

**SYRACUSE**

**CRB**

**CITIZEN REVIEW BOARD**

**Annual Report  
2016**



# TABLE OF CONTENTS

Summary of 2016 Operations .....	1
Complaint Intensity Index .....	2
Mission & Objectives .....	3
Board Members & Terms .....	4
Filing a Complaint with the CRB .....	4
Public Meetings .....	5
Outreach .....	5
Operations.....	5
Board Training & Development .....	6
Hearings & Disciplinary Recommendations .....	6
Disciplinary Action Rate .....	7
Responses from Chief of Police regarding Sustained Complaints.....	7
Policy & Training Recommendations .....	9
Case Summaries of Sustained Findings.....	16
Budget.....	20
Statistics .....	21
Appendix I: Proposed Use of Force Policy .....	30
Appendix II: Proposed Eyewitness Identification Policy .....	47

## SUMMARY OF 2016 OPERATIONS

The close of 2016 marked another active year of oversight by the Syracuse Citizen Review Board. The following information provides a summary of the CRB's 2016 operations. A more detailed discussion of the data is available in the body of this report:

- 109 complaints received
- 25 hearings held
- **The annual Sustain Rate for 2016 was 12.84% (of the 109 complaints received, 14 resulted in one or more sustained findings). The Sustain Rate for 2015 was 17.5%.**
- There was a significant decline in 2015 than 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 previously released special report).
  - In 2016, the CRB received 33 complaints of excessive force and sustained 7 (21%) excessive force allegations.

2016 CRB Disciplinary recommendations:

- 7 recommendations for retraining
- 8 recommendations for counseling
- 6 recommendations for written reprimand
- 2 recommendations for suspension
- 1 recommendation for loss of one day paid vacation
- 1 recommendation for two furlough or vacation Days
- 0 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 no responses from the Chief of Police to the 14 hearings in which a CRB panel sustained an allegation. The CRB v. Syracuse Police Department was still pending in 2016 before the Supreme Court of the State of New York Appellate Division, Fourth Department with an Opinion and Order entered on March 24, 2017.

- 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 70 instances of excessive force sustained by the CRB and 13 distinct officers with two or more sustained allegations of excessive force. For the complaints included in the chart, the CRB is unable to provide information related to the discipline imposed by the police department.

**Complaint Intensity Index Table**

<b>Number of Officers</b>	<b>Number of Complaints Filed with at least one Sustained Finding by the CRB*</b>
7	9
3	8
7	7
11	6
12	5
24	4
18	3

\*Based on complaints filed with and investigated by the CRB between January 1, 2012 and December 31, 2016.

## **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.syr.gov.net/crb\\_Members.aspx](http://www.syr.gov.net/crb_Members.aspx).

### **Members of the Syracuse Citizen Review Board** as of December 31, 2016

#### **Mayoral Appointees**

Ms. Diane Turner - term expires December 2016\* Held over until December 31, 2017  
Open Seat - term expires December 2017  
Open Seat - term expires December 2018

#### **District Councilor Appointees**

Open Seat - 1<sup>st</sup> District - term expires December 2017  
Open Seat - 2<sup>nd</sup> District - term expires December 2018  
Mr. Caleb Duncan - 3<sup>rd</sup> District - term expires December 2018  
Ms. Ruth Kutz, Board Vice-Chairman - 4<sup>th</sup> District - term expires December 2017  
Mr. Louis Levine - 5<sup>th</sup> District - term expires December 2016\* Held over until December 31, 2017

#### **At-Large Councilor Appointees**

Ms. Hatisha Holmes – term expires December 2018  
Ms. Mallory Livingston, Board Chairman - term expires December 2018  
Mr. Clifford Ryans - term expires December 2016

For a variety of reasons including professional advancement and personal situations, 2016 saw the resignation of eight Board members. We thank the following for their willingness and ability to serve the City of Syracuse through the Citizen Review Board. Their contributions are appreciated:

Mr. William “Bill” Barber – 3<sup>rd</sup> District Appointee  
Mr. David Barrette – Mayoral Appointee  
Mr. Douglas Bullock – At-Large Appointee  
Mr. Peter Christiana – 1<sup>st</sup> District Appointee  
Ms. Carole Horan – 2<sup>nd</sup> District Appointee  
Mr. Joseph Masella – Mayoral Appointee  
Ms. Leah Moser – At-Large Appointee  
Ms. Laura A. Walker – Mayoral Appointee

## **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.syr.gov.net/CRB.aspx](http://www.syr.gov.net/CRB.aspx). The CRB office telephone number is 315-448-8750. The CRB can be reached by e-mail at [crb@syr.gov.net](mailto:crb@syr.gov.net).

## **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 2016, the Board processed on average nine complaints per month depending on the current case load.

## **OUTREACH**

The CRB legislation requires the agency to conduct at least five outreach events annually, one in each Council District. During 2016, the CRB hosted outreach events at a Dunkin' Donuts, one housing complex and city branch libraries. The 2<sup>nd</sup> District Outreach committee meeting was Monday, August 22 at Dunkin' Donuts, 1001 West Genesee Street with one person from the public present; the 3<sup>rd</sup> District Outreach Committee Meeting was Tuesday, September 13 at Brighton Towers Apartments with 3<sup>rd</sup> District Common Councilor Susan Boyle and 16<sup>th</sup> District County Legislator Monica Williams attending; the 4<sup>th</sup> District Outreach Committee Meeting was Tuesday, October 11 at Beauchamp Branch Library with ten people from the public present; the 1<sup>st</sup> District Outreach Committee Meeting was Wednesday, November 9 at White Branch Library with one person from the public present. The 5<sup>th</sup> District did not have a meeting. This was not realized until the Holiday season was upon us. As a result, the 2017 schedule was established for presentation at the first Board meeting of the year. Each District will have two meetings.

Community events at which the CRB was present or represented included Juneteenth, CNY Pride Festival, Senator David Valesky's Community Resources Fair at Southwest Community Center, Coffee and Conversation at Southside Interfaith CDC, the Near West Side Initiative Block Party at Skiddy Park, Project X Nonviolence CommUNITY & COPS event at the Thornden Park Amphitheatre and the Westcott Street Cultural Fair.

Community Outreach and Public Education is achieved by having CRB information – brochures, complaint packets (complaint form, HIPAA form, Legal Assistance Addresses, Notice of Claim form) and magnetic information cards – available for the taking while interacting with the public and police depending on the event. Each event provided an opportunity to introduce the CRB process

to the public and respond to any questions. Board members now have name badges to wear while attending outreach events. The badges have the Board member's name and by whom they are appointed (District/At-Large Councilors or Mayor Stephanie Miner).

## **OPERATIONS**

Between January 1 and December 31, 2016, the CRB held 11 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. The CRB received a total of 109 complaints in 2016 and completed processing of 76 cases.

## **CHANGES IN ADMINISTRATORS**

Mr. Joseph L. Lipari assumed the position of Administrator on May 16, 2012 to bring the Syracuse Citizen Review Board forward. Mr. Lipari brought a unique blend of expertise in police accountability and reform, community organizing and the investigation of police misconduct. He is so highly respected among his peers in civilian oversight of law enforcement that in 2015 he was selected to travel to Russia as part of the Eurasia Foundation's Social Expertise Exchange (SEE) Program. The foundation collaborated with NACOLE (National Association for Civilian Oversight of Law Enforcement) to identify practitioners in the field who can share best practices with their Russian counterparts. The foundation sponsored an eight-person United States–Russia working group on Rule of Law that focused on developing civilian oversight in both Russia and the United States. In May 2016, Mr. Lipari left the Syracuse CRB to take a position as a Senior Policy Manager for the Office of the Inspector General for the New York Police Department. We are forever grateful for the work he did in Syracuse and work to build on the foundation he helped establish.

Mr. David L. Chaplin II, Esq. came to the CRB from the Corporation Council Office. In December 2016, he left to pursue other opportunities as an attorney in the labor field.

Ms. Ranette L. Releford, MPS came to the CRB from the Corporation Council Office in June 2017 and is the current CRB Administrator.

## **BOARD TRAINING AND DEVELOPMENT**

Open Meetings Law Training – The Onondaga County Jail Oversight Committee invited the CRB and staff to attend training on the Open Meetings Law. Robert J. “Bob” Freeman, Executive Director of the New York State Committee on Open Government and expert in open meetings law conducted the training Monday, August 1, 2016 at the Tech Garden. Two Board members and the CRB staff attended. The Open Meetings Law will be a regular portion of the CRB Annual Training Day.

Ms. Ruth Kutz experienced a ride-along with Syracuse Police Department personnel.

## 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 2016, the CRB held 26 hearings to examine a variety of complaints. 14 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 14 cases. The CRB's fourth quarter disciplinary recommendations included suspensions without pay, counseling/verbal warnings, written reprimand placed in personnel file for 90, 60 or 30 days, retraining, restitution, loss of two furlough or vacation days, and loss of one day of paid vacation.

During 2016, the CRB held 25 hearings. 14 of the hearings resulted in sustained findings against one or more officers. For the year, the Board made 7 recommendations for retraining, 8 recommendations for verbal warning, 6 recommendations for written reprimand, 2 recommendations for suspension, and 0 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 2016 was 12.84%.** The sustain rate is calculated by dividing the number of hearings that resulted in sustained findings (14) by the number of complaints received in the year (109).

## **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 14 cases involving sustained findings by the CRB in 2016, the Chief of Police provided no responses to the cases. Based upon the lack of responses received from the Chief's in 2016 because of the pending the lawsuit related to the Chief's refusal to provide required responses to CRB Findings and Recommendations in cases that exceed the 60- day time frame, 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 timeframe would not be a problem. The CRB operated consistent with that notion for almost four years. It should be noted that the 60-day timeframe 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 timeframe, 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 timeframe would not be a problem, Corporation Counsel's office had never previously objected to the CRB holding a hearing beyond the 60-day timeframe despite the fact that many hearings were held after the 60-day timeframe 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 timeframe 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 timeframe. 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 timeframe, 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 timeframe 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 was scheduled to appear before the court on May 5, 2016.

Judge Spencer J. Ludington signed an order on April 29 stating Corporation Counsel's office will have 30 days to respond. Ten days after that, a court date will be set.

