



MAX HUNTSMAN
INSPECTOR GENERAL

COUNTY OF LOS ANGELES
OFFICE OF INSPECTOR GENERAL

312 SOUTH HILL STREET, THIRD FLOOR
LOS ANGELES, CALIFORNIA 90013
(213) 974-6100
<http://og.lacounty.gov>

MEMBERS OF THE BOARD

MARK RIDLEY-THOMAS
HILDA L. SOLIS
SHEILA KUEHL
JANICE HAHN
KATHRYN BARGER

June 26, 2019

TO: Brian Williams, Executive Director
Sheriff's Civilian Oversight Commission

FROM: Max Huntsman
Inspector General 

SUBJECT: RESPONSE TO CIVILIAN OVERSIGHT COMMISSION AD HOC
COMMITTEE INQUIRY ON EXCESSIVE FORCE

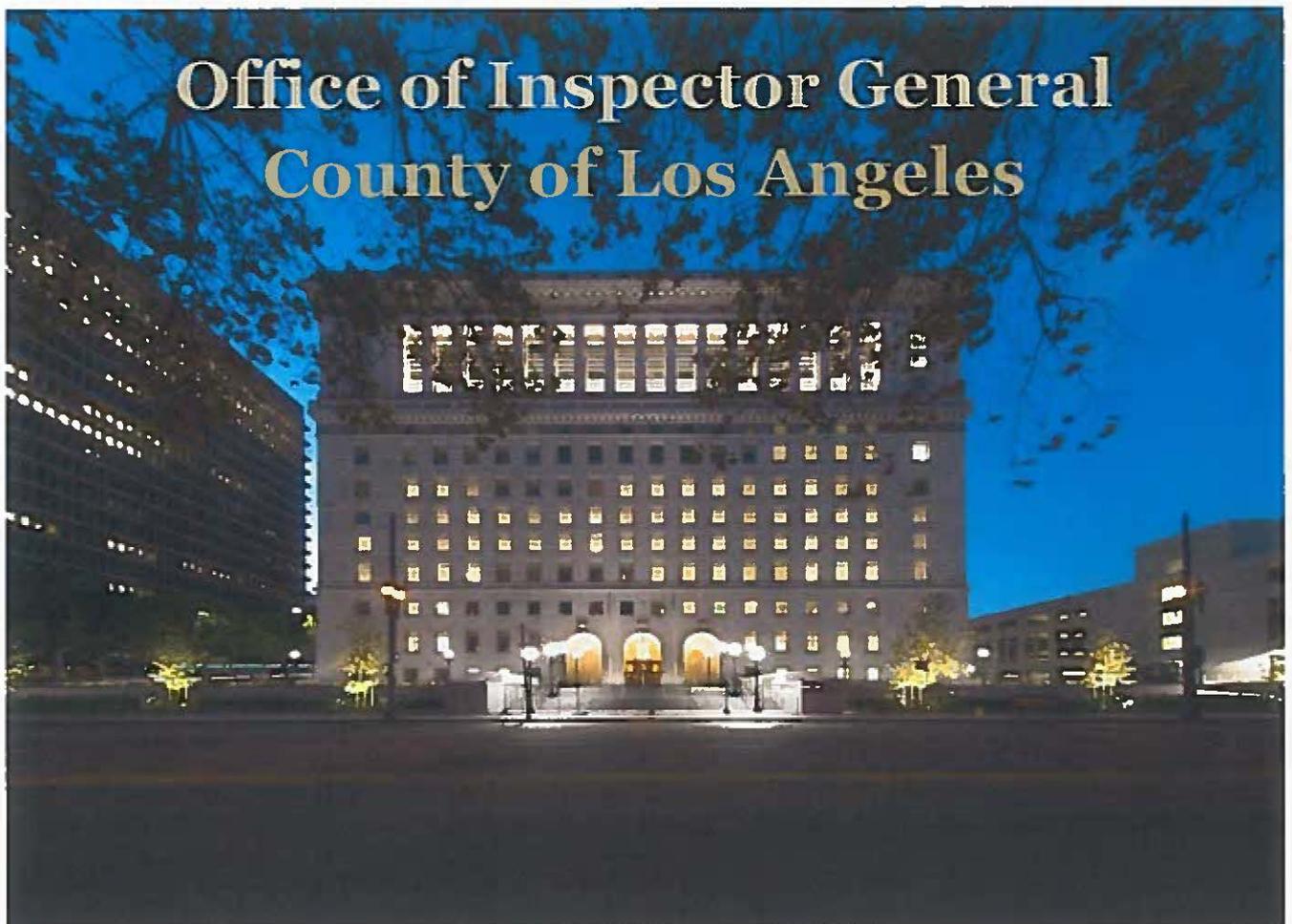
Enclosed please find the Response to Civilian Oversight Commission Ad Hoc
Committee Inquiry on Excessive Force.

If you have any questions concerning this report, please contact me at (213) 974-6100.

MH:DB:sg

Enclosure

c: Supervisor Janice Hahn, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Kathryn Barger
Alex Villanueva, Sheriff
Sachi A. Hamai, Chief Executive Officer
Celia Zavala, Executive Officer
Mary C. Wickham, County Counsel
Brian Williams, Executive Director, Civilian Oversight Commission



**Response to Civilian Oversight
Commission Ad Hoc Committee
Inquiry on Excessive Force**

June 2019

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Questions Presented

On June 26, 2017, the Los Angeles County Civilian Oversight Commission (COC) made the following request of the Office of Inspector General (OIG):

Regarding patrol function[s] of the Los Angeles [County] Sheriff's Department, we would like an assessment on whether and to what degree excessive and unnecessary use-of-force is occurring. How significant is this as a problem, if at all? Is this a problem of significant or great concern? What is the magnitude of the problem? For purposes of this request, "excessive and/or unnecessary use-of-force" is meant to be force that is out of policy or unconstitutional.

Limitations on Data

OIG staff looked at LASD policies and its force review process and also queried and reviewed force data compiled by the LASD. To determine if there is a problem at the Department's patrol divisions with excessive force and develop a quantifiable comparison, OIG staff tried to compare the data with similar information from other law enforcement agencies. However, given the lack of national benchmarks, inconsistencies in the way force data is classified and evaluated by law enforcement agencies, the lack of available data from other law enforcement agencies, and problems with the current systems in place at the LASD, it is difficult to compare or assess to what degree excessive force is a "problem" at the LASD.

The fundamental challenge is both to identify excessive force and capture data for comparison and analysis. However, LASD is actively pursuing implementation of body-worn cameras, a reform which would greatly improve the raw evidence available to identify excessive force. This report proposes recommendations which the COC may wish to consider making which would further improve the capturing of force data.

Scope

This report includes data related to uses of force and allegations of excessive force¹ by LASD deputies assigned to the Department's 23 patrol stations² in the following categories:

¹ For purposes of this report, the term "excessive" force means the same as "unnecessary" or "unreasonable" force. These words are used interchangeably throughout this report.

² The 23 patrol stations are: Altadena, Avalon, Carson, Century, Cerritos, Compton, Crescenta Valley, East Los Angeles, Industry, Lakewood, Lancaster, Lomita, Malibu/Lost Hills, Marina Del Rey, Norwalk, Palmdale, Pico Rivera, San Dimas, Santa Clarita, South Los Angeles, Temple, Walnut/Diamond Bar, and West Hollywood.

- Uses of Force including Deputy Involved Shootings
- Public Complaints (also known as Citizen Complaints)
- Allegations of Excessive Force
- Administrative Investigations
- Criminal Investigations

For context, this report includes an examination of the Department's use-of-force policies and provides a description of the Department's internal use-of-force reporting procedures, the public complaint process, and the internal investigative process. The time period examined is from 2012 through 2016.

Sources of Information

The information provided in this report was collected using sources within the LASD. These sources include the following LASD internal databases:

- Performance Recording and Monitoring System (PRMS) - formerly known as PPI
- Internal Criminal Investigations Bureau Case Tracker
- Discovery Unit Allegations of Force Tracker.

The Los Angeles County Sheriff's Department

The Sheriff of Los Angeles County oversees the largest sheriff's department in the United States, providing police services to all unincorporated areas of the County, all county parks, public venues and facilities, 38 county courthouses, the Metro Transit Authority, the 10 campuses of the Los Angeles Community College District, and 42 of 88 municipalities within the County. The area patrolled encompasses about 3,171 square miles with a population of approximately three million people. Additionally, the Department provides security for about 18,000 inmates in seven county jails.

