



33rd Semiannual Report
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Introduction

During this past year, while most LASD deputies have gone about the business of keeping communities safe, and have done so respectfully and effectively, there have been instances of wrongful conduct by deputies, failures of supervision, and unprecedented turmoil and personnel turnover within the upper ranks of Sheriff's Department. There is no longer an Undersheriff, and only one of the current four Assistant Sheriffs held that office a year ago. Before the changing of the guard, problems burst into the open that for many years were unattended to or ignored, whether in the jails or the Antelope Valley or on patrol, threatening the County of Los Angeles and its taxpayers with substantial payouts.

At that time, the former Undersheriff apparently exhorted some LASD deputies to work in the so-called "gray zone" or, as I prefer to call it, the gray fog, where objects can be seen only dimly and the guideposts to distinguish right from wrong cannot be read. When the gray fog finally began to burn off, the Sheriff and Undersheriff faced calls for resignation. Although there may have been over-delegation and unwarranted reliance on the Undersheriff by the Sheriff, and despite the LASD being a paramilitary organization, it is worth noting that the assistant sheriffs and chiefs and commanders and captains, with two or three exceptions, did not exactly mutiny or protest when the Undersheriff seemed to overreach.

To attempt change in LASD culture and practice from the outside, the levers have been pulled and the pressure points pushed. The *Los Angeles Times* and *Witness LA*, as well as the Department of Justice, have lit up dark corners at the LASD and kept the spotlight unremittingly focused. Yet while vigorous investigations and solid news and editorials are necessary, they are not always sufficient to bring about change. It is frustrating when some recommendations to curb the callousness (or worse) toward some suspects and inmates by a small minority of LASD employees have never been adopted or vanished into the gray fog. In all the years I have served as Special Counsel, I recall only once when I was told things about rotation of deputies in the jails or intentions "sincerely" to change one's ways that the speakers knew to be less than truthful, and this was at the latter stage of the gray fog years.

Time and again, it is been shown that the power to control an elected sheriff is a near impossibility, to the frustration of many—in particular, to the Supervisors. Despite good-faith efforts to be aware of and respond to problems, the Supervisors at the end of the day lack the power to order the Sheriff or Undersheriff to run a constitutional jail, whether directly or through a blue ribbon commission or a civilian commission or Special Counsel or OIR or an Inspector General or otherwise. It may be that the federal government needs to be added to the mix.

The Sheriff himself has not stood still this last year. If, as one might hope, the gray fog is lifting, the LASD has new leadership for the first time in many years. The Sheriff reached from outside the Department to bring in an individual to run the jails with no connection to the prior regime and deep experience as a professional in corrections at the state level. Two key members of the former Commander's Panel, whose contributions were singled out in a prior Semiannual Report, have been elevated to the rank of Assistant Sheriff and Chief. These individuals and I have formed a positive working relationship and arrived at consensus solutions to some of the problems in the jail and in patrol. Together, we formulated new use of force policies, expanded the definition of lethal force to include more head injuries, banned heavy metal flashlights in the jails, drafted rules for the use of videotape in administrative investigations, instituted dual tracking, and formulated rules for rotation of deputies within certain facilities. Although housecleaning needs to continue of persons who operated with apparent impunity in the gray fog, I am optimistic that the ongoing relationship of Special Counsel with the Sheriff and his staff will remain fruitful and productive.

This report of Special Counsel and staff covers two topics of great importance. Chapter 1 deals with dog bites initiated by the LASD's canine handlers. We point out that the victims of the dog bites are almost universally African-American and Latino and that the percentage of apprehensions involving a dog bite has trebled in recent years. The concentration of bites on nonwhites is called disparate impact, a topic receiving widespread attention in part because of United States District Judge Scheindlin's recent opinion in the New York City stop-and-frisk litigation. The question is not whether there is disparate impact—that has been proven by data and analysis beyond doubt—but rather, what is the remedy or cure? We wrestle with some of those issues in chapter 1. We commend our consultant, Brian Center, for his excellent work with Nick Armstrong of PARC staff on this chapter.

The two major law enforcement agencies in Los Angeles County—the LASD and the LAPD—have experimented with new ways of rehabilitating officers who have been found in violation of administrative policy. In the LASD, discipline historically has been days off without pay for almost everything but misconduct leading to termination or demotion. In some law enforcement agencies, the sting has been mitigated or eliminated by insurance provided by the union to make up the monetary loss. In other agencies, discipline has been an occasion for negotiation and deal-making, whether by reducing the number of unpaid days off or holding days off in abeyance or suspension or by a variety of settlement agreements.

Sheriff Baca made two important observations regarding standard discipline: 1) it is not only the deputy that suffers from loss of pay but also his or her spouse and family, and 2) the discipline does not always encourage good conduct and rehabilitation but rather may lead to

anger and resentment. A better way, in the Sheriff's view, is to provide education and encouragement in lieu of punishment and hard feelings. From this came the inspiration for Education-Based Discipline (EBD), where deputies are assigned a number of days of training and classroom work as a partial or even complete substitute for days off without pay. EBD is a good idea, and it is deserving of credit.

We conclude nonetheless that although the EBD program is well-intentioned, in practice it is being used indiscriminately and it is overbroad and overused. Although there have been very recent improvements to the program, it does not always draw a bright line between misconduct for which there should be zero tolerance and misconduct that is amenable to education or retraining. Although there is merit in several of the classes given, it is not a substitute for in-service training and the upkeep of perishable skills. EBD was not able to prevent or minimize disturbing instances of apparent misconduct by deputies and supervisors during the gray fog years. It adds fuel to the fire of those who allege that law enforcement is unwilling to punish and overly willing to protect its own. It strengthens the arguments of those who contend that the power of the LASD to investigate and discipline misconduct should be taken away and given to civilian overseers. In its present form, we cannot endorse EBD.

We do not conclude, however, that it should be abolished in its entirety. Rather, we advocate that it be used with much less frequency, and that every instance of discipline should include a substantial, actual suspension without pay when demotion or termination is not inappropriate. Excessive force, sexual harassment, discrimination, biased policing, or knowing or recklessly putting false information into the record are policy violations that must not be eligible for EBD. I commend Chris Moulton of our staff for his fine work on this chapter.

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My staff as Special Counsel includes members of the Police Assessment Resource Center (PARC) as well as paid and unpaid consultants and volunteers. Most have continued doing work in the public interest after PARC. Oren Root, PARC's first Deputy Director, now directs important work on immigration issues for the Vera Institute of Justice in New York City. Julio Thompson worked on LASD matters for many years, starting with the Kolts investigation in 1992. He is now the Assistant Attorney General for the state of Vermont, where he heads the AG's Civil Rights Division. Julie Ruhlin, now at OIR, worked for several years with PARC, gaining a solid foundation in law enforcement issues, particularly in corrections. Django Sibley and Camelia Naguib, along with Julio, have not only made careers in civilian oversight but are recognized as leaders in the field, particularly in areas involving

analysis of use of force, officer-involved shootings, and the quality and integrity of internal affairs investigations. Brian Buchner taught PARC how to use statistical methods to gain further analytical insight. Brian has also remained in civilian oversight on a national scale as a leader in NACOLE (National Association of Civilian Oversight of Law Enforcement) and as staff to the Los Angeles Police Commission's Inspector General.

Other former PARC members have gone on to graduate study, professional degrees, and other fields of work. Matthew Barge left PARC for law school at NYU and the practice of law at two top-of-the-line national law firms. Brian Center, whom I first met when he was Justice Deputy to Supervisor Molina, actually worked in the LASD afterwards and brings deep experience and knowledge of law enforcement, police reform, and political reality.

It is my unalloyed delight to announce that Matthew is now back with us and Brian is taking on greater responsibilities as a consultant. Brian supervised our research staff on the canine chapter in this report, and he is supervising another PARC project in the Southwest. He previously conducted a wide-ranging examination of gang enforcement strategies for our last Semiannual Report. As a consultant, Brian in a short time with PARC has raised the quality of our work product.

Matthew Barge was responsible for some of the finest work that PARC has done in its 12 years of existence. Matthew returned to PARC on September 1, where he will now help supervise and assure the quality of all work PARC performs. He reports directly to me. My work as Special Counsel to the Board, or as a Monitor appointed by the federal court, or with PARC as a consultant to mayors, city councils, and law enforcement agencies must, above all, be credible and rigorously thought-through, considered, and reconsidered. The quality of our work is our stock-in-trade. The most persuasive advocate for using our services in the future is the work that is on our desks right now, paraphrasing a motto of two leaders of two prestigious law firms, each of whom may have said it first. Matthew and Brian will help guarantee the quality of PARC's work product onward.

Canine Services Detail

Introduction

The disparate impact of American urban police practices on racial and ethnic minorities is not in doubt; how it should be addressed, however, is a tangled subject. As made clear by the recent trial in New York on the NYPD's stop and frisk practices, and has been demonstrated elsewhere, African-Americans are stopped, frisked, searched, arrested, prosecuted, and receive longer sentences substantially out of proportion to the percentage of the population those persons represent.¹² This disproportion shows up in the police practices of the LASD. Whom the deputies decide to stop, arrest, or pursue is primarily a decision made by patrol officers. Likewise, those patrol decisions will have downstream consequences, particularly in determining the manner of arresting an individual. The net impact of these decisions may be to magnify the disparate impact.

This chapter examines some of these consequences in the context of who gets bitten by police dogs from the LASD's Canine Services Detail (CSD). We want to make very clear at the outset that we are not arguing that deputies call for or deploy canines with a specific, conscious intent to single out persons because of their race or ethnicity, although some of them, reflective of deplorable elements of American society, might. More than 150 years after emancipation and 50 years after the March on Washington, racial disparate impact in American society is sadly not yet eradicated. The police operate within a society that continues to produce often unequal and unfair results. That does not, however, absolve the police of responsibility to deal with those consequences.

We have, in the past, recommended that the LASD focus on the stark disparities in the racial and ethnic mix of persons who are bitten by police dogs. In the first six months of this year, 100 percent of the dog bites were of Blacks and Latinos. While the number of annual bites of Anglos, Pacific Islanders, and Native Americans has remained consistently low from 2004 through 2012, 89 percent of the total bites in the same time period were of Latinos or Blacks. This 89 percent is an increase from a still troublesome 85 percent in the 1990s.

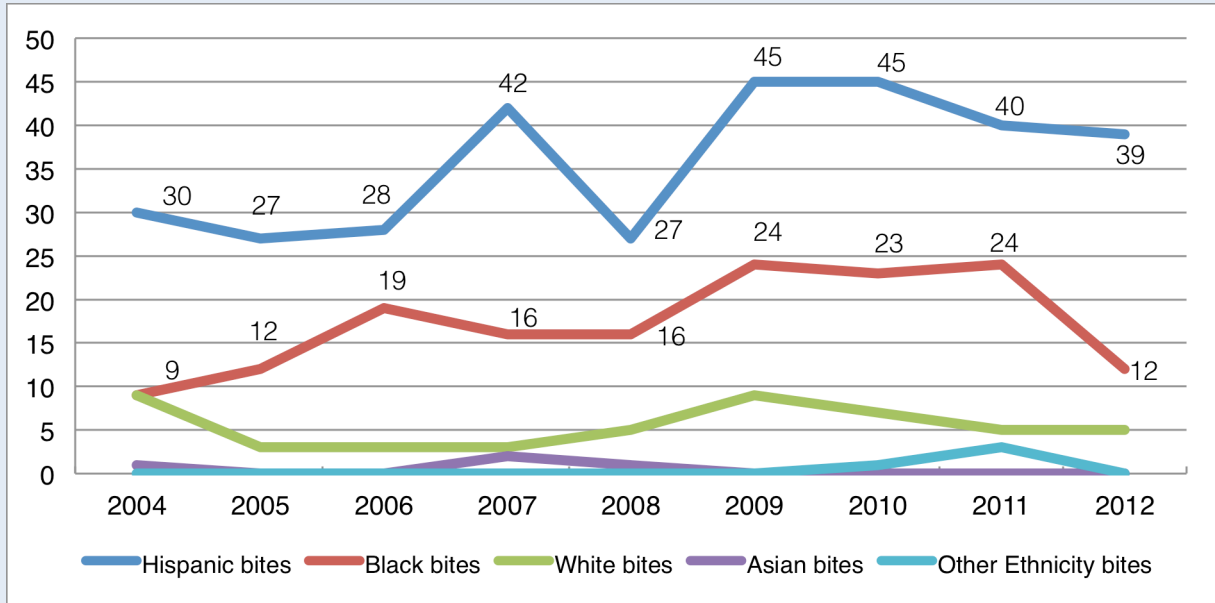
As shown in Table 1, the number of Latinos being bitten by dogs increased 30 percent, from 30 bites in 2004 to 39 bites in 2012. Similarly, from 2004 to 2012, the number of Blacks being bitten by dogs increased 33 percent, from 9 in 2004 to 12 in 2012. This trend of minority

¹ *Floyd v. City of New York*, 813 F.Supp.2d 457, 6-7 (S.D.N.Y. 2011).

² Gelman, Andrew, et al., "An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias," 102 *Journal of the American Statistical Association* at 816 (2007).

populations disproportionately being bitten has held firm in recent years. In 2010, 90 percent of the bites were on Black or Hispanic suspects; in 2011, 89 percent; 2012, 90 percent; and during the first six months of 2013, 100 percent or all of the 17 bites were on Black or Hispanic suspects. Consideration might be given to a partial moratorium on the use of canines in all but the most critical circumstances involving armed suspects as practices are developed to curb the disproportionate impact.

Table 1: Total Bites by Ethnicity (January 2004 – December 2012)



Our reconsideration of CSD in this Report was also prompted by a troubling rise in the percentage of apprehensions of suspects associated with a dog bite. Not that many years ago, the LASD canines bit fewer than 10 percent of subjects in apprehensions involving a dog. In recent years, however, canines bit nearly 30 percent of apprehensions. Our review of incident reports leads us to believe that a much lower biter ratio is a reasonable goal.

The current Lieutenant in charge of the Detail, Bruce Chase, is working hard to reduce the percentage and has had some success recently. The question is what caused the run-up to nearly 30 percent in the bite ratio in the first place. **One reason is clear: There is insufficient supervision in CSD that could be cured with the addition of a fourth Sergeant. We urge that a fourth Sergeant be added.**

During the years that the bite ratio was rising, the LASD was experiencing a wholesale degradation of accountability in the management of force in the jails. Others, including Special Counsel, have covered that topic repeatedly, and it is not necessary to spell it out

once again. The time period in question was one in which, at nearly the highest level in the Department, deputies were actively encouraged to work in the “gray zone” where the line between aggressive policing and unconstitutional policing is blurry. Under current management, by the assistant sheriffs and many individuals like Bruce Chase, a brighter line is being restored that does not edge up to or cross the line into unconstitutional misconduct.

We cannot say with certainty that those attitudes influenced the CSD, but we can point out that there was a loosening of accountability and a trend to use canines in circumstances where lesser force had been used in the past, particularly with respect to barricaded suspects. We are confident that Bruce Chase can restore strict control of handlers, reduce the bite ratio to the 10 to 15 percent range, and decline to use the canines where lower levels of force will suffice.

The CSD is a small unit housed within the Department’s Special Enforcement Bureau (“SEB”), along with its SWAT team. It often goes unnoticed in a vast Department of 16,000 employees and a \$2 billion budget. The canine unit employs 20 personnel (16 sworn) and 12 dogs, with an annual operating budget (including personnel salaries and benefits) a little over \$2.7 million. Out of the over one million calls for service that the LASD receives each year, and out of the over 175,000 Part I or Part II crimes deputies respond to, in the range of 450 to 650 times per year police dogs roll out to search for a suspect.