The CRB filed its Brief regarding our injunction to ask the Court to compel the Chief to provide the necessary documents outside the 'discretionary' 60-day window in effort to allow the CRB to perform its mandated functions for complex cases where more investigatory time is needed. Corporation Counsel submitted their Answer, after losing on their Motion to dismiss on grounds of Standing & Capacity that they planned to appeal, to an Article 78 Petition and Declaratory judgment motion on June 2, 2016. The Court scheduled a date for both parties to have an appearance on position of relief where the judge would either make a decision immediately after oral arguments (day of) or reserve his decision whereby he would render a decision after that hearing date.

On July 28, 2016, Judge Spencer Ludington ruled that Chief Frank Fowler must inform the CRB what discipline, if any, he imposed on officers accused by the CRB of misconduct, even in cases that take longer than 60 days to complete. Judge Ludington also issued a declaratory judgment clarifying the CRB's Ordinance. It was anticipated that the City will appeal both the judge's ruling and his earlier decision that established the CRB's standing to sue.

The appeal was scheduled for oral argument in Rochester Wednesday, January 11, 2017.

Messrs. Chaplin and Barrette and Ms. Livingston met with Councilor Steven Thompson, Chief Frank Fowler and Mr. William Ryan from Mayor Stephanie Miner's office in an attempt to settle the lawsuit with the City. They agreed that a good approach for resolving the 60-day time limit would be to amend the by-laws to require that the Administrator provide written notice to the Chief and a revised date for completion on any case that is going to go beyond the 60 days and include a brief statement as to why. If the need for another extension occurs, the Administrator would simply repeat the process before the revised date passes. This retains our ability to hear a case after the 60 days have past. As a courtesy, we simply need to let the Chief know when a case is taking longer than usual.

Thereafter, the CRB received a new request to consider voluntarily agreeing to amend the Ordinance relating to our ability to sue in the future by forfeiting our standing to sue. **The Board voted unanimously against removing the right to sue.**

**“P.S. THE DECISION WAS UPHOLD IN 2017”**

## **COMMON COUNCIL AMENDMENT**

Common Councilor Steven Thompson sought to amend Section 8 of the City of Syracuse’s Local Law No. 1 (2012), that amended Local Law No. 11 (1993), “Legal Representation of the Board,” to add “In accordance with the City Charter and applicable Local Law, nothing in the Local Law shall be construed to or shall establish a power of the CRB in initiate, join, participate or commence any legal action or proceeding.” As stated, the proposed amendment restricts the Board’s authority to initiate any legal action and issue subpoenas. Councilor Thompson stated that his intention was to keep the CRB from suing the police department. He held the amendment until it was discussed at a Public Safety Committee meeting. Councilor Thompson officially withdrew the legislation barring the CRB from taking legal action.

## **2016 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.

## **REAFFIRMATION OF 2012, 2013, 2014 & 2015 POLICY RECOMMENDATIONS**

### **2015 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:

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.<sup>1</sup>
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).

## 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.<sup>2</sup> 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);<sup>3</sup>
  - 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;<sup>4</sup>

<sup>1</sup> 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>

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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

- 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.<sup>5</sup>
- 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 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.<sup>6</sup>

2. ***Commence Development of a Comprehensive Body Camera Policy*** ready to be implemented upon the eventual acquisition of body cameras.<sup>7</sup> 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.<sup>8</sup> 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

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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.

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 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.”

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 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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<sup>9</sup> 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](http://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](http://www.cops.usdoj.gov).

<sup>10</sup> DOJ finding letter to the City of Austin, pg. 4.

<sup>11</sup> DOJ finding letter to the City of Austin, pg. 6.

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).

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 SUSTAINED FINDINGS**

Out of the complaints processed during 2016, 14 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. 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 Secure Entry Sustained against one Officer**

A male complainant returned to his apartment at a public housing complex to find the front door unlocked and the rear door slightly ajar. He contacted police and learned that they had been to his apartment to serve a warrant. The complainant's address was not listed on the warrant. Officers had a warrant for a wanted individual with one address. The victim provided the complainant's address as a potential address for the wanted individual for which the police responded to domestic violence charge against.

Officers report that they went to the complainant's address to locate wanted individual. One officer reports that upon knocking on the front door, a piece of cardboard that had been taped up to replace a missing windowpane swung loose. He reports that through the opening he could hear the TV, but there was no response to his knocking. He believed this may be an indication that the suspect was inside. He contacted Syracuse Housing Authority to request assistance and another officer responded with a master key to gain entry. The apartment was searched and no one was there. The officer advises, the front door was re-secured upon their exit and that if he "remembers correctly" no entry was made other than the front door.

A second officer reported that he responded to the location and unlocked the apartment, noting the missing window from the front door. He reported that the front door was relocked upon leaving and that 30 minutes later he was dispatched to the apartment to respond to the complainant's burglary concern. The officer reported that he asked the complainant if anything was missing and the complainant said no. The officer reported that he advised the complainant to contact maintenance to have the missing window of the door replaced. He then cleared the burglary call as unfounded. Upon questioning from OPS, the officer provided language from the Syracuse Housing Authority tenant handbook that states that access to a tenant's apartment is allowed without notice in the event of emergencies, including "threats to the health and safety of other tenants."

The complainant stated that prior to the officers' search there was no damage to the window of his front door. He reported that the Plexiglas was intact and in place. He stated that when he arrived home, the front door was closed, but unlocked and the square of Plexiglas from the door window was on the floor inside the unit. He reported that witnesses told him that a short officer pushed the window out in an effort to get his hand inside the unit to unlock the front door, but that the window was too high so he could not reach the lock. He stated that the witnesses told him that multiple officers went around to the back door as well. The complainant reported that the back door was left unlocked and was open

several inches when he returned. He confirmed that the officer who responded to his burglary complaint told him to call maintenance to get the window fixed.

The panel sustained the allegation of failure to secure entry against the officer. Although the officers indicated that the doors were secured upon their exit, the CRB panel found the complainant's account that his front door was unlocked and his back door was ajar to be credible. The panel thus concluded that the officer failed to lock the doors when exiting. Since it appeared to be an unintentional oversight with no malicious intent, the panel recommended verbal counseling for the officer to remind him of the importance of securing a residence after conducting a search.

- **Demeanor Sustained against two Officers**

A female complainant filed a complaint regarding officers' failure to Mirandize her following an altercation with a maintenance staff worker, for which an excessive force claim was made. The complainant further claims that officer acted in retaliation following an encounter with her two days prior where it is claimed rude and racial slurs were used.

The complainant stated that an officer came to her apartment to discuss an incident involving her minor son and damage to a maintenance worker's truck window from a pellet gun. The complainant invited the officer into her apartment to talk, but soon realized that the officer wanted to search her home and question her juvenile son about the incident. The complainant stated the officer walked further into her home, ignoring requests to immediately leave and return with a warrant. The complainant stated the officers were rude and they used racial slurs toward her. The complainant wrote that because she was half-dressed, she felt uncomfortable and "violated that he refused to leave my home." She stated that she informed the officer that he could not question her son or search her home and persisted voicing her desire for officer to leave. She mentioned that the officer was verbally combative and dismissive of her requests for a few minutes before he left. She wrote that the officer said, "This is America and 'we' speak English here" as he proceeded to leave. She felt the officer's comment were racially insensitive since, in frustration, she spoke her native tongue, to more comfortably express her desire for officer to leave her home. The complainant contends that immediately after leaving, the officer "turned back around, kicked the door with his right foot and held the door from closing" while continuing to make rude remarks. The complainant stated, the officer said, "(I) will be evicted from the apartment he will see to that."

The complainant wrote that two days later she called 911 after a dispute with the maintenance staff worker. The responding officer arrested the complainant for Harassment 2<sup>nd</sup> degree and resisting arrest. The complainant explained that the officer did not provide her with a chance to explain her version of events and during the arrest, the officer made more rude remarks, such as "all your neighbors will see you now" making references to when the complainant made him leave her home.

The complainant states that there is a conflict of interest between the officer and herself. She believes that her arrest was in retaliation for the previous incident two days earlier. She states that the officer used unnecessary force in her arrest, claiming that he slammed her onto the ground, squeezed the back of her neck and twisted her left index finger. She also reported that another officer assisted the first officer in the arrest, also handling her inappropriately. The complainant believes that if another officer had responded to her 911 complaint, "this event would have been handled in a different manner." She complains that she "was not told by the first officer why she was being detained" and was not read her Miranda rights.

The first officer indicated that his response was to obtain information. He explained the reason why he was speaking with the complainant and she responded using profanity. He reported that while he was speaking with the complainant, her son emerged and informed the officer that he did have a BB gun, but was not responsible for damaging the truck window though had knowledge of the culprit. The officer reported that the complainant intervened and told him to get out and allegedly called the officer a derogatory name. After hearing the complainant address him in a foreign language, the officer reported that he told her he did not understand and does not speak that language. The officer admitted that he responded to the complainant's statement, "this is America, learn it" by stating, "This is America, but I only speak English." The officer closed the criminal mischief investigation pending suspect information.

The officer reported that two days later he responded to a call for alleged verbal harassment by the complainant aimed at the maintenance staff worker for calling the police two days earlier. The maintenance staff worker sought the complainant's prosecution for pushing him in the face with a mobile phone in her hand. The officer reported that he made an arrest of the complainant.

The officer wrote that during both interactions with the complainant he treated her fairly and allowed her to talk and to yell at him. He stated that the maintenance worker told him they were in the process of evicting the complainant. He "informed the complainant that the rental office wanted me to let her know that she is going to be evicted from the apartments." He reported that he made no statement to her that could be construed as being unprofessional. He attempted to speak with the complainant, but she responded, "You have a vendetta against me, don't talk to me." He advised the complainant that she was under arrest.

The CRB panel sustained the Demeanor allegation against the officers because they neglected to communicate with the complainant regarding the purpose for arrest. The panel determined that officers should always attempt to communicate with all parties to a conflict unless any party fails to cooperate and recommended that both officers receive verbal counseling regarding proper citizen's arrest procedure.

- **Excessive Force Sustained against one officer; Demeanor Sustained against four officers**

A male complainant filed a complaint regarding an excessive force incident occurring at his residence. The complainant is also complaining that after his arrest, his apartment was left unsecured and was later burglarized resulting in \$5,000.00 in alleged losses.

The complainant wrote that officers knocked at the door, he let them in, was questioned about his identity and whether he had knowledge about a person reportedly running around the building threatening people with a hammer. The complainant reported that officers also asked about various holes in the outer walls of the apartment to which the complainant replied the holes had been there prior to his moving in months ago. The complainant admits that he had been in possession of a hammer. After losing his apartment key and being locked out, he borrowed the hammer from his neighbor in effort to break into his own apartment. The complainant submits that he returned the hammer because he was unsuccessful in getting it to force his door open. Instead, he kicked his apartment door open. The complainant reported that before officers left, an officer stated, "If we have to come back here, someone is going to jail."