These services are provided by approximately 18,000 employees, about 10,000 of whom are sworn deputies and 8,000 are civilians (professional staff). Sheriff's Department employees are assisted by 4,200 civilian volunteers and almost 800 reserve deputies. This report focuses on uses-of-force in patrol operations.

Department's Definition of Force

The Department's Manual of Policies and Procedures (MPP) defines force that must be reported and documented as any physical effort used to control or restrain

another or to overcome the resistance of another.³ Not all applications of force falling within this definition are required to be reported.⁴

The Department classifies reportable force applicable to patrol functions into three categories:

Category 1 Force⁵ involves any of the following where there is no injury:

- Searching and handcuffing techniques resisted by a suspect;⁶
- Hobbling⁷ resisted by a suspect;
- Control holds or come-alongs resisted by a suspect;
- Take downs; and/or
- Use of Oleoresin Capsicum spray, Freeze +P or Deep Freeze aerosols, or Oleoresin Capsicum powder from Pepperball projectile (when a suspect is not struck by a Pepperball projectile) if it causes only discomfort and does not involve injury or lasting pain.

Category 2 Force involves the following:

- Any identifiable injury;
- A complaint of pain that a medical evaluation determines is attributable to an identifiable injury; and

³ MPP 3-10/010.00, Use of Force Defined, available at <http://shq.lasdnews.net/shq/mpp/3-10.pdf>.

⁴ The pointing of a gun, for instance, is not considered a reportable use of force under the Department's definition, unless the gun is discharged. Law enforcement agencies are not consistent on whether the pointing of a firearm must be reported and/or documented. For instance, the LAPD does not require it, but the San Diego County Sheriff's Department does. In 2002, the federal Ninth Circuit Court of Appeals held that the pointing of a firearm to an individual's head could be found to be an unreasonable use of force, in violation of the Fourth Amendment to the Constitution. (*Robinson v. Solano County* (9th Cir. 2001) 278 F.3d 1007.)

⁵ A fourth category of force was carved out of Category 1 force in 2017 to streamline the documentation of some of the lowest levels of reportable force. This force category is referred to as a Non-Categorized Incident (NCI). An NCI is any of the following uses of force when there is no injury or complaint of pain once the force has concluded and there are no allegations of excessive force or other misconduct: resisted hobble application; resisted searching and handcuffing techniques; resisted firm grip, control holds, "come-alongs," or control techniques. This category of force is used in custody settings and has recently been implemented in certain stations, including Lancaster and Palmdale. See LASD North Patrol Division Order 17-01

⁶ In its force policies, the Department refers to the application of force on a "suspect." However, its policies apply to the application of force on all persons, not simply those suspected of committing a crime.

⁷ A person is hobbled when they are handcuffed, their ankles are held together with a "Ripp hobble" restraint device, and the clip end of that device is connected to the handcuffs. MPP 3-01/110.21.

- Any application of force other than those defined in Category 1 Force, but does not rise to the level of Category 3 Force.

Category 3 Force involves any of the following:

- All shootings in which a shot was intentionally fired at a person by a department member;
- Any type of shooting by a department member which results in a person being hit;
- Force resulting in admittance to a hospital;
- Any death following a use of force by any department member;
- All head strikes with impact weapons;
- Kick(s) delivered from a standing position, to an individual's head with a shod foot while the individual is lying on the ground/floor;
- Knee strike(s) to an individual's head deliberately or recklessly causing their head to strike the ground, floor or other hard, fixed object;
- Deliberately or recklessly striking an individual's head against a hard, fixed object;
- Skeletal fractures, with the exception of minor fractures of the nose, fingers or toes, caused by any department member;
- All canine bites; or
- Any force which results in a response from the Internal Affairs Bureau (IAB) Force/Shooting Response team.⁸

Unreasonable Force

The Department's policy provides that "Department members are authorized to use only that amount of force that is objectively reasonable to perform their duties."⁹

The policy goes on to state that:

"Objectively reasonable" means that Department members shall evaluate each situation requiring the use of force in light of the known circumstances, including, but not limited to, the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the member or others, and whether the suspect is actively resisting, in determining the necessity for force and the appropriate level of force.¹⁰

⁸ MPP 3-10/100.00, Use of Force Reporting Procedures.

⁹ MPP 3-10/020.00, Authorized Use of Force.

¹⁰ *Ibid.*

Additionally, “unreasonable force” is specifically defined in Department policy as “force that is unnecessary or excessive given the totality of the circumstances” pursuant to *Graham v. Conner* (1989) 490 U.S. 386.¹¹ Policy further mandates that employees who use unreasonable force are to be disciplined or criminally prosecuted.¹²

Under *Graham*, claims alleging law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other “seizure” are most properly characterized as invoking the protections of the Fourth Amendment. The Fourth Amendment guarantees individuals the right “to be secure in their persons . . . against unreasonable seizures,” and must be judged by reference to the Fourth Amendment’s “reasonableness” standard. (*Graham, supra*, 490 U.S. at p. 394.) Under that standard, a court must determine whether an officer’s actions are “objectionably reasonable” considering the facts and circumstances confronting the officer, without regard to his or her underlying intent or motivation. (*Ibid.*) The “reasonableness” of a use of force is judged from the perspective of a reasonable officer on the scene, and its calculus embodies an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. (*Id.* at p. 396.)

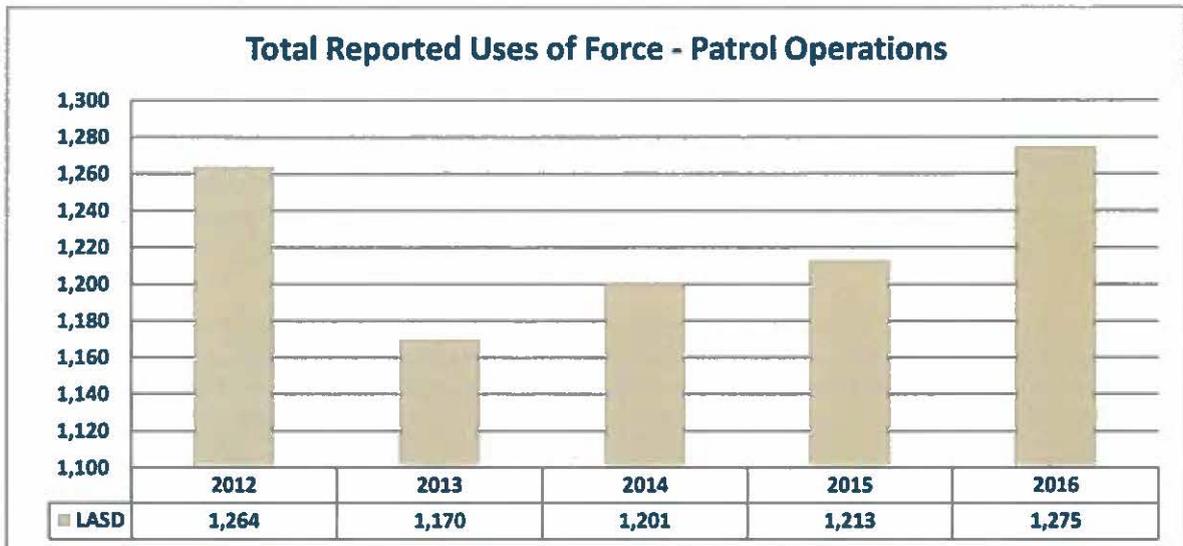
Use-of-Force Statistics for LASD

The following table shows the Department’s reported use-of-force totals per year from 2012 through 2016 for patrol operations.¹³ These totals are based on the Department’s use-of-force reporting requirements and include deputy-involved shootings. In the five years examined, the LASD reported an average of 1,225 uses of force per year.

¹¹ MPP 3-10/030.00, Unreasonable Force.

¹² *Ibid.*

¹³ As queried on the LASD’s PRMS system on April 4, 2018.



