told her, "I came here and you had black eyes and bruises and scratches and [you] didn't do anything to him, so [I'm] not going to do anything about this."

The subject officer denied that he told the complainant that no arrest would be made because of previous failures to follow through in court, but reported that he "attempted to explain that he was familiar with [her]." He further denied that he refused to take a police report and insisted that no report was completed because he was unable to get information regarding the dispute from the involved party.

The complainant's son reported that he was there while the officers were there, that the officers asked him questions about the incident, and that he provided all requested information to them. The Computer Aided Dispatch (CAD) notes from the 911 call also indicate that the son was cooperative and willing to provide information.

The CRB panel concluded that the officer did acquire sufficient information to have probable cause to charge the other party. Witnesses corroborated the complainant's account that the officer brought up her past domestic violence incident and seemed to indicate that he would not help her in

the present incident due to her past reluctance to appear in court to testify against her abuser. Therefore, the CRB panel sustained the allegations of Failure to Act and Poor Demeanor against the subject officer and recommended to the Chief of Police that the officer be given a written reprimand and provided retraining on the importance of maintaining a courteous and professional demeanor.

- **Failure to Act and Poor Demeanor Sustained against One Officer**

A male complainant reported being physically attacked at a bar and that when he reported it to an officer the officer failed to investigate and that another officer issued a ticket to him in retaliation for video recording the officers.

The male complainant reported that he showed the officer a bruise that he received on his left temple area from the attack. The complainant reported that the officer told him that he had no basis for an assault charge, that the incident would be considered a disturbance, and that he can and will arrest him (the complainant) too, so it would be best to leave it alone and go on his way. The complainant then used his cell phone to video record officers on scene and provided a narration regarding his dissatisfaction with the police response. The complainant reported that the officer then questioned him about being drunk. The complainant reported that he was not drunk and told the officer that he would be willing to take a field sobriety test. The complainant reported that he then walked to his motorcycle, sat down on it, started and revved the engine. He reported that he then turned the engine off and put his helmet on which he had forgotten to do because he was frustrated with the incident. He reported that three officers then came over to him and told him to get off the bike, which he indicated he did. The complainant reported that one of the officers told him “since you recorded our plates earlier, I’m gonna get yours.” He reported that this officer told him he was obstructing the roadway. The complainant then again began recording his interaction with police. The complainant reported that an officer then asked him if he was trying to be a civil rights activist. The complainant reported that the officers laughed at him and made fun of him for stuttering. The complainant was then given a ticket for parking in traffic.

The complainant provided several video clips recorded during the incident. In one clip, an officer can be heard asking the complainant if he is a civil rights activist. The complainant begins to narrate the actions leading up to the present moment and stutters a bit over his words. An officer then tells the complainant that he cannot even talk he’s so drunk.

In another video provided by the complainant, slight darkness can briefly be seen in the vicinity of his left temple region, but it is not clear if this is a bruise from being struck or his natural skin coloration. He did not appear to be severely injured.

A subject officer acknowledged that the complainant informed him about the alleged assault and that he told the complainant that the other person could make the same allegation resulting in both of them being arrested. The officer made no effort to investigate the allegation or complete a report documenting the allegation or to request assistance by another officer to do so. In one of the videos provided by the complainant, this officer also appeared to engage in unnecessary and sarcastic verbal banter with the complainant.

The CRB panel concluded that the officer failed to act in not completing a police report when presented with a plausible allegation that a crime had occurred and that the officer demonstrated poor demeanor while interacting with the complainant. The panel thus sustained Failure to Act and Poor Demeanor against the subject officer and recommended to the Chief of Police that the officer receive a verbal warning and retraining on determining when to complete a police report.

- **Excessive Force Sustained against Two Officers, Excessive Force Not Sustained against One Officer; Nonfeasance Sustained against Another Officer**

A male complainant reported that he was leaving a dance club in the early morning hours when he noticed a heavy police presence on the street. He reported that he walked to a pizza shop to get something to eat and noticed about twelve police officers standing in front of the shop. He entered the pizza shop and reported that while standing in line, a white male told him that he didn't know that they let monkeys in the restaurant after 2:00 AM (the complainant is African American). The complainant reported that a heated argument ensued between him and this male and lasted for several minutes. He reported that all of a sudden he was being "man handled" by SPD officers. He reported that he asked the officers if he was being taken to jail, but his question was ignored as the officers began to strike him. He reported that once he was on the ground, he was being hit and kicked "from every direction" by what he believed were six or more officers. He reported that they dragged him out of the shop and threw him into the back of a police transport van where officers continued to strike him.

After being lodged at the Justice Center, the Sheriff's Department called EMS to respond after the complainant reported chest pain. Rural Metro evaluated him and indicated that he complained of chest and rib pain, shortness of breath, contusion and blood in his left eye and a swollen right cheek. Rural Metro transported him to the hospital where he was diagnosed with a nondisplaced transverse process fracture to two vertebrae of his spine (the wing-like structure of the vertebrae), multiple abrasions to his face, subconjunctival hemorrhage (blood in his eye) and a contusion to his left eye.

The subject officers reported that they heard a disturbance emanating from the pizza shop, responded, and observed the complainant yelling and waving his arms. They reported that the manager of the pizza shop was motioning to the complainant to leave. Upon entering the pizza shop, the officers reported hearing the complainant tell the manager that he did not have to leave. The officers reported that they then told the complainant that he was under arrest and attempted to place his arms behind his back. They reported that the complainant resisted arrest by tensing his arms and pulling them away while stating, "I'm not going to jail." The officers reported that they attempted to place him up against a partition wall but that he continued to struggle by pulling his arms away. One officer reported that he then swept the complainant's right leg with his and forced the complainant to the ground. Another officer reported that he delivered several closed fist strikes to the complainant's left back region in an attempt to gain his compliance. Another officer reported that as he attempted to assist in bringing the complainant to the ground, the complainant attempted to bite him on the right arm. This officer reported that he delivered two closed fist strikes to the right and left sides of the complainant's face.

A police sergeant responded to the scene and conducted a Use of Force investigation. Based on the sergeant's Use of Force report, it appeared that the sergeant made no effort to interview any of the

third party witnesses to the incident. The Use of Force report did not indicate that the complainant had attempted to bite one of the officers as an officer had claimed in his report.

The CRB panel concluded that the strikes to the back and face of the complainant by two different officers were unnecessary and unjustified and thus sustained the allegation of Excessive Force against these two officers. The panel recommended a two week suspension without pay for these two officers. The panel found insufficient evidence to conclude that the physical take down of the complainant conducted by a different officer was excessive and thus did not sustain the allegation against the officer who conducted the take down. The CRB panel also sustained Nonfeasance against the responding sergeant for failing to interview any of the available third party witnesses as part of the Use of Force investigation. The panel recommended to the Chief of Police that the sergeant be retrained in the procedures for conducting thorough Use of Force investigations and that he be suspended for one week without pay.

BUDGET

2015-2016 Adopted DETAIL ANALYSIS OBJECTS OF EXPENDITURE

100 PERSONNEL SERVICES		
101	Salaries	\$ 92,912.00
400 CONTRACTUAL EXPENSES		
403	Office Supplies	\$ 3,250.00
407	Equipment Repair Supplies & Expenses	\$ 400.00
415	Rental, Professional & Contractual Services	\$ 33,063.00
416	Travel, Training & Development	\$ 2,865.00
	TOTAL:	\$133,900.00

Fourth Quarter, 2015 Data

Total Complaints Received during Fourth Quarter of 2015 (October 1 to December 31, 2015):

19

Categories of allegations as defined in CRB Ordinance (totals from all complaints received from October 1 to December 31, 2015; note that multiple allegations can be made in one complaint):

Active Misconduct: 24

Passive Misconduct (Failure to Act): 4

Damaged or lost Property: 1

Denial or Violation of Constitutional Rights: 0

Lack of Truthfulness in a Police Report or Falsifying a Report: 0

The number of cases processed by the Board during fourth quarter of 2015: 21

The number of cases where a CRB panel recommended disciplinary sanctions be imposed by the Chief of Police during the fourth quarter of 2015: 3

The number of CRB cases where the Chief of Police or the SPD imposed sanctions or discipline when disciplinary recommendations were made by a CRB panel during the fourth quarter of 2015: The CRB received a response from the Chief of Police in only one of three cases sustained by the CRB during this period. The Chief of Police did not impose discipline in that case.