Canines are a use of force tool that can play an important role in crisis situations, primarily where a dangerous suspect is hiding from deputies. Used properly, this tool can greatly enhance the efficiency of resolving the crisis, prevent deputy-involved shootings, and improve officer safety. Used incorrectly, and a dog bite can easily become a significant misuse of force that results in serious injury to a suspect or innocent bystander and significant legal exposure for the County. In other words, while canine roll outs currently are relatively infrequent, each one is a high stakes endeavor.

In our review of CSD, we assessed the search and force policy for canine deployment, bite statistics, use of force reports from dog bites, and accidental bites that resulted in monetary settlements. Furthermore, we visited the unit to witness CSD training and discuss some of the issues we encountered in our review. We met with past CSD Lieutenant Eliezer Vera, current CSD Lieutenant Bruce Chase, and former LASD Captain and National Tactical Officers Association Director Phil Hansen, who also served as a sergeant and lieutenant in the SEB. We also reviewed best practices nationally and researched how other large law enforcement agencies manage their canine use of force issues.

Overall, we found the personnel at the CSD to be well trained, professional, thoughtful, and dedicated. In general, they are more seasoned and mature than the average patrol deputy. Of the 12 handlers assigned to the unit, the average age is 43 and the average time with the Department is 19 years. The three sergeants average 47 years of age and 22 years with the Department.

CSD personnel have a challenging job. They are only called during dangerous situations, where a suspect is running away and hiding, which exposes the deputies to possible ambush. Suspects may be armed or under the influence of drugs and refuse to surrender. It takes excellent tactics, discipline, and finely calibrated emotional control to apprehend suspects without lethal force and maintain officer safety. We believe the handlers have been too quick to use dog bites in some situations where other, potentially less damaging force is available. They could do better explaining in their reports why they chose a dog bite as a tool as opposed to less lethal force. We are deeply concerned about disparate impact and the bite ratio. Our findings and recommendations are set forth below.

History of Police Dogs

The introduction of dogs into policing in the United States occurred around 1910 in New York and New Haven, Connecticut. Since then, around 2,500 police forces in North America, out of approximately 16,000, have a canine program. The misuse of police dogs in 20th century America was not uncommon. Most infamously, Bull Connor in Birmingham Alabama intentionally used dogs to intimidate and savagely attack peaceful civil rights demonstrators. In more recent decades, police dogs in urban areas still have become a symbol of police being too quick to use force against minorities. For example, in Los Angeles, it was reported in the late 1980s that police officers referred to black youths as “dog biscuits,” and used dogs with reckless abandon in poor and minority neighborhoods.³ As one community member said, “There was a code or understanding on the streets that if you ran from the police, they would rough you up or get a canine to bite you. That is why some people still run from the police – they are afraid.” As reported in a 1996 *Los Angeles Times* article, canines had been “unleashed” on suspects for more than a decade, “causing injuries at far higher rates than those associated with batons, tear gas or even guns.” This led to criticism of the Department and was, according to the Times, the source of “bitter debate.”⁴

Those who have witnessed a bite understand the severity of this type of use of force. The dogs used by the CSD exert between 800 and 1,500 pounds per square inch when they bite—

³ Newton, Jim, “LA Finds Mixed Results in Curbing Police Dog Bites: Policing: LAPD has reduced incidents significantly in 1990s. Sheriff’s Department shows much slower turnabout,” *Los Angeles Times*, Mar. 1, 1996.

⁴ *Id.*

force the Ninth Circuit Court of Appeals likened to having a limb run over by an automobile.⁵ A routine bite causes significant injury, and each bite incident carries with it the risk of permanent damage. In one study, for example, researchers found that canine bites resulted in hospital visits 67.5 percent of the time, while other uses of force, like batons or Tasers, resulted in hospital visits 22 percent of the time or less. These same researchers found claims of permanent physical disfigurement and injuries to bones, blood vessels, nerves, breasts, testicles, faces, noses and eyes (blindness). They opined that canine bites should be considered a level of force immediately below deadly force and equated a bite to an officer swinging a baton with three-centimeter spikes attached.⁶ A canine bite must be taken very seriously.

This history, and the symbolism of law enforcement's misuse of dogs, again highlights the importance of being vigilant about ensuring that the CSD is disciplined and conservative in its use of force with canines, and that its activities are transparent and receive regular review.

I. How CSD Works: Policies And Procedures

CSD's rationale for using the canines is that they can increase officer safety, raise the safety to the citizens in the search area, and enhance the chances of finding and catching the suspect. CSD also believes canines can reduce the amount of time and people-power necessary to finish the job of conducting the search and can reduce the necessity of an officer involved shooting.

The ease of releasing a dog to go bite someone, however, is partly what led to the over use of canines in years past. The severity of a dog bite as a consequence, when compared to a youth joy riding in a car, or someone just running away from officers after committing a low-level crime, has never added up.

For this reason, and as the direct result of our negotiations with the LASD, in 1994 the Department drafted its Field Operations Directive to limit the use of canines, and to bring clarity about when they can be used. According to the Directive, canines are only deployed in instances that include: "Searches for felony suspects, or armed misdemeanor suspects, who are wanted for **SERIOUS** crimes and the circumstances of the situation present a clear danger to deputy personnel who would otherwise conduct a search without a canine." This Directive was revised in 1999 to permit canine deployment for Grand Theft Auto-related

⁵ *Miller v. Clark County*, 340 F.3d 959, 960-62 (9th Cir. 2003).

⁶ McCauley, et al., *The Police Canine Bite: Force, Injury and Liability*, Report for the Center For Research In Criminology, Indiana University of Pennsylvania (2008).

searches of “. . . those reasonably believed to be adults, and are reasonably believed to be the driver of a confirmed stolen vehicle.”⁷

As of the writing of this Report, CSD has recommended further changes to the Directive to create more clarity about when canines should be used. As one example, “Serious crimes” is replaced with serious or violent felonies as defined in the Penal Code, which lists out around 45 (depending on how one counts them) examples of serious crimes, like manslaughter, mayhem, rape, sex crimes, and carjacking. The list may be overly broad. **We recommend that CSD consider winnowing the list of crimes for which canines should be used. Alternatively, CSD might want to limit deployment to a subset of Part I crimes as defined in the FBI's uniform crime reporting system.**

CSD policies further allow for canines to be used in particular contexts – including searches of commercial or residential buildings when a suspect may be hiding inside, capture of an armed suspect with the goal of avoiding more lethal force, and area searches (assuming the suspect is wanted for a serious crime). Again, we would restrict searches to armed suspects and Part I crimes.

When personnel in the field believe the criteria have been met, they may put in a request for the canine team to roll out to their scene. When CSD takes the call, an SEB supervisor must approve the decision to deploy a canine. CSD reports that on numerous occasions, it will turn down requests from the field for canines because the requests do not fit the proper scope of authorized uses.

The station personnel create a perimeter containment, trying to limit the area in which the suspect could flee. The dogs then arrive, at which time the decision is made as to whether to release them to help find and apprehend the suspect. CSD ensures that a supervisor from SEB or field supervisor responds to the incident. CSD, understanding the high stakes of canine use, wants someone experienced both with the dogs and with tactical SWAT-type situations to make the decisions about how to use the dogs. For example, the latest version of the Directive states: “The decision to make a tactical canine deployment must be approved by a SEB supervisor. Generally, the canine handler will dictate the search tactics to be utilized and coordinate the deployment of assisting personnel.”

While it may be appropriate to have the handler decide the tactical and technical aspects, we have always insisted that no canine can be used without the approval of a manager senior in rank to the handler. Also, these crisis situations create difficult decisions that balance officer safety with limiting the use of force on a suspect who is refusing to listen to commands and

⁷ LASD Field Operations Directive 86-37.

is creating potential danger for the officers and the public. Someone experienced with both the dogs and crisis tactics should be present to minimize the risk at the scene.

When officers make the decision to release the dogs, the dogs search for the first person they can find and, if the handler doesn't intervene, the dogs will bite that person. This method of training dogs is called the "bite and hold" or "find and bite" method. CSD calls this deployment method "handler control" to emphasize that the handler, not the dog, is making the decision of whether the use of force instrument (the dog) will be ordered to bite. On some occasions, if a particularly unruly suspect has already been located, the handler will still release the dog and order the suspect bitten, if the officers on scene believe this will prevent the use of more lethal force. CSD calls these "directed bites." We disapprove of directed bites except in very limited circumstances. No canine should be used if there is merely a suspicion that the subject may act in such a way as to later justify lethal force by the handler. All releases of dogs must at minimum present an imminent threat of death or serious bodily injury. Suspects known to be armed may fall into this category.

The "bite and hold" training and deployment method requires that officers are firmly certain that the containment area is cleared of non-suspects, to prevent accidental bites of those non-suspects. In order to minimize their use of force, it also requires the officers to stay as close as possible to the dog, who is often off-leash, while nonetheless balancing officer safety. This allows the officer to call off the dog before a bite, if possible, or, once the suspect is bitten, to order the dog to release as soon as possible.

For example, if a suspect who might be armed is around the corner from an officer, in a back yard, and the dog was released and is now biting the suspect, the officer must decide when to safely approach the suspect and when it is safe to release the dog and take the suspect into custody. Rushing too fast into the line of sight of the suspect could be dangerous for the officer if the suspect still has access to a gun; moving too slowly could unnecessarily result in more severe bite injuries to the suspect and injury to the dog during the longer struggle.

To help minimize the risk of intentional or accidental bites, and to give specific and timely notice to suspects before a dog is released, the CSD plays an announcement, in English and Spanish, via radio car and helicopter public address systems to notify everyone in the containment area that a dog is going to be released and that the dog will bite if it locates a person.

If a bite does occur, it must be reported to a CSD supervisor and an immediate investigation must occur. The Internal Affairs Bureau ("IAB") is also notified. If the IAB believes the injury caused by the bite is "significant," which usually is interpreted as requiring an overnight stay

at the hospital or some form of surgery, the IAB, rather than the CSD, generally conducts a force investigation. CSD personnel are responsible for taking photographs of the injuries.

II. Assessing The Use Of Bites

One of the most controversial aspects of canine use of force is determining whether it was truly necessary for a dog to bite a suspect once that suspect is found. If, for example, a hiding suspect surrenders once discovered, but the handler is not able to call off the dog and the suspect is bitten, the issue is whether the force was reasonable and justified. Indeed, at the time this Report was being finalized, a number of plaintiffs were suing police departments in Northern California, alleging that they were bitten after they had surrendered and obeyed officer commands.

A. Bite Ratio

One of the most useful ways for law enforcement agencies and observers to assess whether simply too many people are being bitten is the “bite ratio.” The “bite ratio” is the number of times canines bite people per the number of times a suspect was in fact apprehended during a canine deployment:

$$\text{BITE RATIO} = \frac{\text{NUMBER OF APPREHENSIONS BY DOG BITE}}{\text{TOTAL APPREHENSIONS}}$$

Because canines are trained in the “bite and hold” technique, one might suppose that once a suspect is found, the ratio of bites would be high. However, the opposite is true. When the proper crisis situation tactics are used and the canine handler has proper control of the dog, the bite ratio can remain quite low. In years past, for example, CSD has had bite ratios as low as 8.7 percent – meaning that 91.3 percent of the time, dogs successfully *found but did not bite* the suspect. In such instances, the suspect often gives up before the dog is released or is safely captured and the dog called back before a bite occurs.

In our effort to identify a specific, recommended bite ratio, we identified very little literature, research, or national standards on the topic. A 1998 Los Angeles study showed the LAPD having a 44 percent bite ratio and the LASD a 36 percent bite ratio. Commentators

universally seem to agree that such ratios are unacceptably high.⁸ A six-year study of canine use in Montgomery County, Maryland in the 1990s found an average bite ratio of 14.1 percent. A 2006 survey of police departments in Florida found bite ratios ranging between 15.7 percent and 22.4 percent.

CSD statistics provide support for the proposition that the Department can, in fact, maintain a low bite ratio. In 1997 and 1998, the bite ratio was 8.7 percent and 8.3 percent. In the years 2000 through 2002, the bite ratio was 12.5 percent, 11.9 percent, and 14.6 percent, respectively. It should be noted, too, that the number of deployments for all of those years (2000 through 2002) ranged between 625 and 734, and apprehensions exceeded 150. Thus, the CSD has the ability to be active and fully engaged, yet still maintain a low bite ratio.

Since the 1999 policy changed allowing canines to be used while searching for suspects wanted for Grand Theft Auto, the bite ratio has steadily climbed. As Table 2 shows, in 2011, per CSD's calculations, the bite ratio was at 25.5 percent. As noted above, 2012 came in at 25.8 percent.

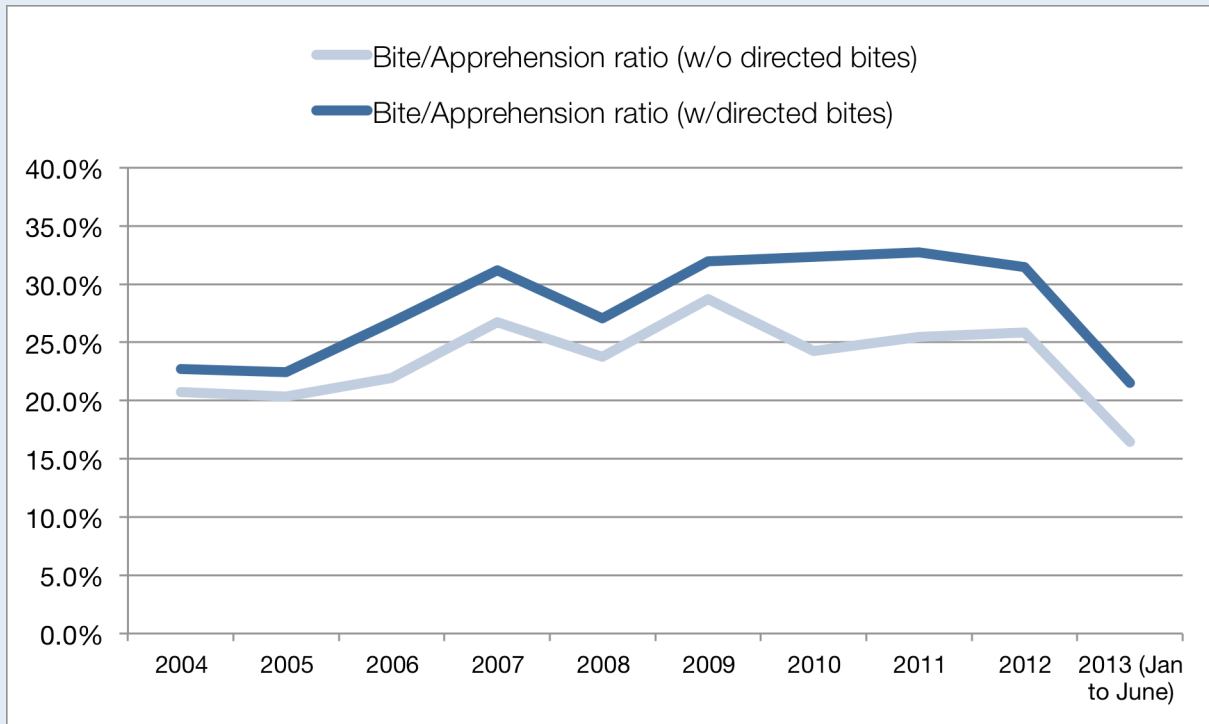
It is unclear if the 1999 policy change is a direct cause of this increase. On one hand, in 2012, a number of bites were related to Grand Theft Auto. Specifically, there were 9 bites (out of 56 total) related to Grand Theft Auto or taking a vehicle without consent, or 1 out of 178 apprehensions. In the first 6 months of 2013, 4 of the 17 bites were related to car theft. On the other hand, the Department was able to maintain a bite ratio between 11.9 and 14.6 percent from 2000 to 2002 despite the policy change in 1999 that allowed for the search of Grand Theft Auto suspects. Thus, the 1999 policy change could be, but is not definitively, a factor driving the increase.

