ATTACHMENT 3

Report by Policy Analyst Jan Rus in response to questions posed by the board prepared for the November 10 CPRB meeting.

1) Policy re: lethal cover by rookie (inexperience/wording)

The board asked a question about the placement of a rookie officer in a position of providing lethal cover as occurred in a previous CPRD case due to the perceived increased potential that a rookie might make a mistake or react poorly when faced with the possibility of using lethal force. Board members wondered if it was possible to change police policy to require only veterans to be placed in such positions.

Response:

Unfortunately, the facts in the particular case under review appear to be Sui generous in that they allowed the incident to fall between the cracks of typical OPD response. In the particular incident, the individual involved was inside a vehicle with clear access to a weapon; however that individual was apparently asleep or unconscious at the time of the interaction with the police. Had the individual involved been awake and barricaded within the vehicle with a weapon, the incident would have immediately triggered the use of an OPD tactical team for its resolution. One of the requirements for Tactical team members within the OPD is that they must not only have received advanced training in certain complex interactions such as barricade situations, but also that they must have served at least 3 years on the force prior to seeking inclusion on the team. Therefore, had the incident in question been handled by a tactical team, it can be assumed that none of the team members involved in providing lethal cover would have been rookies.

However, because the individual in the car was unconscious and not actively barricaded, the option to call for a tactical team was subject to the discretion of the incident supervisor. From the testimony of the officers on the scene, the possibility of calling for a tactical team was discussed, however for a variety of factors, including: the possibility of a wait time of up to one hour for the tactical team to assemble; the fact that it was unclear if the unconscious individual in the car was in need of immediate medical attention; and an armed burglary which was occurring at the same time and diverting some tactical team members; it was decided that a tactical team was not required. The supervisory officer did place highly experienced officers as riflemen covering the scene and positioned the remaining members of the response team in positions which he believed would provide the best match to their individual skills. Unfortunately, the operation resulted in the use of deadly force by an individual rookie officer who had been placed in a position to provide close lethal cover.

Because of the unique nature of the incident in question, in which the individual involved was both clearly in possession of a weapon and inside a vehicle, but not conscious or barricaded, the incident supervisor had very little formal guidance as to police response. Because of the fact that it didn't automatically trigger a formal tactical response, but led to an unfortunate use of lethal

force, the incident in question has undergone extensive review by the department and IAD, and has become a training case for incident supervisors. In most similar incidents, where the individual involved is conscious and in possession of a weapon, the automatic triggering of a tactical response would have guaranteed that the officers involved were at minimum 3 year veterans of the force. However all graduates of the Police Academy are presumed to have sufficient training to handle their assigned roles, and in the absence of a formal trigger of the supervisory officer was well within his rights to assign the officers on scene to the roles he believed would provide the best resolution of the incident. While a blanket policy to require veterans be placed in positions of lethal cover during complex incidents where lethal force is an option holds a certain appeal, the current rules regarding tactical response teams covers the vast majority of such incidents, and achieves the same goal while also providing incident supervisors on the scene the flexibility to position officers in the positions in which they will be most useful for the few incidents that do automatically trigger a tactical response. Furthermore, the incident in question has itself caused changes in training for the very small number of cases that fall through the cracks of Department General Order K-5 dictating the use of tactical teams. It is therefore unclear that a blanket policy regarding the number of years of experience of officers providing lethal cover makes sense at this time.

Additional Information:

From Department General Order K-5: Tactical Operations Team (2/25/2000):
Barricade Situations: the standoff created by an armed or potentially armed suspect, who is refusing to comply with police demands for surrender, in any location, whether fortified or not.

The full rules with respect to the use of tactical teams are available on the OPD website. DGO K-5 Tactical teams at:
http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak032283.pdf

2) Are guidelines different from MOR for crisis intervention team?

The board posed a question as to whether officers acting in their capacities as members of the OPD Crisis Intervention Team (CIT) are subject to guidelines that are different from those of the typical officer.

Response:

CIT officers are regular officers of the OPD who have, in addition to their normal duties, volunteered to undertake additional training in responding to distressed and mentally unstable individuals. As such they are subject to the full set of rules contained in the OPD Manual of Rules. They are additionally required to take certain steps pertaining to the evaluation, care and escorting of individuals subject to a 5150 call to the appropriate medical/psychiatric facilities as dictated by Department General Order O-1.1 (10/3/14)

Additional Information:

For the full set of additional policies and procedures relating to CIT officers please see DGO O-1.1 available at the OPD website at:
http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak058384.pdf

3) How do we push back on sexual assault training?