The number of complaints processed and not sent to a panel hearing during the quarter: 17

The number of cases that successfully were routed to conciliation: 0

The number of complainants who initiated extended contact with the CRB but did not follow through with a formal signed complaint: 0

The length of time each case was pending before the Board: 2 months on average (but some take longer due to unavoidable delays).

The number of complaints in which the Board recommended that the City provide restitution to the complainant and type of restitution recommended: 0

The number of complainants who filed a Notice of Claim against the City of Syracuse while their complaint was being considered by the Board: 5

Hearing outcomes

Panel hearings scheduled: 4

Panel hearings held: 4

Panel hearings resulting in disciplinary recommendations from CRB: 3

Panel hearings resulting in no disciplinary recommendations from CRB: 1

2015 Totals

Total Complaints Received during 2015: 74

Categories of allegations as defined in CRB Ordinance (totals from all complaints received in 2015; note that multiple allegations can be made in one complaint):

Active Misconduct: 80

Passive Misconduct (Failure to Act): 17

Damaged or lost Property: 1

Denial or Violation of Constitutional Rights: 0

Lack of Truthfulness in a Police Report or Falsifying a Report: 3

The number of cases processed and closed by the Board during 2015: 72

The number of cases where a CRB panel recommended disciplinary sanctions be imposed by the Chief of Police during 2015: 13

The number of CRB cases where the Chief of Police or the SPD imposed sanctions or discipline when disciplinary recommendations were made by a CRB panel during 2015: The CRB received a response from the Chief of Police in only seven of 13 cases sustained by the CRB during this period. The Chief of Police did not impose discipline in any of the seven cases for which he provided a response.

The number of complaints processed and not sent to a panel hearing during 2014: 54

The number of cases that successfully were routed to conciliation: 0

The number of complainants who initiated extended contact with the CRB but did not follow through with a formal signed complaint: 1

The length of time each case was pending before the Board: 2 months on average (but some take longer due to unavoidable delays).

The number of complaints in which the Board recommended that the City provide restitution to the complainant and type of restitution recommended: 0

The number of complainants who filed a Notice of Claim against the City of Syracuse while their complaint was being considered by the Board: 17

Hearing outcomes

Panel hearings scheduled: 16

Panel hearings held: 16

Panel hearings resulting in disciplinary recommendations from CRB: 13

Panel hearings resulting in no disciplinary recommendations from CRB: 3

Categories of complaints received by the CRB between October 1 and December 31, 2015*

City Wide

Excessive Force	Demeanor	Failure to Act	Harassment	Racial Bias
8	6	4	3	0
False Arrest	Improper Search/Seizure	Theft/Larceny	Taser Discharge	Untruthfulness in a Police Statement or Falsifying a Report
1	2	0	1	0
Gender Bias	Evidence Tampering	Improper Offer to Eliminate Charges in Exchange for Incriminating Information	Constitutional Violation	Violation of SPD high-risk traffic stop policy
0	2	0	0	0

*Some individual complaints include multiple allegations

Categories of Complaints Received by the CRB during 2015
Number & Percent of Annual Intake

Excessive Force	Demeanor	Failure to Act	Harassment	Racial Bias
26	26	16	8	3
35%	35%	22%	11%	4%
False Arrest	Improper Search/Seizure	Theft/Larceny	Taser Discharge	Untruthfulness in a Police Statement or Falsifying a Report
9	6	0	1	3
12%	8%	-	1%	4%*
Gender Bias	Evidence Tampering	Improper Offer to Eliminate Charges in Exchange for Incriminating Information	Constitutional Violation	Violation of SPD high-risk traffic stop policy
0	2	0	0	0
-	3%	-	-	-

*Typically not discovered until after a complaint is filed and police reports have been acquired.

Categories of Allegations Sustained by the CRB during 2015

Raw Number, Percent of All Sustained Hearings (13 total) & Percent of that Category that were Sustained

Excessive Force	Demeanor	Failure to Act	Harassment	Racial Bias
6	6	3	0	0
46%	46%	23%	0%	0%
23%	23%	19%	0%	0%

False Arrest	Improper Search/Seizure	Theft/Larceny	Taser Discharge	Untruthfulness in a Police Statement or Falsifying a Report
0	0	0	0	1
0%	0%	0%	0%	8%
0%	0%	0%	0%	33%

Gender Bias	Evidence Tampering	Failure to Intervene	Conduct Unbecoming	Nonfeasance
0	0	1	1	3
0%	0%	8%	8%	23%
0%	0%	*	*	*

*No complaints filed making such allegation; however, finding sustained based on CRB investigation.

Complaints Received per Common Council District during the 4th quarter of 2015 and Total for 2015

District 1:

Demeanor: 3/8
Excessive Force: 2/5
Failure to Act: 1/3
Harassment: 1/1
Racial Bias: 0/1
False Arrest: 0/1
Improper Search/Seizure: 0/1
Theft/Larceny: 0/0
Taser Discharge: 0/0
Untruthfulness in a Police Statement/Falsifying a Report: 0/1
Gender Bias: 0/0
Evidence Tampering: 0/0
Constitutional Violation: 0/0

District 2:

Demeanor: 2/6
Excessive Force: 3/8
Failure to Act: 0/2
Harassment: 1/4
Racial Bias: 0/1
False Arrest: 1/4
Improper Search/Seizure: 2/3
Theft/Larceny: 0/0
Taser Discharge: 0/0
Untruthfulness in a Police Statement/Falsifying a Report: 0/1
Gender Bias: 0/0
Evidence Tampering: 0/0
Constitutional Violation: 0/0

District 3:

Demeanor: 0/1
Excessive Force: 0/4
Failure to Act: 0/1
Harassment: 0/0
Racial Bias: 0/0
False Arrest: 0/0
Improper Search/Seizure: 0/1
Theft/Larceny: 0/0
Taser Discharge: 0/0
Untruthfulness in a Police Statement/Falsifying a Report: 0/0
Gender Bias: 0/0
Evidence Tampering: 0/0
Constitutional Violation: 0/0

District 4:

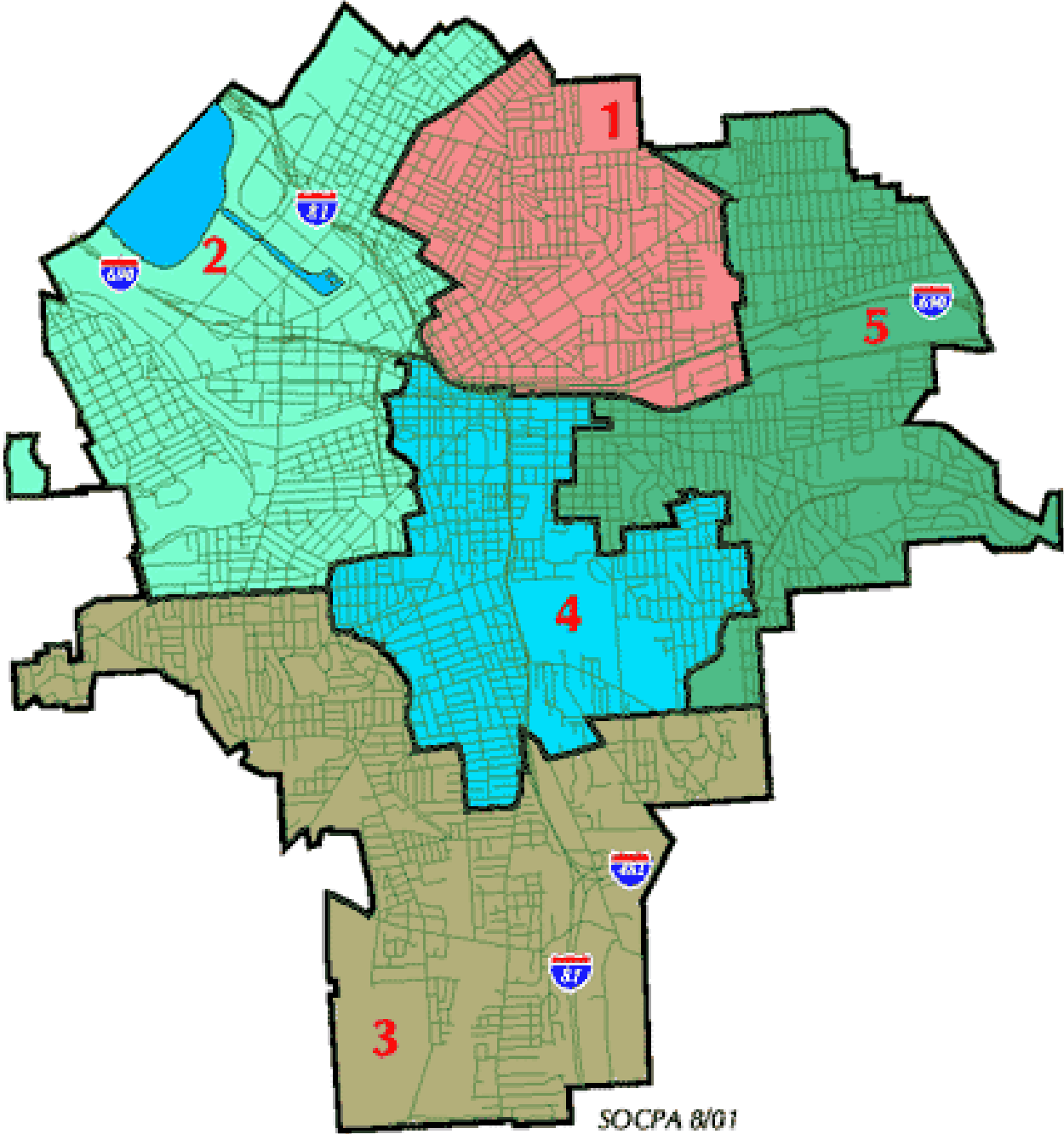
Demeanor: 1/5
Excessive Force: 3/3
Failure to Act: 1/4
Harassment: 1/1
Racial Bias: 0/2
False Arrest: 0/3
Improper Search/Seizure: 0/1
Theft/Larceny: 0/0
Taser Discharge: 1/1
Untruthfulness in a Police Statement/Falsifying a Report: 0/1
Gender Bias: 0/0
Evidence Tampering: 0/0
Constitutional Violation: 0/0

District 5:

Demeanor: 0/3
Excessive Force: 0/4
Failure to Act: 2/4
Harassment: 0/1
Racial Bias: 0/0
Gender Bias: 0/0
False Arrest: 0/1
Improper Search/Seizure: 1/1
Theft/Larceny: 0/
Taser Discharge: 0/0
Untruthfulness in a Police Statement/Falsifying a Report: 0/0
Evidence Tampering: 0/0
Constitutional Violation: 0/0

***See the following page for a map of the Common Council Districts**

CITY OF SYRACUSE COMMON COUNCIL DISTRICTS



Complainant Demographics for All Complaints Received in Fourth Quarter of 2015

Ethnicity		
Black	14	74%
White	4	21%
Latino	1	5%
Asian	0	0%
Native American	0	0%
Total	19	100%

Sex		
Male	12	63%
Female	7	37%

Sexual Identity of Complainant		
LGBTQ	0	0%

Age		
Under 18	1	5%
18-35	7	37%
36-50	6	32%
51+	5	26%

Disability		
Visual	0	0%
Hearing	0	0%
Physical	1	5%
Intellectual	2	10%

Language other than English		
Spanish	0	0%
Vietnamese	0	0%
Other	0	0%

Complainant Demographics for All Complaints Received in 2015

Ethnicity		
Black	44	59%
White	22	30%
Latino	5	7%
Asian	0	0%
Native American	1	1%
Other	2	3%
Total	74	100%

Sex		
Male	50	68%
Female	24	32%

Sexual Identity of Complainant		
LGBTQ	1	1 %

Age		
Under 18	2	3%
18-35	25	34%
36-50	29	39%
51+	18	24%

Disability		
Visual	1	1%
Hearing	2	3%
Physical	2	3%
Intellectual	6	8%

Language other than English		
Spanish	0	0%
Vietnamese	0	0%
Other	1	1%

Appendix I

Proposed Comprehensive Use of Force Policy

The current SPD Use of Force policy includes adequate procedures for reporting uses of force. Thus, the proposed Use of Force policy by the CRB does not address reporting requirements. The department's existing reporting policies should be maintained and integrated into a comprehensive Use of Force policy such as the one proposed here.

The following Use of Force policy is based on current national best practices, model policies from other police departments, and recommendations by the United States Department of Justice in consent decrees reached with jurisdictions across the country.

A Comprehensive Use-of-Force Policy for the Syracuse Police Department
Proposed by the Syracuse Citizen Review Board

Volume 1, Article 4 – Rules of Conduct

Section 3.00

Use of Physical Force

- I. POLICY
- II. DEFINITIONS
- III. USE OF FORCE TO EFFECT DETENTION, AN ARREST, OR TO CONDUCT A SEARCH
- IV. DETERMINING OBJECTIVELY REASONABLE FORCE
- V. LEVELS OF RESISTANCE
- VI. LEVELS OF CONTROL
- VII. USE OF DEADLY FORCE
- VIII. IMPACT WEAPONS
- IX. LOW LETHALITY SHOTGUN
- X. OC SPRAY
- XI. ELECTRONIC CONTROL WEAPONS
- XII. DUTY TO INTERVENE
- XIII. MEDICAL AID
- XIV. DE-ESCALATION & ASSESSING OPTIONS

I. POLICY

The Syracuse Police Department is committed to the sanctity and preservation of life, human rights, and the dignity of every individual. Department members are sometimes required to use force in self-defense, defense of others, and during the execution of lawful duties. In all situations, Department members are required to conduct themselves in accordance with lawful and constitutional standards.

All members shall view their duties in the context of safety for themselves and others, with an emphasis on respect, professionalism, and reverence for human life, even when force is required.

In compliance with applicable law, officers shall use the amount of force reasonable to effect an arrest, overcome resistance to arrest, or defend themselves or others from harm. When force is necessary, the degree of force employed should be in direct relationship to the amount of resistance exerted, or the immediate threat to the officers or others. There is a compelling public interest that officers authorized to exercise the use of force do so in an objectively reasonable manner and in a way that does not violate the civil rights guaranteed by our Constitution and applicable law. Officers who use excessive or unjustified force degrade confidence in law enforcement among the community that they serve, undermine the legitimacy of a police officer's authority, and hinder the Department's ability to provide effective law enforcement services to the community.

Officers who use excessive or unauthorized force shall be subject to discipline, possible criminal persecution, and/or civil liability. Use of force is only authorized when it is objectively reasonable and for a lawful purpose. Accordingly, the Department will thoroughly investigate all uses of force by officers to assure compliance with all legal requirements and this policy.

II. DEFINITIONS

Approved Weapons – Approved weapons are those weapons meeting department specifications for which an officer has received proficiency and safety training.

Blocking – Blocking is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. The intent of blocking is to prevent an avenue of escape by the placement of a police vehicle.

Deadly Force – Any use of force likely to cause death or serious physical injury, including the use of a firearm; neck hold; or strike to the head, neck, or throat with a hard object or closed fist.

Electronic Control Weapon (ECW) – The ECD is a Neuro-Muscular Incapacitation device that stimulates the motor neurons to contract disrupting communication from the brain to the muscles thereby causing temporary motor skill dysfunction.

1. Spark Display – A non-contact demonstration of the ECD's ability to discharge electricity.
2. Drive (or Touch) Stun – A secondary function of the ECD intended to administer pain to a subject by making direct contact with the body after the air cartridge has been expended or removed. Note: Use of the ECD in this mode is discouraged.
3. Probe Mode – The primary function of the ECD, which occurs when the ECD is fired and both probes make contact with a subject. The intent is that the subject be temporarily immobilized for the period of time the ECD is cycled.

Force – Physical effort to compel compliance by an unwilling subject above un-resisted handcuffing, including pointing a firearm at a person.