It also should be noted that the Department currently calculates its bite ratio by excluding directed bites. It instead includes directed bites in a separate statistical category. For example, in 2011 there were 220 apprehensions with canines and 72 bites, for a very high ratio of 32.7 percent.⁹ CSD subtracted out 16 directed bites, on the theory that the canines did not have to find the suspect and the "find to bite" ratio therefore should not apply. According to current CSD leadership, CSD included directed bites in its calculation of the bite ratio prior to 2002.

⁸ See, e.g., Mesloh, Charlie, "Barks or Bites? The Impact of Training on Police Canine Force Outcomes," 7 *Police Practice and Research* at 323-335 (2006).

⁹ See Table 2.

Table 2: Bite to Apprehension Ratio (January 2004 – December 2012)



We do not agree with the Department’s technique for calculating the bite ratio. The bite ratio is a central tool for management to track the number of bites and refine canine deployment strategy. Differentiating between “directed bites” and bites where the dog is ordered to “find and bite” is a distinction without a difference. One class encompasses situations in which a deputy sends a dog to bite a suspect – for example, where a suspect is known to be hiding in a closet – while the other class encompasses situations where a deputy sends a biting dog into a garage where he is pretty sure the suspect is hiding. In both scenarios, the officer, who is supposed to be in control of the dog at all times, directed the dog to bite. Including directed bites in the bite ratio statistic allows the bite ratio to function as a broader, better management tool. It further instills a culture in which the handler is always in control, and accountable, for the dog’s actions. For these very reasons, most other law enforcement agencies with which we spoke do include directed bites in their bite ratio.

Our recommendation is that CSD set a goal to maintain a bite ratio below 15 percent, including directed bites. While there is no exact science behind this number, the most persuasive argument for setting this goal is the simple fact that it is realistic and achievable. If reducing the ratio can be accomplished with good discipline and proper tactics, while maintaining officer safety, then each non-bite reduces, that much more, the risk of unnecessary, severe damage or death to a suspect. This bite ratio goal gives CSD management a specific benchmark by which to evaluate progress.

We note here that the bite ratio has dipped in the first eight months of 2013 to approximately 20 percent by our calculations, when directed bites are included. This is movement in the right direction. We do, of course, understand that the ratio may fluctuate over the course of the year. This ratio is also still higher than our recommended level.

To test the feasibility and appropriateness of our recommendation, we examined Supervisors' Reports on Use of Force for canine bites from 2009 to 2013.¹⁰ Out of the incidents we reviewed in which a suspect was bitten, we believe that in roughly half of the cases, a bite might have been avoided. This is not to say that we believe these bites constituted unlawful excessive force. The law, as discussed more below, gives discretion to officers to act "reasonably" under the circumstances, and these bites may meet those criteria. It appears, nonetheless, that a lower level of force could have been attempted without sacrificing officer or community safety – which means the Department might have nonetheless safely taken the suspect into custody while reducing the risk of severe injury to the suspect and litigation.

As one example, in 2011, Deputies responded to a burglary in progress call at a church. When deputies arrived, they believed that they were in fact witnessing a burglary in progress, so they established a containment of the church and requested the CSD. After announcements of the canine's deployment were made over a public address system for roughly 15 minutes, the CSD searched the church for the suspect until the canine alerted them that a person was in a storage shed. Having no information about whether the person inside the shed might be armed, the CSD deployed a canine that located the suspect on the floor within the shed and bit him on the back.

Because the suspect was clearly in the containment area, it appears that less harmful alternatives could have been attempted, including negotiation or tear gas. We asked more senior officials the Department their opinion, and they agreed that, generally, a suspect barricaded or hiding in a confined area like a shed or closet can often be extracted without a dog bite.

We reviewed several other instances in which suspects ran into small, enclosed spaces, such as a closet or shed. The dog could not bite them because they were behind a closed door. Instead of attempting to bring the suspect out with tear gas, a stingball, a flash bang, or through negotiation, CSD opened the door and sent in the dog for the purpose of biting the suspects. If officers could open the door safely to send in the dog, they just as safely and easily could have used tear gas or other, less risky, and less potentially damaging force.

¹⁰ We reviewed a random sample of 50 reports from 2009 to 2011 and all 73 reports from 2012 and 2013 (through June 2013).

Current LAPD policies are instructive here. The LAPD requires trainers to teach their dogs the “bark and hold” method in which dogs are trained to bark at the suspect once found but not to bite unless the suspect attempts to attack the dog or flee. Where a suspect hides in a confined area, LAPD uses clear-out tools, such as International Punch II M-5-G (which contains Oleoresin Capsicum), to try to force the suspect out of the enclosed area. In other words, in the situations discussed above where a suspect is known to be hiding in a confined space, LAPD policies prohibit officers from sending in a canine to deliver a bite in order to bring the suspect out. Unless the subject is armed, the same prohibition should be adopted by the LASD.¹¹

If less-harmful alternatives are not employed, we recommend that supervisors document in the report why they were not employed. We recommend adding a section in the Supervisor’s Report on the Use of Force form that has supervisors answer the following question about the use of force being reviewed: “Were there any reasonable alternatives for the use of force? If yes, what were they and why were they not used?”

A majority of the bites we found most questionable occurred in years past. In reviewing the 17 bites in 2013, some of the incidents involved very dangerous situations and, given the need for officer safety, we found it very difficult to second-guess the decision to use the canine as reported. Nevertheless, there were 11 cases where a bite possibly could or should have been avoided. For example, in a number of cases, it seemed that there may have been opportunities for deputies to call a dog back once the dog alerted officers to a suspect hiding and to at least attempt to employ alternative methods of apprehending the suspect. If even four or five of these incidents had been safely and successfully resolved without a bite, the bite ratio would have been significantly lowered.

¹¹ Lieutenant Chase points out that the differences in practice between the LAPD and the LASD may be fewer as would first appear: “All of our handlers and supervisors carry Clear Out, Tear Gas and Tasers. Our sergeants also have Pole Cameras for looking into confined spaces. Whenever the situation dictates, if we are reasonably sure a suspect is in a confined space, we attempt to force him out in the same manner as LAPD. Many of our non-bites are due to the use of such means. However, neither LAPD’s policies [nor] our own absolutely prohibit the introduction of a canine if other means to force out the suspect have failed. Prohibiting the introduction of a canine would be unreasonable. You would potentially have to resort to destroying someone’s home in order to get to a suspect who had refused all other means to surrender. (It’s worth remembering here that most canine searches do not involve suspects who have barricaded themselves in their own homes.)

Simply forcing someone into the open with the use of chemical agents also does not preclude a subsequent violent confrontation. Someone who has already refused repeated attempts to get them to surrender peacefully is not likely to simply crawl out and give up. One single dog bite can be far less damaging than multiple dog bites, for example, if you call the dog off and have to subsequently direct him to re-engage, or if a bite is inflicted on a fleeing suspect who has been forced, unrestrained, into the open by chemical agents.”

Ultimately, the bite ratio is a tool to keep management focused on the issue of excessive use of force. It is up to the leadership to instill a practice and culture that views dog bites as extremely serious force that should only be used when it does not make sense to use less significant uses of force.

We note that Lieutenant Chase came to CSD in January 2013, after having engaged in a culture-change effort in the jails. We are hopeful that his leadership is a reason why the bite ratio has gone down in recent months and that it will continue to decrease. Overall, the CSD could improve by abiding by a uniform philosophy that: (1) less lethal force options should, in nearly all circumstances, be attempted before a dog bite occurs, and (2) the reasons for using a dog bite, rather than other methods of force, is well documented, so that accountability accompanies each use of force.

We also recommend that the unit develop its own, additional measuring tool by determining the percentage of cases where the use of force is deemed to be the least lethal use of force available to capture the suspect and not compromise officer safety – as opposed to only determining if the bite was legal. This would provide the most accurate picture in assessing whether CSD could do just as good of a job while nonetheless deploying less serious force. If such information were documented and analyzed in real time when debriefing an event, as opposed to years later by monitors reviewing reports, CSD would have a much clearer picture.

B. Total Bites

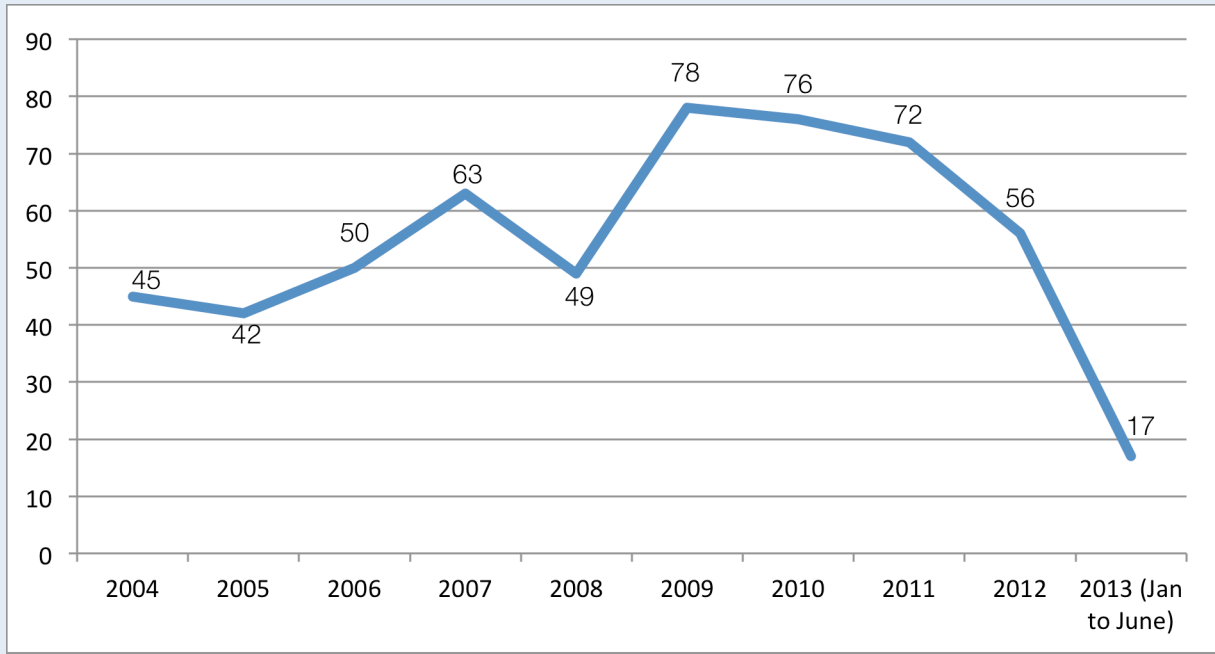
A second management tool is simply to examine the total number of bites each year. As reflected in Table 3, the total number of bites per year has remained relatively consistent from 2004 to 2012, with the exception of years 2009, 2010, and 2011 where the number of total bites rose. In terms of average bites per year, from 1997 to 2004, CSD averaged 19.7 bites per year. In contrast, from 2004 through 2012, the average was 59 bites per year, a substantial increase in the average total bites.

In 2012, the year we started looking into this issue again, bites were down to 56, and so far in the first half of 2013, CSD is on track for 34 bites, figuring that the number of bites for the second half of 2013 will be similar to the first half of the year. It is possible that this slightly decreasing trend will continue in years to come – an encouraging development.

Again, there are many variables that could contribute to the total bites each year. It is up to the supervisors and chain of command to use these figures as a management tool to try to

reduce the total bites. In any event, the fluctuating bite ratio, combined with the total bites, does concern us and convinces us that a close eye should be kept on the unit over the next few years to assess its use of force practices.

Table 3: Total Apprehensions by Dog Bite



C. Other Measuring Sticks

CSD also keeps statistics to track the bite ratio and number of bites for individual handlers and dogs. We applaud this effort. As one Department leader said:

“Managers should be very aware of the bite ratios and number of bites implemented by each handler. It is an effective tool to pay attention to red flags. That is not to say that a higher number of bites is automatically improper; it just helps managers focus in to find out if things are being done properly.”

Our review of these statistics did not raise any concerns. We commend the unit for keeping track of these numbers and believe it is important for them to continue to do so.

III. Bite And Hold Versus Find And Bark

As noted above, CSD dogs are trained in what is referred to as a “bite and hold” method. Some departments call this “find and bite.” This means that, once ordered to do so, the dog is trained to find and bite the first person it comes into contact with. Thus, to avoid a bite once the dog locates a suspect, the handler must be close enough to the dog and have a visual line of sight to make the decision to call off the dog before the bite happens. The dog also must be trained so that it has developed the discipline to stop in the middle of a chaotic situation and comply with the officer’s command.

Because of a concern about unnecessary injuries and liability nationwide, in 2001, the Department of Justice recommended “agencies should train their canines to follow the approach of “find and bark,” rather than “find and bite.”¹²

Similarly, The International Association of Chiefs of Police (IACP) gave a strong endorsement of “find and bark” over “find and bite.” As one report stated: “Many major metropolitan and other police agencies in the United States have successfully transitioned to the find and bark method of canine training and usage without negative repercussions. In fact, those agencies that have done so report significant drops in bite ratios and civil and criminal litigation without any perception of additional risk to canine units.”¹³

Nonetheless, we could find no clear consensus among experts as to which method is better. CSD personnel and others in the Sheriff’s Department are strong proponents of “find and bite.” They believe that the “find and bite” strategy more effectively promotes officer safety. If the dog merely barks at an armed suspect, they say, it gives the suspect time to arm himself, prepare for oncoming officers, shoot the dog, or flee and continue the chase. One officer gave an example where a fleeing suspect had positioned himself to ambush him with a gun as he and his partner were coming around a corner into a back yard. A canine was sent to find the suspect, located him in the yard, and bit him. During the struggle with the dog, the suspect dropped his gun. As the officers rounded a corner, they were met with an opportunity to apprehend the suspect rather than gunfire. The officer believed that, if the dog had only barked, the two officers might have been shot.

Another criticism of the “find and bark” approach is that it results in just as many bites as the “find and bite.” The reason is that the dog is trained to bite if the suspect moves, and most suspects – because they are frightened of the barking dog – move or they try to attack the

¹² *Principals For Promoting Police Integrity: Examples Of Promising Police Practices And Policies*, U.S. Dep’t of Justice (2001).

¹³ *Law Enforcement Canines: Concepts and Issues Paper*, IACP National Law Enforcement Policy Center (2001).

dog. Several trainers we spoke with said that “find and bark” dogs also have more difficulty staying disciplined because they are rewarded for not biting in training scenarios where the suspect stays very still but are rewarded for biting a suspect in the field when the suspect moves. Some trainers fear that these dogs actually try to make the suspect move so that they can get their reward.

Indeed, the Florida study mentioned above, which surveyed 334 dog handlers (181 surveys were returned) from various police departments within the State of Florida in 2002, found that departments using “find and bite” had a lower bite ratio than those using “find and bark.”¹⁴

On the other hand, a large number of Departments, including the LAPD, have implemented the “find and bark” method of canine deployment and maintained effective units without jeopardizing officer safety. Handlers in these departments believe “find and bark” is better for officer safety because the dogs identify suspects as soon as the suspect is located, by barking. Conversely, “find and bite” dogs often spend additional periods of time during which the officer still does not know the suspect’s location in which the dog looks for ways to access the suspect in order to bite. The LAPD “find and bark” handlers with whom we spoke reported that they had no problems extracting suspects hidden in small spaces, like closets or sheds, even though their policies prohibit the use of the canines to help with the extraction. Their use of gas, negotiation, or other tactics was sufficient.