The complainant reported that 15 to 20 minutes after the officers left his apartment, they returned and knocked on his door. The door opened freely from being kicked in and the lock busted. The complainant claimed that officers walked into his apartment and told his guest to leave. The complainant stated that the officers began questioning him again about threatening his neighbor with a hammer. The complainant reported he asked Officer One if he was going to be arrested, to which Officer One responded, "No, not yet." The complainant asked Officer One if he was "done yet" and told the officer that "he knew his rights." The complainant wrote that he put both hands up, palms out, in a 'surrendering way' and Officer One 'charged' him and repeatedly punched him in the face.

In what appeared to be an effort to make an arrest, the complainant described officers as grabbing him by his arms with Officer Three reportedly tripping him, causing him to fall onto the floor. Once on the floor, the complainant reported that Officers Two and Three handcuffed him as Officer One continued to repeatedly punch him in the head and face. The complainant also reported that Officers Two and Three were 'kneeing' him in the ribs on both sides as Officer Three yelled, 'stop resisting.' The complainant states he responded, "How could I be resisting when you already have me cuffed" in hopes that his neighbors would hear him. The complainant reported that he continued to feel pressure and pain in his back and realized that Officers One and Three were applying pressure to his back as they held him in place. The complainant stated that officers were talking about how to write their report and what to charge the complainant with while in his living room.

The complainant states that once officers noticed that he was bleeding, they called an ambulance and transported him to St. Joseph's for medical evaluation. After release from the hospital, he was transported to the Justice Center with bumps on his head, three stitches, bruised ribs and a loose tooth that fell out the next day.

Officers One and Three were dispatched to a north side address regarding a suspicious person – an approximately 40-year-old white male, possibly high on spike –running around the apartment building with a weapon threatening a tenant. The 911 caller wished to remain anonymous for alleged fear of retaliation from the complainant. Officer One reported when he advised the complainant to refrain from further contact with his neighbor, the complainant was uncooperative and started referring to his neighbor as an ethnic slur. Officer One reported that the complainant made verbal threats that if the neighbor “messed with him he would kill him.”

Officer One reported that after speaking with the complainant for a few more minutes, he seemed to calm down and officers left the apartment building only to respond back when the original caller informed dispatch that the authorities should hurry back because the complainant was allegedly at his apartment door threatening to kill him. Upon responding back to the apartment complex, Officer One engaged the complainant, reportedly was still uncooperative and hostile, making an attempt to de-escalate an allegedly volatile situation until the complainant is perceived as ‘blading his body’ in what the officer perceived to be an aggressive stance with hands raised and fists clinched and yelled a profanity. Officer One reported that the complainant’s actions caused him to become concerned for his personal safety, so he reacted and grabbed the complainant’s arms forcing him backwards onto the living room floor. Officer One was assisted by Officers Two, Three and Four who were also on scene. Officer Three reported that he advised the complainant that he was under arrest while experiencing active resistance. The complainant’s actions required officers to use physical force to subdue and place him under arrest. After the complainant was placed into custody by officers he was medically assessed and it was determined that he had suffered a quarter-inch laceration to his eyebrow that was bleeding.

Review of the intake booking video showed the complainant with significant signs of pain in his mid-section, abdomen, oblique area, wincing in visible discomfort at some command movements.

The CRB panel found the complaint of excessive force against Officer One credible and consistent with the swelling on his hands and the complainant’s arrest information reflected the officer struck him in the face and head more than was reported further constituting misconduct. They recommended a written reprimand be placed in the personnel file for three months and that he receive retraining on de-escalation and the use of force policy. The panel also voted to sustain the complainant’s Demeanor allegation against Officers One, Two, Three and Four for their role in repeatedly ‘kneeing’ the complainant following Officer One’s initial head strikes knocking the complainant to the floor. The panel recommended verbal counseling for Officers One, Two, Three and Four.

- **Harassment and Retaliation Sustained against Two Officers**

A male complainant reported that after dropping off a friend at her residence and parking in the friend's driveway, he was approached by Officers One and Two. After the officers requested his driver license, he asked why and was told that he had failed to use a turn signal. Complainant stated that he had been sitting in the driveway for approximately three minutes before the officers arrived. After providing his license and registration, the complainant informed officers that the vehicle was a rental. The complainant stated Officer Three became verbally aggressive in his desire to see the rental agreement in his name. The complainant responded he was not in possession of the agreement at the time, but could call the rental company to verify. The complainant wrote that the officer snatched the registration and license out of his hands and told him to find the rental agreement while another officer badgered him about having an open container that was soda. The complainant reported that both he and his passenger were issued citations (a citation for no seat belt while parked in her driveway for the passenger), denied an opportunity to speak with the officers' supervisor or to be provided their badge numbers. Complainant said he informed Officer Three that he would be filing a complaint for unprofessionalism and racial profiling. The Complainant stated that Officer Three responded he did not care and that he will be in court to see that the complainant is found guilty for the tickets written.

The complainant wrote shortly after the officers left, he realized his CDL permit was not returned to him. He called 911 and filed a complaint regarding his encounter and his desire to have his permit returned, but no supervisor responded. Twenty minutes after his 911 call, Officers Two and Three returned and issued him another ticket for being in possession of two unexpired forms of identification. He explained to the officers he had a recent similar issue with an officer and that he was informed that the law allowed a CDL and Driver's license to be carried simultaneously per DMV regulations. Complainant wrote that the officers said that is not true and they do not care. Another 20 minutes later, he met with the officers who returned his CDL and cancelled his ticket regarding two identifications admitting that they made a mistake.

The CRB panel found the Retaliation, Harassment allegations against Officers Two and Three credible and voted to sustain them because the officers ticketed the passenger of a parked car for a seat belt infraction following a verbal argument with the driver. They recommended verbal counseling for Officers Two and Three.

- **Failure to Act Sustained Against One Officer**

A female complainant reported that her 12-year-old son was attacked by an older teenage male while at a corner store because her son refused to conceal narcotics for the older teen after police approached the store. The complainant wrote that her son was picked up and dropped on his head by the older teen. The complainant stated that she contacted the police after reporting the suspect was still at the scene. She wrote that an officer responded and allowed the suspect to leave the scene without checking his identification or

conducting an interview. The complainant reported that the officer stated to her that she already knew who the suspect was, where he resided and further instructed the other officers on scene not to pursue the teen because she (the officer) needed more information on what happened. The complainant reported that the suspect, allowed to leave the scene, went to the complainant's home and threatened the family with a handgun stating, "I am going to shoot your house up" for contacting the police. The complainant wrote that because the officer let the older teen walk away, it placed the family in danger of reprisal and her son is now seeking counseling.

Two officers were assigned to conduct a follow-up investigation with the complainant. The result of this follow-up was the completion of a criminal case against the suspect for assault 3<sup>rd</sup> degree regarding the incident at the corner store. The case was based on a prepared photo array to identify the suspect as well as a statement from the complainant's son, describing his injuries. Later, a warrant was applied for where criminal cases against the suspect for menacing 2<sup>nd</sup> degree and Criminal Possession of a Weapon 4<sup>th</sup> degree were completed. The cases were based on a statement of prosecution from the complainant as well as her successful identification of the suspect in a photo array.

The CRB panel found the complaint regarding failure to act credible and voted to sustain the allegation against the officer because she failed to conduct any investigation, while on the scene or otherwise, into the assault of a minor and put the victim's family in danger of reprisal. The panel recommended verbal counseling and retraining on Syracuse Police Department protocol for conducting an investigation and taking witness statements.

- **Demeanor Sustained against Two Officers**

A male complainant reported that Officers One and Two of the Crime Reduction Team stopped him issuing a ticket for blocking a driveway. Two weeks later, the complainant saw the officers conducting a traffic stop of another motorist as he drove past. Moments later the complainant was pulled over as well. He stated that while stopped behind another vehicle waiting to make a right turn, with the right turn signal on, he noticed the officers passing by driving in the opposite direction. He saw them in his rear view mirror turning around to pursue him. The complainant reported that during the traffic stop the officers' acted 'erratic', cursed at him, and spoke to him in an unprofessional manner. The complainant wrote that Officer One became angry when he refused to roll the window down lower than a few inches as commanded during a request for license and registration. The complainant wrote that officers were demanding and attempting to gain access to his vehicle by pulling on the door handle. Said officers, attempted to break the window with their flashlights and handcuffs as well. The complainant called 911 and asked for additional assistance due to his fear of potential harm. The 911 operator advised the complainant that a supervisor would be sent and further advised him to exit the vehicle and comply with officers.

Officer One reported that “I do recall completing a traffic stop with the complainant. During the stop the complainant initially refused to pull over his vehicle and then refused simple commands for shutting off his vehicle and providing necessary paperwork we utilize to perform our investigation. The complainant continued to challenge myself and Officer Two to the point we were almost forced to break his window and forcefully remove him from the vehicle. As the threat level of the stop continued to escalate, so did my reactions by raising my voice in a forceful manor.” Officer One also stated that “I recall having an elevated attitude due to his action.” The complainant went as far as to call 911 because he said “he didn’t feel safe.”

The CRB panel found the complaint regarding demeanor credible and voted to sustain the allegation against Officers One and Two because they did not attempt to de-escalate the engagement with the complainant during the traffic stop. The officers failed to document what steps, if any, were taken to de-escalate the encounter prior to the stated behavioral escalation. Specifically, the officers stated a desire to ‘break the window and forcefully remove’ the complainant from the vehicle due to increased frustration with the perceived lack of cooperation. The officer validated his ‘elevated attitude’ and raised voice ‘in a forceful manor’ lacking a documented and reciprocated attitude from the complainant without detailing any steps taken to de-escalate the demeanor of the complainant. The panel concluded that the officers’ failure to de-escalate the traffic stop perpetuated the tension present during the verbal exchange and thereby placed, unnecessarily, that responsibility solely on the complainant to behave respectfully. The CRB panel recommended a letter of reprimand and retraining. The letter of reprimand is to remain in the officers’ personnel file for one year and articulate a retraining on de-escalation steps taken when executing a vehicle and traffic stop.

- **Failure to Act Sustained against Syracuse Police Department**

A female complainant reported that the Syracuse Police Department is responsible for falsely citing her bar to the New York State Liquor Authority and City Department of Code Enforcement based on the racial make-up of her patrons and a desire to discriminate against Black bar owners.