Force Transitions – The movement, escalation/de-escalation, from the application of one force type to another in conjunction with the “objectively reasonable” standard from *Graham v. Connor*, 490 U.S. 386 (1989). The officer must consider all the factors prior to using force and choose a reasonable option based on the “totality of the circumstances” present.

Hard Hand Tactics – Impact oriented techniques that include knee strikes, elbow strikes, punches, and kicks. Such strikes are used to subdue a subject and include strikes to pressure points such as the common peroneal (side of leg) and radial nerve (top of forearm). Defensive strikes are used by officers to protect themselves from attack and may include strikes to a subject's body with the hand, fist, forearm, legs, or feet. These techniques target the major muscle groups and are delivered to create muscle cramping, thereby inhibiting muscle action and allowing the officer to subdue the subject. In extreme cases of self-defense, where the officer reasonably believes that a subject's actions are likely to result in death, serious bodily injury, or incapacitation of the officer or another person (see Aggravated Aggressive Resistance in Section V), the officer may need to strike more fragile areas of the body, such as the head or neck, where the potential for serious bodily injury is

greater. The use of neck restraints or chokeholds is prohibited unless the use of deadly force is authorized.

Imminent Threat – “Imminent threat” refers to an impending violent act or resistance that an officer reasonably believes will occur, based on the totality of the circumstances.

Involved Officer – A commissioned officer or supervisor, who participated in, directed or influenced the application of the use of force.

Less Lethal Force – Force neither intended nor likely to cause death or serious physical injury, but that can cause death or serious physical injury. Less-lethal force includes, but is not limited to, the use of an ECW, an impact weapon such as an asp or baton, and OC spray.

Critical Firearm Discharge – Each discharge of a firearm by an officer. This term includes discharges at persons where no one is struck. This term is not intended to include discharges at the range or in training or negligent discharges not intended as an application of force, which are still subject to administrative investigation.

Reasonable Force – Reasonable force is an objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances presented at the time of the incident. See section IV. “Determining Objectively Reasonable Force.”

Reportable Use of Force – Any use of force that is greater than that required for un-resisted searching or handcuffing. Additionally, pointing a firearm at or in the direction of a person, and any use of force which results in injury or a complaint of pain or injury is a reportable uses of force.

Serious Bodily Injury – A bodily injury that creates a substantial risk of death or incapacitation; causes serious, permanent disfigurement; or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

Significant Force – Any force by any officer which results in injury, treatment by a medical professional, or admission to a medical facility. All Significant Force is Reportable Force.

Soft Hand Tactics – The use of physical strength and skill in defensive tactics to control arrestees who are reluctant to be taken into custody and offer some degree of physical resistance. Such techniques are not impact oriented and include pain compliance pressure points, takedowns, joint locks, and simply grabbing a subject. Touching or escort holds may be appropriate for use against passive resistance.

Witness Officer – A commissioned officer or supervisor who observed, heard or was in close proximity to a use of force event but did not participate in or directly influence the application of the use of force.

III. USE OF FORCE TO EFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

A. General

1. Officers shall use advisements, warnings, and verbal persuasion, when possible before resorting to force.
2. If it is not already known by the subject to be detained, arrested, or searched, officers should, if reasonable, make clear their intent to detain, arrest or search the subject. When practicable, officers will identify themselves as a police officer before using force.
3. When feasible based on the circumstances, officers shall prioritize the employment of de-escalation techniques to include, but not limited to the utilization of verbalization; disengagements; area containment; surveillance; waiting on a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and increase officer and civilian safety. Force shall be de-escalated immediately as resistance decreases.
4. Officers shall allow individuals time to submit to arrest before force is used wherever possible.

B. Use of Force Authorization and Limitations

Officers of the Department are authorized to only use objectively reasonable force to accomplish lawful objectives. Officers may use force:

1. To effect an arrest or prevent the escape from custody of a person whom the officer reasonably believes has committed an offense.
2. To defend an officer or others from the use, or imminent use, of physical force.
3. To take persons into protective custody when authorized by law, such as persons who are a danger to themselves or others, persons incapacitated by alcohol, and/or runaway children.
4. To prevent someone from committing suicide or inflicting serious physical injury upon themselves.
5. To assist a licensed physician or psychologist in providing necessary medical treatment.
6. To overcome passive or active resistance to a lawful order.
7. To neutralize an unlawful assault and defend themselves or others from harm.

The authorized use of physical force ends when resistance ceases and/or the officer has accomplished the purpose necessitating the use of force. Justification for the use of force is limited

to the facts known or perceived by the officer at the time such force is used and meet the objectively reasonable standard described in Section IV below.

Force shall never be used to subject a person to torture and/or other cruel or inhumane or degrading treatment, to unlawfully coerce a person, or to punish a person.

IV. DETERMINING OBJECTIVELY REASONABLE FORCE

Under the Fourth Amendment of the United States Constitution, a police officer may only use such force as is “objectively reasonable” under all of the circumstances. The standard that courts will use to examine whether a use of force is constitutional was first set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and expanded by subsequent court cases. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving.

The reasonableness inquiry in reviewing use of force is an objective one: the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them. The officer’s perception may be a consideration, but other objective factors will determine the reasonableness of force. These factors may include but are not limited to:

1. The severity of the crime(s) at issue;
2. Whether the subject poses an immediate threat to the safety of the officer(s) or others;
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight;
4. The influence of drugs/alcohol or the mental capacity of the subject;
5. The time available to an officer to make a decision;
6. The availability of officers/resources to de-escalate the situation;
7. The proximity or access of weapons to the subject;
8. The environmental factors and/or other exigent circumstances.

The officer will use a level of force that is necessary and within the range of “objectively reasonable” options. When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner. Reasonable and sound judgment will dictate the force option to be employed. Therefore, the department examines all uses of force from an objective standard rather than a subjective standard.

V. LEVELS OF RESISTANCE

It is important for officers to bear in mind that there are many reasons a suspect may be resisting arrest or may be unresponsive. The person in question may not be capable of understanding the gravity of the situation. Officers must consider several factors when dealing with a non-compliant subject. A subject may be noncompliant due to a medical condition, mental, physical, or hearing impairment, language barrier, drug interaction or emotional crisis, and have no criminal intent. This may not make the subject any less dangerous but it may require a change in tactics that will be more effective while maintaining officer safety.

1. **Compliant** – A person contacted by an officer who acknowledges direction or lawful orders given and offers no passive/active, aggressive, or aggravated aggressive resistance.
2. **Passive Resistance** – Behavior that is unresponsive to police verbal communication or direction (e.g., ignoring or disregarding police attempts at verbal communication or control; going limp; or failing to physically respond or move) and verbal resistance (e.g., verbally rejecting police verbal communication or direction; telling the officer that he or she will not comply with police direction, to leave alone or not bother him or her). Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitutes passive resistance.
3. **Active Resistance** – The subject's verbal or physical actions are intended to prevent an officer from placing the subject in custody and taking control, but are not directed at harming the officer. Examples include: walking or running away, breaking the officer's grip, and hiding from detection. Verbal statements, bracing, pulling away, or tensing alone do not constitute active resistance.
4. **Aggressive Resistance** – The subject displays the intent to fight or otherwise harm the officer or another person, but the subject's actions do not represent an imminent threat of death, serious bodily injury, or incapacitation. The aggression may manifest itself through a subject taking a fighting stance, punching, kicking, striking, or other actions which present an imminent threat of physical harm to the officer or another person.
5. **Aggravated Aggressive Resistance** – The subject displays the intent to fight or otherwise harm the officer or another person, and the subject's actions represent an imminent threat of death, serious bodily injury, or incapacitation of the officer or another person. These actions may include the imminent use of a firearm, a blunt or bladed weapon, or extreme physical violence.