Police Contacts Resulting in Force

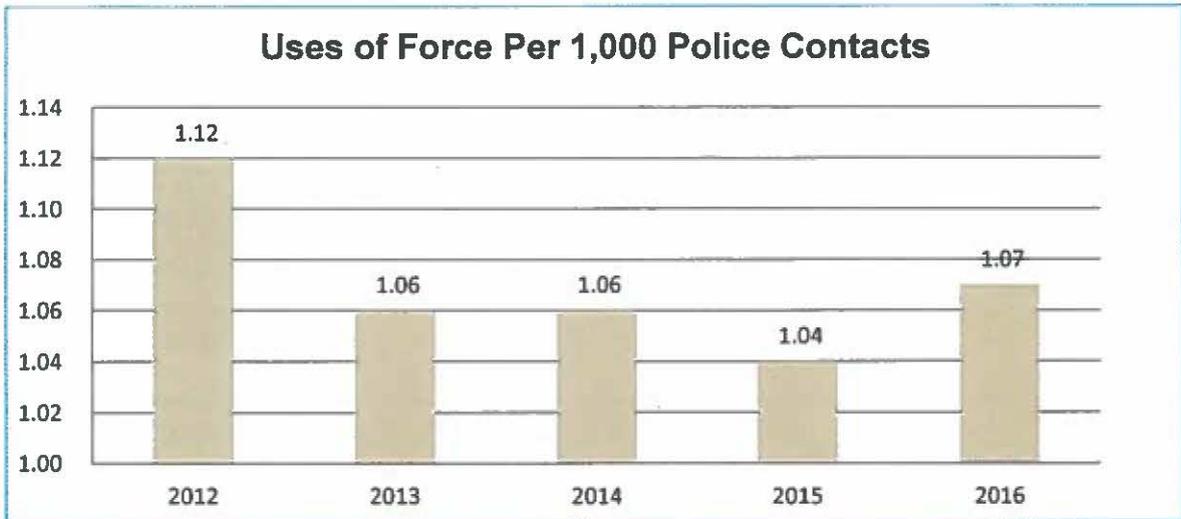
Police contacts are defined as any personal contact with a member of the public resulting from a call for service or self-initiated contact by deputies or officers. Self-initiated contacts would include such things as traffic stops, pedestrian stops, and bicycle stops. Although the vast majority of contacts go without incident, some do result in an arrest, a use of force, or both.

From 2012 through 2016, the LASD averaged approximately 1.1 million police contacts per year as shown in the following table:

Year	LASD ¹⁴
2012	1,125,332
2013	1,104,569
2014	1,130,125
2015	1,171,078
2016	1,189,949
Average.	1,144,211

The next chart shows that for every 1,000 LASD police contacts from 2012 through 2016 there was approximately one reported use-of-force for each of the five years.

¹⁴ Provided by the LASD on December 12, 2017 from its Regional Allocation of Police Services (RAPS) system.



Deputy-Involved Shootings - Deadly Force

The discharge of a firearm constitutes deadly force. The following circumstances can justify the use of deadly force: self-defense or the defense of others when a deputy reasonably believes that death or serious physical injury is about to be inflicted upon the deputy or others; to effect an arrest or prevent the escape of a fleeing felon when the deputy has probable cause to believe the suspect presents a significant threat of death or serious physical injury to the deputy or others.¹⁵

When a deputy-involved shooting occurs, several response teams from various LASD bureaus including Homicide, IAB, and Training and Risk Management (RMB) respond to the scene. Personnel from two independent outside entities -- the District Attorney's Office, Justice System Integrity Division (JSID), and the OIG -- also respond to the scene. These outside entities are responsible for monitoring the LASD's investigation of the shooting.

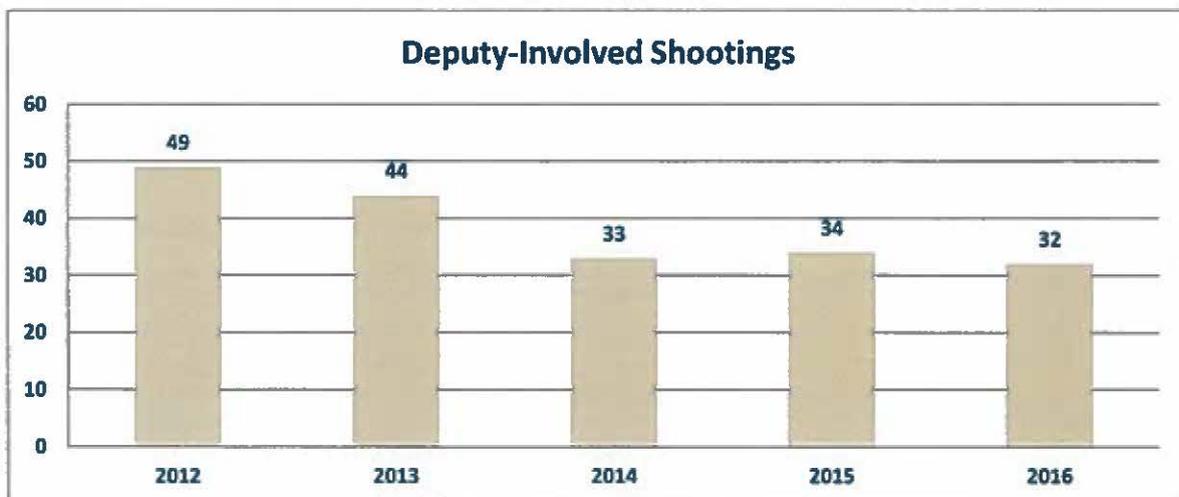
Collectively, these various department units and outside entities evaluate the shooting to address, among other things, whether criminal violations have occurred and whether proper tactics and policies were followed. When a subject is injured as a result of a shooting, the shooting investigation is bifurcated into a criminal investigation by the Homicide Bureau and an administrative investigation by IAB. The Department's Homicide investigation ends when the case is submitted to the District Attorney's Office (LADA) for filing, unless the Homicide Bureau is asked to conduct additional investigation by the LADA. If the LADA rejects the case for criminal filing, a determination letter is sent to LASD notifying it of the decision and the administrative investigation begins. The Homicide Bureau investigation and the IAB administrative investigation are two separate investigations. After the

¹⁵ MPP 3-10/200.00, Use of Firearms and Deadly Force.

administrative investigation is concluded, the case is presented to the Executive Force Review Committee (EFRC) for evaluation and recommendations.

Both deputy-involved shootings and Category 3 uses of force are investigated by IAB and are reviewed by the EFRC. The EFRC is comprised of three commanders who convene a hearing with the employee's unit commander, the IAB investigator, personnel from the Training Bureau, the Homicide Bureau, the Advocacy Unit, and the Risk Management Bureau. Before the hearing, the panel members, the unit commander, and the concerned Division Chief receive a copy of the investigations and review them. At the hearing, the IAB investigator presents the case and answers any factual questions posed by panel members or others present at the hearing. The EFRC panel evaluates each incident and determines whether the uses of force and tactics by the involved employees were within established policies and procedures. If they determine a policy violation occurred, they will make a disciplinary recommendation to the concerned unit commander and division chief. The panel members may also recommend other corrective action, training, debriefings, or commendations.

The graph below shows the number of deputy-involved shootings from 2012 through 2016:



As of May 10, 2019, 174 of the 192 deputy-involved shootings from 2012 through 2016 have been reviewed by the EFRC panel. In all but five of those shooting incidents the panel found that the force used was reasonable or in policy. In two of the five shooting incidents, the panel found "unresolved" whether the force used was reasonable.¹⁶ In the remaining three shooting incidents, the panel found the shooting violated the Department's shooting-at-vehicles policy. In those shootings,

¹⁶ See discussion of dispositions in the Excessive Force Investigation Results section at pp. 14-16.

one deputy was a trainee and received additional training for the policy violation, one deputy was a reserve deputy and was separated from the Department, and the third deputy received a five-day suspension.

Additionally, the tactics were found to be out of policy in 56 of the 174 (32%) shooting incidents reviewed by the panel. The discipline recommendations for those violations ranged from no-discipline, to additional training, to discharge. The one deputy for whom the EFRC panel issued a discharge recommendation involved tactical violations committed in a fatal 2013 shooting of a suspect who was unarmed at the time of the shooting but had been armed with a firearm before the shooting. Additionally, in all but one of the hit shootings reviewed by the LADA, the deputies involved in the shootings were found to have acted lawfully and/or without criminal liability. In the one shooting incident in which the LADA found the deputy acted unlawfully, the LADA filed a criminal complaint alleging felony voluntary manslaughter for the February 24, 2016, fatal shooting of Francisco Garcia at a convenience store/gas station in Norwalk. The deputy in that shooting was on-duty and Mr. Garcia was unarmed. The LADA's news release with more details about the case may be found on the LADA's website, <http://da.lacounty.gov/media/news/sheriffs-deputy-charged-with-killing-motorist-at-norwalk-gas-station>.