The complainant wrote in her complaint that during the Alcoholic Beverage Control (ABC) check there was no warning and no warrants executed by SPD, State or Federal officers. No weapons or drugs were found in her establishment and although they checked and scared everyone present, her patrons were encouraged to allow the authorities to do their jobs, though unaware if they were in compliance with State regulations for such impromptu searches. The complainant reported that she was never provided notice that she acquired points on her license prior to a deputy chief informing her of such. “We always cooperate with SPD, never gave them a hard time over the past two and a half years we’ve been open.” She wrote that SPD often sat outside her bar all night. “We welcome their presence.” She also mentioned that she ended a party and removed arguing patrons from her establishment citing that she wanted no problems with SPD after being informed that

she was being closely watched with threats to be shut down. She documented that a sergeant had never returned her calls from June 24 through February 27 (the period for which points were assessed) to gather an understanding of why they are being targeted “all of the sudden especially after I’ve called the police on another establishment down the street having wild parties of over 200 people and our previous open line of communication.”

The complainant reported that the stabbing incident for which she was cited had nothing to do with her bar rather a random teenager who had never been inside of her establishment, stabbed someone who exited earlier in the evening. The complainant named several instances where police reported that her patrons caused a disturbance on days when her establishment was not open or had been closed. The complainant recounted an incident at a Caucasian-owned bar where her daughter was assaulted. When she arrived to talk with police, she was laughed at. She inferred that if a similar incident occurred at her bar, being black owned, it would have resulted in someone being arrested and the bar given points on its license. The complainant stated that she had cancelled previously scheduled parties because SPD asked her not to have a party due to possible threats of violence. She also mentioned how on several occasions she allowed SPD to view her camera whenever a crime happened around her bar. She stated that, according to a sergeant, the sidewalks and streets are public property and the responsibility of SPD. She felt instead proactively stopping the hostile gathering, SPD intentionally allowed people to gather, waiting for someone to get hurt. She stated that the police entered her establishment regularly, checking IDs and searching people without warrants. She did not say anything for fear of being shut down, but felt “the harassment has to stop.”

The Office of Professional Standards wrote that the complainant stated a belief that incidents of violence are being improperly attributed to her establishment and are causing a negative and unfair reaction by the SPD. The complainant referenced another establishment as the true source of many of the problems. She recounted conversations she had with a lieutenant who advised the bar would be shut down by order of the Chief if she hosted two proposed parties on consecutive evenings. At this time, an unnamed deputy chief told her there were points on her Certificate of Use. According to OPS, the complainant discounted multiple events for which the bar was assessed points, including a stabbing occurring in March and a fight that occurred in April. The complainant opined the police harassment occurs because hers is a black-owned bar and that the police department lied about these incidents in an attempt to close the bar. She noted, “Those white bars have a fight every weekend and they are still open.” She further stated that after they close and patrons leave, but remain within a one-block radius, the actions of people outside of her bar is not the responsibility of the bar, rather the fault of SPD for failing to clear the area in front of the bar after hours.

OPS reported researching incidents at both establishments through July 21 and recounted 29 different DRs associated with the complainant’s establishment, with five incidents resulting in police reports. Those incidents included what were documented as several fights, a stabbing, shots fired and a homicide that occurred the weekend after the complainant

lodged her complaint. OPS found that the complainant was the complainant in six of those incidents and reported disturbances and loitering in the area not directly in the vicinity of her establishment. OPS found ten different DRs associated with the other establishment, with no incidents resulting in police reports. No basis was provided for why none of the ten associated DRs failed to produce police reports.

OPS reported researching the frequency of random ABC checks by authorities within the City over the course of 18 months, starting at the beginning of 2015. One hundred nineteen ABC incidents had been handled by SPD at a wide variety of locations. The most focused areas appeared to be the Armory Square area with approximately 70 incidents and the University/Marshall Street area with approximately 15 incidents. The complainant's establishment had been subject to one ABC check in that time. That ABC check was a multijurisdictional ABC check to be conducted by NYS Liquor Authority. This approach was taken in response to multiple reported instances of violence in close vicinity of the establishment. The NYS Liquor Authority investigator discovered and documented several ABC violations.

OPS reported that the points cited are attributed to complainant's Certificate of Use provided by the City. A sergeant reported receiving a number of complaints from various venues, many of which had reportedly cleared complainant's establishment of any wrongdoing under that ordinance. However, the club accumulated 15 points due to recent incidents and point totals in excess of 12 points require a hearing by the City. The sergeant pointed out that the hearing provides owners the opportunity to plead their own case, invite commentary from supporters of the venue and is conducted by people outside the police department, specifically to prevent SPD from having the ability to directly suspend those certificates by themselves. At the request of OPS, the sergeant recounted recollection of what establishments and the race of the owner had come under similar scrutiny while assigned to Ordinance Enforcement. Five businesses, four owned by Caucasian males and one by a Black female, have closed. They were located on South Clinton Street, West Genesee Street, Milton Avenue, East Fayette Street and Pond Street. In late October, two were under review, one owned by a Caucasian male and one by the complainant. Three were allegedly approaching the review level – two were downtown and one in the University area, each reportedly owned by Caucasian males. The sergeant reportedly gave the NYS Liquor Authority three referrals based on incidents reported to him by patrol. He reported being contacted by the Liquor Authority who requested other reports for other incidents in the immediate area. The Liquor Authority opted to perform an ABC Check. The federal probation officer assigned to a detail to conduct the check of the complainant's establishment wrote in a sworn statement that he was working with several other probation officers from my agency along with the NYS Liquor Authority, SPD, NYS Parole, Onondaga County Probation, County Sheriff's Office and NYS Police. At 1:15 AM they made entry into the bar and his duties at the time of entry was to identify patrons of the establishment that were under the supervision of Federal Probation and conduct pat downs and searches of those patrons.

The complainant initially worked with Chief Fowler to keep her bar open but she states that “when he stopped returning our calls and allowing his officers to harass us, what are we supposed to do?” She stated that she was provided no notices, no warning, no tickets and no letter of complaints prior to being suspended. She disputes the three points received for an alleged disturbance on April 30 for which no 911-call notes were found and she said she was not open.

The complainant no longer occupies the space because the building owner moved for eviction due to the negative effect and impact falling from the complainant’s previously suspended liquor license and suspended Certificate of Use.

The CRB panel found the complaint regarding failure to act credible and voted to sustain the allegation against the Syracuse Police Department because of the need to review their proactive policing measures relative to minority-owned businesses when coupled with crime reduction. Specifically, the practice of the Department to document what steps, if any, are taken to accommodate requests for increased police presence. The panel concluded that the Department inadequately responded to and failed to work with the complainant to address criminal activity unrelated to her establishment prior to reporting accumulated violations to the State Liquor Authority and City Department of Code Enforcement.

The CRB panel recommended that the Syracuse Police Department notify and counsel all sworn officers to be more attentive to continued proactive policing measures relative to minority-owned and primarily minority-patronized businesses for purposes of crime prevention. The Panel also recommends that the Syracuse Police Department continue to work with the Mayor’s office in fairly and adequately responding to private calls for increased police presence.

- **Failure to Act (Failure to Preserve Evidence) Sustained against Two Officers**

A male complainant reported the failure to conduct a proper investigation after a stolen vehicle complaint. The complainant stated that hours after reporting his car stolen, a Syracuse police officer accused him of false reporting. An SPD officer had the vehicle towed and placed a hold on the release of the vehicle pending further investigation by another officer. Because of the delay, the complainant’s car was scrapped for money to pay tow and storage fees.

The complainant complains that he woke up one morning to find his car missing. After catching a ride to work, he called the police. An officer went to the complainant’s job and took his complaint. The complainant wrote that hours later, the officer called to inform that his vehicle had been located. The officer informed him that he viewed footage of the vehicle in a parking lot with two individuals, a male and a female, appearing to remove items from the trunk. The male reportedly looked similar to the complainant. The complainant stated that it was not him in the video, as he did not leave home after arriving from work. The Officer advised the complainant that his vehicle appeared to have been involved in a crash

and that his vehicle was being towed to a garage, a hold would be placed on it until the security footage could be further reviewed and the traffic division would be conducting the follow-up on this incident. Seven months passed without the complainant hearing from the officer.

Reportedly Officer One was informed by Officer Two that he would conduct a follow-up into the circumstances of how the damage to the complainant's vehicle occurred. Officer Two told Officer One to place a hold on the vehicle for further investigation purposes and not to complete a motor vehicle accident report because of the lack of information surrounding the damage to the complainant's vehicle. Officer One explained that he spoke with Officer Two a few days later after he received information that the company that handles the video surveillance footage was requesting a payment before turning the video over to police. Officer One states that Officer Two informed him that he would look into it, but Officer Two retired prior to the completion of the follow-up. His sergeant was able to contact and speak with him about the investigation. The sergeant wrote that Officer Two could not recall the investigation and or being notified of the incident by Officer One, therefore he did not start any follow-up. Normally, an officer completes a hit-and-run accident investigation report, a traffic officer reviews it then a follow-up is conducted. Since an accident report was not completed, this did not occur. The sergeant ultimately reassigned the follow-up investigation to another officer (Three).

A follow-up report was done by Officer Three who was unable to view the surveillance video footage that Officer One viewed during his original investigation. The video footage was no longer available as it was four months later. Officer Three was also unable to establish when, where and how the damage to the complainant's vehicle occurred and the circumstances of the motor vehicle crash remain unknown.

Officer Three reported due to the complainant's failed attempt to pay the fees that were accumulated as a result of the tow and subsequent storage, a New York DMV Salvage Certificate was completed, releasing the vehicle and ownership to the garage. The garage then took possession/ownership of the vehicle and the vehicle sold as scrap metal for payment towards the accrued fees.

The garage explained that five days after a vehicle is towed to them, they send a letter to the registered owner of the vehicle detailing the ramification of non-payment. After around 30 days of non-payment, they contact SPD and requests a DMV 907A Salvage Certificate releasing ownership of the vehicle to the garage. After the complainant signed the letter, the hold remained active for a month. The complainant could not retrieve his vehicle until the assigned traffic investigator released the investigatory hold. Due to the retirement of Officer Two, the initial assigned traffic investigator, no traffic report was produced, the hold was not released and the vehicle was ultimately scrapped. The investigation was dormant and simultaneously on hold, preventing the complainant's retrieval with or without payment.