Interestingly, both “find and bite” and “find and bark” proponents believe that their method gives more importance to handler control, rather than allow a dog to make a use of force decision. “Find and bark” proponents note that, when the dog is within the line of site, the barking dog gives the handler the control to recall the dog, while the biting dog will bite based on its own training. “Find and bite” proponents point out that when the dog is out of site, a barking dog has to make a decision of whether a suspect is “threatening” enough to bite.

We tend to side with the “find and bark” proponents on this argument. The majority of CSD cases we read undermined the notion of handler control. Dogs were either proceeding to bite suspects while the suspect was out of the handler’s sight or biting suspects once the dog discovered a person under a tarp or a car or pile of clothes. These latter types of cases again are examples where the dog has made a decision to bite or where the handler did not have time to recall the dog (or chose not to) before the bite.

¹⁴ Mesloh, Charlie, “Barks or Bites? The Impact of Training on Police Canine Force Outcomes,” 7 *Police Practice and Research* at 323-335 (2006).

All of the handlers with whom we spoke said that a significant danger of “find and bark” is that it takes a well-staffed training team to constantly train the dogs and re-condition them after incidents in the field. They urged that Departments without such resources should probably not use the “find and bark” strategy. CSD is fortunately not one of those agencies: it is large enough to have a fully staffed training team. The study from Florida did not disclose the size of the agencies with the high bite ratios using “find and bark” dogs, but we question if this could be a partial explanation for the findings there.

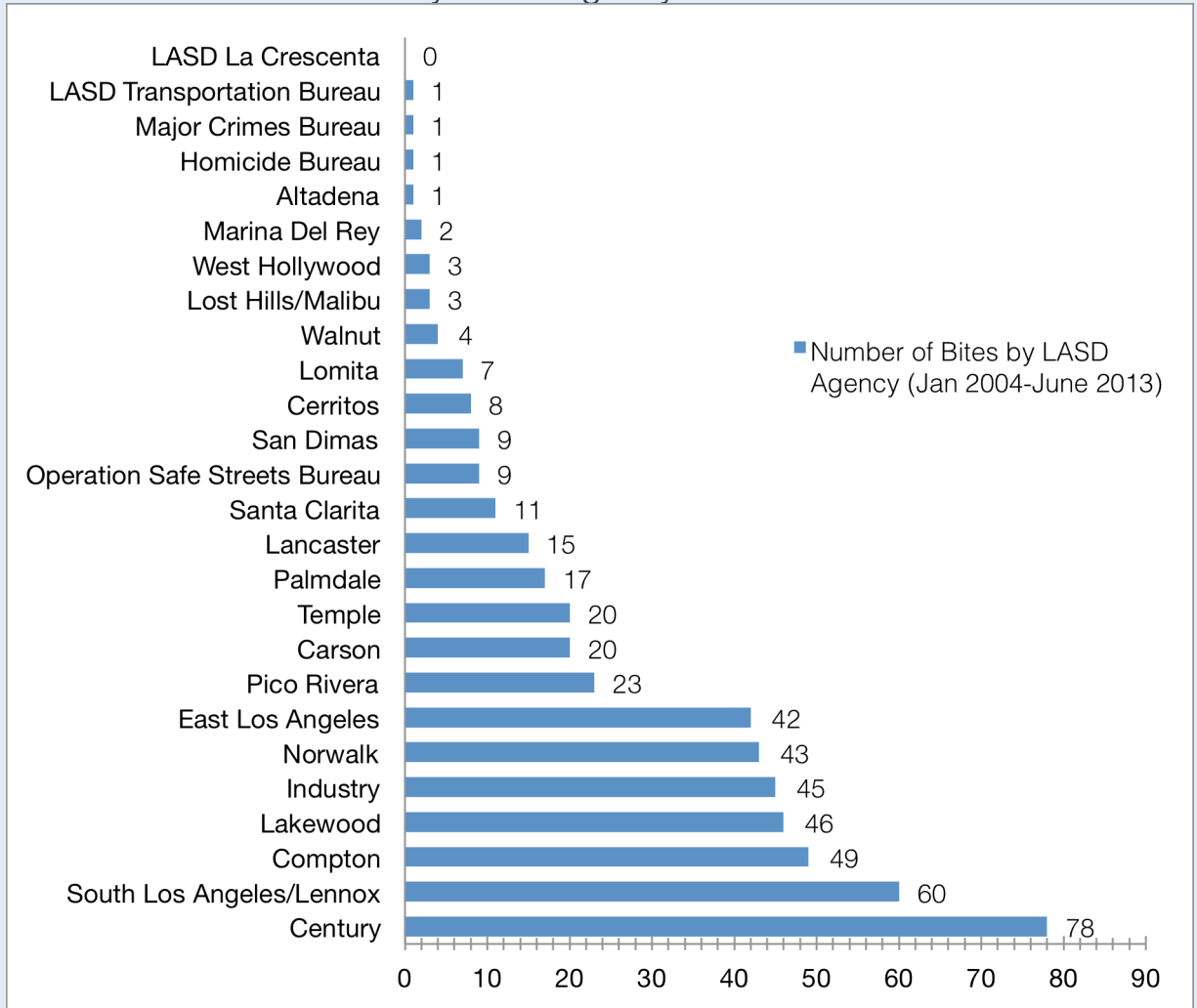
Although we would prefer that CSD use the “find and bark” method with their dogs because it provides greater opportunities for handler control, we have not found sufficient evidence to strongly argue against their use of the “find and bite” method. With “find and bark,” there are more opportunities to call the dog back and apprehend the suspect without a bite. Both methods have advantages and disadvantages in different situations. We have not found a department that has figured out how to train dogs in both methods so as to allow handlers to use different tactics in different situations. Departments must choose a method that best suits their needs. Nonetheless, we again assert strongly that if CSD continues using “find and bite” dogs, our recommendations should be adopted in order to reduce both the number of bites and bite ratio.

IV. Bites By Ethnicity

Based on our review of Supervisor’s Reports on Use of Force related to canine bites and statistics provided to us from the Department, the vast majority of the canine deployments occurred in high crime areas. Accordingly, the likelihood for deployment may be crime-related. We observed, however, that large swathes of LASD’s jurisdiction, encompassing generally affluent areas with smaller minority populations, had few deployments or bites. Crime rates are lower in these areas, but the stark disparity leads us to wonder why canine deployments seem to occur disproportionately in less affluent areas with larger minority populations. As shown in Table 4, the five LASD stations with the highest number of bites (Century, South LA/Lennox, Compton, Lakewood, and Industry) had more bites, from January 2004 to June 2013, than all of the other 21 agencies or stations *combined*. Century Station,¹⁵ in particular, had 15 percent of the total bites for a total of 78 bites from January 2004 to June 2013. In contrast, the more affluent stations where Whites are the predominant ethnicity (La Crescenta, Altadena, Marina Del Rey, West Hollywood, and Lost Hills/Malibu) comprised about two percent of the total bites for a total of nine bites for the same time period.

¹⁵ Century Station serves the following areas: City of Lynwood, Florence/Firestone, Walnut Park, Willowbrook, and Athens Park.

Table 4: Number of Bites by LASD Agency



V. Bite Duration

Canines are trained to bite their targets in the arm and hold that bite until the deputy can make the arrest. When canines bite suspects for long durations, however, suspects are more apt to suffer more serious injuries because of a greater chance of struggle. As one emergency room doctor indicated, it is not so much the length of time that the bite is held; rather it is the *struggle* that often leads to injury. Although a deputy should not prematurely confront a suspect who is known or reasonably suspected of being armed, the deputy must not demand absolute passivity before the dog is ordered to release a bite.

The Department's Directive, Field Operations Directive 86-37, clarifies that a dog should release the bite as soon as possible. The Directive states, "The handler will remove the dog at the first possible moment the canine can be safely released." The Directive also further states that "[w]hen deciding to remove the dog, particular attention must be given to the perceived threat or actual resistance presented by the suspect. Handlers will continue to factor into their decision that the average person will struggle if being seized or confronted by a canine. This struggling, alone, will not be cause for not removing the canine." In other words, deputies are not supposed to use the fact that a suspect is struggling with a dog as an excuse to let the bite carry on longer.

While most of the handlers in the reports we reviewed commanded their canines to release their bites in less than 10 seconds, many of the reports documented that the canines held the bites for as much as 20 to even 40 seconds despite handlers' relatively close proximity (i.e. less than 40 feet away from the suspect).

On certain occasions, when a dog has bitten a suspect and the suspect is still close to a location where a gun might be concealed, officers will order the suspect to walk toward the officer, into an open space, with his or her hands up – all while the dog is still biting. This prolongs the bite, which, in turn, elevates the risk of serious injury.

Because there is no video of these crime scenes, it is very difficult for us to judge whether or not the arresting officers are removing dogs from bites at the "first possible moment." Almost every report mentions that the officers demand that the suspect show both hands before they will release the dog. Thus, on most occasions, the fact that the suspect is struggling with the dog, which prevents the officer from having a clear view of a suspect's hands, does appear to serve as a justification to not release the dog.

The worry is that officers, acting in a dynamic and rapidly evolving situation, may overestimate the safety concern and unnecessarily cause serious injury to the suspect. Certainly, the image of asking a suspect to calmly listen to officer instructions and walk toward the officer while a large dog continues to injure the suspect is very extreme.

We are, of course, sensitive to the concern for officer safety and the danger that, in these tense situations, a suspect breaking away from a bite in close proximity to an officer could put the officer at risk and quickly turn the situation into an officer-involved shooting. Many suspects chased by CSD are violent, refuse to give up even when cornered, are on drugs, or are otherwise in crisis – all of which make it difficult to detain them without significant force. In many situations, it is reasonable to be even more certain that the suspect is subdued. It may be possible, however, to do so without extending the duration of the bite. A

less than lethal tactical option, such as a Taser or pepper spray, would be less injurious to the suspect than a bite of long duration – and often just as effective in safely taking the suspect into custody.

The Ninth Circuit has held that a prolonged bite or improper encouragement by an officer to prolong the bite may constitute excessive force. In a 1998 case against the City of Oakland, an officer did not remove the dog from the bite for some 30 seconds. The officer was waiting for the plaintiff to show his hands before releasing the dog. The Court refused to throw out the case, holding that it was up to a jury or judge to decide if the prolonged bite constituted excessive force.¹⁶ On the other hand, the Ninth Circuit held in another case that a bite lasting one minute and causing serious injuries was nonetheless reasonable under the circumstances.¹⁷ Thus, although there is no “bright line” rule governing how many seconds a bite may last in order to be reasonable, a bite may be constitutionally excessive under the circumstances simply because it lasted too long.

We recommend that CSD supervisors regularly train on this issue and debrief officers after a bite, with thorough questioning to ensure that officers are vigilant in removing bites as quickly as possible. We also recommend that CSD add to its Directive that the distance between the handler and biting dog be documented, to add extra emphasis on the handler staying close enough to the dog – while maintaining officer safety – to be in a position to make these difficult decisions. A dog who ventures out of sight increases the risk of unintended bites or prolonged bite durations. It should be noted that every report we read included information about the distance of the handler to the biting dog. Adding this language to the Directive only reinforces an existing, sound practice.

VI. Risk of Liability

A. General Standards And Non-Accidental Bites

The basic law governing canine use of force is that it must be objectively reasonable under the circumstances. Courts look at factors such as the severity of the crime committed by the suspect, whether the suspect posed an immediate threat to safety, and whether the suspect was resisting arrest or attempting to flee.¹⁸

¹⁶ *Watkins v. City of Oakland*, 145 F.3d 1087, 1093 (9th Cir. 1998) (excessive duration of bite and improper encouragement of a continuation of the attack could constitute excessive force).

¹⁷ *Miller v. Clark County*, 340 F.3d 959, 963 (9th Cir. 2003).

¹⁸ *Graham v. Connor*, 490 U.S. 386 (1989).

As noted above, for many years, police were using canines with abandon, and plaintiffs' attorneys noticed. As noted by the IACP, during the 1990s, canine bites became, nationally, "one of the leading sources of civil and criminal litigation alleging excessive or improper use of force."¹⁹

Taking cues from case law and national best practices, CSD has done a good job of designing policies and practices that limit its exposure to liability for non-accidental dog bites. Practices including making an announcement in English and Spanish that a dog is going to be released, limiting the use of canines largely to incidents involving serious crimes by fleeing adults, and integrating CSD into the SWAT team so that handlers are highly trained in tactical maneuvers, all greatly limit the risk of liability. Practically, suspects who make the decision to run from police and defy their orders to surrender generally do not arouse the sympathies of finders of fact at trial.

The Department, of course, must remain disciplined and vigilant in its effort to minimize the risk of liability. Canine bites can cause such serious injury that one mistake or questionable deployment can be tremendously costly to the County. Maintaining policies, practices, and a management system to ensure that dogs are removed from their bites as soon as possible; using alternative force methods to apprehend the suspect and maintain officer safety; and documenting the reasons why the level of force was used are all steps the Department can take to reduce the risk of facing costly lawsuits.

Since 2009, CSD has had 14 claims filed against it for non-accidental bites and 3 lawsuits have been filed. No dollars have been paid out, except for attorney's fees. In contrast, accidental bites, the subject to which we now turn, generated significant settlements.

B. Accidental Bites

Another risk of liability is that a dog will accidentally bite someone other than the fleeing suspect. This usually occurs when officers do not know that a non-suspect is in an area of interest (such as a back yard), the non-suspect does not hear officers' warnings, and the non-suspect person is the first person the dog finds. It can also occur if a dog is poorly trained.

Of the 299 bites since 2009, CSD dogs accidentally bit non-suspects 3 times. The incidents resulted in lawsuits and financial settlements for taxpayers totaling almost \$1.1 million, along with \$250,000 in attorneys' fees.

¹⁹ *Law Enforcement Canines: Concept and Issues Paper*, IACP National Law Enforcement Policy Center, at 7 (2001).

With aggressive dogs off leash searching densely populated neighborhoods, CSD needs to take all steps possible to try to keep these bites to zero. Not only are the accidental bites financially burdensome, the citizens of Los Angeles County should not have to worry about the possibility that they may be bitten by a police dog searching for a suspect. As one cautionary tale, the City of Hayward in Northern California recently paid a \$1.5 million settlement for accidentally killing an elderly man via a canine bite.

The 3 lawsuits resulting from accidental bites by LASD canines occurred during CSD containments in South Los Angeles and Hawaiian Gardens. Two of them are instructive of the risks of the use of canines:

- **Case #1.** In 2010, deputies were searching for a fleeing suspect around a home with a back yard. The deputies asked the owner if anyone was in the back of the home, and the owner said no. Perhaps she was afraid to let the deputies know that a man was living in a shed in her back yard, or perhaps she forgot, but in truth a man was living in the shed, sleeping at the time and not hearing the announcement being played by the deputies warning of the canine. The canine entered the shed and bit the man. The deputies estimated that the bite lasted approximately 30 seconds before they realized he was not the suspect and released the dog. This accidental bite resulted in a fractured arm and surgery for the middle-aged man and a financial settlement from the County of Los Angeles of \$225,000.

- **Case #2.** Also in 2010, deputies were searching for a suspect at a property with two houses, one in front and one in back. The deputies again asked the owner of the front home if anyone was in the back house, and the owner said that no one was home, so the deputies released the dog. Again, the deputies made the announcement. This time, the victim was an elderly man who said he heard voices and thought that the deputies were asking him to come out of the home. He said he did not hear the announcement that a dog was going to be released. When he stepped out of the house, he was bitten and suffered significant injuries and surgery. Deputies estimated that the bite lasted 10 seconds before the dog was released. The County settled with him for \$850,000. The homeowner, interviewed after the incident, said that she was confused about whether the deputies were asking if just her family was in the back or if anyone at all was back there; and she said she felt bad for the misunderstanding.