How LASD Reports Uses of Force other than Deputy-Involved Shootings

Whenever there is a reportable use of force (as defined above), Department policy mandates that a verbal notification and written report be made by the employee who used force to the employee's immediate supervisor with a minimum rank of sergeant. Each employee who uses force must submit a separate report before going off-duty. Those employees who witness force must also verbally notify their immediate supervisor, who must notify the watch commander and determine whether the employee who witnessed force must write a separate report.¹⁷

The supervisor is required to locate and interview witnesses, photograph the scene, secure surveillance videos, ensure that the department members who used or witnessed force prepare all required reports in a timely manner, review and approve their written reports, review video (if available), interview medical staff, photograph injuries, and complete a supervisor's report. The watch commander is required to physically examine any subject upon whom force is used and interview that subject unless IAB assumes responsibility for investigating the use of force.

The watch commander is responsible for making an immediate verbal notification to IAB in the following situations: all shootings by any department member, both on

¹⁷ MPP 3-10/110.00, Use of Force Review Procedures.

and off-duty, including accidental discharges, warning shots, and shootings at animals; all incidents in which deputy personnel are shot (in incidents involving deputy-involved shootings in which someone was wounded or killed, the LASD Homicide Bureau also responds and takes over the investigation); hospitalizations due to injuries caused by any department member; skeletal fractures caused by any department member; Category 2 or 3 force used by any department member during or following a vehicular or foot pursuit; all large-party situations where Category 2 or 3 force is used; injury or complaint of injury to a person's head or neck area resulting in medical evaluation and/or treatment following contact with any department member; all head strikes, kicks to the head with a shod foot, or knee strikes to the head; any situation in which a department member pushes, shoves, takes down, or otherwise causes a person to hit their head against a hard object; canine bites resulting in medical treatment; any death following a contact with a department member; any of the above uses of force witnessed by a department member applied by personnel from another law enforcement agency involved in an operation with department personnel; or at any scene where the Sheriff's Response Team (SRT) is deployed. An IAB lieutenant determines whether IAB will respond.¹⁸

If the use of force is classified as Category 1 or 2, the watch commander is further tasked by policy with preparing and submitting a force package to the station captain within 21 days after the force incident, unless the investigation is conducted by IAB. The force package contains a recommendation from the watch commander on whether further action or investigation is warranted. The station captain must independently evaluate all force packages and the recommended findings therein. The station captain then determines if the force and tactics are within policy and decides whether further action or investigation is necessary. The station captain thereafter forwards the force package to a commander assigned to the relevant patrol station for additional review. Category 3 uses of force and shootings are reviewed by the EFRC as discussed above.

How LASD Conducts Administrative Investigations of Alleged Excessive Force¹⁹

Allegations of excessive force are handled differently depending on how the Department becomes aware of the allegation. If an employee reports a use of force and during the force investigation the subject alleges the force was excessive, the allegation will be reviewed and analyzed during the normal force-review process discussed above. If a force incident is not reported and the allegation of excessive

¹⁸ MPP 3-10/110.00, Use of Force Review Procedures.

¹⁹ See Appendix A - Review of Misconduct Cases Process for a flowchart depicting the process for investigations and administrative review of misconduct cases.

force is brought to the attention of the Department by a supervisor who may have reviewed video or an employee who may have witnessed the force, the failure to report the force and the possibility that excessive force was used is generally handled by initiating an administrative investigation. If the subject or other member of the public brings an allegation of force to the Department's attention, it can be handled in different ways. Some patrol stations document the allegation as a service comment report and conduct an inquiry²⁰ into the allegation as discussed further below. After the inquiry, the station captain opens an administrative investigation if the evidence reveals a possible policy violation or closes the inquiry without an administrative investigation if the inquiry reveals there is no evidence of excessive force or an unreported use of force. In either case, the inquiry is forwarded to the Discovery Unit within the Department's Risk Management Bureau and uploaded into PRMS. Some stations conduct an allegation-of-force inquiry without documenting the allegation as a service comment report. At the conclusion of the allegation-of-force inquiry, a memorandum is authored and the unit commander closes the inquiry or initiates an administrative investigation depending on the evidence. If the force allegation is closed, the memorandum is forwarded to the concerned division chief for review and thereafter to the Discovery Unit for retention.²¹ If the subject or complainant produces evidence that makes it immediately apparent that a policy was violated, be it that a force incident occurred and was not reported or that the force used was excessive, a station captain may also choose to immediately recommend an administrative or criminal investigation be initiated without documenting the allegation as a service comment report or initiating a unit inquiry into the allegation.

An administrative investigation is a departmental investigation into allegations of misconduct. As mentioned above, the Department can become aware of a member's alleged excessive use of force either by a departmental use-of-force report, a supervisor, an employee, or a public complaint. Although each is handled differently at the outset, if an administrative investigation is initiated, the procedures do not follow the same path as a normal use-of-force review. When an investigation into an allegation of excessive force is initiated, the unit commander decides which policy violations to pursue. While the policy violation on unreasonable force is sometimes charged, potential policies more commonly listed as potential policy violations are performance to standards, force prevention principles, and/or force reporting.

²⁰ LASD uses the term "inquiry" when it conducts investigations into citizen complaints before they are referred for an administrative investigation. During citizen complaint inquiries, personnel are not compelled to write reports or make statements, but may do so voluntarily. The process is similar for force allegations. The Department refers to the supervisor's investigation into the allegation as an inquiry and personnel are not compelled to write reports or make statements as part of the investigation.

²¹ MPP3-10/100.00, Use of force Reporting Procedures.

Once the investigation is completed, it is reviewed by the employee's unit commander. The unit commander recommends findings and may impose up to a 15-day suspension whenever an investigation is founded.²² This administrative action is reviewed and approved by the area commander and concerned division chief. If the division chief determines discipline should be 16 or more suspension days, a reduction in rank, or discharge, the division chief must present his or her decision before a Case Review panel for approval. The Case Review panel is comprised of the Undersheriff and two Assistant Sheriffs who review division chiefs' recommendations about discipline.²³ The findings that can be made are not limited to those initially charged and can include unreasonable force if there is a preponderance of the evidence to prove the employee violated that policy.

The following table shows the number of administrative investigations that resulted in a finding on a charge of unreasonable force compared to the total number of administrative investigations initiated for any violation of policy committed by personnel from the Department's patrol divisions:²⁴

	2012	2013	2014	2015	2016	Total
<i>Investigations Involving a Finding on Excessive Force Policy</i>	6	5	3	2	2	18
Total Administrative Investigations	221	219	240	334	280	1,294
Percentage of Total Administrative Investigations Involving Excessive Force	2.7%	2.3%	1.3%	.6%	.7%	1.4%

According to PRMS, the number of total administrative investigations in patrol divisions from 2012 through 2016 ranged between 221 and 334, while the total number of investigations with findings made on an excessive force charge dropped from six in 2012 to two in 2016. The chart indicates that a very small percentage of administrative investigations resulted in a "founded" finding on the excessive force policy. It is unclear why excessive force cases have steadily decreased since 2012, but one explanation may be that the Department is not using a charge of excessive force and instead may be using other MPP violations to evaluate the incident, as evidenced by how complaints of excessive force are investigated. (See Complaints of Excessive Force section on pages 18-20.) Additionally, the OIG is aware of a 2015 patrol case in which the EFRC panel made a finding of unreasonable force and the employee was served with a letter of intent to discipline. The employee's division, however, subsequently overrode the EFRC panel's decision and imposed lesser discipline for a Performance to Standards violation. That case did not come

²² MPP 3-04/020.60, Delegation of Discipline Matters.

²³ *Ibid.*

²⁴ As queried in PRMS on January 25, 2019, for cases with charges of "3-01/025.10: Unreasonable Force" and "3-10/030.00: Unreasonable Force." Includes both unit level and department level investigations.

up on PRMS when unreasonable force cases were queried. It is therefore unclear how many other cases like that may exist that did not rise to the level of an EFRC review and may have been treated as a performance-to-standards issue.