VI. LEVELS OF FORCE

When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option is appropriate for the situation and bring it under control in a safe and prudent manner. Officers may use the amount of force that is no greater than that which is objectively reasonable to overcome resistance in order to take lawful police action. The level of force employed by an officer should correspond to the level of resistance demonstrated by the subject:

1. Compliant Subject
 - Officer Presence
 - Verbal Communications
 - Escorting without force
 - Handcuffing/Other Restraint Devices
2. Passive Resistance
 - Officer Presence
 - Verbal Communications
 - Escorting under force (including lifting or carrying subject)
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
3. Active Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (no bite)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)
4. Aggressive Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (with bites)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)
 - OC Spray
 - ECW/Taser
 - Hard Hand Tactics (strikes to major muscle groups, excluding head and neck)
 - Baton or Impact Weapon (strikes to major muscle groups, excluding head and neck)
5. Aggravated Aggressive Resistance
 - Officer Presence
 - Verbal Communications
 - Handcuffing/Other Restraint Devices
 - Baton (as escort tool)
 - Blocking
 - K-9 deployment (with bites)
 - Soft Hand Tactics (Takedowns, Pressure Points, Joint Locks, Grabbing)

- OC Spray
 - ECW/Taser
 - Low Lethality Shotgun
 - Hard Hand Tactics (including strikes to head and neck)
 - Baton or Impact Weapon (including strikes to head and neck)
 - Firearm use
- **Force Transition:** In use of force incidents, the officer will transition to differing degrees or types of force, including attempts to deescalate. Force situations are dynamic and require an officer to continually assess the suspect's actions to ensure a proportionate response. Officers shall modify their level of force in relation to the amount of resistance offered by a subject.
- Prior to the use of any approved weapon option, the officer, when practical, will communicate to other officers and the subject that the use of the option is imminent, and clearly and audibly announce the same to all personnel in the immediate area unless exigent circumstances prevent this from occurring.

VII. USE OF DEADLY FORCE

An officer may use deadly force upon another person only when it is objectively reasonable to:

1. Defend the officer or others from what is reasonably believed to be an imminent threat of death, incapacitation, or serious bodily injury;
2. Effect an arrest or prevent the escape from custody of a person whom they reasonably believe has committed, or attempted to commit, a felony involving the infliction or threatened infliction of serious physical injury; AND the officer reasonably believes this person still poses an imminent threat of death or serious physical injury to the officer or other persons. Where feasible, the officer should give warning of the intent to use deadly physical force.

See, Tennessee v. Garner, 471 U.S.1, 85 (1985): The United States Supreme Court ruled that the use of deadly force to prevent the escape of a suspected felon violates the Fourth Amendment prohibition against unreasonable seizure if used against an apparently unarmed, non-violent suspect (the case involved a burglary suspect). The Supreme Court further stated that deadly force may be used against an offender who has attempted or committed an offense involving the infliction or threatened infliction of great bodily harm. **Deadly force may not be used against an unarmed, non-violent, property crime offender.** The United States Supreme Court decision went on to state that when an officer is justified in the use of deadly force he will, **if feasible**, first give a verbal warning. (Example: "Police! Stop or I will shoot!")

3. Use of Firearm to Destroy Animals – Officers may use deadly force against an animal that represents an imminent threat to public safety, or as a humanitarian measure where the animal poses an imminent danger to public safety or to the officers' safety, or where the

animal is seriously injured after the officers have received authorization from the animal's owner (to the extent practicable) and the officer's supervisor.

4. Use of Department Weapons for Training and Other Purposes – Officers may discharge their firearms for the purpose of practice, firearms training, when on the police range or other established shooting ranges, or when authorized by the Chief of Police to participate in law enforcement competition events.

A. Elements of a Deadly Threat

1. **Ability** – Ability exists when a person has the means or capability to cause grave injury, serious bodily harm, incapacitation, or death to an officer or another. This may include, but is not limited to the following: the officer and the suspect's physical ability, size, age, strength, gender, and combative skill; the suspect's level of aggression, and any weapons in their immediate control.
2. **Opportunity** – Opportunity exists when a person is in a position to effectively resist an officer's control or to use force or violence upon the officer or another. Examples that may affect opportunity include relative distance to the officer or others, and physical barriers between the subject and the officer.
3. **Imminent Jeopardy** – Based upon all the facts and circumstances confronting the officer, the officer reasonably believes the subject poses an imminent threat to the life of the officer(s) or other third parties and the officer must act immediately to prevent death, incapacitation, or serious bodily injury.
4. **Preclusion** – All other lesser alternatives have been reasonably considered and exhausted prior to the use of deadly force, to include disengagement. Deadly force in response to the subject's actions must remain reasonable while based upon the totality of the circumstances known to the officer at the time force was applied.

B. Deadly Force Restrictions

1. Warning Shots Prohibited – Officers are prohibited from discharging their firearms as a means of warning or frightening a person.
2. Shooting at or from Moving Vehicles – Officers will not discharge a firearm either at or from a moving vehicle, unless it is absolutely necessary to do so to protect against imminent threat to the life of the officer or others. The imminent threat must be by means other than the vehicle itself. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. This prohibition includes, but is not limited to:
 - a. Officers will attempt to move out of the path of an oncoming vehicle, if possible, rather than discharge their firearms;
 - b. Officers will not intentionally place themselves in the path of an oncoming vehicle and attempt to disable the vehicle by discharging their firearms;

- c. Officers will not discharge their firearms at a fleeing vehicle (a vehicle moving away from the officer) or its driver or occupants.
3. Risk to Innocent Bystanders – When officers are about to discharge their firearms, they should be aware of their field of fire, including the backstop, so as to not unnecessarily create a substantial risk of harm to innocent persons. Officers are prohibited from discharging their firearms without specific target acquisition, including: into a crowd, into a building or through a wall, or where the subject is not clearly identified and it is unknown if there are other occupants present.
4. Drawing and Pointing Weapons – Officers are prohibited from drawing and pointing their firearms at or in the direction of a person absent an objectively reasonable determination that the situation may escalate to the point where deadly force would be authorized under this policy. When it is determined that the use of deadly force is not necessary, officers shall, as soon as practicable, secure or holster their firearms. It is the rule of this department that drawing a firearm and pointing it at a target is considered a reportable use of force.
5. Use of Firearms While under the Influence of Alcohol and/or Drugs – Officers shall not carry or use any firearms or weapons while consuming alcohol or impaired by drugs or any other medical condition that might interfere with their judgment or proficiency.
6. Security, Storage, and Safe Handling of Firearms – Officers shall be trained in accordance with Department guidelines, and shall obey all safety rules when handling any firearm or any other weapon. No person other than Syracuse Police Department Officers shall be permitted access to any department-owned firearm, with the exception of: police officers from other jurisdictions in the official performance of their duty; for repair or maintenance as approved by the department; or other circumstances with the express permission of the Chief of Police.

Officers will secure and store firearms, both on and off duty, in such a way as to ensure that no unauthorized person will have access to or gain control over the firearm. All Department firearms kept at home must be secured in a safe place inaccessible to family members, especially children.

Whenever an officer is in a departmental facility and removes his/her handgun or other weapon, the item must not be left in the open and must be secured so that it is not readily accessible to civilians, suspects, victims, or witnesses.

C. Less Lethal Force Restrictions

The following tactics of less lethal force may be permitted in circumstances only when deadly force is authorized by this policy:

1. Any chokeholds or neck restraints, with or without a device, that restricts a person's airway or inhibits the flow of blood;

2. Any use of flashlights, radios, or any other items not issued or trained specifically as defensive weapons;

In limited circumstances when a confrontation escalates suddenly, however, an officer may use any means or device at hand such as a flashlight, radio, and other issued equipment, to defend him/herself, as long as the level of defensive action is objectively reasonable given the existing circumstances.

D. Other Force Restrictions

1. Force shall not be used against persons in handcuffs, except as objectively reasonable to prevent imminent bodily harm to the officer or another person or persons, or, as objectively reasonable, where physical removal is necessary to overcome passive resistance.
2. Officers will not use force against persons who only verbally confront them and do not impede a legitimate law enforcement function.
3. Officers will not use force in a retaliatory fashion. Retaliatory force includes, for example, force in excess of what is objectively reasonable to prevent an escape to punish individuals for fleeing or otherwise resisting arrest; and force used to punish an individual for disrespecting officers.

VIII. IMPACT WEAPONS

Authorized impact weapons may be used only when an officer is confronted with aggressive resistance or aggravated aggressive resistance occurring or imminent against him/herself or another person.