CSD takes these accidents seriously. They now make an effort to have experienced team members interview people, such as the homeowners above, to ask more thorough questions to ascertain if anyone is in fact in the area. Interviewers now explain to the homeowners that the homeowners will not get in trouble if people are living in a shed or other structures in violation of building codes, or for any other reason. In other words, they explain that they are there to search for a dangerous suspect and not looking to get the homeowner in trouble.

We recommend that CSD better document their practices and efforts to avoid accidental bites in order to make clear that the unit is being thoughtful and careful to avoid costly mistakes. For example, it is unclear from the reports if officers are asking the right questions (i.e. simple questions would be “how do you know no one is there? Did you see them leave?”). CSD also could do a better job of documenting how long the announcement was played, and what evidence there is that the announcement warning nearby individuals is audible to people inside homes, especially when a noisy helicopter is hovering overhead. It is also difficult to determine from many reports what other steps were taken to ensure that the area was cleared. We believe these improvements could be made with merely an added paragraph and little burden to the report writer.

VII. Report Quality

As a highly specialized unit with specific guidelines for deployment, we expected the reports to meticulously document the justifications for why the CSD responded to each incident. When reviewing the use of force incidents, we looked at the quality of the written reports. Our review assessed each Report on Use of Force for the thoroughness of the investigation, interview quality, justification for deploying the dog, demographic information (including race of suspect and location of incident), and explanations for why less harmful force alternatives were not used.

Overwhelmingly, the investigations we assessed were good. Most reports in were thorough and well-documented – clearly summarizing each incident, explaining why the canine was deployed, and including interviews of suspects, witnesses, and deputies. We commend the LASD and, specifically, the Special Enforcement Bureau’s Canine Services Detail for its investigation quality.

We do recommend that reports include additional detail. Most importantly, a brief description of why a bite was chosen, as opposed to another force type, would greatly improve the ability of a reviewer, whether from inside or outside the Department, to assess the use of force in each case.

VIII. Conclusion & Summary Of Recommendations

Despite our respect for CSD because of its work, we nonetheless believe the unit could improve in several areas and make a number of recommendations to that end as follows:

Recommendation #1: Study why there are disproportionate incidence of dog bites on Black and Latino suspects and collect data going forward to help identify the factors that drive canine call outs. If no such measures are taken, then impose a partial moratorium on the use of canines in all but the most critical circumstances involving armed suspects.

As discussed above, the fact that minorities are being bitten at a disproportionate rate – for many years – causes us great concern. The public is entitled to some explanation and understanding of why this is happening. We urge, again, that LASD conduct a study to determine the key factors driving this disparity. We also recommend that the Department collect data on all incidents that involve fleeing suspects who are involved in serious crimes. Such data will create a platform for analyzing whether or not race does in fact play a factor in the decision to call out the canine unit. If LASD continues to ignore the issues, we recommend that a partial moratorium be placed on the use of canines in all but the most critical circumstances involving armed suspects. Without the ability to conduct a meaningful, rigorous assessment, the LASD will demonstrate to the public that racial disparities in policing deserve only a shrug of the shoulder.

Recommendation #2: Provide CSD with one additional sergeant.

An inability of the three CSD sergeants to cover every shift has led to the use of outside sergeants to fill the supervisory holes. This insufficient supervision hinders the CSD and may jeopardize CSD's ability to sustain recent improvements. We therefore recommend that the Department provide CSD with one additional sergeant.

Recommendation #3: Set more aggressive goals for the bite ratio and number of bites.

The Department should set a goal of a bite ratio that stays below 15 percent. The ratio should include directed bites. We think this ratio is reasonable, especially given that it has in fact been achieved in past years by CSD. Based upon our review of incident reports, it appears that a number of bites could be avoided altogether by choosing alternative tactics such as clear out gas.

This bite ratio goal can help create a long-term culture that treats bites as a relatively seldom-used tool for extreme circumstances and that is subject to systematic review and analysis.

Although we leave it to supervisors to devise a goal that discourages unnecessary uses of force but does not discourage effective and aggressive police work, it seems that a unit-wide debriefing if and when the total number of bites reach 25 for the current year, in which the group explores precisely why bites are exceeding numbers achieved in past years, would further this goal.

Recommendation #4: Document and track why alternative uses of force were not used and create a culture emphasizing less use of force.

All personnel must equally understand and share the philosophy that less lethal force should always be attempted if it is a safe, reasonable option. The current emphasis appears to be that bites must be reasonable under the law. Although this does result in some focus and thoughtfulness – which is a great advancement from when we first started reviewing the CSD – it leaves too much room for deputies to deploy ultimately legal but unnecessary bites.

To further emphasize the importance of limiting bites, each incident report that documents a bite should include a brief explanation of whether alternatives were available and, if so, why they were not used. With this data, CSD should develop an additional management tool that measures the percentage of cases where the use of force is deemed to be the least lethal. This metric, even more than the bite ratio, will further aid management in determining whether the overall use of canines is appropriate.

Recommendation #5: Maintain other measuring tools for individual dogs and handlers.

CSD should track bites and bite ratios for individual dogs and handlers. It should ensure constant, high quality training of dogs so that any dogs showing signs of not following commands will be pulled from the field.

Recommendation #6: Develop tools to better assess bite durations.

It is currently very difficult to assess whether the CSD is making its best efforts to limit the duration of dog bites. The deputies and the suspects are the only parties who witness the bite duration. The decision by the deputy about when to release a bite involves numerous situation-specific factors. This leaves CSD supervisors in the dark.

It is up to the supervisors, as the experts, to develop these tools. We recommend that all canine deployments be videotaped. The CSD should consider additional measures, as well, including updates and revisions to training that specifically address bite duration.

Recommendation #7: Improve documentation related to efforts to avoid accidental bites.

CSD should better document their efforts to avoid accidental bites. This could include inserting language in the Directive about the strategy to make sure the search area is clear of non-suspects; inserting in incident reports more details about how deputies determined that an area was safe to release a dog; and being more consistent in reports about why involved deputies believed that the announcements were audible and likely to be heard by people in the search area.

Recommendation #8: Improvements to the revised²⁰ CSD policy.

SEB recently submitted a revised canine deployment policy to the Homeland Security Division Chief to forward up through the chain of command for review and approval. Although it incorporates most of Field Operations Directive (the current deployment policy for SEB), we believe that the revised policy improves upon the Directive. The new policy outlines the Department's parameters for tactical canine deployment, inserts rules for outside agency canine deployment, and indicates which situations merit deploying a canine.

Though a strong policy, we recommend the following improvements to the revised policy:

- In the policy's introductory paragraphs, we recommend adding a paragraph that clearly highlights the importance of strict handler control and a description of what the Department defines as "handler control" in terms of its canine techniques and training.
- We recommend including a section in the policy memorializing that CSD will train its deputies, at a minimum, on a semiannual basis. This continuous training should be documented by CSD trainers and verified by CSD supervisors to meet internal standards.

²⁰ LASD Memo from Special Enforcement Bureau to Homeland Security Division, "Recommendation to Place Current Canine Services Detail Deployment Policies into the Department's Manual of Policy and Procedures," May 20, 2013.

Recommendation #9: Incorporate the revised,²¹ current CSD deployment policies into the Department’s Manual of Policy and Procedures.

Currently, CSD operates under the parameters of Field Operations Directive 86-37, which was last revised in April 1999. The Directive is robust and thorough; however, we recommend that it be officially added (in its revised form with improvements listed in Recommendation 8) to the Department’s Manual of Policy and Procedures with the appropriate modifications and revisions that keep it consistent with other Department policies, practices, and procedures.

During our review of CSD, current SEB Captain Michael Claus proposed this recommendation to Chief Edmund Sexton of the Homeland Security Division and submitted a revised version of Field Operations Directive 86-37 to the Risk Management Bureau’s Manual and Orders Unit to begin the Department’s process for approving and incorporating new policies. We are very encouraged by this positive development for the Department and plan to closely follow the progress of the canine deployment policy’s placement into the Manual of Policy and Procedures.

Recommendation #10: Create a tracking system of the injuries caused by bites.

We are concerned that deputies have caused hundreds of bites over the past several years but do not know the extent of physical damage they are causing. It seems to us that this prevents the Department from truly assessing the appropriateness of using this type of force and being accountable to the public for such force. If we follow the analogy that a dog bite effectuates force akin to an officer whipping a club with three-inch spikes into a suspect, the canine, quite unlike the club, puts the officer at a distance and removed from the action. The officer cannot assess whether the use of force was ultimately a good decision.

Indeed, not only is the officer removed from having to physically drive the three-inch spikes into the body of the suspect, but the pictures taken of the bites do not provide any quality information about the extent of the injuries. Often times the photos show bite and scratch marks on an arm that, as one investigator said, “don’t look that bad.” The photos, however, may not reveal what is going on underneath the skin – for example, whether bones have been fractured or muscles torn.

On the other hand, several handlers from around the nation also have opined that dog bites are less harmful than thought by common opinion. For example, Tasers have been

²¹*Id.*

associated with a number of deaths over the past ten years, while canines have caused relatively few. If canines are causing relatively minor injuries because of their training on how to hold a bite, CSD should know this too.

We recommend that the Department obtain information from each suspect's medical records to inform them of the extent of injuries caused by each bite. The CSD should then, with the help of a doctor to ensure that the summaries are accurate and clear, reveal these injuries to the unit each year to help educate deputies about the damage ultimately caused by dog bites. Of course, patient confidentiality is a concern, but so long as the request by investigators for medical information is narrowly tailored and only for the investigation, and the information is then aggregated so that the unit only learns of the injuries (as opposed to the names), such a process should be legal. We believe it would be in the best interests of the Department and the public.

Education-Based Discipline

Introduction

Over the last ten months, we have measured the impact of the movement away from suspensions in the LASD. We are troubled by what we found. A suspension without pay is the typical discipline imposed by law enforcement agencies on its personnel for moderate to serious misconduct, with discharge and demotion reserved for more serious violations and oral or written reprimands for the less. A suspension without pay places a burden on individuals and their families in the form of financial hardship. A suspension may be for only a day or two or for up to 30 days in the LASD. In lieu of days off without pay, in whole or in part, the LASD has been allowing deputies to attend classes instead. The program is called Education-Based Discipline (“EBD”). We found that deputies are being offered classes for serious misconduct that should result in significant sanctions in the form of days off.

We were particularly concerned how founded allegations of unreasonable force were handled at the Department under EBD, at least until last February. Unreasonable force is one of the most serious violations of Department policy. Nonetheless, disciplinary action was significantly rolled back for this type of misconduct during the time period that we analyzed. Specifically, we found 27 cases of sustained unreasonable force allegations during the lifespan of EBD. Of these 27 cases, 23 were able to exercise the EBD option. Among those, 15 were able to fully satisfy with EBD courses. The 15 cases that were satisfied by EBD course resulted in 89 days of suspension being put into abeyance through EBD, and the remaining 7 cases had 77 days put into abeyance with 46 days being served “hard.” This means that 88 percent of those founded to have used force in violation of Department policy were able to complete their discipline, in whole or in part, by simply attending EBD classes.

This is a higher frequency of suspensions being satisfied with the EBD alternative than the combined average of all cases involving suspensions. Also, out of the 27 cases, nine (35 percent) were given shorter suspensions after grieving the case with the Department. In all, 166 hours of the total 229, 72 percent, suspension days assigned to LASD members who were founded of using unreasonable force were able complete them in EBD. The Sheriff’s Department has been too forgiving of this type of misconduct under the Education-Based Discipline program.

Beginning approximately five years ago, law enforcement agencies in Los Angeles began to experiment with alternatives to suspensions without pay. Sheriff Baca was a pioneer in this effort. It was the Sheriff’s perception that a suspension did not improve performance and that suspended employees (“Subjects”) without pay did not learn how to improve their

actions and could become angry and resentful toward the Department and its leaders.²² The LASD program, which began in 2009, is EBD. It substitutes classroom instruction, in whole or in part, for days off. Suspension days are placed into abeyance for, typically, one year, and if the EBD schedule described in the offender's settlement agreement is completed, the suspension days are considered to be satisfied.

We conclude that the EBD program is well-intentioned but is, in practice, overbroad and overused. Although there have been very recent improvements to the program, EBD does not always draw a bright line between conduct for which there should be zero tolerance and conduct that is amenable to education or retraining. Several classes offered have merit, but they are neither substitutes for in-service training nor sufficient to ensure upkeep of perishable skills. EBD clearly has not been able to prevent or minimize horrific instances of excessive force in the jails. It adds fuel to the fire of those who allege that law enforcement is unwilling to punish and overly willing to protect its own. It strengthens the arguments of those who contend that the power of the LASD to investigate and discipline misconduct should be taken away and given to civilian overseers. In its present form, we cannot endorse EBD.

We do not conclude, however, that it should be abolished in its entirety. Rather, we advocate that it be used much less frequently. Every instance of discipline should include an actual suspension without pay as well as classroom instruction. Furthermore, discipline short of demotion or termination for sexual harassment, race-based policing, or knowing or recklessly putting false information into record be added to those violations that are not eligible for EBD.

How EBD Works

The EBD option is considerably less onerous than a suspension without pay. A 10-day suspension lasts, at minimum, two calendar weeks and takes away pay for each of those 10 days. Thus, a Subject earning \$70,000 annually could lose approximately \$2,700 over the two-week pay period. Conversely, the EBD option, when it accounts for the full suspension period, allows the LASD member to keep the income, and EBD is completed on duty—thus not infringing on the Subject's leisure time. In addition to costing the officer less financially, EBD takes much less time to complete. The typical shift for an LASD employee is 8 to 10 hours. It takes one EBD credit to fulfill one day of suspended leave. Since one EBD credit

²² Cobos, Al, *A New Era for the Discipline Process: Education-Based Discipline, Sheriff Leroy D. Baca Presents at Harvard Law School*. Los Angeles County Sheriff's Department, http://www.psmag.com/wp-content/uploads/2010/08/SACT_A-new-era-for-the-discipline-process.pdf.

equates to four hours in lecture or study time, **it takes roughly half of the time to complete the disciplinary action under EBD as opposed to suspended leave.**

Currently, EBD can be offered as an option for anything up to a full 30-day suspension. Employees receiving suspensions of 16 days or longer, or who have repeated infractions, are considered on a case-by-case basis and can receive a combination of EBD and traditional suspension days. Not all disciplinary actions have an EBD option. At present, cases that involve demotion or termination do not qualify for EBD. Senior LASD executives can decide that EBD is not appropriate and can order that the employee to serve all assigned suspension days “hard” – meaning that suspension days are served and pay is docked.

The first step in the EBD process is the Respect-Based Discipline (RBD) meeting between the Subject and the unit commander or manager to discuss the discipline process and the details of the charges. The LASD employee will be given information on the case (a CD-ROM case file), notice of 10 days to submit a written response, and details regarding EBD. Before Department executives reach a conclusion on the appropriate discipline, they are to consult with the Office of Independent Review (OIR). After the consultation with OIR is complete, and LASD executives have received the Subject’s required response, the Subject will be informed, in writing, of the proposed discipline. The RBD meeting is intended to create trust between the Sheriff’s Department and the employee accused of misconduct and to ensure that all parties are fully informed.