Excessive Force Administrative Investigation Results

There are five possible investigative dispositions within the LASD: exonerated, founded, unfounded, unresolved, and inactivated.²⁵ **Exonerated** refers to cases in which the employee was not personally involved or in any way connected to the incidents or alleged conduct; an inquiry revealed all allegations were false or the reporting party demonstrated diminished capacity; or even assuming the allegation is true, it does not constitute a violation of law or department policy. **Founded** refers to cases in which the investigation establishes by a preponderance of the evidence that the allegation is true, and the employee's conduct is prohibited by law or policy. **Unfounded** refers to cases in which the investigation establishes by a preponderance of evidence that the allegation is not true.²⁶ A finding of **Unresolved** refers to when there is no preponderance of the evidence to support either version of the incident.²⁷ A case may be **Inactivated** in limited circumstances such as when the subject resigns or retires during the investigation or the complainant withdraws the complaint or refuses to cooperate.²⁸ Policy further dictates that there must be independent reasoning indicating the alleged misconduct did not occur or that all investigative leads were exhausted before a case can be inactivated.²⁹

In a case deemed "founded," the unit commander or division chief refers to guidelines for discipline to determine what level of discipline to recommend. The Department has a policy of using "progressive discipline," which is a method that "attempts to correct, resolve or remove the employee's performance problem or misconduct at the lowest, most effective level."³⁰ However, acts of misconduct the

²⁵ The Department's definitions of Unfounded and Exonerated do not align with the California Penal Code. The Department uses Unfounded when the investigation establishes by a preponderance of evidence that an allegation is not true. A preponderance of the evidence is defined in the law as "evidence that has more convincing force than that opposed to it." In contrast, California Penal Code section 832.5(d) states "Unfounded" means that the investigation clearly established that the allegation is not true. Similarly, California Penal Code section 832.5(d)(3) states "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy. Thus, unlike LASD policy, the Penal Code imposes a higher burden of proof before a law enforcement agency can decide that a case is Unfounded or Exonerated.

²⁶ MPP 3-04/020.25, Administrative Investigation Terminology.

²⁷ LASD Administrative Investigations Handbook, page 26.

²⁸ *Id.* at p. 32.

²⁹ MPP 3-04/020.20, Inactivation of Administrative Investigations.

³⁰ Guidelines for Discipline, September 28, 2012, at page 3, available at <http://lasd.org/pdfjs/web/GuidelinesForDiscipline.pdf>.

employee should reasonably know are unacceptable, such as dishonesty, violent behavior, or "behavior which is illegal or places the individual or the Department in violation of federal, state or local laws, or court orders," are not appropriate for progressive discipline.³¹

The progressive discipline steps are as follows: written reprimand; suspension; salary step reduction; bonus removal; reduction in rank or grade; discharge.³² There are also Education Based Discipline (EBD) training programs that can be used in lieu of suspension days for most violations. Guidelines for specific policy violations are set forth in the Department's Guidelines for Discipline. As of April 2019, the Department is using Discipline Guidelines that were implemented on September 28, 2012 (2012 Guidelines). Before December 2018, the Department was using Guidelines for Discipline that were implemented on January 1, 2017 (2017 Guidelines). The post-2012 guidelines were challenged by the deputy union as part of an unfair employment practice charge before the Employee Relations Commission (ERCOM or Commission). The Department contested the charge arguing that modifying the guidelines for discipline was a management right. In August 2018, the ERCOM hearing officer found that the post-2012 guidelines were subject to bargaining and could not be implemented unilaterally without meeting and conferring with the union. Before the case was argued before the Commission, which decides whether to follow the hearing officer's recommendation, LASD opted to revert to the 2012 guidelines rather than further litigate the matter. However, the Commission has not yet issued a final decision.

The chart below sets forth the discipline guidelines in effect in both the 2012 and 2017 Guidelines for offenses related to the use-of-force investigations:

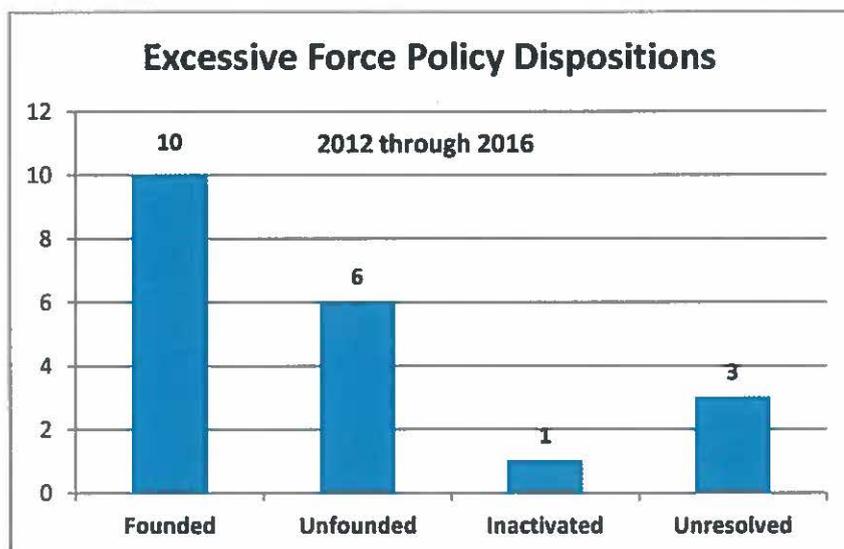
³¹ *Ibid.*

³² There is a further process that is not technically discipline although it is sometimes used in that context: The Unit Performance Log Entry (PLE). The unit performance log is comprised of supervisory notations about employee performance during a given rating period. The purpose of the Unit performance log is to document supervisors' observations about performance and supervisor/employee discussions about performance (goals, strengths/weaknesses, career guidance, etc.). Use of the Department's designated PLE form is required. The documentation on a given employee in the Unit performance log must be shown to, and discussed with, the employee by the supervisor who recorded it, who must obtain the employee's signature as evidence that the employee saw the documentation. Performance log documentation may be referred to in the employee's current performance evaluation, after which all the past rating period's notations must be removed from the log and new notations only, can be entered for the next rating period. Expired documentation must be maintained at the Unit until the evaluation process is complete and then must be destroyed. See MPP 3-02/085.10, Employee Performance Records

	2012	2017
Failure to Report Force Used	5-25 days	15 days to Discharge
Failure to Report Witnessed Force	5-15 days	5-15 days
Unreasonable Force	15 days to Discharge	15-20 days (Category 1 or 2) 30 days to Discharge (Category 3)

As mentioned above, the unit commander may impose up to a 15-day suspension whenever an investigation is founded, but the unit commander needs division chief and Case Review approval to impose a higher level of discipline if the unit commander or the EFRC panel recommends discipline greater than a 15-day suspension, a reduction in rank, or discharge.

The chart below shows the dispositions of the 18 administrative investigation cases listed above involving 20 deputies in which findings were made on allegations of excessive force during the period of 2012 through 2016. During that period, 10 (50%) of the dispositions were founded, six (30%) were unfounded, one (5%) was inactivated, and three (15%) were unresolved.



Of the ten deputies who were found to have violated the Department's excessive force policy, two were discharged, six received a 15-day suspension, one received a 13-day suspension, and one received a 10-day suspension.

Criminal Investigations of Excessive Force

If criminal conduct on the part of a department member is suspected, the Department's Internal Criminal Investigations Bureau (ICIB) is notified and the case

is forwarded to it for investigation. ICIB cases can involve any type of crime possibly committed by a department member, whether committed on or off-duty. When ICIB completes its investigation, the case is generally presented to the LADA's Justice System Integrity Division (JSID) for filing consideration, unless the ICIB investigator determines there is insufficient evidence to believe a crime was committed. The LADA files criminal cases when it believes the evidence is sufficient to prove *beyond a reasonable doubt* that a crime was committed.

While the use of unreasonable force is both a policy violation and a violation of the law, not all unreasonable force allegations are investigated criminally. Some unreasonable force cases are referred for administrative investigation without a criminal investigation being conducted. The burden of proof necessary to establish a policy violation is far lower than that for establishing a crime. Therefore, whether a case is investigated and/or prosecuted criminally, an employee can still be disciplined for using unreasonable force so long as there is a preponderance of the evidence to support the policy violation.

Criminal Cases Investigated

The table below shows the percentage of ICIB cases involving excessive or unreasonable force that originated out of a patrol station while the involved deputy was on duty.³³ Overall, the total percentage of excessive force cases investigated by ICIB for the five-year period under observation was 9.52% of the total cases. This is approximately one case per year for the same time period.