The CRB panel found the complaint credible regarding failure to act and failure to preserve evidence credible and voted to sustain the allegations against Officers One and Two because they neglected to both thoroughly investigate and communicate with the complainant throughout the investigation process. Once Officer One viewed the video surveillance, he failed to preserve it rendering it irretrievable. The panel determined that the indefinite hold placed on the vehicle pending an investigation that did not occur caused the scrapping of vehicle to pay owed towing and storage fees. The CRB recommended that the complainant be reimbursed for the market value of the vehicle, towing and storage fees and anything the complainant is responsible to pay.

- **Demeanor Sustained against Three Officers involved in a Search**

A female complainant reported a “no-knock, high-risk search warrant execution,” conducted by the Syracuse Police Officers resulting in broken windows, electronics and furniture that had nothing to do with the contents and scope of the court-approved search warrant. The complainant argues that her home being “raided” was intentional harassment for her being very vocal in her community and her casual association with an individual apprehended for inciting a riot and threatening officers during the Father’s Day incident.

She wrote that once she arrived at her home, she was met by SPD and SWAT. She asked the first police officer she met why they were in her house. She was not told what or who they were looking for and the search continued for about an hour before she could go in her home. The complainant recounted that as she entered her home she noticed that her kitchen table was broken into two pieces and the front windows were broken; glass was everywhere. They broke the living room TV and trashed children’s toys. Clothing was wet with shampoo. Liquids were poured everywhere. Food was mixed with trash. The bedroom TV was broken. The smoke detectors were thrown out the back window. The children’s closet doors were broken. Every bit of furniture was thrown around the room. The clothes dryer was pulled apart.

The complainant believes that the search warrant authorized to invade her premises was “the SPD trying to send me a message to shut my big mouth.” The complainant is vocal on her street, often recording police encounters with her cell phone, citing police for various alleged ‘overreach.’ To this point, the complainant stated, “The day before the ‘raid’ there had been an incident in front of my home involving a young teenage male. There were several officers addressing the youth. I started taping the interaction on my cell phone. The next day my home was raided.” The complainant indicated an officer on scene the day prior to the search of her home stated, “We got something for you.” The complainant responded, “What is that supposed to mean?”

The complainant stated, “The only way that I found out what the police were in my home for was after finding a piece of paper (warrant) with only my address on the floor. [The suspect mentioned] was never a resident at my home. If they would have investigated that, they would have been able to verify that fact.” She stated that she knew the suspect, has

known him for several years for “being around the neighborhood” and was his ‘good friend.’ The complainant also stated that the suspect has never stayed the night at her residence nor has she ever had an intimate relationship with him. The complainant emphasized that she felt as though she was “guilty by association” for purely knowing the suspect and the incident involving him taking place outside her home a day earlier.

An Affidavit for Search Warrant stated the rationale for a judge to grant permission in searching what is the complainant’s home is that on Father’s Day following an officer-involved shooting, the crowd was riotous and hostile and an officer reported observing the suspect attempting to incite a riot by yelling threats and profanity about police. The affidavit stated two days after the incident, another officer interacted with the suspect in front of the complainant’s home and reported that the suspect made an admission that he resided at the address. The suspect allegedly stated that he would shoot officers if he observed them on his block again. As recently as five days before Father’s Day, he had reportedly been stopped on four different occasions while driving a 2008 Honda Odyssey registered to the complainant.

The Affidavit also indicated that two SPD Detectives interviewed a witness concerning the Father’s Day incident. The witness reported that he was present during the incident and witnessed the fatally injured individual in possession of a handgun. The witness stated that he observed the fatally injured individual drop the gun on the ground as he ran after being shot and saw the suspect pick up the weapon before he could grab it himself.

The Affidavit concludes that based on the above-referenced information, a high possibility existed that the occupants of the residence were likely in possession of weapons inside the premises. It would be exceedingly dangerous for officers to knock and announce their presence prior to entry into the home, thus the request that the court authorize a ‘no-knock’ entry of the home by officers. Permission to search the persons of each party in the premises/vehicle at the time the warrant is executed was also requested. That was to prevent the destruction/concealment of the weapon as well as to prevent injury to any of the officers or other occupants on scene. The execution of this warrant will be considered high risk due to the nature of the investigation and the fact that it involves firearms. An ‘all hours’ provision permitted execution of the warrant at any time, day or night to give police the element of surprise, making it safer for both suspects and the police.

Search warrants were issued for the residence and a 2008 Honda Odyssey registered to the complainant. The warrants were executed. The suspect was taken into custody. The suspect allegedly stated that he resided at the address forming the basis for the warrant execution at the residence of the complainant.

The search warrant stated a directive for searching the dwelling that is a two-story, multi-family, wood-framed structure with tan colored siding, a white porch railing and the numbers above the front door. The search is to include all areas of the building, all areas of curtilage, entry and egress, storage areas, including the attic and basement area designated

as such for tenant of said premise, as well as any unattached garage or shed for the following property: handguns, ammunition, ammunition boxes, bullet casings, holsters, targets, gun magazines, gang-related clothing/papers/items, latent and patent fingerprints, personal identifying papers, and any other items indicative of a violation of NYS Penal Law Section 265. The same language was directed for searching a 2008 Honda Odyssey that belonged to the complainant.

Due to the high-risk nature of the warrant, the SWAT team performed the initial entry and house clearing. The suspect had recently threatened violence against police officers at the scene of a shooting and was believed to be on scene in possession of one or more handguns.

The complainant stated that no superior officers of SPD contacted her regarding her home being searched. She wants “an apology from the police for coming into my home and destroying my home and my property for no reason.” “The police impounded my car for 4 days.” The complainant states her car was \$520 to get out and was returned with one driver side window broken.

The CRB panel found the complaint credible regarding Demeanor and voted to sustain the allegation against the officers who participated in the execution of the search of the residence because they neglected to communicate with the complainant at any point concerning the purpose for the search. After the initial security sweep, once the residence was secured from potential threat, the residence owner/complainant should have been informed of the purpose of the search and provided a copy of both residence and vehicle search warrants. Damage to items within the residence and the vehicle was deemed excessive and outside the scope of the warrant. The panel determined that unless any party fails to cooperate or officer safety is at risk, officers should always attempt to communicate with a non-subject resident about the purpose of a search. The panel recommended that the officers involved receive retraining regarding professional courtesy and treatment of and engagement with residents/owners who themselves are not the subject of the search. The panel recommended the Syracuse Police Department develop and adopt a policy aimed at the execution of a search warrant, specifically, produce a receipt of all items seized and destroyed during the execution of a search warrant.

- **Failure to Act (Failure to Intervene) Sustained against three Officers**

A male complainant filed a complaint regarding his treatment by Syracuse Police officers during his arrest and booking process. He also complains that while he was being ‘brutally attacked and almost suffocated’ to death by several Onondaga County Sheriff deputies, during booking, they failed to intervene and prevent harm he ultimately suffered.

The complainant wrote that after his arrest, prior to being processed into Justice Center booking, he was subjected to repeat taunting by two Syracuse Police Department officers. The complainant has severe sensitivities and they were triggered by what he perceived as

taunting by the deputies that was harsh and childish. He lacked control in his present environment and admitted that due to the taunting and face making, he told the officer to stop or he would spit on him. During this time the complainant was crying after being arrested, separated from his dogs that he considers to be his kids, and provoked with teasing while in route to booking by the officers.

The complainant suffers from severe depression and has Post Traumatic Stress Disorder (PTSD) incurred after being molested and taunted by older male cousins and their friends during his childhood. After his threat, the SPD officer stopped taunting him, but a sheriff deputy picked up where the SPD officer left off with joking, taunting, and making faces over his cries. The complainant wrote that he found this to be unprofessional and that he does not normally go around spitting on people, yet admitted that he spit on the deputy because he was provoked. The complainant stated he was very emotional from the entire ordeal and apologized for threatening to spit and spiting as well as making vulgar and disparaging remarks towards officers. He felt a spit mask should have been placed upon him by SPD given threats made to spit at the SPD officer. He admits that he was verbally combative and not cooperative but did not deserve to be brutally beaten for spitting on the deputy while his hands were cuffed behind his back, posing no apparent physical threat.

The audio quality of the booking video was poor but showed the complainant making vulgar, disparaging and sexually suggestive remarks towards sheriff deputies in response to general intake questions. The video showed the complainant, while handcuffed, warn/threaten deputies not to say anything further to him or else he will be spit on. It appears the deputy said something that cannot be heard clearly and the complainant turned his head and spit over his left shoulder into the direction of the deputy standing slightly behind the complainant. The complainant is swiftly and aggressively taken down. Several deputies can be seen making repeated punching and knee strikes while his head, neck and feet are restrained. The complainant can be heard screaming for help until a spit mask is applied to his head and his feet are joined with his handcuffed hands behind his back and then escorted out.

The CRB panel found the complaint regarding failure to act (failure to intervene) credible and voted to sustain the allegation because the officers neglected to prevent sheriff deputies from exercising excessive force upon the complainant inside the Justice Center booking vestibule. The video evidence showed numerous closed fist and knee strikes on the complainant's head and body when no apparent threat of physical harm was presented. The panel determined that the force used by sheriff deputies was unnecessary given the complainant was handcuffed, wearing only his underwear and outnumbered. The panel concluded that SPD officers' failure to intervene, de-escalate and report the force applied perpetuated the harm caused and runs counter to the integrity and ethics of the Department, its policies, procedures, rules and personnel.

Additionally, the panel took exception with three additional issues relevant to this complaint. First, the panel determined it was inappropriate that the complainant was made

to sit publicly exposed wearing only his underwear, unsecured outside his home as officers questioned him. The officers should have retrieved an article of clothing prior to or immediately after making the arrest. Second, the panel determined that officers should have taken the complainant to the Comprehensive Psychiatric Emergency Program (CPEP) at St. Joseph's Hospital given his mental health status, statements and nature of the call for police assistance. Third, the panel determined that officers should have taken a statement from the complainant (suspect) for record to accompany the statement of the victim and the caller (the complainant's aunt), at the scene for a more thorough investigation.

The panel recommended verbal counseling regarding steps taken to intervene and de-escalate observed deviations from SPD Rules and Regulations.

- **Excessive Force, Illegal Search and Racial Profiling Sustained against Two Officers**
- **False Reporting Sustained against One Officer**

A male complainant reported being racially profiled, illegally searched, having excessive force used on him, and police falsifying a report. He alleged that the police falsely reporting what they found on him when he was approached by police while parked in a Pioneer Homes parking lot between two other cars.