1. The use of a baton or similar instrument to strike a blow to a subject's arms or legs will be considered use of less lethal force and may be used to confront aggressive resistance.
2. The use of any such items to intentionally strike a subject's head or neck is prohibited except where deadly force is authorized by this policy and may only be used to confront aggravated aggressive resistance.
3. Using a firearm as an impact weapon is not an authorized tactic as such use of a firearm could result in an unintentional discharge causing the death of suspects, bystanders, and/or officers.

IX. LOW LETHALITY SHOTGUN

The low lethality shotgun should only be used against persons who are armed with a weapon that could cause serious injury or death to themselves or others, or when a subject poses an imminent threat to the safety of the officer or other persons. This includes, but is not limited to: an edged weapon, club, pipe, bottle, brick, etc.

Officers are cautioned that the target area for impact munitions substantially differs from a deadly force target area. Instead of aiming for center mass of the body, the low lethality shotgun is aimed at abdomen, thighs or forearms. The head, neck, and groin should be avoided.

It may be used as an alternative to deadly force only when circumstances allow the officer involved to bring an incident to a safe conclusion without unnecessary risk to the officers.

1. Prior to firing a low lethality shotgun, when feasible, the officer will announce a warning to the subject and other officers of the intent to deploy the low lethality shotgun if the subject does not comply with commands.
2. When fired at a distance of five yards or greater, the low lethality shotgun will be considered a less lethal option.
3. When fired at a distance less than five yards, the low lethality shotgun will be considered a deadly force option.
4. Officer shall give the subject a reasonable opportunity to voluntarily comply.
5. Two officers must be present if a low lethality shotgun is deployed.

Restrictions:

The low lethality shotgun will not be used in the following circumstances:

1. Against persons who are holding a firearm unless there are compelling reasons to do so which can be clearly articulated.
2. In a civil unrest situation unless authorized by a lieutenant or above, and each application must have a specific targeted individual who presents an imminent threat; and it must be reasonably assured that other individuals in the crowd who pose no threat of violence will not be struck by the munitions.
3. When the subject is visibly pregnant, unless deadly force is the only other option.

The low lethality shotgun should not be used in the following circumstances unless there are compelling reasons to do so which can be clearly articulated:

1. When the subject is at the extremes of age (elderly and young children) or physically disabled;
2. When a subject is in an elevated position where a fall is likely to cause serious injury or death;
3. When subject is handcuffed or otherwise restrained;
4. As a breaching tool.

X. OLEORESIN CAPSICUM (OC) SPRAY

The use of Purified Oleoresin Capsicum aerosol spray (Pepper Spray) is an option granted to officers when a subject is demonstrating aggressive or aggravated aggressive resistance.

1. **Verbal Warning:** If an officer reasonably determines that the use of pepper spray is necessary s/he must, where reasonable, issue a warning that pepper spray will be imminently deployed if the subject fails to cooperate.
2. **Consider Less Intrusive Alternatives:** Before an officer resorts to a justified use of pepper spray s/he must consider the availability and efficacy of less intrusive alternatives.
3. **Aggressive Resistance:** In order for the use of pepper spray to be justified and necessary, an officer must possess a reasonable belief that the subject is exhibiting signs of aggressive resistance.
4. **Restrictions:**
 - a. **Risk Groups:** Officers should not deploy pepper spray where a member of a “risk group” is the intended target. These include children, the elderly, women believed to be pregnant, individuals who are blind, and individuals appearing in frail health or having cardiovascular or respiratory conditions.
 - b. **Indiscriminate Groups/Crowd Control:** Officers should not deploy pepper spray for the purposes of generalized crowd control nor should they direct pepper spray towards an indiscriminate group of people.
 - c. **Small, Contained Areas:** Officers should not deploy pepper spray in small contained areas such as automobiles and closets.
 - d. **Passive Resistance:** Under no circumstances should an officer use pepper spray against an individual who is passively resisting.

Note: OC spray may be less effective or ineffective when deployed against subjects who are intoxicated, drugged, or otherwise irrational or emotionally disturbed. In such circumstances, other forms of force may be more appropriate.

XI. ELECTRONIC CONTROL WEAPON (ECW or “TASER”)

A. Wearing of ECW

1. ECWs must be carried in a Department approved holster, attached to the officer's gun belt, or secured to the officer.
2. ECW must be worn on the officer's non-dominant side in cross-draw position.

B. Use of ECWs

1. *Deployment:* ECWs should be used only against subjects who are exhibiting aggressive or aggravated aggressive resistance.
2. ECWs shall not be used:
 - a. As a pain compliance technique against a passive subject or active resistor whose actions are not directed at harming the officer or another person. Active resistance includes pulling away from an officer's grasp or running away from an officer and do not justify the use of an ECW under this policy;
 - b. On children, the elderly, obviously pregnant females, frail individuals, blind individuals, against subjects operating or riding on any moving device or vehicle where the subject may fall while it is in motion, against individuals in a body of water of sufficient depth to cause drowning, in situations where the subject may fall from an elevated surface, or when the officer knows that the subject suffers from a serious medical condition;
 - c. On handcuffed subjects unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others;
 - d. In a punitive or coercive manner to obtain information from an uncooperative person;
 - e. In drive-stun (touch-stun) mode as a prod or escort device;
 - f. To rouse unconscious, impaired, or intoxicated individuals;
 - g. When combustible gases or flammable liquids are present;
 - h. When a K-9 is in the process of apprehension, an ECW will not be deployed;
 - i. For demonstration purposes unless specifically authorized by the Chief of Police.

Warnings

A warning should be given to a subject before deploying ECW unless doing so would place any person at risk. Warnings must include a verbalization, and may also include display, laser painting, arcing, or a combination of these tactics.

An officer is not required to give a verbal warning if the warning would compromise the safety of the officer or others.

Officers shall make all reasonable efforts, when feasible, to warn other officers that a deployment is about to occur.

Multiple Applications

Officers should not intentionally use more than one ECW at a time against a subject. Unless faced with exigent circumstances, no more than one officer should deploy an ECW against an individual at the same time.

Extended Durations

Officers should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Officers should give a new warning for every subsequent cycle. Officers should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury.

Any subsequent ECW applications should be independently justifiable, and the risks should be weighed against other force options.

In determining the need for additional cycles, officers should take into account and beware that a person subjected to an ECW cycle may not be able to respond to commands during or immediately following exposure.

SPD and this policy recognizes, however, that multiple applications may be necessary to gain or maintain control of a combative individual, particularly where back-up officers are unavailable.

Drive Stun Use

ECWs shall be used in drive-stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure in close quarters to gain separation between officers and the subject so that officers can consider another force option.

Targeted Area

Officers will make all reasonable efforts to avoid intentionally targeting a person's head, neck, eyes, chest, or genitalia.

The target area for frontal probe deployment is lower center mass (below the chest) and below the neck for back shots.

ECW use on Animals

ECWs can be effective against aggressive animals. This policy specifically permits use of an ECW as a tool for officers to use when confronted with an aggressive animal.

(For additional information on care and maintenance, training, post-deployment procedures, reporting and accountability, see Volume 1, Article 4, Section 6.00A)

XII. DUTY TO INTERVENE AND DUTY TO REPORT

Any officer present and observing another officer using force that is beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, safely intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.

Whether or not an officer intervened, and whether or not an officer was present, an officer shall promptly report to a supervisor any use of force that an officer becomes aware of and believes may be beyond that which is objectively reasonable.

XIII. MEDICAL AID

Whenever force is used on a person, the officer shall immediately evaluate the need for medical attention for the person upon whom the force was used. It is the officer's responsibility to arrange for such attention by requesting emergency medical services when the person has sustained a visible injury, complains of injury or discomfort, or requests medical attention. If the person refuses to be treated, the person must sign the refusal statement on the emergency medical service's Pre-Hospital Care report form. If the person refuses to sign, the refusal must be witnessed on the form. The subject's acceptance or refusal of medical care shall also be documented in the officer's report.

XIV. DE-ESCALATION & ASSESSMENT OF OPTIONS

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest, or to protect the officer, other officers, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of Force Options. Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

Tactical withdrawal is a reasonable option when considering officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be appropriate responses to a situation, and should always be considered.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that officers under their supervision perform to a standard. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where police use of force is probable.