CASES ORIGINATING IN PATROL STATIONS	2012	2013	2014	2015	2016	Total
<i>Criminal Investigations Involving Excessive Force</i>	1	2	1	0	2	6
Total Internal Criminal Investigations	23	13	8	6	13	63
Percentage of Total Criminal Investigations	4.35%	15.38%	12.50%	0.00%	15.38%	9.52%

Criminal Cases submitted to the District Attorney's Office

Of the 63 cases investigated by ICIB, 36 were submitted to the LADA for filing consideration, including all six, or 16.67%, of the cases dealing with excessive force, as shown in the following table:

³³ ICIB provided our office with a list of all criminal cases with occurrence dates from 2012 through 2016 that originated in patrol stations. Those cases had the crime of assault under the color of authority under Penal Code section 149 as their primary criminal charge, which we deemed "excessive or unreasonable force" for ease of comparison.

CASES ORIGINATING IN PATROL STATIONS	2012	2013	2014	2015	2016	Total
<i>Excessive Force Cases Submitted to LADA</i>	1	2	1	0	2	6
Total Investigations Submitted to LADA	16	6	8	3	3	36
Percentage of Total Criminal Investigations	6.25%	33.33%	12.50%	0.00%	66.67%	16.67%

While the six cases investigated by ICIB involving allegations of excessive force were presented to the LADA for criminal filings, none of them resulted in criminal charges being filed. After the cases were rejected for filing, an administrative investigation was conducted in five of the six cases. After the administrative investigations were finalized, one case was determined to be unfounded and the remaining four were founded. Of the founded cases, three included findings that the involved deputies engaged in unreasonable force. Two of the deputies received 15-day suspensions and one deputy was discharged. The discharged deputy's discipline, however, was reduced to a 30-day suspension in a settlement agreement in February 2019 signed after the discipline was imposed and the case was pending a hearing before the Civil Service Commission. The fourth deputy received a 15-day suspension for failing to report the force, but the force he used was deemed reasonable.

Additionally, five of the six cases submitted for criminal investigation and all the cases involving founded policy violations and discipline involved video evidence capturing the force used. The only case without video evidence was the case that was inactivated without an administrative investigation.

How the LASD Investigates Public Complaints of Excessive Force

Under LASD policy, public complaints of excessive force are to be investigated in a timely manner like force investigations based on a department use-of-force report. Once a public complaint of excessive force is received, the watch commander at the station receiving the complaint generally initiates a service review, unless it is clear at the outset that a crime was committed or a policy was violated and the complaint is immediately referred for criminal or administrative investigation. Absent such a referral, a complaint by a member of the public alleging unreasonable force by an employee begins with an interview of the reporting party by the watch commander. The complainant is provided with a service comment report number for tracking purposes. Within three days, the unit commander must send a letter to the reporting party acknowledging receipt of the complaint and providing the name of the handling supervisor.

Thereafter, the watch commander or assigned supervisor conducts an inquiry into the allegation and can seek to terminate the complaint under limited circumstances such as when there are no witnesses, the reporting party was under the influence or is mentally unstable, or the allegations are physically impossible. The vast

majority of complaints, however, are not terminated without some form of inquiry. Upon completion of the service comment review, the watch commander writes a memorandum to the unit commander detailing his or her conclusions regarding the validity of the complaint. The conclusions include an exoneration when the investigation establishes that Department personnel were not involved in the force, the allegation is demonstrably false, or the allegation does not constitute a violation of the law or department policy.³⁴

If the complaint is not terminated or the employee is not exonerated, the watch commander prepares a memorandum for the unit commander summarizing the evidence and recommending one of the following dispositions: (1) the employee's conduct "appears reasonable"; (2) the employee's "conduct could have been better"; or (3) the employee's conduct "should have been different." The unit commander then reviews both the inquiry and the memorandum to determine if in those cases in which the employee's conduct "should have been better," there is potential criminal conduct or a possible violation of department policy. If there is reasonable suspicion of criminal conduct after a preliminary inquiry, the unit commander or division chief may request a criminal investigation or administrative investigation depending on the seriousness of the allegation and/or the alleged injuries. All criminal investigations into on-duty excessive force are investigated by the ICIB. Alternatively, the unit commander may recommend an administrative investigation, which can be conducted at the station level or referred to IAB for investigation, or the unit commander can take other action such as issue a PLE or require additional training for the involved employee.³⁵ A flow chart of the complaint reporting and review process is attached as Appendix B.³⁶

The following table shows public complaints of excessive force documented as service comment reports compared to the total number of station personnel complaints. There is a downward trend in the total number of complaints involving personnel at patrol stations for the last five years. In 2012, there were 1,132 total personnel complaints, while in 2016 there were 842, a decrease of 26%. There are 12 different categories for personnel complaints, one of which is an excessive force complaint.³⁷ In the years examined, the percentage of excessive force complaints to total personnel complaints ranged from 6.0% to 8.6 % of all complaints submitted against station personnel – an average of 7.1% for the five-year period.

³⁴ MPP section 3-04/020.25. See Also LASD Service Comment Report Handbook pages 40-41.

³⁵ *Ibid.*

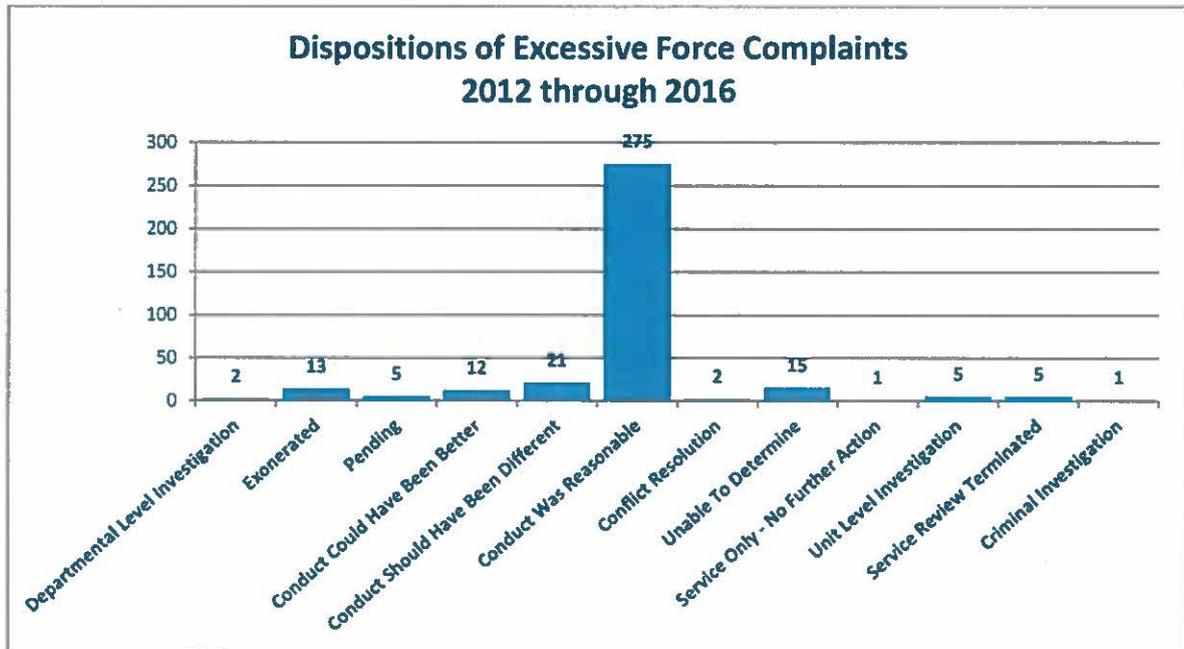
³⁶ As adapted from LASD's Service Comment Report Handbook (06/23/11).

³⁷ Other categories are: Criminal Conduct; Discourtesy; Dishonesty; Improper Detention, Search, Arrest; Improper Tactics; Neglect of Duty; Other; Operation of Vehicles; Harassment; and Discrimination.

Personnel Complaints	2012	2013	2014	2015	2016	Total
Complaints Involving Excessive Force	68	66	85	70	68	357
Total Patrol Personnel Complaints	1,132	1,034	987	975	842	4,970
Percentage of Total Administrative Investigations Into Complaints Involving Excessive Force	6.0%	6.4%	8.6%	7.2%	8.1%	7.2%

Dispositions of Excessive Force Complaints

The next chart shows the dispositions of the 357 public complaints alleging excessive force for the period from 2012 through 2016. In more than three-quarters of the complaints (77%), the department member's conduct was found to be "reasonable." A small percentage of the complaints resulted in findings that the conduct "could have been better" or "should have been different." These evaluations are currently conducted at the unit level without identifiable centralized supervision, raising the possibility that different standards are applied in different areas and making it difficult to judge the fairness of the determinations.