The complainant wrote that he believed two SPD officers approached his parked vehicle from behind, blocking him in, because he was a Black man in a high crime area and their claims of observing furtive motions was a bogus excuse to create reasonable suspicion. The complainant wrote that both officers immediately approached, grabbed and searched the passenger who was removing mechanical equipment from the front and back seat, after being given a ride to repair his disabled vehicle parked blocks away. The complainant wrote that he observed the officers searching his friend and attempted to exit the vehicle. Immediately after getting one leg out of the car, one officer ran around and jumped into the doorway flashing his light all around the interior and in his face, asking questions about alleged drugs and guns. The officer repeatedly asked why he was just sitting in the car. He replied by mentioning the cold weather as a reason to have the car running while allowing his friend time to gather his belongings after giving him a ride. The complainant asked the officer why he blocked his vehicle in and the officer replied that he observed furtive movements inside the car and he believed something had to be going on.

The complainant stated the officers claimed they observed a digital scale covered in cocaine. He complained that the officers assaulted him. One officer asked him to get out of the car. He complied, placing his hands on the roof of the car. The officer searched him and reached into the back of his pants near the complainant's rectum. He claimed while being searched from behind, the officer said he felt something and asked, "Do you have something back here?" "You seem kind of nervous." The complainant admits to turning abruptly toward the officer to get the officer to remove his hands from inside his pants saying, "Why are you violating my rights like this?" He stated before he could finish his sentence, he was immediately slammed onto the ground, striking his head with the left side of his face on the

ground. After being punched by another officer on the right side of his face, the complainant was stood up, further search, whereby contraband was found in his front pant pocket. He stated the police documented the weight of contraband in his pocket as four grams. When the Forensic Science Center weighed it, it was 2.576 grams.

An officer indicated he observed a suspicious vehicle, but did not describe what was suspicious about the vehicle. Officer reported that upon approaching the vehicle, he observed what appeared to be a digital scale with white powdery residue on it, consistent with the appearance of a scale being used to portion cocaine for sale. Upon questioning, the passenger reportedly admitted he had recently used cocaine earlier in the day. While the passenger was being searched, the officer asked the driver, the complainant, to get out of the vehicle. He did, the officer began to search the complainant who the officer reported suddenly broke free and attempted to flee. The officer tackled the complainant but was reportedly unable to force both hands behind his back to handcuff him. His partner assisted at that time, striking the complainant once in the side of the face. The complainant's arms were pulled behind his back and he was subsequently handcuffed. After being taken into custody, the complainant allegedly admitted he ran because he was on parole. A search of his pockets revealed \$110 cash and material consistent with crack cocaine. The officer reported he later weighed the material in its packaging and found it weighed four grams. The material was recovered, along with the digital scale and two cell phones found in the complainant's possession. The complainant was subsequently charged with 3rd, 4th, 7th degree Criminal Possession of a Controlled Substance (CPCS) and resisting arrest.

A Sergeant reported that he spoke with the complainant at the scene and was told he ran from the officer because he was in possession of drugs. The complainant also is alleged to have voluntarily advised the Sergeant "the officers didn't do anything wrong."

The complainant stated that he never ran nor attempted to run during the officer's search of his person. "I am not stupid, where am I going to go? I had no reason to run because what was in my pocket wasn't anything major." He did move in order to stop the officer from illegally searching inside the back of his pants before being slammed onto the ground. He only mentioned being on parole when asked after the arrest. He stated he would have no reason to volunteer his parole status. The complainant stated that he is not a drug dealer and has two cell phones because one is for Wi-Fi purposes. It does not make calls and the other is just a regular phone. The complainant stated that he never told the sergeant he ran from the officer and it's not true that he ever felt the officers didn't do anything wrong. The complainant feels his rights were completely violated.

The CRB panel found the complaint regarding the allegations credible and voted to sustain the allegations of excessive force, illegal search, racial profiling, against two officers and false reporting against one officer.

Regarding the sustained allegation of racial profiling, the panel determined that the officers approached the complainant's vehicle allegedly after observing furtive movements of two

Black males parked in-between two other cars in a predominately-Black community over a brief, but unstated period. Regarding the sustained allegation of an illegal search, the panel determined that officers did not follow proper protocol when they searched inside the complainant's pants without prior approval from a supervisor, contacting the respective parole officer for permission, and/or a demonstration of an emergency circumstance. The officers failed to provide a legal basis for detention and articulate what steps, if any, were taken to contact the complainant's parole officer at any point prior to or after the search and arrest. Regarding the sustained allegation of excessive force, the panel determined the complainant was not resisting arrest and presented no threat to officer safety prior to or immediately after being forcefully positioned on the ground and struck with a closed-hand fist to the face.

The panel determined that the Use of Force report was incomplete and untruthful because it appeared to misrepresent the culpability of the complainant through uncorroborated quoted statements. The panel also determined that the officer appeared to have substantiated the investigation of an occupied, suspicious vehicle without conducting a thorough examination of his own. He failed to document any eyewitness accounts of what preceded the alleged justification of force.

Additionally, the panel took exception to the documented weight of the retrieved contraband where upon forensic analysis was found to weigh substantially less. The panel is aware that the inaccurate total weight improperly justified an increased charge against the complainant was later found to be unsubstantiated. The panel concluded that the officers' handling of the matter justified a finding of collective misconduct.

The panel recommended that the officers involved receive letters of reprimand and retraining. The letters of reprimand are to remain in the officers' personnel files for one year and the officers receive retraining on the proper procedure for accurate report writing, stop and frisk, search and seizure and the handling of suspects who present valid identification and are on parole.

- **Excessive Force and Demeanor Sustained against One Officer**
- **Demeanor Sustained against Three Officers**

A male complainant reported that a Syracuse Police Department officer attacked him while he was actively recording the execution of a traffic stop. The complainant wrote that he was straddling his bicycle and watching police officers search and arrest three occupants of a vehicle during a traffic stop when Officer One yelled at him from across the street saying if the complainant said one word, he would go to jail. The Officer then put on his weighted black gloves, crossed the street in the direction of the complainant using profane language. The complainant wrote that Officer One stated "I told you to stop coming around here, put your hands behind you back." The complainant complains that he attempted to get off his bicycle in effort to comply, but Officer One "proceeded to grab me and slam me on the ground" and struck the complainant in the face, head, and back several times. The

complainant stated that at this time he informed Officer One that he had a defibrillator. Officer One responded with profanity he did not care, while continuing to strike the complainant in the head. The complainant wrote that handcuffs were applied and Officer One “put his foot on my head holding me down on the ground. He searched my pockets and pulled out my Medicare card and yelled aloud, ‘Oh you on welfare? You need to get a job.’” He was placed in the back of the prisoner transport van. The complainant reported the officers tried to unlock his phone to delete his video recording.

Officer One documented that during the detention of suspects for a traffic stop, he observed the complainant sitting on his bicycle utilizing his cell phone to record the stop. Officer One wrote that “it should be noted that the complainant was approximately 20 feet away from my location. As I attempted to further conduct our drug investigation, I observed the complainant begin to swirl his hand in a circular motion above his head.” After approaching the complainant, the complainant raised both hands above his head to prevent Officer One from gaining control of his hands thereby resisting his arrest. Officer One further wrote that he struggled to gain control of the complainant’s arms so Officer One tackled him to the ground and used a closed fist punch to the complainant’s right side of his head/ear area. Officer One referenced that prior to this day, he gave the complainant a warning to “discontinue interfering with my investigations” or be arrested for Obstruction of Governmental Administration.

Officer One also wrote that he believes the complainant has shown up to his calls “each time becoming more aggressive and causing greater interference in my investigation.” Officer One believed the complainant has “a vendetta against me” since being given a ticket for loud music in April 2016. Officer One documented that on previous encounters the complainant made “various statements, which I interpret as threatening” such as “a tornado is coming” and remarks to “other officers about me losing my job and being sued.” Officer One considers the remarks mentioned as “hostile acts” and believes the complainant has “malicious intentions towards me...done with the intent to interfere with my work, through intimidation and distraction.” Officer One wrote that “due to the complainant’s continued hostile course of conduct towards me, I have been increasingly wary of his presence when he appears on my calls. With the recent increase in murders and ambush attacks on police officers across the nation, acts of aggression towards officers are handled with extreme caution...the complainant was intentionally impairing and perverting my ability to perform my investigation...his tornado hand gestures and mere presence caused my attention to be directed away from my partner.” Officer One wrote that he and his partner were outnumbered with three vehicle occupants (two male and one female) “when the complainant inserted himself into our investigation.”

The complainant stated that he was “more like 60 feet away from Officer One before he attacked me.” The complainant mentioned that he never swirled his hands in a circular motion on that day and further stated that if he was swirling his hand while straddling his bicycle, one would see the camera moving as he allegedly motioned. When asked whether he had a vendetta against Officer One, the complainant stated that he did not. The

complainant stated that he had been appearing at and documenting various police encounters since 2015, well before he was given a ticket in April 2016. He admits that he has been on multiple calls where Officer One was present, but also admits he's present at multiple scenes where Officer One is not present. He also stated that he did not interfere with Officer One's investigation because he remained in one place, across the street and beyond the sidewalk, prior to Officer One "slamming me off of my bike and beating me." He never yelled profanities at officers because "they take you to jail for that around here." The complainant also stated that he, at no time, has obstructed an active investigation and maintained that he has kept a safe distance often behind yellow caution tape when recording police encounters. The complainant explained his tornado reference to be the inevitable probe by the Federal Bureau of Investigations evaluating SPD for corruption. The complainant elaborated by stating, "They can't keep killing, beating, and planting evidence on us with impunity." No officer substantiated Officer One's contention that the complainant swirled his hand in the fashion of a tornado.

The complainant has a First Amendment right to film a police officer in a public place as the officer goes about his duties. In a 2011 decision, the United States Court of Appeals for the First Circuit stated that it makes no difference whether the police were annoyed. Their annoyance does not make a lawful exercise of a First Amendment right a crime. The right to film police in public is well established. "Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting the free discussion of governmental affairs." This is particularly true as concerns the behavior of law enforcement officials who may misuse their authority "to deprive individuals of their liberties." The court noted there is no legal distinction between a "journalist" and a citizen. Every citizen with a camera is now a journalist, and everything occurring in public can be filmed absent physical obstruction.