Appendix II

Recommended Policy on Conducting Eyewitness Identifications

The following policy was developed by The Daigle Law Group, LLC and provided to the Syracuse CRB upon request. The CRB extends its appreciation to Eric Daigle for his assistance and guidance in policy development.

A Model Policy for Conducting Eyewitness Identifications

Proposed by the Syracuse Citizen Review Board

I. PURPOSE

The purpose of this directive is to establish the proper guidelines and procedures for obtaining reliable eyewitness identifications.

II. POLICY

Syracuse Police Department (“Department”) personnel shall strictly adhere to this directive in order to maximize the reliability of identifications, minimize unjust accusations, and conform to established legal procedures.

III. DEFINITIONS

Eyewitness: A person who observes another person at or near the scene of an offense.

Photo lineup: A procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

Live lineup: A procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

Show up: A procedure in which a single person suspected as a perpetrator of an offense and maybe others are presented one at a time, to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator. A show up is also known as a Field Identification and/or One on One Identification. Show ups typically occur shortly after the commission of a crime and/or when a suspect is apprehended at or near the crime.

Field View: A procedure wherein the eyewitness views a group of people in a public place on the theory that the suspect may be among the group. A field view differs from a show up in that it may be conducted well after the commission of the crime may be conducted with or without a suspect in the group.

Identification procedure: Either a photo lineup or a live lineup.

Filler: Either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

Sequential Photo Lineup or Live Lineup: Whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live

lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time.

Double Blind Procedure: The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense.

Blind Administration (other than Folder Shuffle, below): The conduct of an identification procedure in which the administrator of the procedure is unaware of which photograph the witness is viewing during the procedure. This procedure is intended to ensure that the eyewitness does not interpret a gesture or facial expression by the officer (administrator) as an indication as to the identity of the suspect.

Folder Shuffle Method: When the conduct of the Double Blind Procedure is not practicable, the photo lineup shall be conducted by inserting each of the required photographs into separate, unmarked folders, shuffling them and allowing the eyewitness to remove the photographs, one at a time to view them. A computer program in which a software program is used to administer any lineup, wholly or in part, shall comport to the procedures contained within this policy. If the eyewitness is able to make an identification of a photograph that person should sign and date the identified photograph.

Lap: A single completed cycle to view all the photos in a photo lineup or all persons participating in a live lineup.

Confidence Statement: A statement from the victim/witness, in his or her own words, on how certain they are of the identification which is taken immediately after identification is made. The *Confidence Statement* should be recorded in writing and signed by the victim/witness or otherwise memorialized.

A. Photo and Live Lineup – General

1. Prior to the Identification Procedure the eyewitness shall be instructed on the procedures below using the Syracuse Police Department Witness Instruction Form for Eyewitness Identification:
 - a. That the eyewitness will be asked to view an array of photographs or a group of persons, and that each photograph or person will be presented one at a time;
 - b. That it is as important to exclude innocent persons as it is to identify the perpetrator;
 - c. That the persons in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair can change;
 - d. That the perpetrator may or may not be among the persons in the photo lineup or live lineup;
 - e. That the eyewitness should not feel compelled to make an identification;

- f. That the eyewitness should take as much time as needed in making a decision;
 - g. That the police department will continue to investigate the offense regardless of whether the eyewitness makes an identification;
 - h. That, after the identification procedure, he/she will be asked how certain he/she was that the perpetrator was or was not in the lineup;
 - i. That even if the eyewitness is able to make an identification, he/she will be asked to finish the procedure by looking at all the photographs or all of the individuals until he/she has completed looking at each one;
 - j. That if there are other witnesses, the eyewitness must not indicate to them that he/she has or has not made an identification of a suspect;
 - k. That the officer administering the procedure either does not know whether any of the people in the photographic array or in the lineup were involved in the crime or does not know the sequence in which the eyewitness is viewing the photographs;
 - l. That if the witness selects a person or photograph he/she will be asked to provide a statement about the identification. If the eyewitness does not recognize someone, he/she must say so; and
 - m. That if the eyewitness does not select someone, the police will continue to investigate
2. Any Individual Conducting or Assisting in the Identification Procedure:
- a. Shall not say anything to the eyewitness regarding the position in the photo lineup or the live lineup of the person suspected as the perpetrator.
 - b. Shall not say anything to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator.
 - c. Shall not provide any information concerning a person the eyewitness identifies as the perpetrator.

B. Photo Lineup

1. When Conducting Identification of Suspects by Photograph, the Following Procedures Should be Followed:
- a. The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense, i.e. double blind procedure, except that, if it is not practicable to conduct a photo lineup in such a manner, the photo lineup shall be conducted by the use of a folder shuffle method, computer program, or other comparable method so that the person conducting the procedure

does not know which photograph the eyewitness is viewing during the procedure.

- b. The witness shall be shown a photo lineup that includes at least five fillers, in addition to the suspected perpetrator.
 - c. The photographs shall be either all color or all black and white.
 - d. There shall not be two different photographs of the same suspect in the group.
 - e. Witnesses should never be shown only a photograph of the suspect.
 - f. The photographs shall be presented sequentially so that the eyewitness views one photograph at a time and the administrator shall record the order in which the folders were presented.
 - g. Each witness should view the photographs alone so that other witnesses will not be influenced or open to suggestion. When possible the suspect should be placed in a different position in the sequence for each witness.
 - h. The photographs shown to the witness should be selected to assure fairness and impartiality to the suspect. The fillers should generally fit the description, such as race, sex, facial features, profile, height, weight, build, clothing, etc. of the person suspected as the perpetrator, so that the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out.
 - i. No writings or information concerning any previous arrest of the person suspected as the perpetrator shall be visible to the eyewitness.
 - j. All photographs shown to witnesses should, if possible, be retained for any subsequent criminal proceedings.
 - k. The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure.
 - l. If the eyewitness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers included in the photographs in which the person suspected as the perpetrator is included shall be different from the fillers used in any prior lineups, and steps must be taken to ensure that the suspect does not stand out in the new lineup.
 - m. Should the witness request a second “lap” the lineup will be presented in the same ordered sequence as the initial lap.
2. Administration of Double Blind Photographic Lineups
- a. No information regarding the identification of the suspect will be revealed to the person administering the lineup.

- b. The lineup administrator will conduct the lineup following the sequential protocol, numbering each photo with the order in which it was presented to the witness.
- c. The assigned investigator or anyone with knowledge of the suspect should not be allowed in the room at the time of the lineup administration.
- d. The lineup administrator should give instructions to the witness by verbally reading the Witness Instruction Form to the witness and determine if they understand. The witness will then be asked to sign and date the form.
- e. The lineup administrator will avoid any actions or comments that could be construed as an attempt to influence a witness to select a particular photo or to validate, invalidate or reinforce a selection that has been made by a witness.
- f. If the witness identifies someone, the lineup administrator will then ask the witness to describe in their own words how confident they are of the identification.
- g. Even if someone is identified, all of the photographs in the series will be shown.
- h. The lineup administrator shall not provide any feedback about the lineup results to the witness.
- i. Once the sequential lineup process is complete, the lineup administrator should generate a report with the results of the sequential lineup, initial the back of each photograph for lineup verification in court and preserve the photo lineup as evidence. The original photographs should be secured as any other evidence with the originals being maintained as evidence and one complete copy placed into the case file.
- j. Laps – The administrator should not offer nor suggest that the eyewitness engage in another “lap” or viewing of the photographs. If the eyewitness should request a second lap of the photographs, one additional lap is permissible but in any event should not exceed two laps. If a witness requests a second lap, the entire series of photographs must be viewed by the witness in the same order in which they were shown originally. The witness must not be permitted to view just one photograph of the selection even if he or she requests to see just one.

3. Blind Folder Shuffle Procedure

- a. When implementation of the Double Blind Photographic procedure is not practicable due to lack of manpower resources, limited number of officers on duty, a major crime where many officers are aware of the identity of the suspect or any other such circumstance, a Blind Folder Shuffle must be used.
- b. The photograph of the suspect and the five or more fillers are each placed into separate, unmarked folders and shuffled by the administrator, who will number each folder according to the sequence in which they were shown to the witness.