The EBD program supplants suspension days with education credits by placing the suspensions days into abeyance. The suspension days are held in abeyance for a period of 12 months. If the employee violates the terms of the EBD agreement before the 12 months conclude, the Subject will then serve the days held in abeyance. EBD can be offered to an employee as part of a PDSA, or in a written EBD Proposal provided in a separate Letter of Intent to Discipline.²³ Upon receiving a notice of suspension, the LASD member has 10 days to elect for the EBD option in lieu of taking the suspended leave without pay. Under the EBD option, a LASD Subject will take a Lieutenants’ Interactive Forum for Education (LIFE) course and a combination of other courses to fulfill the unpaid suspension days.

²³ A Pre-Disposition Settlement Agreement (PDSA) is an alternative to a full investigation and disposition of alleged misconduct. If the Subject admits to the misconduct, there is an immediate founded disposition and agreed upon discipline to conclude the matter promptly. The matter cannot be grieved after a PDSA has been reached. A PDSA is not an option in situations that might require a severe penalty such as a suspension of 16 days or more, discharge, demotion, or loss of bonus pay. Generally, PDSAs are common for minor acts of misconduct, and instances where facts regarding the matter are not disputed by those involved. The PDSA must be approved by the unit commander or manager and often include an EBD element as part of the discipline.

Here is an example of how an LASD member can fulfill an eight-day suspension with EBD:

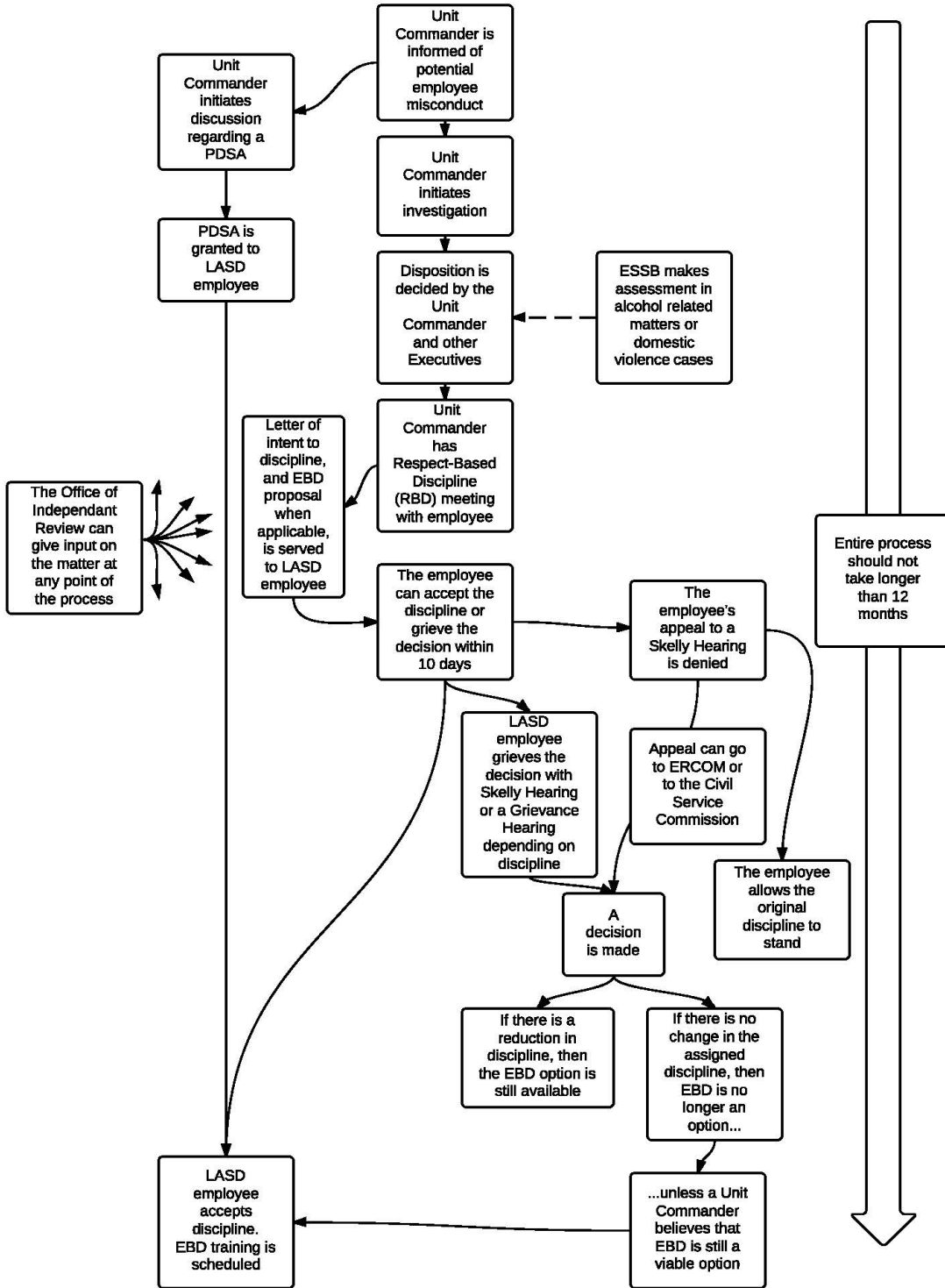
- Attend and complete the Lieutenants' Interactive Forum for Education (LIFE) Class (8 hours)
- Attend and complete the Deputy Leadership Institute (DLI) course (16 hours)
- Attend and complete the Tactical Communications Course (8 hours)
- Attend and complete the Anger Management Course (8 hours)
- Write an EBD evaluation reflecting the Subject's experience with the EBD process.

In the above example, the actual time attending courses equals 40 hours plus the amount of time spent completing the EBD evaluation. A unit commander, or other LASD executive, creates a suggested training schedule for the Subject using *Guidelines for Discipline and Education-Based Alternatives* (also referred to as *Guidelines for Discipline*). This manual explains the EBD process and displays a discipline matrix grid, listed in the back of *Guidelines for Discipline*, to guide the LASD executive to create EBD coursework.

LASD Executives can also add options to an EBD proposal that are not suggested in the discipline matrix. The LASD member can give a presentation before his or her peers in the Department, otherwise known as a "Briefing." In these Briefings, the Subject often demonstrates contrition for the misconduct and educates peers on how they can avoid violating LASD policies. Publically acknowledging culpability is a powerful tool to reforming behavior. **We recommend that the Sheriff's Department encourage these Briefings.** There is also an option for independent study for EBD participants. Independent study can include assigned readings with subsequent written evaluations that do not involve attendance in a classroom. For example, *7 Habits of Highly Effective People* is a commonly assigned reading. These options not otherwise included in the discipline matrix give the EBD the program a more rounded curriculum.

Alcohol and domestic violence-related charges are decided under a different set of guidelines. Alcohol offenses are followed with an evaluation from the Employee Support Services Bureau (ESSB). The ESSB makes a recommendation to the Unit Commander of what EBD options might be suitable for the Subject. Up to three credits can be recommended to the Unit Commander once ESSB has evaluated the court-mandated classes or programs. For domestic violence offenses, ESSB will make an evaluation of the employee and will be assigned to a "treatment program" to be completed "off-duty," including EBD classes.

Table 5: How EBD Works



The LASD *Guidelines for Discipline and Education-Based Alternatives* provides an adequate description of the EBD process. Table 5 is a visual representation of the EBD process. The Sheriff's Department has a visual representation of their own,²⁴ also a flow chart, but it cannot be found in the *Guidelines for Discipline*. We would suggest that either LASD's flow chart, or ours, be added to the manual.

Discipline Assignment

There are several deficiencies in *Guidelines for Discipline* as an instructive tool for LASD leaders who must create and assign sanctions. The description of the EBD program is adequate, but the manual fails to thoroughly illustrate how an LASD executive would formulate a suitable EBD schedule. The "Discipline and Education Guide," located in the back of the *Guidelines for Discipline*, provides a general guide for LASD executives to assign discipline schedules for Subjects with sustained allegations. For each specific violation, a range of disciplinary options are provided that often include suspension days, written reprimands, and discharges. Many of the discipline options the LASD executive have to choose from range from 1 to 5 suspension days, 10 to 20 suspension days, or from Written Reprimand to Suspension.

In addition to disciplinary options provided for each specific violation, each violation is matched to a set of Action Item Menus. Each Action Item Menu lists a set of classes that are germane to the violation and address how the LASD member can improve their conduct at the Department. Classes associated with each Action Item Menu are listed on the Regional Community Policing Institute webpage for California.²⁵ Action Item Menu A through E list a set of classes, ranging from 9 to 22 courses, that each address a certain subject (e.g. Action Item Menu Item A: Problem Solving and Self-Management, and Action Item Menu C: Skill Enhancement).

LASD executives therefore have a very broad set of options – but the available documentation does not provide the decision-maker with sufficient instruction or guidance. The "Discipline and Education Guide" outline options that are so wide-ranging that LASD executives are simply not given a constructive guide for creating tailored discipline programs.

To illustrate the complexity and lack of guidance to decision-makers, below is an example of a sustained allegation with corresponding discipline options that the LASD executive has at his or her disposal:

²⁴ Regional Community Policing Institute, "California," <http://rcpi-ca.org/resources/list/> (last visited Sep. 25, 2013).

²⁵ *Id.*

Example of Discipline Options Available for Sustained Allegations

Deputy X (name redacted for confidentiality purposes) received a charge of Policy of Equality – Inappropriate Conduct Toward Others, Hazing, and Conduct Towards Others – Discourtesy or Profanity toward Department members. Here is the listed set of options in “Discipline and Education Guide” that the LASD executive has to choose from to create a discipline schedule for these sustained allegations:

EBD OPTIONS:

Policy of Equality – Inappropriate Conduct Towards Others

Disciplinary Options: Written Reprimand to Discharge.

Action Item Menus: B, C, and E.

Hazing

Disciplinary Options: 3-day suspension to Discharge.

Action Item Menus: A, B, C, and E.

Conduct Towards Others – Discourtesy or Profanity toward Department members

Disciplinary Options: Written Reprimand to 10-day suspension.

Action Item Menus: A, B, C, and E.

Here is a description of Classes listed under each of the Action Item Menus referenced in the various EBD options above:

A: Problem Solving and Self-Management

- Life Class (8 hours), Deputy Leadership Institute (16 hours)
- 7 Habits of Highly Effective People (24 hours)
- Imagine 21 (32 hours)
- Professional Development (Ethical Decision Making) (8 hours)
- Anger Management & Effective Communication (8 hour)
- Behavior Stress Management (4 hour)
- Relationship Management-Conflict Resolution (4 hours)
- Dealing with Difficult People (4 hours)
- Basic Tactical Communications (8 hours)
- Cultural Awareness for Supervisors (8 hours)
- Cultural Diversity (8 hours)
- Respect-Based Leadership (8 hours)

B: Skill Enhancement

- Arwen Certification (4 hours)
- Special Weapons Training (2 hours)

- EVOC- S.T.A.R. (8 hours)
- EVOC-In-Service (8 hours)
- EVOC-In-Service (16 hours)
- EVOC- Patrol Trainee Phase V (8 hours)
- EVOC – Alternative Driving Program (8 hours)
- EVOC- Law Enforcement Driving Simulator (8 hours)
- EVOC- Van Operator’s Course (8 hours).

Note: Other courses listed under this Action Menu Item already listed under Action Item Menu A above]

C: Boundary Recognition

All courses listed here have been previously listed under Action Item Menus A and B.

E: Character Reinforcement

All courses listed here have been previously listed under Action Item Menus A and B.

DISCIPLINE OPTIONS:

Conduct Towards Others – Discourtesy or Profanity toward Department members	Written Reprimand to 10 Suspension Days
Hazing	3 Suspension Days to Discharge
Policy of Equality – Inappropriate Conduct Toward Others	3 Suspension Days to Discharge

In the above example, the LASD executive has a wide range of classes (20), suspension periods (3 to 30 days), and additional options such as Written Reprimands and Discharges. The nature of the misconduct will, of course, give some guidance as to what discipline will be properly punitive and corrective. There are, however, many factors that the LASD executive must consider that are not addressed in the manual. For instance, if the Subject has violated a policy for a second or third time, how should that affect the discipline? How should multiple violations in one case affect the severity of the discipline? Should a combination of EBD classes and “hard” suspension days be assigned? Also, the Action Item Menus are far too broad to give any real guidance as to what specific courses should correspond to specific violations, particularly when multiple violations are levied against one LASD member in a single case – which occurs in nearly all founded policy violations.

Thus, in the example, the Subject was assigned 12 days in suspension; 6 of the days were actually served with removed pay, and the other 6 days were put into abeyance with the completion of EBD. The EBD course schedule for the Subject was the 8-hour life class (2 credits), the 16-hour Deputy Leadership class (4 credits), the 8-hour Respect Based Leadership course (2 credits), and an EBD evaluation.

This was a particularly onerous discipline schedule, but the male deputy was found to have committed multiple lewd acts against a female peer deputy of the Department. These acts included commenting on the peer deputy's clothing with sexual undertones, questioning her about personal relationships, deploying pepper-spray underneath the bathroom door while the Complainant was inside, hiding her flashlight, and activating a Taser to the Complainant's buttocks. These particularly egregious policy violations were met with strong sanctions. In our evaluation, however, we do not agree that EBD should have been granted. This behavior, which can be safely described as torment, should not be tolerated, and allowing part of the suspension to be placed into abeyance with EBD signals that the Sheriff's Department feels otherwise.

Moreover, the LASD executive who was in charge of making this decision was given little guidance from this manual as to what would be an appropriate disciplinary action for this situation. The LASD executive did find guidance on the matter with the Equity Oversight Panel and the Office of Independent Review. In order for *Guidelines for Discipline* to be a complete manual for this process, the executive must be more fully instructed on what the appropriate amount of punishment should be meted for nearly all acts of misconduct.

Prior Misconduct

As suggested above, although *Guidelines for Discipline* does briefly address the issues of discipline history, it does not effectively guide the LASD executive on how to consider this as an aggravating and mitigating factor. In the section on Progressive Discipline, the manual instructs the LASD executive to consider "the frequency or length of time between occurrences" of sustained allegations, and on page ten of the manual it states that "Disciplinary History" should be examined when considering the level of discipline to impose on a LASD Subject. Many settlement agreements describe past misconduct if prior founded allegations do indeed exist. However, the policy is unacceptably incomplete. It does not help the LASD executive in charge of creating discipline to factor past misconduct. A rubric, guidelines, or even suggestions would make this important element of the disciplinary process much more consistent and clear.

The Denver Police Department created a *Discipline Handbook*, an online guide that describes how misconduct is handled at the DPD. In this manual, there is a clear description of how past disciplinary history impacts management's decision to create new discipline.

Prior Disciplinary History as an Aggravating Factor²⁶

21.1 An officer's prior disciplinary history not already used to increase the discipline level may be considered in determining whether the disciplinary sanction should be increased from the presumptive penalty to the aggravated range. It may also be considered in determining whether special circumstances exist justifying a penalty in excess of that allowed under the matrix²⁷ up to and including reduction in rank or termination.

21.2 As with any other potentially aggravating factor, the reviewer must determine the weight or significance of the history. Factors which may be considered in the weighing process include, but are not limited to:

- 21.2.1 The nature and seriousness of any prior violation;
- 21.2.2 The number of prior violations;
- 21.2.3 The length of time between prior violations and the current case;
- 21.2.4 The relationship between any prior violation and the present misconduct;
- 21.2.5 Whether the prior history demonstrates a continuation or pattern of the same or similar misconduct; and
- 21.2.6 Whether the prior history demonstrates continuous misconduct, even if minor, evidencing a failure to conform to rules or to correct said behavior.

21.3 Remoteness – Where there has been an appreciable amount of time between the prior and present misconduct and the prior misconduct was minor, the prior misconduct should not be considered as an aggravating factor. An exception to this rule would be where the prior misconduct, even if remote/minor, evidences repeat, continual or pattern misconduct.