The Board had a question with respect to officer training in the special care that must be used by officers investigating sexual assaults/claims of sexual violence in response to a previous CPRB case. Namely the board asked whether there are existing policy recommendations for such interviews and what the best practices are with respect to interactions with victims of sexual crimes.

Response

In the case previously heard by the CPRB, an officer involved an investigation of a sexual assault was deemed to have been rude and unprofessional in his interview of the victim of sexual violence. However, because his behavior was not considered to rise to the level of being a MOR violation by the OPD and the CAO, the officer in question did not receive any discipline for that specific incident. However, subsequent to that particular incident the same officer was involved in a separate case involving the investigation of a sexual assault of a student of Mills College (a complaint with respect to that incident was also made to the CPRB). The Mills incident led to several changes with respect to both officer training and the OPD's response to sexual assault. Additionally there is an open disciplinary case with respect to the particular Officer's conduct in the Mills case.

Additional Information:

The victim in the Mills case wrote an article in Salon.com about her experience, and it was reported widely in the public press including a story by the Mercury News Group: http://www.mercurynews.com/2015/05/08/sexual-assault-investigations-college-students-stand-prompts-reforms-by-oakland-police/, attached in its entirety below:

Sexual assault investigations: College student's stand prompts reforms by Oakland Police

By **KATY MURPHY** | kmurphy@bayareanewsgroup.com

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OAKLAND — Shaken and anxious, Kendall Anderson didn't know what to expect when she arrived at the Oakland Police Department to meet with an investigator after reporting she was raped on a date. But she certainly didn't imagine being led into a windowless interrogation room with handcuffs on the chair, gruff questions about her virginity and the insinuation that she was confusing "rough sex" with rape.

The ordeal left the Mills College student even more traumatized, according to a complaint she filed with an Oakland police oversight panel.

"I thought that there would be some sort of sensitivity," Anderson, 21, said of her experience in late 2013. "I was astounded."

What's remarkable about Anderson's story isn't just what happened in that room, but what she did about it — and what happened next.

Anderson went public, filing a complaint with the Oakland Citizens' Police Review Board and then submitting a firsthand account to Salon.com, published in January, titled, "I wish I'd never reported my rape."
After reading the piece, the Oakland Police Department's chief of staff, Sgt. Holly Joshi, set up a meeting with Anderson and police Chief Sean Whent. Within weeks, the Special Victims Section — which conducts sexual assault and human trafficking investigations — created a "soft interview room" for victims, added training sessions for officers handling rape investigations, and created a form to make sure victims knew they could have a trained advocate by their side throughout the process.

(Joshi acknowledged that a meeting with a rape victim spurred the department to make changes but did not refer to Anderson by name, saying she was legally prohibited from speaking about a particular sexual assault case.)

"There's already enough areas where the victim could feel not supported," Joshi said. "There are so many places things can go wrong. The police department should absolutely not be a contributor to her not feeling supported. We have to be the safe place."

A vase of silk daffodils and a sailboat painting now greet victims when they enter the tiny but sunny interview room, a stark contrast to the dingy, windowless walls and institutional tile of the standard interrogation room right next door. Around the corner is a family waiting area with an alphabet mat and buckets of toys for children — another new addition.

While interview rooms designated for adult sexual-assault victims aren't yet common, Palo Alto police use one, and San Francisco investigators will meet a victim at her home, a friend's home or a conference room at the station, depending on her preference.

As the Oakland Police Department trains its sexual-assault investigators, Joshi said, the department will stress the importance of "pre-interviewing" — officers explaining to victims that they might have to ask some uncomfortable and invasive questions, and why it will help their case. They should also make it clear to victims that they don't have to answer those questions, she said, and that they can stop the interview at any time.

The problems Anderson brought to light "shook us all up," said Lt. Kevin Wiley, who runs the Special Victims Section. While he doesn't think the problems she described are systemic, he said, hearing about them was a "wow moment" — a reminder that even well-trained investigators can get "locked into these processes" and forget the human element, causing further harm to the victim.

"You don't need to be victimized twice," he said.

The department has an open internal investigation into Anderson's complaint against Officer Bryant Ocampo, who is still working at the police department. The officer did not respond to questions from this newspaper and sent the inquiries to the department's media relations office.