The CRB panel found the complaint regarding Excessive Force and Demeanor credible and voted to sustain the allegations against Officer One. He did not attempt to de-escalate prior to the use of force, did not appear to give the complainant an opportunity to comply with his orders prior to use of force and used an unjustifiably disproportionate degree of force to execute a lawful objective. No legitimate threat of officer safety was afoot. The panel determined the verbal refusal a moment before force is applied does not justify the unreasonable application. Additionally, the panel found the vulgar, racial language and threats exercised by Officer One run counter to the integrity and ethics of the Department, its policies, procedures, rules and personnel. The panel also found that Officers One and Two breached protocol by abandoning unsecured suspects to detain the complainant. The panel recommended two furlough/vacation days, retaining in anger management and de-escalation and a letter of reprimand remain in the personnel files for six months for Officer One.

The CRB panel found the complaint regarding Demeanor credible and voted to sustain the allegations against Officers One, Two, Three and Four. The panel found the behavior unprofessional by discouraging the lawful exercise of one's State-protected right without

direct knowledge of whether interference actually occurred. Finally, the panel determined that Officer Four acted unprofessionally by affirming the unjustifiable use of force where the complainant was not provided an opportunity to get off of his bicycle and comply with commands before being thrown to the ground and punched in the face and head multiple times. Therefore, the panel determined the complainant's allegation of excessive force and demeanor sustained acts of misconduct. The panel recommended a letter of reprimand remain in the personnel files for six months for Officer One and letters of reprimand remain in Officers Two, Three and Four's personnel files for six months.

- **Excessive Force Sustained against Five Officers**

A male complainant reported that after exiting a corner store from buying a t-shirt and a drink (an ICEE) he walked towards the 1700 block of East Fayette Street and spilled a portion of the drink on his new shirt. After turning around and cleaning off his shirt, a younger male approached him and had a brief conversation about his drink. The complainant stated that he "saw the cop car pulling down the street." Moments later, he noticed "Officer One jumping out of his car running up to some kids standing a little past the phone store several feet behind him. Then he's running up to me and the first words out of his mouth were 'Do you want to die today?' I didn't know what to do because I never had this type of encounter with an officer of the law. Then he's in my face trying to grab on my hands and I pulled back, then he tells me I'm being detained. I asked why but he never gave an answer (while grabbing for my hands) then I just took off running with no idea what Officer One is going to do next. Then as I'm running I hear a gunshot come from Officer One because I have a weapon which he claims to have seen when he approached me. As I ran, I headed towards 1809 East Fayette Street and ended up tripping and falling behind the building behind a wall barrier." The complainant stated that before tripping, he dropped the weapon as he was running, heard the ammunition clip fall to the ground as he pulled the gun from his waist area after turning to run so that it did not fall on its own as he fled. He stumbled and fell not attempting to move or flee further as the fall was painful and he was tired from running. He complained that the first officer to approach him (Officer Three) jumped on his back and began putting his arms behind his back as other officers arrived seconds later. The complainant wrote that Officer One followed after the other officers and that Officer Three held one arm behind his back and the other above his head though the complainant stated he was complying and not resisting. he wrote that he then heard officers yell "stop resisting" in order to have any nearby witnesses think he was not complying as Officer One proceeded to kick and punch him in his head and face.

The complainant continued stating that at this time he was yelling to Officer One to stop hitting him because he had recently had reconstructive surgery on his jaw bone with a metal plate inserted. He stated that Officer One did not care, alternating from "kicking constantly in my face to a variation of kicks, punches nonstop as I still have my right hand behind my back and left arm behind my head and Officer One throwing kicks and punches as I'm on my stomach with officers on my back punching me in the back of the head." The complainant stated that officers then sprayed him with Mace five inches from his face. "This is when I

start screaming for help loud as I could. They finally dragged me from behind the wall barrier. I could not open my eyes and my breathing was coming in short breaths gasping for air telling them I can't breathe or see. One of the officers comes and pours hot water on my face claiming that none of them have cold water to try and treat the Mace on my face. They finally get me up on a stretcher and I ask if one of them could loosen the handcuff on my right wrist because it was way too tight." The complainant was later found to have nerve damage on his right wrist and suffered a fractured nose, cuts and abrasions to the back of the head, arms, and right leg.

OPS reported that Officers One and Two were operating a police vehicle in the 1700 block of East Fayette Street when they observed three people who appeared to be loitering on the front porch of which has been the site of criminal activity. The officers approached the three males who attempted to quickly depart the area upon observing the officers. Officer One approached a male who was walking away to the east while Officer Two approached two males who were walking away to the west. Due to the possible criminal offense of trespassing and the past incidents surrounding the use and sale of narcotics, Officer Two frisked the two males for weapons, verifying they were unarmed. Officer One attempted to do the same to the third male, later identified as the complainant, who was not cooperative and became physically and verbally resistive. The complainant yelled, "You gonna kill me? You gonna kill me?" multiple times. As Officer Two handcuffed one person to maintain control, Officer One observed a handgun in the complainant's waistband and began to grasp for the complainant in an attempt to gain control of him. The complainant broke free from Officer One's grasp and turned and ran further east. As the complainant ran, he was believed to have drawn the weapon from his waistband. Seeing the complainant was armed, Officer One drew his duty weapon. As the complainant continued to run, he turned his torso back toward Officer One, extending the handgun toward Officer One. Officer One fired a round at the complainant, missing him. The complainant continued running east.

The complainant ran toward 1809 East Fayette Street, pursued by Officer One. Officer One lost sight of the complainant in a wooded area behind the building and was uncertain where he had gone. Officer Two also ran on foot to the area and Officers Three and Four drove to the rear parking lot from another direction before exiting to search on foot. Officer Three located a discarded handgun behind the building and soon after observed the complainant concealing himself at the base of a concrete retaining wall several feet away from the gun. Officer Three engaged the complainant, initially solo then with the assistance of Officers One and Two who arrived soon after, while Officer Four secured the handgun. The complainant was allegedly not cooperative with his arrest, refusing Officer Three's verbal commands to place his hands behind his back, then straining against Officer Three's attempts to pull it behind his back. All officers attempted to force the complainant's arms back, but he continued to roll back and forth towards the arm they were trying to secure. At one point, Officer Two struck the complainant with a closed fist several times in the ribcage to overcome his resolve. After further attempts to pin his arms behind his back remained unsuccessful and resulted in the complainant momentarily breaking free and kicking his legs at the officers, Officer Two struck the complainant several times in the face to compel him

to give up. The complainant still did not and Officer Two then pepper sprayed the complainant, after which they were able to secure each wrist in handcuffs.

While the complainant was being apprehended, officers responded to the original scene of the stop. One live round was recovered from the area between 1706 and 1710 East Fayette Street where the complainant initially fled. This round matched the caliber of the weapon recovered near the complainant, which was determined to be 9mm. Also recovered in close proximity to the live round was a magazine loaded with seven live rounds, also 9mm.

The use-of-force report completed by Officer Five briefly described the incident as it unfolded, the alleged resistance stated by officers and the force used to overcome it by officers. Officer Five noted the complainant was bleeding from the face and was transported to Upstate Hospital for treatment of his injuries before being lodged in the Justice Center. Officer Five noted photographs were taken by an evidence technician, although it was noted in the report that the complainant refused to cooperate and told him to stop taking pictures after just a few were taken because he stated the camera flash was painful following being Maced.

The complainant stated that he never turned to look back at Officer One as he fled with the gun in his hand. He contended that he at no point kicked or flailed his legs, rather remained compliant and nonresistant as he was being beaten. The complainant also challenges Officer Two's statement saying that Officer One was the primary officer kicking and punching him in the face, not any other officer. The complainant also stated that Officer Three did not attempt to complete an arrest as "he was only holding my arms awkwardly" so that Officer One could assault him and "claim all force used was as result of resistance."

An eyewitness wrote a formal notarized statement emphasizing that Officer One approached the complainant. The witness heard the officer stating, "Do you want to die today?" repeatedly while reaching toward the complainant before he turned to run. The witness reported not observing the complainant turn around and point anything towards the officer, "especially not a gun." the witness also indicated that Officer One appeared to approach the complainant aggressively and for no reason as Officer One cut at least one car off in the "middle of the street pulling up and jumping out of his car" engaging the complainant.

The CRB panel found the complaint regarding Excessive Force credible and voted to sustain the allegations against all five Officers. The panel concluded that the officers involved used a high level of force from the outset of the encounter rather than attempting lower levels of force first. The panel also concluded that level of force used included kicks and punches to the head, face, stomach and back and that the kicks and punches were further administered after The complainant complied with the officers' attempt to properly handcuff him. The panel recommended loss of one day of paid furlough/vacation for each Officer.

- **Excessive Force Sustained against Four Officers**

A male complainant reported that after he had stolen and returned a pair of \$10.00 shorts from the Family Dollar, officers arrived and “told me to put my hands on the car, I turned around and asked ‘what for’ and he slammed me on the ground with me on top of him and began choking me. I tried to loosen his grip and I got off the ground and they began punching me. I grabbed their legs and we fell, they began assaulting me and kicking my shoulder out of socket, began to taser me, and fractured my nasal passage. I received several scars and bruises.”

In the report provided by the Office of Professional Standards, Officer One was dispatched to the Family Dollar regarding a larceny in progress complaint and observed the male suspect walking in the parking lot area when he arrived. The Officer ordered the male suspect to stop at the front of the police vehicle, the complainant stopped, and then “started to slowly back away from the officer while placing his hands down in the front of his shorts.” Officer One then “took hold of the complainant arms and attempted to escort him closer to the patrol vehicle.” Before Officer One was able to give further verbal commands, the complainant allegedly thrust his arm into the officer, and twisted himself until he faced the officer. The complainants behavior and actions caused the officer to believe that he was about to be assaulted.

Officer One took the complainant to the ground landing on the complainants back as he tried to grab hold of complainant by his arm and shoulder. The complainant struggled with the officer and was able to force the officer over onto his back with complainant ending up on top of the officer. Once on top of the officer, complainant allegedly began to punch the officer several times with both hands on the officer’s right and left side rib area. Officer One wrote that Officer Two arrived and delivered a kick to complainants face and shoulder which allowed Officer One to get the complainant off of him. With the assistance from additional responding officers, Officer One was able to ultimately subdue and place the combative subject male into custody.

Numerous Officers responded to the scene after a call for assistance was requested. A total of four officers, including Officer One used force to attempt gaining control and effect the arrest of complainant. The officers utilizing force were, in addition to Officer One (8 - 20 punches to face), Officer Two (One kick to face; One kick to shoulder; 2-3 kicks to lower back; 8-10 knee strikes to stomach; One additional punch to stomach after taser deployment), Officer Three (delivered several closed handed punches to the face), and Officer Four (discharged stun/taser wires three separate times). Each officer documented their selected level of force in their Incident Report.