- c. The eyewitness should be instructed to remove each photograph, one at a time and view the single photograph. At no time should the lineup administrator be able to determine which particular photograph is being viewed by the witness at a particular time.
- d. If the blind method is not practicable, then the administrator must position himself or herself so as not to be able to give cues, consciously or unconsciously to the eyewitness such as his or her standing somewhere behind the eyewitness.
- e. When the eye witness concludes viewing a particular photograph, it should be placed back in the folder and returned to the administrator before viewing the next one.
- f. Even if the eyewitness identifies a suspect part way through the entire series, he/she should be instructed to continue viewing the remaining photographs.
- g. If the eyewitness requests a second lap, the folders should be shown to the witness in the same manner and in the same sequence as the first lap.

C. Live Lineups

1. In Order to Assure a Fair Lineup the Following Procedures Should be Followed:

- a. Before a suspect participates in a lineup, he or she must be informed of his/her right to have an attorney present at a lineup and of his/her right to be provided with an attorney without costs if he/she is unable to afford such legal counsel. Unless a knowing and voluntary waiver is made, in writing if possible, no lineup may proceed without an attorney present.
- b. A suspect cannot be compelled to participate in a lineup without probable cause to arrest. If the suspect refuses to participate in a lineup, the officer should contact his/her State's Attorney office.
- c. At least four (4) fillers who fit the description of the suspect as provided by the eyewitness(es) shall be included in the live lineup, in addition to the suspected perpetrator.
- d. There should be similarity between the accused and other persons in the lineup with regard to height, body type, and coloration of hair and skin.
- e. There should be a similarity in dress between the accused and the other persons in the lineup.
- f. If the accused is to wear particular clothing as a demonstration, the others in the lineup must be requested to wear the same clothing.
- g. If the accused is requested to speak or make gestures or movements for identification purposes, the other persons in the lineup must be asked to speak the

same words, or perform the same gestures or movements, in the same manner.

- h. If more than one witness is to make an identification from the lineup, each witness must do so separately, and no witness should be allowed to speak to another witness until all the witnesses complete their identification.
- i. No one must indicate to a witness, in any manner, which of the persons in the lineup is the accused or which person the police believe to be guilty.
- j. All line up participants shall be out of view of the eyewitnesses at the beginning of the identification procedure.
- k. The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure.
- l. All persons in the lineup should carry cards that identify him or her by number only and they should be referred to only by that number.
- m. The administrator of the lineup should carefully instruct the eyewitness by reading directly from the instruction form. The eyewitness should be asked to sign the form indicating that they understand the instructions and the administrator will sign and date the form.
- n. If the eyewitness makes an identification of a suspect, a statement must be taken as to the certainty of that identification.

D. Attorney's Role

- 1. The purpose of an attorney's presence is not to interfere with the conduct of the photo lineup or live lineup, but to observe the procedures used by the law enforcement officers, so that in any subsequent court proceedings the accused will have a lawyer as a witness to any unfair suggestive procedures that may have been employed during the photograph or live lineup.
- 2. The lawyer's role at a photo or live lineup is limited to observing the identification procedure, and advising the client, when in custody.
- 3. The attorney shall initial photocopies of all photographs used in the photo lineup.
- 4. Under no circumstances may a lawyer interfere with the conduct of the lineup procedures.
- 5. The attorney may not properly advise a client to refuse to participate in a lineup, a voice test, a handwriting sample, to wear certain clothing, to assume a stance, to walk, to gesture, or to cooperate in other similar physical demonstrations.

6. The officer in charge of the case shall ensure that attorneys witnessing the identification procedures are provided with a document outlining the attorney's role at the photo or live lineup.

E. Responsibilities of the Officer in Charge of the Case

1. The officer in charge of the case must advise the accused of the right to have an attorney present at the lineup.
2. The officer in charge of the case must find out if the accused has an attorney. If so, the officer in charge of the case must contact that attorney and advise the attorney of the time and place of the lineup.
3. The officer in charge of the case shall ensure that attorneys witnessing lineups are provided with a document outlining the attorney's role at lineups.

F. Refusal of Detainee to Stand in a Line Up

1. If a detainee refuses to stand in a lineup, the following procedures shall be followed:
 - a. A determination shall be made as to the availability of a photograph of the detainee suitable for use in photograph identification.
 - b. Photograph identification can be used in lieu of a lineup if the subject refuses to participate in a lineup and, by the subject's action, would seek to destroy the value of the identification.
 - c. Regardless of whether a photograph is available or not, the Patrol Unit Lieutenant shall be contacted for the number of the on-duty assistant state's attorney. The state's attorney contacted shall be informed if a photograph of the detainee is available or not and shall be informed that the detainee refuses to participate in a lineup. Department members and detention personnel shall be guided by the advice of the state's attorney.

G. Administration of Show Ups

1. Generally, no detainees shall be taken back to the scene of a crime to have the complainant identify the suspect. They should never be transported to a police station absent probable cause to arrest. Suspects should be detained at the scene of the stop and the witness(s) transported to that location to view the suspect.
2. A single confrontation for identification between an accused and an eyewitness, not as part of a lineup, should only be employed where there is good and sufficient justification for not setting up a formal lineup.
3. Exceptional circumstances, which would justify a one-on-one confrontation, are:
 - a. Where the accused requests an immediate confrontation in order to clear the

accused. In such cases it should be made clear to the accused that the accused does not have to confront the eyewitness but that police will accommodate the request if that is what the accused desires.

4. If the police deem a confrontation inadvisable at that time, there is no duty on the part of the police to arrange such a confrontation merely because it is requested by the accused.
5. Showup identification procedures are employed soon after a crime has been committed, when a suspect is detained at or near the crime, or under exigent circumstances. When exigent circumstances necessitate the employment of an immediate confrontation, the procedure shall be conducted in a non-suggestive manner.
6. Every showup must be as fair and non-suggestive as possible. If the suspect is handcuffed, he/she should be positioned so that the handcuffs are not visible to the eyewitness. Unless necessary for the safety of the officers or others the suspect should not be viewed when he/she is inside a police car, in a jail cell or in jail clothing.
7. Detaining a person who fits the description of a suspect in order to arrange a showup is lawful when the officer has reasonable suspicion that a suspect has committed a crime.
8. A suspect should be viewed by one eyewitness at a time out of the presence and hearing of other eyewitnesses. Witnesses who have viewed a suspect should not be permitted to communicate with those who have not.
9. Officers must not say nor do anything that would convey to the eyewitness that they have evidence of the suspect's guilt.
10. If an eyewitness makes identification, a statement should be obtained from the eyewitness including the level of certainty of that identification.

H. Field Views

1. Employing a procedure known as Field View may be appropriate depending on the facts of an individual investigation.
2. The eyewitness may be accompanied to a public location where the suspect may or may not be present and is then permitted to view a group of people in an effort to identify a suspect. The officer or investigator may not direct the eyewitness's attention to any particular person, make any suggestions to the eyewitness or otherwise attempt to influence the witness's ability to observe the group.

I. Written Record

1. A written record of the identification procedure shall be carefully made on the Identification Procedure Record and Form. The record shall include the following:
 - a. All identification and nonidentification results obtained during the identification

procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection.

- b. The names and addresses of all persons present at the identification procedure.
- c. The date and time of the identification procedure.
- d. In a photo lineup, the photographs presented to the eyewitness or copies thereof.
- e. In a photo lineup, identification information on all persons whose photograph was included in the lineup and the sources of all photographs used.
- f. In a live lineup, identification information on all persons who participated in the lineup
- g. In addition to written record, all live lineups shall be photographed. The name, rank, and assignment of the officer taking the photograph shall be entered on the identification record and become a permanent part of the file. The officer in charge of the case shall be responsible for the photographing of lineups conducted at all other locations.
- h. The Syracuse Police Department shall maintain as a separate and distinct record a set copies of Standard Identification Forms and records completed. The form shall be retained by calendar year for the purpose of facilitating analysis and reporting by outside persons or agencies tasked with same.