Additionally, of the 357 documented excessive force complaints, there were only seven administrative investigations (department level and unit level³⁸) and one criminal investigation. These eight investigations involved a total of 11 deputies. After investigation, the cases were closed out with discipline ranging from no discipline to a 15-day suspension, as shown in the following chart:

³⁸ Department level investigations are investigations that are investigated by IAB and Unit Level investigations are investigations that are investigated at the station level.

Investigations Resulting From Public Complaints			
#	Type	Disposition	Outcome
1	Unit Level	Founded	15-Day Suspension
2	Department Level	Founded	10-Day Suspension
3	Unit Level	Founded	Written Reprimand
4	Unit Level	Founded	Written Reprimand
5	Unit Level	Founded	Written Reprimand
6	Unit Level	Founded	Written Reprimand
7	Unit Level	Founded	Written Reprimand
8	Unit Level	Unresolved	None
9	Unit Level	Inactivated	None
10	Unit Level	Unresolved	None
11	Criminal	Case Submitted to LADA for Filing	No Criminal Charges Filed

Although the seven administrative cases began as excessive force complaints, none were investigated for a violation of the excessive force policy. The Department deemed those cases not to warrant an investigation of the excessive force policy but pursued an investigation into violations of other policies such as "Performance to Standards," "Obedience to Laws, Regulations and Orders," "Conduct Toward Others," or "Use of Force Reporting Procedures." The administrative investigations therefore focused on those charges.

The criminal case, which occurred in 2012, was submitted to the LADA with a primary allegation of "assault under color of authority" and was rejected by that office. The case was thereafter inactivated without an administrative investigation into the allegation.

Unreported Allegations of Force Involving Complaints by the Public

An allegation of force is like a complaint of excessive force. Both involve a member of the public notifying the Department of a use of force by a department member. Generally, a complaint of excessive force is based on a reported use of force by a deputy that a community member alleges was excessive. An allegation of force usually stems from an unreported use of force that can trigger an investigation into why the deputy did not report the use of force.

The table below depicts the number of allegations of force received by the LASD Discovery Unit, which serves as the Department's repository of completed use-of-force and allegations-of-force packages.³⁹ A total of 118 cases were received for the period of 2013 through 2016. The statistic for 2012 is not included because the

³⁹ As of April 19, 2018.

policy requiring units to forward their allegations-of-force packages to the Discovery Unit for storage and tracking was not implemented until December 19, 2012.

Allegations-of-Force Cases	2012	2013	2014	2015	2016	Total
LASD Patrol Stations	N/A	34	20	19	24	97

Problems Tracking LASD Force Allegations

Our inquiry revealed that the totals indicated in the table above may not reflect the entire population of allegations-of-force cases. This is because of inconsistencies in the reporting process. In some stations, accounting for allegation-of-force cases is straightforward – they are handled in the same manner as a public complaint of excessive force and documented in PRMS. In some stations, they are handled as an allegation-of-force inquiry, which is documented in a memorandum and forwarded to the Discovery Unit for tracking if it is determined that there is no validity to the allegation. However, in other stations, they are subjected to various scenario-based questions to determine whether they will be investigated as a public complaint, a force case, or a criminal or administrative investigation and tracked in PRMS.⁴⁰

Consequently, some allegations are counted as excessive force complaints in PRMS, some are counted as administrative investigations in PRMS, some are counted as criminal investigations in PRMS, and others are counted as allegations-of-force cases in a tracker kept at the Discovery Unit, making it impossible to query all allegations-of-force cases in a single department system. Additionally, it is not clear whether stations are sending their completed allegations-of-force cases to the Discovery Unit after the investigations have been completed, which would result in an accurate accounting of all allegations-of-force cases. As a result, the numbers that the Discovery Unit has for “allegations of force” may not be accurate. It appears, however, that this inconsistency is found only in the Department’s patrol operations and not in its custody division. The Department’s custody division enters all its allegations of force as a custody complaint in PRMS. The policy on use-of-force reporting procedures should more clearly describe the reporting requirements to ensure all allegations of force are accurately reported.

Conclusion

The total number of documented excessive force complaints against LASD personnel decreased from 2012 to 2016. During the same period, the number of excessive force complaints did not drop significantly. Without a review of each unreasonable force complaint that was not referred for an administrative

⁴⁰ See Appendix C - Handling of Alleged Force Cases at Some Patrol Stations, based on Lakewood Station Unit Order #99-38 and Pico Rivera Station Unit Order #10-02.

investigation, it is impossible to assess whether there are any cases in which unreasonable force was used but the involved personnel were not disciplined or criminally prosecuted as required by policy.

Excessive use of force cases comprise only 1.4% of founded internal administrative investigations in which there is an ultimate finding on the charge of unreasonable force. In those cases, half resulted in unfounded, unresolved, or inactivated dispositions. This could be attributed to several factors, including credibility assessments that must be made by decision-makers. ICIB investigated six cases involving excessive force allegations and none resulted in criminal filings. If deputies were equipped with body-worn cameras, credibility assessments would be easier to make and we would likely see a decrease in cases determined to be unfounded, unresolved, or inactivated administratively.

While it is difficult to provide a definitive yes or no answer to the question: "Is there a problem with excessive force in the LASD," we have provided data and statistics we believe provide an overview of use-of-force reporting procedures used by the LASD, and the ways the Department categorizes and analyzes excessive force complaints, allegations, and investigations. This same data, however, also exposed inconsistencies in the documentation and handling of such cases, which warrants additional review and potential policy changes. For these reasons, the OIG makes the following recommendations:

Proposed Recommendations

Recommendation No. 1: The complaint process allows a complaint to be terminated if the handling supervisor deems the complainant to be under the influence or mentally unstable. Given that the mentally ill are a marginalized part of society, special care must be taken to evaluate these cases carefully and respectfully. Thus, we recommend detailed documentation in cases in which a complaint is terminated because the complainant is suspected of having mental instability.

Recommendation No. 2: The allegations-of-force cases should be properly tracked and reported in a consistent manner. We recommend that the Department develop a department-wide policy to accomplish this. These cases should be tracked and reported in a centralized computer database accessible to unit commanders and not simply on a tracker at the Discovery Unit.

Recommendation No. 3: We recommend that the Department reassess its definitions of unfounded and exonerated within the MPP and adjust them to mirror the definition of those terms in Penal Code sections 832.5(d)(2) and (3).

Recommendation No. 4: We recommend the Professional Standards Bureau take a more active role in monitoring those cases assigned to unit personnel for

investigation to ensure the cases are handled appropriately. This would address the possibility that station standards as to "reasonable" conduct may vary throughout the department.

Recommendation No. 5: We recommend patrol deputies be required to use body-worn cameras. Availability of video evidence is critical to ensuring that excessive force is properly identified when it occurs.