²⁶ Denver Police Department. *Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines*, at 25, [http://www.denvergov.org/Portals/338/documents/Handbook percent206-4-08 percent20- percent20FINAL percent20with percent20appendix.pdf](http://www.denvergov.org/Portals/338/documents/Handbook%206-4-08%20-%20FINAL%20with%20appendix.pdf).

²⁷ This matrix can be found in the appendix of this chapter.

The Denver Police Department's *Discipline Handbook* also illustrates how past discipline should impact the level of discipline being assigned. (The Appendix includes a copy of DPD's penalty table with a corresponding discipline matrix as presented in the *Discipline Handbook*.) The above policy unambiguously delineates how disciplinary history acts as an aggravating factor for sanctioning a Subject. The number of violations, the egregiousness of violations, and the length of time between violations are all identified, and indicated as potential triggers for increasing the severity of the new discipline. The Denver Police Department executive is much better informed on how a Subject's previous violations should bear on the creation of a new discipline schedule.

The penalty table listed in the back of DPD's *Discipline Handbook* helps in not only to assist law enforcement supervisors to appropriately increase discipline for prior misconduct as an aggravating factor but also to create needed consistency to the discipline process. The DPD's penalty ranges are sufficiently narrow to provide clearer guidance. This, in turn, will result in more consistent discipline actions at the Department – helping LASD fight against allegations of discrimination or favoritism concerning discipline. Limiting some of the discretion of ranking LASD members in this decision-making process can also be an effective risk management tool. Many of the discipline actions are currently being decided *ad hoc* at the Los Angeles Sheriff's Department; LASD executives are deciding each discipline action according to his or her own judgment of the situation. LASD executives are not beholden to any real standard when creating discipline for their employees. The Denver Police Department's *Discipline Handbook* is a great example of how a law enforcement agency should inculcate their supervisors to make fair and proper discipline decisions.

Statistical Measures of EBD

Since Education-Based Discipline was introduced to the LASD in April 2009, the nature of discipline changed significantly. Under EBD, suspensions have become a much more infrequent outcome for LASD members with sustained allegations of misconduct.

We took several statistical measures of the discipline outcomes under the EBD program. Our analysis focused on cases closed with founded misconduct from April 2009 through October 2012. Of the 960 times that suspensions were given to LASD employees, 746 (77 percent) were granted the EBD option to satisfy the suspension schedule in whole or in part. Among that group, 137 suspension assignments, or 18 percent of the total 746 incidents, were assigned a combination of suspension days served "hard" – meaning that unpaid suspension days were actually served – and suspension days placed into abeyance through EBD. Collectively, this group serving this combination of discipline was assigned 1,596 suspension days, 706 (44 percent) of those suspension days were actually served while the remaining 890

(56 percent) days were satisfied through EBD coursework or independent study. The remaining 609 suspension assignments of the 746 (82 percent) were able to put their entire suspension schedule into abeyance through EBD—3,042 suspension days collectively. There were 214 instances when members of the Department served a full suspension with EBD—1,584 days collectively.

Recidivism

Although recidivism is not a major problem at LASD, **we are concerned with the Department's practice of allocating EBD to Subjects with prior sustained allegations.** We found 165 instances of recidivism at LASD over the lifetime of the EBD program at LASD: 134 Department members received a consecutive sustained allegation with sanctions from April 2009 until October 2012.²⁸ Of those 134 Department members, one LASD member received discipline on five separate cases, five LASD members received discipline on four separate occasions, and 13 LASD members received discipline on three separate occasions. The remaining 115 instances of recidivism are LASD members with two incidents of misconduct with discipline. There were 1,351 employees with sustained allegations in the lifetime of the EBD program, meaning that repeat offenders committed only 9.92 percent of these violations.²⁹ Considering that the average annual staffing level at LASD from 2009 through 2012 is 16,673, this is a small fraction of the Department.

Nonetheless, there were many instances that involved Subjects who improperly received EBD coursework after a third or fourth sustained allegation, including:

- After receiving one unpaid suspension day in December 2009, and a written reprimand in 2010, a Deputy Sheriff received five suspension days after being found guilty of committing six violations. The Subject received six credits of EBD to satisfy the suspension period. Then in November of 2011, the same Subject committed four more violations³⁰ to earn a 10-day suspension that was wholly satisfied in 11 EBD credits. Despite having committed policy violations on four separate occasions, and accumulating 16 suspension days and one written reprimand, this deputy only served one unpaid suspension.

²⁸ This does not count discharges, salary step reduction, and bonus removal.

²⁹ Repeat offenders include those who committed sustained allegations that result in a Written Reprimand, Suspension or Demotion from April of 2009 through October of 2012.

³⁰ 3-01/005.10: RESPONSIBILITY FOR DOCUMENT; 3-01/030.10: OBEDIENCE TO LAWS, REGULATIONS; 3-01/050.10: PERFORMANCE TO STANDARDS; 3-01/050.20: DUTIES OF ALL MEMBERS.

- One LASD member received a written reprimand in 2010 and in 2012. Later in 2012, the same deputy committed two violations³¹ to receive a one-day suspension that was completed with two EBD credits. That same year, this deputy committed three additional violations in a fourth case for two days of unpaid suspension – EBD was not an option for this fourth case.
- A Deputy Sheriff received the EBD option after it was found that the officer used unreasonable force. In 2009, this LASD deputy committed two violations that resulted in a one day unpaid suspension. In 2011, this same member of the Department committed five more offenses—one being a founded instance of unreasonable force—that resulted in an eight-day suspension. Five of those eight days were put into abeyance through EBD. Upon receiving another set of sustained allegations in 2012, the deputy received a five-day suspension, and completed three of the five days with five EBD credits—the other two days were served “hard.”

These examples challenge the value of the EBD. For one thing, Subjects can satisfy EBD class requirements by repeating a class that they have already taken. In the first example above, the Subject completed the LIFE program twice, and the Subject in the third example completed that program twice. We doubt that there is any value in taking the same class on multiple occasions. If a LASD member was not able to retain the decision-making material after taking the LIFE class once, why have the individual complete this class a second or third time? Overall, we found 22 instances where EBD was offered after an LASD member who was found guilty of prior misconduct and received discipline.³² Scaling back punishment in situations that involve prior misconduct demonstrates that the Department believes this is acceptable behavior. Prior misconduct, particularly uses of unreasonable force, should be dealt with appropriate sanctions, and not diminished penalties. Sending members of the Department through multiple rounds of EBD courses will not likely alter behavior as effectively as unpaid suspensions.

We also note that allowing a LASD member to take the EBD option after a sustained allegation of unreasonable force sends the wrong message to employees of the Department.

False Statements & False Information in Record

In addition to excessive force, two other disconcerting sustained allegations being handled with EBD are false statements and false information in record. According to *Guidelines for*

³¹ 3-01/050.65: SHOOTING REQUIREMENTS; 3-01/050.70: FAILURE TO SHOOT/QUALIFY.

³² Discipline in this instance refers to suspension days, Written Reprimand, or Demotion.

Discipline, a violation that falls under the false statement allegation is “lying to a supervisor,” and violations of false information include:

Falsification of internal documents or communications, falsification of official reports or records, falsification of application or omission of information for employment or promotion when it materially affects acceptance or rejection for employment or promotion, falsification of time records or financial records (travel, mileage, overtime, etc.) for fraudulent purposes.

LASD members who have been found of falsifying information to the Department need to be given a clear message that this dishonest behavior will not be tolerated, as it violates the trust of the Department. During the time-period of interest, from April 2009 to October 2012, there were 19 members of the Department who were found to have made False Statements, 10 members who were found to have made False Information in Record, and 4 members of the Department who were guilty of committing both offenses. Among the 19 Department members who made false statements only, two members were given a demotion, one had to serve 10 days without EBD, and the remaining 16 were granted the EBD option. Those 16 who received the EBD option, 11 were able to satisfy the suspension period by attending EBD classes—a total of 171 days. The remaining 5 completed their suspension with a combination of days 45 EBD and 25 “Hard” days. Collectively, among the 16 cases, 216 suspension days were put into EBD out of 251—86 percent.

For members of the Department who had founded allegations of making a false information in record, 9 of the 10 were allowed the EBD option, and of those nine, 8 did not serve any of the 95 suspension days collectively assigned. One LASD member found guilty of false information had to serve all seven suspension days, and another served 15 suspensions days “hard” and 10 through EBD.

The four who were guilty of making a false statement and false information in record were all granted the EBD option to satisfy 63 of a possible 73 suspension days. Three of these Subjects were allowed to complete their suspensions with no actual suspension days to serve, while the remaining subject served 10 suspension days and 5 days through EBD.

Although there are mitigating circumstances and important details in each case, there are far too many instances of the Department being lenient toward members who withheld or obscured the truth. **Allowing 85 percent and more of those suspension days to be satisfied with EBD does not demonstrate that the Sheriff’s Department did everything that it could to prevent future instances of deception.**

Grievances

The LASD Employee found to be in violation of Department policy has 10 days to grieve or accept the original disciplinary action. If the employee decides to grieve the judgment of the LASD executives, and no change is made to their discipline, then EBD should no longer be an option unless the Unit Commander or Chief believes that this is a viable option, according to the LASD *Guidelines for Discipline* manual.

After speaking with several people close to the LASD disciplinary process, many members of the Department are still provided the option of EBD coursework when there has been no change to the disciplinary action. We believe that this is an incorrect handling of Subjects who have exhausted the right to challenge the Department's decision to discipline. Without the risk of losing EBD, then there is nothing to prevent the Subject from grieving his or discipline in every instance. **LASD should not allow Unit Commanders or Chiefs to grant the EBD option after a grievance is considered when no change in discipline results from the grievance process.**

Sexual Harassment and Relations with Subordinates

The Los Angeles Sheriff's Department has dealt with the consequences of sexual harassment charges before. After Deputy Susan Paolino Bouman successfully sued LASD for sexual harassment and discrimination, a Consent Decree was issued against the Department to govern its treatment of women. The Bouman Consent Decree, along with a bevy other lawsuits accusing the department of mistreating woman, was meet with a promise from Sheriff Lee Baca to have "zero tolerance for harassment."³³

When Education-Based Discipline is used to replace a rigorous suspension schedule, it is difficult to say that the Sheriff has followed through with his promise. During the period of our analysis, 16 department members were accused of sexual harassment, and 16 were accused of relations with subordinates, and three Subjects had both sustained allegations. The 16 who were charged with sexual harassment, 8 were allowed to take EBD classes to replace all or part of their suspension period. For this group, 40 of 90 suspension days were satisfied with EBD. The remaining 8 who were charged with Sexual Harassment served suspensions without pay. The 16 who were charged with Relations with Subordinates, eight, again, were allowed to take the EBD classes. These 8 Subjects were able to satisfy 49 suspension days of 64 through coursework. The remaining 8 participants who did not

³³ Tina Daunt & Anne-Marie O'Connor, "Sex Harassment Hard to Root Out in Sheriff's Dept," *Los Angeles Times* (Apr. 18, 1999), <http://articles.latimes.com/1999/apr/18/news/mn-28688> .

receive EBD, one was subjected to a demotion, and the remaining seven were given “hard” suspension periods. The three who were charged with both Sexual Harassment and Relations with Subordinates were dealt with appropriate penalties. Two were given demotions. One was given a 30-day suspension in addition to completing EBD classes. While those who had committed both violations were properly disciplined, allowing half of those who committed one or the other is not acceptable. Allowing Subjects to take classes instead of completing a full suspension demonstrates that the Department does indeed continue to tolerate this behavior.

Sworn vs. Civilian Personnel

We compared the treatment of sworn personnel at the Los Angeles Sheriff’s department (e.g., Deputies, Sergeants, Captain) to civilian personnel (e.g., Clerks, Cooks, Technicians) under the EBD program. We found that the Department was doing an acceptable job of treating these two groups equally. Both groups were allowed to take the EBD option in 55 percent of cases with sustained allegations. The civilian group did, however, face double the amount of unpaid suspensions proportionally. The difference is accounted in the percentage of written reprimands. Among sworn staff, 31 percent were given written reprimands while only 18 percent of the civilian staff was given this discipline. We believe that the Sheriff’s Department should make every attempt to treat their personnel as fairly as it can and to be equally as punitive in discipline to both sworn and civilian staff.

Completing EBD Credits While On-Duty

Because participants who are “on the clock” attend EBD classes, there is no loss of off-duty time for these employees. Persevering the employee’s off-duty time should be a low priority. Having an LASD employee complete EBD classes during off-hours and weekends adds a punitive element to this discipline option. These classes are meant to improve the employee’s behavior through education and should also contain some penalty to help deter the employee from repeating the error or errors. **We recommend that LASD schedule all classes during a Subject’s off-duty hours.**

This adjustment would need to agree with current federal and state labor law. EBD falls under the rules that are used to regulate all training activities as LASD.³⁴ The *Memorandum of Understanding For Joint Submission Regarding the Peace Officers*, which is the current LASD collective bargaining agreement, states the following:

³⁴ Interview with Sergeant Cobos, 3/22/13.

“Work schedules for employees in [LASD] have been established by management on a seven (7) consecutive work day cycle in accordance with the provisions of the Fair Labor Standards Act (FLSA).” (Article 8; Section 1)

Under the Fair Labor Standards Act (FLSA), whenever an employee is on a jobsite and is made to do work, the employee must be compensated.³⁵ This includes training on the job – an employee must be paid while training because training for work is still considered “work.” A stipulation of the FLSA is that any “course, lecture, or meeting” cannot be “directly related to the employee’s job” if it is not paid.³⁶

Many EBD classes are, without a doubt, directly related to LASD job duties. **In order to avoid violating this subsection of the FLSA, we recommend that LASD employees be paid a fraction of their pay while attending EBD classes during off-duty hours.**³⁷ With some small compensation, LASD members are still facing a penalty for their misconduct while the Department can avoid violating of labor law.

There are many trainings provided to LASD members that are related to on-duty activities that are off-duty and uncompensated. For instance, trainings for instant DNA testing kits are off-duty and optional for sworn members. EBD itself is optional, as described in the *Guidelines for Discipline*. The trainings that are agreed upon by the deciding LASD executive and the Subject are not optional once the EBD option is exercised, but entering into EBD in place of a full unpaid suspension depends on the Subject’s agreement.

Therefore, providing small compensation to Subjects participating in EBD would placate the letter of the FLSA – especially given that LASD already allows trainings, instructive to on-the-job activities, to be completed outside of employees’ normally scheduled working hours.

Difficulty of Reaching Discipline

The difficulty of reaching disciplinary actions at LASD is another obstacle to appropriately handling founded misconduct. As noted in the 20th Semiannual Report, “once informed of the intent to impose discipline, the Subject has several avenues to argue against the

³⁵ 29 U.S.C. § 203(g)

³⁶ Code of Federal Regulations, Title 29 C.F.R. §§ 785.27.

³⁷ Implementation of this policy change would need to go through the process of union bargaining. This recommendation does not specifically violate any of the terms of the current collective bargaining agreement between the Association for Los Angeles Deputy Sheriff (ALADS) and LASD, but it does fall under “mandatory subjects of bargaining” under California Labor Law. Also, misconduct at LASD would need to be understood as employee behavior that results in financial loss (e.g. civil lawsuits, processing complaints, investigations) to be lawful under the California Wage Orders.

discipline.”³⁸ The Subject can have a Skelly hearing if the suggested discipline is five suspension days or more; grieve the matter with the immediate supervisor, the Captain, and then with the Division Chief; the Subject can also bring the matter to County’s Employee Relations Commission (“ERCOM”), or to the County Civil Service Commission (“CSC”) if the matter is severe enough and has not yet been settled.