The Administrator reviewed a video provided by an eye witness whose voice could be heard stating “this is crazy,” “Yall done kicked the man in his head” and “they just tased him”. The Administrator heard what sounded like screams from the complainant, the sound of a taser being deployed, as officers 5-7 officer are seen either on or surrounding complainant.

Another eye witness and her mother (two white females) were interviewed and stated that they'd never seen a human treated that way. They stated that the officers were trying to get the complainants hands and both admitted that he was not initially compliant in the process of arrest. They also advised that they thought race may have been a factor given how viciously they kicked, punched, and tased him after he was already in handcuff's; further stating that officers kept joining in like they enjoyed it. The daughter stated that the way officers treated complaint made her sick to her stomach, and left her in tears. She further stated that the ordeal was horrible and the complainants face didn't look recognizable after the officers finished beating him.

The CRB found the complaint regarding Excessive Force to be credible ad voted to sustain the allegations against all four officers. The eye witness testimony was deemed credible as well and support the accounts of the complainant. The panel concluded the level of force included punches, kicks, and tazer after he was handcuffed to be excessive and recommended all officers receive more training on Article 35 of the NYS Penal Law and the current Use of Physical Force Policy.

## **BUDGET**

2016-2017 Adopted

### PERSONNEL SERVICES

510100	Salaries	\$ 93,530.00
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### CONTRACTUAL & OTHER SERVICES

540300	Office Supplies	\$ 3,230.00
540500	Operating Supplies & Expenses	\$ 10,260.00
541500	Professional Services	\$ 28,500.00
541600	Travel, Training & Development	\$ <u>2,365.00</u>

<b>TOTAL:</b>		<b>\$137,885.00</b>
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## 2016 Totals

**Total Complaints Received during 2016:** 109

**Categories of allegations as defined in CRB Ordinance (totals from all complaints received in 2016; note that multiple allegations can be made in one complaint):**

Active Misconduct: 33

Passive Misconduct (Failure to Act): 16

Damaged or lost Property: 2

Denial or Violation of Constitutional Rights: 6

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

**The number of cases processed and closed by the Board during 2016:** 85

**The number of cases where a CRB panel recommended disciplinary sanctions be imposed by the Chief of Police during 2016:** 14

**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 2016:** The CRB received no response from the Chief of Police for the 14 cases sustained by the CRB during this period.

**The number of complaints processed and not sent to a panel hearing during 2016:** 64

**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:** 5

**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:** 1

**The number of complainants who filed a Notice of Claim against the City of Syracuse while their complaint was being considered by the Board:** 4

### Hearing outcomes

Panel hearings scheduled: 26

Panel hearings held: 25

Panel hearings resulting in disciplinary recommendations from CRB: 14

Panel hearings resulting in no disciplinary recommendations from CRB: 9

**Categories of Complaints Received by the CRB during 2016\***  
**Number & Percent of Annual Intake**

Demeanor	Destruction of Property	Evidence Tampering	Excessive Force	Failure to Act	Failure to Secure Entryway after Forced Entry
52	2	3	33	36	1
47%	18%	27%	30%	33%	9%

False Arrest	Gender Bias	Harassment	Improper Offer to Reduce Charges	Improper Search/Seizure
22	0	24	2	15
20%	0	22%	18%	14%

Racial Bias/Profiling	Retaliation	Theft/Larceny	Untruthfulness in a Police Statement or Falsifying a Report	Violation of Constitutional Rights
31	3	3	3	6
28%	27%	27%	** 27%	5%

\*Some individual complaints include multiple allegations

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

**Categories of Allegations Sustained by the CRB during 2016**

**Raw Number, Percent of All Sustained Hearings (14 total) & Percent of that Category that were Sustained**

<b>Demeanor</b>	<b>Destruction of Property</b>	<b>Evidence Tampering</b>	<b>Excessive Force</b>	<b>Failure to Act</b>	<b>Failure to Secure Entryway after Forced Entry</b>
5	0	0	7	4	1
35%	0%	0%	50%	28%	7%

<b>False Arrest</b>	<b>Gender Bias</b>	<b>Harassment</b>	<b>Improper Offer to Reduce Charges</b>	<b>Improper Search/Seizure</b>
0	0	1	0	1
0%	0%	7%	0%	7%

<b>Racial Bias/Profiling</b>	<b>Retaliation</b>	<b>Theft/Larceny</b>	<b>Untruthfulness in a Police Statement or Falsifying a Report</b>	<b>Violation of Constitutional Rights</b>
1	1	1	1	0
7%	7%	7%	7%	0%

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

## Complaints Received per Common Council District for 2016

### **District 1:**

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

### **District 2:**

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

### **District 3:**

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

**District 4:**

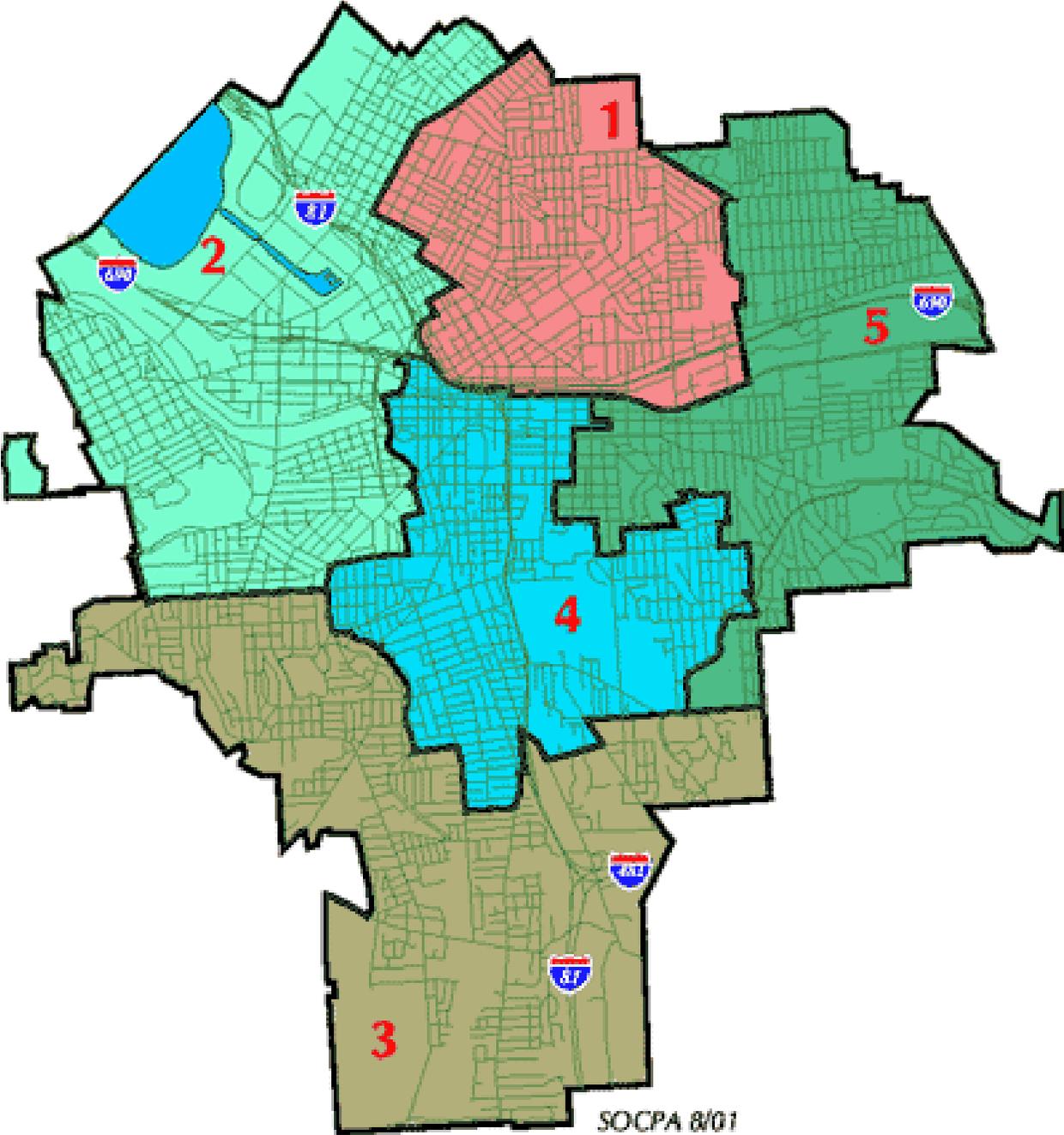
Demeanor: 6  
Evidence Tampering: 0  
Excessive Force: 3  
Failure to Act: 3  
Failure to Secure Entryway after Forced Entry: 1  
False Arrest: 0  
Gender Bias: 0  
Harassment: 1  
Improper Search/Seizure: 2  
Racial Bias: 0  
Taser Discharge: 0  
Theft/Larceny: 0  
Untruthfulness in a Police Statement/Falsifying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

**District 5:**

Demeanor: 0  
Evidence Tampering: 0  
Excessive Force: 5  
Failure to Act: 2  
False Arrest: 0  
Gender Bias: 0  
Harassment: 0  
Improper Search/Seizure: 0  
Racial Bias: 0  
Taser Discharge: 0  
Theft/Larceny: 0  
Untruthfulness in a Police Statement/Falsifying a Report: 0  
Violation of Constitutional Rights: 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 2016

<b>Ethnicity</b>		
<b>Black</b>	72	66%
<b>White</b>	24	22%
<b>Latino</b>	5	4%
<b>Asian</b>	0	0%
<b>Native American</b>	1	1%
<b>Other</b>	2	2%
<b>Total</b>		100%

<b>Sex</b>		
<b>Male</b>	72	66%
<b>Female</b>	35	32%

<b>Sexual Identity of Complainant</b>		
<b>LGBTQ</b>	0	0%

<b>Age</b>		
<b>Under 18</b>	4	3%
<b>18-35</b>	43	39%
<b>36-50</b>	35	32%
<b>51+</b>	21	19%

<b>Disability</b>		
<b>Visual</b>		%
<b>Hearing</b>		%
<b>Physical</b>		%
<b>Intellectual</b>		%

<b>Language other than English</b>		
<b>Spanish</b>		0%
<b>Vietnamese</b>		0%
<b>Other</b>		0%

\*Disability information and languages other than English were not indicated by the complainants.

## **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

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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

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### 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.