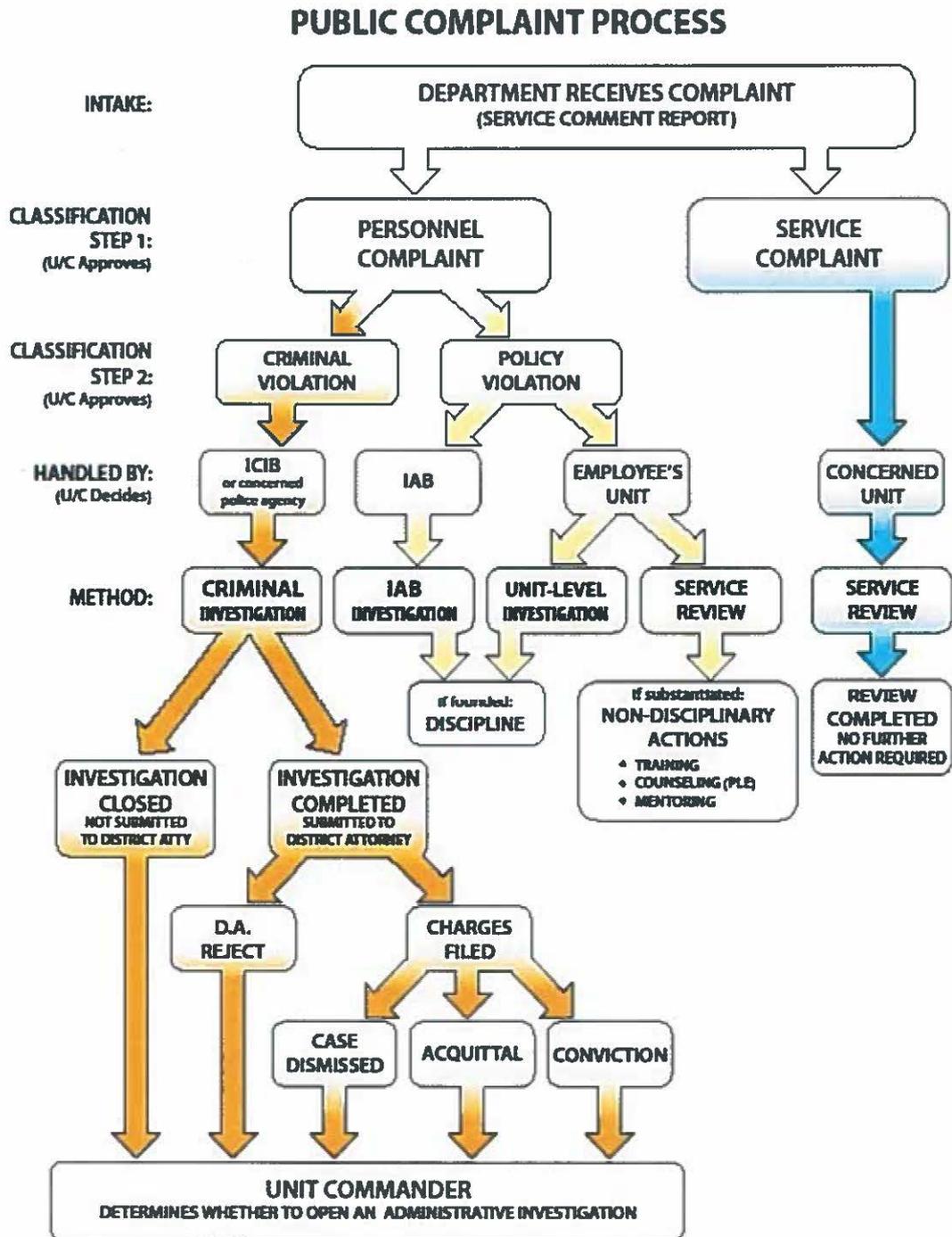
Recommendation No. 6: We recommend that all citizen complaints alleging unreasonable force be documented as service comment reports even if a full inquiry is deemed unnecessary before referring the case for an administrative or criminal investigation. Such documentation is necessary to track how many unreasonable force investigations are initiated by citizen complaints.

Appendix A - Review of Misconduct Cases Process-Flowchart

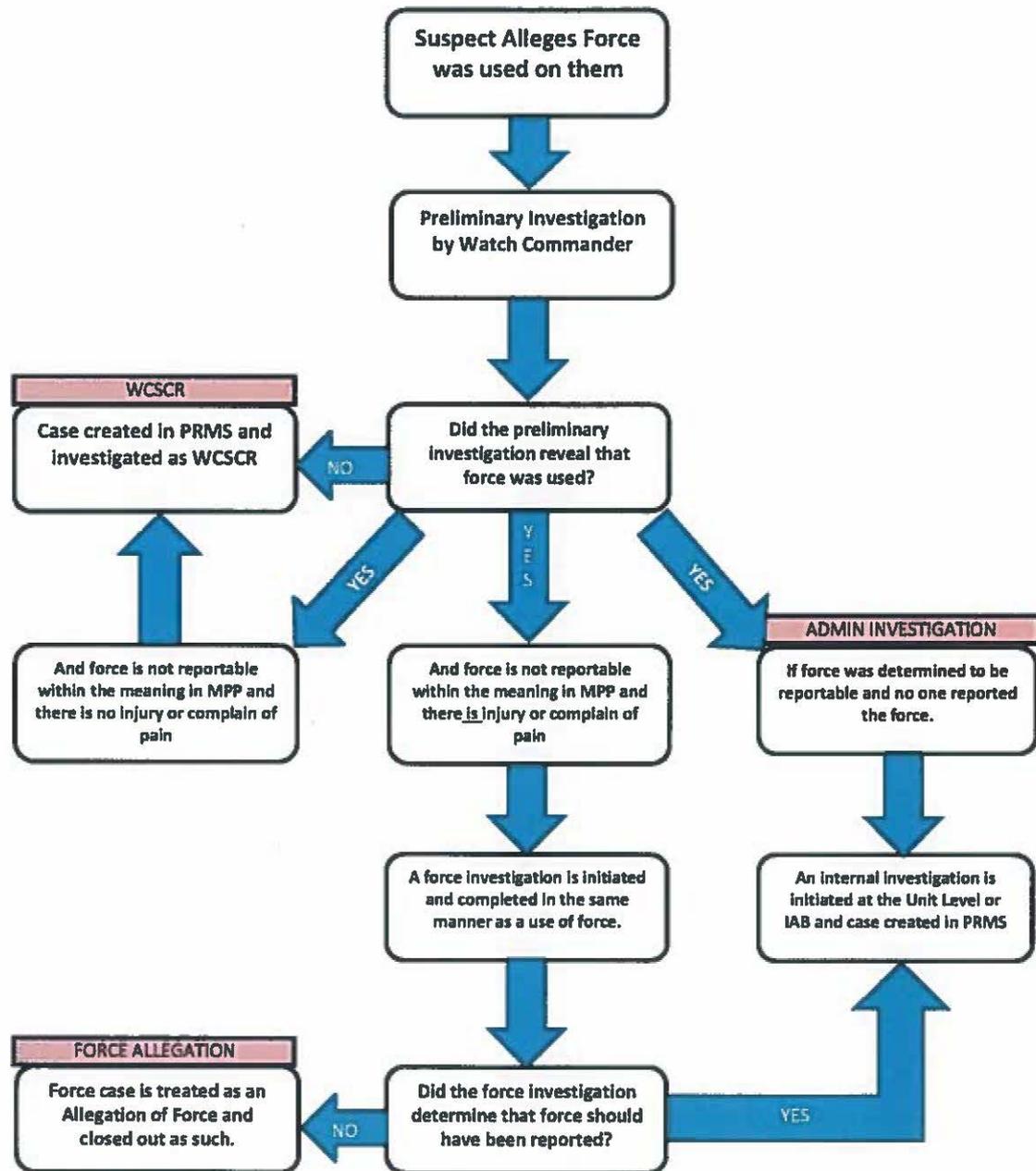
INVESTIGATION AND ADMINISTRATIVE REVIEW OF MISCONDUCT CASES



Appendix B - Public Complaint Process-Flowchart



Appendix C - Handling of Alleged Force Cases at Some Patrol Stations



BASED ON LAKEWOOD STATION UNIT ORDER #99-38 and PICO RIVERA UNIT ORDER #10-02



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF



June 26, 2019

Mr. Daniel W. Baker
Inspector General
Office of the Inspector General
312 South Hill Street, 3rd Floor
Los Angeles, California 90013

Dear Mr. Baker:

RESPONSE TO EXCESSIVE FORCE INQUIRY

On May 14, 2019, the Office of the Inspector General (OIG) provided the Los Angeles County Sheriff's Department (Department) with a submission draft of its assessment and report on excessive and/or unnecessary use-of-force conducted by Department members.

The report was a follow-up to a June 26, 2017, Los Angeles County Civilian Oversight Commission (COC) request to the OIG. The COC asked the OIG to determine whether and to what degree excessive and/or unnecessary use-of-force is occurring. The assessment request was regarding patrol functions of the Department.

We appreciate your overall assessment and input of the use-of-force (UOF) and force allegations involving our Department members. It is another resource to educate those within and outside of the Department to understand UOF and our Department's examination and review of each UOF. Your report shows our process is comprehensive, wide ranging, and is a systematic approach. Excessive and unnecessary use-of-force investigations or inquiries do not take the same path and there is a wide range of resolutions depending on each individual investigated incident. Your input will assist us in continuing to implement best practices, be forthright, and improve our policies and procedures.

211 WEST TEMPLE STREET, LOS ANGELES, CALIFORNIA 90012

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