Making victims feel more at ease is crucial for a broader and more elusive goal: bringing sex offenders to justice.

"We think that if we are ever going to stop rape we need to make the criminal justice system work for victims," said Scott Berkowitz of the Rape, Abuse & Incest National Network, "because rapists tend to be serial criminals and the only way to stop them is to take them off the streets."

Department of Justice surveys have consistently found that about two-thirds of sexual assault victims never report their attacks to the police. In a survey of college women released in December, that figure was a startling 80 percent; nearly half said they were afraid of retribution or that they felt it was a personal matter.

Having skilled and sensitive investigators with an understanding of how trauma can affect a victim's memory or behavior could encourage more people to come forward, Berkowitz said. And, advocates and criminal justice experts say, it is more likely to help a victim make a strong statement, which is often essential in cases with scant physical evidence and no other eyewitnesses besides the accused.

If victims feel uneasy or suspect the investigator doesn't believe them, they say, an effective interview is unlikely.

"People who feel comfortable in their surroundings and comfortable with their interviewers may be more likely to provide fuller, more complete answers to questions — and that will help us uncover what is the goal of any interview: to find out the truth about what happened," said Lt. Zach Perron, of the Palo Alto Police Department.

Anderson's case was referred to the district attorney's office but never prosecuted. She said she was told the defense would likely argue the act was consensual and question why she waited two days to report the crime.

The accused refused to speak to investigators and was never arrested.

While she still believes the legal system failed her, Anderson said, she feels like she's gotten a different kind of justice.

"I've actually been able to get through to the police, and change has been made," she said. "And I fear that if I didn't speak up, how much longer this would have been going on."

Follow Katy Murphy at Twitter.com/katymurphy.

4) Policy recommendation re: PDRD continued use until residence secured

The board asked whether we could request a specific policy requiring OPD to leave on their Personal Recording Devices until after a searched property has been properly secured based on case 15-0876 in which the responding officers turned off their recording devices prior to fully securing a searched property, thereby leaving ambiguity with respect to a subsequent claim that the property was left unsecured and was later the subject of a robbery.

Response:

By the actual wording of Department General Order I-15.1 (7/16/15), it would appear that there is a positive requirement that officers conducting searches leave their PDRDs recording until both the search is complete (which should include securing the property), and the officers involved believe that they will have no further interactions with the individuals involved. This DGO was issued within 2 months of the incident in question, so it is possible that the officers involved were not entirely trained to the letter of the MOR. In conversations with the OPD, they have stated that they are currently reviewing the full set of rules and policies with respect to the use of Personal Recording Devices as part of a broader review of department policy. If the issues raised by this case continue to be salient after this review, the CPRB can make a policy recommendation to specifically speak to training with respect to securing searched properties and PDRD use as this process moves forward.

Additional Information:

From Department General Order I-15.1 (7/16/15)

D. Deactivation of the PDRD

e. The searches requiring activation as enumerated in Part II, A have concluded and the member believes they will have no further interaction with the person;

For the full text of DGO I-15.1 please see:

http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf

5) Policy recommendation: MOR change re: responsiveness to citizen requests for name/badge number and reasons for stops.

The Board had a question with respect to the affirmative duty of officers to provide their name/badge number and the reason for any police stops to any citizen upon their request stemming from a CPRB case in which the responding officers were deemed to have waited for an excessively long amount of time in responding to just such a request.

Response:

The problem confronted by any policy attempting to specify specific response times to citizens complaint times is that they are always subject to both the vicissitudes of the particular incident and the officers willingness to provide the necessary information. A hard guideline could well interfere with the process of conducting a thorough investigation or provide a distraction at a critical time, while a loose guideline is always subject to gaming by the officers involved if they wish to withhold such information. It is unclear that there is any clear policy way out of this conundrum, however it could well be included as part of a CPRB packet of recommendations with respect to police training.

Additional information: From the OPD MOR

370.00 INVESTIGATIONS, ARRESTS, AND DETENTIONS

370.09 IDENTIFICATION AS POLICE OFFICER – Except when impractical or unfeasible, or where identity is obvious, members shall identify themselves by displaying the official star or identification card before taking police action.

398.00 JUDICIAL AND INVESTIGATIVE ACTIONS, APPEARANCES AND TESTIFYING

398.77 REFUSAL TO SUPPLY NAME AND SERIAL NUMBER – Upon request, members and employees shall supply their names and serial numbers to any person who seeks such identification.