Also noted by the CCJV report is that a Captain has complete discretion to lower the amount of suspension days that the Subject has been determined to serve. Particularly in situations that involve false statements and unreasonable use of force, LASD Captains have been active in reducing suspensions for members of the Department with founded allegations. This is yet another reason why the EBD option is concerning: Subjects who have received a suspension, after going through a process designed to avoid this result, typically complete their sentence with just a few EBD classes.

Misconduct Trends at LASD

With this dramatic change in discipline, it would be prudent to examine notable misconduct trends at LASD. With Education-Based Discipline, suspensions are frequently removed and supplanted with non-punitive coursework. To put the EBD process, and the removal of punishment, into context, we will review some of LASD’s significant trends of misconduct. The purpose of this is to examine whether the Los Angeles Sheriff’s Department itself is suitable for EBD.

There are several indications that the EBD system is not the optimal disciplinary system for LASD. The County Commission on Jail Violence’s (“CCJV”) report noted disturbing trends have occurred in the Los Angeles County Jails as managed by the Sheriff’s Department. The report described a “persistent pattern of unreasonable force [...] that dates back many years.”³⁹ This pattern of violence was created within a culture of little accountability, failed leadership, inadequate training, and a “lack of respect for inmates.” Violence was documented as a “preferred option to control[ing] inmates,” and a lax disciplinary process allowed this subversive behavior to continue. Furthering this trend of violence was the existence of deputy “cliques” in the LA county jails. LASD members working in LA county jails would get matching tattoos and allegedly used violence on inmates. LASD leadership apparently knew of these problems and failed to properly address them. This phenomenon has been documented in reports released by CCJV and PARC. In PARC’s 31st Semiannual report (our previous report), it was noted that many experienced

³⁸ PARC 20th Semiannual Report, Page 17, http://www.parc.info/client_files/LASD/11th_percent20Semiannual_percent20Report.pdf.

³⁹ Citizens’ Commission on Jail Violence, *Report of the Citizens’ Commission on Jail Violence*, at 3.

deputies were assigned to the 3000 floor of Men’s Central Jail—the floor that houses the most violent and hardened criminals in the Los Angeles County jail system. A lack of rotation among the jails or the jail floors in addition to the tenuous relationship between inmates and LASD employees created an environment that allegedly fostered the “3000 Boys” deputy clique. In 2010, members of the 3000 Boys apparently were involved in a massive brawl at the Quiet Cannon restaurant in Montebello that led to the termination of 6 deputies.

Many remedies have been proposed to address the problem of violence in jails, including increasing floor rotations among deputies, increasing the number of stationary cameras in the jails, and replacing large flashlights (which can be used as weapons) with smaller flashlights used for illumination. As Sheriff Lee Baca stated, the LA county jails will be “stronger and safer.”⁴⁰ However, a lax disciplinary process will detract from this goal to the extent that it fails to stem the insubordinate culture within county jails.

The issue of deputy cliques has also occurred on patrol. In May of 2012, seven deputies were placed on paid leave while facing allegations that they belonged to a deputy clique that aggressively policed gang activity and celebrated the use of firearms.⁴¹ The seven deputies had all worked on the Gang Enforcement Team at LASD. Part of the investigation looked for matching tattoos that included a skull with a bandana emblazoned with an “OSS” (for Operation Safe Streets), and a gun next to the skull. It was alleged that if the gun had smoke emanating from the barrel, it meant that the deputy had used a firearm while on duty. The clique, allegedly named the “Jump-Out Boys,” even apparently drafted pamphlets describing their positive view of firearm use. Although the investigations into the “Jump-Out Boys” lead to the removal of seven members of the Department⁴², it is apparent that use of excessive force, subversive sub-cultures, and lack of authority goes beyond these seven employees.

Misconduct is a significant problem in LASD, and curtailing it must be a priority, even if it must come at the expense of temporarily damaging morale among Department members who endure stiff punishment. Softening discipline will not help to solve the problems summarized briefly here. Strong authority that can contain, stop, and prevent employee misconduct must have the power to impose substantial sanctions against members who violate the rules.

⁴⁰ Jack Leonard and Robert Faturechi, “L.A. County Sheriff Lee Baca agrees to long list of jail reforms,” *Los Angeles Times* (Oct. 4, 2012), <http://articles.latimes.com/2012/oct/03/local/la-me-sheriff-jails-20121004>.

⁴¹ Faturechi, Robert, “Tattoo in sheriff’s deputy clique may have celebrated shootings, sources say,” *Los Angeles Times* (May 10, 2012), <http://articles.latimes.com/2012/may/09/local/la-me-sheriff-clique-20120510>.

⁴² Faturechi, Robert, “Sheriff moves to fire deputies in Jump Out Boys clique,” *Los Angeles Times* (Feb. 6, 2013).

Evaluation of EBD by Participants

EBD is unsurprisingly very popular among those who have completed the program. Upon completing their EBD course schedule, LASD members are required to complete a one- to two-page evaluation of their experience and give constructive feedback on how to improve EBD. PARC analyzed 25 of these evaluations, chosen at random, and found that praise of the program was by far the most common topic among these essays. Almost all evaluations had some portion devoted to thanking the Sheriff's Department for the opportunity to take the Education-Based Discipline classes and not be suspended without pay. This sentiment was often followed by a remark about how suspension without pay is an onerous punishment and that EBD is a far more appropriate conclusion to the disciplinary process. Many of the evaluations describe their own decision-making process and how they have improved their judgments as a result of the LIFE course. Other common remarks included praise for the instructors as capable lecturers.

The popularity of EBD found in this random sample is supported by statistics derived from a survey conducted by LASD of those who completed the EBD program. A questionnaire was provided to each participant of EBD both before and after the conclusion of their coursework; 795 completed the pre-evaluation survey, while 818 filled-out the survey upon finishing the program. From a scale of one through six, one being "strongly disagree" to six being "strongly agree," 89 percent marked a five or six that they were actively engaged by the instructors, 73 percent marked a five or six that they would make better decisions after attending the LIFE class, and 73 percent marked a five or six that they would recommend taking the EBD option to other LASD members. Those who completed the courses were initially skeptical about the program. Only 56 percent marked a five or six that they believed the EBD course instructors would be engaging, 54 percent marked a five or six that they thought the LIFE course would improve their decision making, and only 51 percent marked a five or six that it would benefit their career. The overwhelming reactions to EBD are relief for avoiding more severe punishment and optimism that the course material will help them in their career going forward.

While this reaction to the course is unsurprising, we did discover one aspect about EBD that we believe should be reevaluated and improved. The written evaluations revealed few examples of how participants learned specific ways to improve their job performance. Indeed, given the array of available courses, this appears understandable. Some courses focus on how to improve the use of firearms. Others focus on choices related to alcohol consumption. However, there seems to be little content in many courses about how Department members can specifically enhance their abilities as sworn or professional employees. Likewise, there are many classes on decision-making and emotional control – a

but few courses on specific skills such as de-escalation policing and management in custody. The LIFE class includes LASD members both Sworn and civilian, from various ranks, and from any LASD location in the county. When there is such a mixture of participants, it is difficult to have coursework that directly improves the abilities of EBD participants.

We would recommend classes that are more specifically tailored to improve the abilities of participants of EBD. Perhaps the second half of the LIFE course, an eight-hour class, could break out class participants according to their position at LASD to better concentrate on how they can augment their competency as a member of the Sheriff's Department.

Record Keeping & Isolated Information

The data used for this analysis was gathered from several areas within LASD and was often difficult to collect. Information on who participated in which EBD classes, and when those classes were attended, were obtained from the Employee Relations department. Employee Relations keeps this information in a stand-alone database that organizes the data by case number. The Risk Management Bureau has yet another database that tracks suspension days served through EBD and days served "hard." The suspension periods are also kept on the Personnel Performance Index (PPI), but suspension schedules that are served through the EBD program and through actual time-off without pay cannot be queried. The PPI also does not retain information on what classes were completed, what day those classes were completed and, and cannot generate reports by employee number instead of case number. The PPI needs to have these abilities and data in order to serve as the performance evaluation program that it was designed to be.

We recommend that the PPI show the EBD classes completed by the department member, the number of suspension days served "hard," the length of the original suspension, and the length of the final suspension with the organization or authority that granted a reduction if one occurred. We also recommend that the PPI have the ability to order data by employee number, and show the amount of money that was removed from the LASD member's pay schedule if they served an unpaid suspension. These modifications would allow the Department to more fully evaluate the EBD program with important data.

Suggested Changes to the EBD Program

We believe that the Education-Based Discipline program does have positive elements and should be continued despite these criticisms. OIR's participation in the discipline process is excellent. Members of OIR are not only involved in every disciplinary decision but are able to unofficially appeal a decision to LASD executives if they do not fully agree with the discipline decision. Those who are granted the EBD option are notably happy with the experience and express that the classes have a valuable impact on their work and on their lives. Instructors are also well-received, and the courses do appear to have some value. Training members of the Department to better themselves is a great way to improve the employees – especially as an alternative to not working and growing bitter towards the Sheriff's Department. These qualities are reasons to retain the program as part of the discipline process at LASD.

Some reforms, however, need to be made. LASD made some progress in this direction during the writing of this report. In February, the Sheriff's Department disqualified the following sustained allegations from EBD: unreasonable force, false statements, failure to report force, and failure to make statements and/or making false statements during a Department internal investigation to the category of reasons to be denied EBD.⁴³ For reasons discussed above, **we would recommend that founded charges of “false information in record” also disallow the Subject from EBD.**

Given the Department's history with sexual misconduct, **we recommend that “sexual harassment” and “relations with subordinates” be added to those that are disqualified for EBD.**

It should be clear that deceit is absolutely not tolerated by the Sheriff's Department. **Members of the Department who are charged and convicted of misconduct a second time and beyond should not be given the EBD option in its current form.** Tolerance can be afforded to one act of misjudgment or misunderstanding, but a second violation signals that a pattern is emerging and should be handled with a more severe penalty.

LASD members mandated to serve suspension periods of 6 days or more should not be permitted to take EBD coursework in place of unpaid suspensions.

⁴³ It should be noted that since February, 2013, two LASD Subjects who have sustained allegations of unreasonable force have been granted the EBD option; along with 6 LASD members who have been found of failing to report force. These incidents occurred before the date of the new policies and were thus allowed the EBD option under the previous policies for discipline.

Suspensions of 3 to 5 days should receive a combination of “hard,” served suspension days and EBD courses. One to 2 suspension days should be the only suspension periods that can be satisfied with EBD alone – and only if it is the first sustained allegation.

EBD classes should still be provided to LASD members while they serve suspensions. As indicated above, participants of the program find the classes to be helpful and taught by proficient instructors. The classes should focus on specific, job-related skills, but even at their current make-up they still appear to be useful to members of the Department. Subjects will still face the consequences of their actions by enduring an unpaid suspension or worse, and attend these classes with some small compensation to remain legal under federal and state labor law. The EBD system has many positive components and characteristics, but it should not be used to replace punishments that can better deter possible future misconduct.

The impact on the minority of LASD members who receive discipline should not prevent the Department from clearly delineating what is unacceptable. While the loss of payment to an employee can impose a difficult challenge to the individual receiving discipline, disciplinary action should not be considered in a vacuum. A suspension without pay not only expressly informs the violator that their behavior is not tolerated but also sends this message to all those in the Department who are informed of the reprimand. While excluding certain violations such as unreasonable force and false statements are a good start, but do not go far enough. The Department, presumably, removed these violations from the EBD because they are not tolerated. We are confused about whether this means that other serious offenses, such as Sexual Harassment, are tolerated. The focus of EBD should be to retrain violators of LASD policy. Including Sexual Harassment, Relations with Subordinates, race-based policing, and submitting false information into record, should be added to those violations that do not qualify for EBD in addition to any violation that results in a suspension period of 4 days or longer. Education-Based Discipline should be used in conjunction with unpaid suspensions, and not in place of them.

Appendix:

Penalty Tables and Discipline Matrix

LASD Penalty & Discipline Matrix

Discipline Level	Mitigated Penalty	Presumptive Penalty	Aggravated Penalty
1		Oral Reprimand	Written Reprimand
2	Oral Reprimand	Written Reprimand	1-3 Fined Days
3	Written Reprimand To 1 Fined Day	2 Fined Days	4-6 Fined Days
4	2-4 Fined Days	3 Days Suspension	5-7 Days Suspension
5	4-6 Days Suspension	10 Days Suspension	14-16 Days Suspension
6	18-22 Days Suspension	30 Days Suspension	38-42 Days Suspension
7	43-47 Days Suspension	60 Days Suspension	Termination
8	90 Days Suspension	Termination	

Denver Police Department – Discipline Matrices



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY A</u>			
CONDUCT THAT HAS A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT			
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	1st Violation	2nd Violation	3rd** Violation
	in 3 Years	in 3 Years	in 3 Years
	-Level-	-Level-	-Level-
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	1	2	3
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*			
RR-103 Aid Another to Violate Rule (A-F)*			
RR-105 Conduct Prejudicial (A-F)*			
RR-108.1 Plainclothes Officers - Identification			
RR-115.1 Conduct Prohibited by Law (A-F)*			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-121 Off Duty in Uniform (A-F)*			
RR-129 Giving Name and Badge Number			
RR-136 Use of Tobacco Products in Police Facilities			
RR-205 Giving Testimonials, Seeking Publicity			
RR-314 Providing Assistance Outside the City			
RR-501 Personal Appearance in Court			
RR-612 Answer to Official Communications			
RR-614 Publication of Articles			
RR-616 Police Bulletin			
RR-802 Uniform Restrictions While Off Duty			
RR-805 Equipment Carried on Person			
RR-1001 Testifying in Civil Cases			
RR-1002 Service of Civil Processes			
RR-1003 Initiation of Civil Cases			
RR-1104 Location When Ill			
RR-1105 Reporting During Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY B</u>			
CONDUCT THAT HAS MORE THAN A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT; OR THAT NEGATIVELY IMPACTS RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.			
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>			
	1st Violation	2nd Violation	3rd** Violation
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F) ⁺	in 4 Years	in 4 Years	in 4 Years
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F) ⁺	-Level-	-Level-	-Level-
RR-103 Aid Another to Violate Rule (A-F) ⁺			
RR-105 Conduct Prejudicial (A-F) ⁺			
RR-108.2 Protecting Identity of Undercover Officers			
RR-115.1 Conduct Prohibited by Law (A-F) ⁺			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F) ⁺	2	3	4
RR-121 Off Duty in Uniform (A-F) ⁺			
RR-122.1 Respect for Fellow Officer			
RR-126 Amusement Places Restrictions			
RR-127 Responsibilities to Serve Public			
RR-128.1 Impartial Attitude			
RR-132 Purchase of Forfeited Property			
RR-140 Discourtesy			
RR-206 Soliciting Business			
RR-303 Trivial Offenses			
RR-304 Traffic Enforcement When Not in Uniform			
RR-309.1 Suggesting Bondsmen or Attorneys			
RR-605 Removal of Reports and Records			
RR-607 Failure to Make, File or Complete Official Reports			
RR-613 Unauthorized Use of Department Letterheads			
RR-703 Soliciting Money for Political Purposes			
RR-704 Soliciting for Promotion, Appointment			
RR-806.1 Alteration or Exchange of Badge Prohibited			
RR-807 Loss or Damage to Badge			
RR-808 Equipment and Property Restrictions on Use			
RR-809 Rough or Careless Handling of City or Departmental Property			
RR-902 Department Vehicle Operation			
RR-1101 Reporting Absence Prior to Roll Call			
RR-1102 Reporting for Duty			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY C</u>			
<p>CONDUCT THAT HAS A PRONOUNCED NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT, OR ON RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.</p>			
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	1st Violation	2nd Violation	3rd ⁺⁺ Violation
	in 5 Years	in 5 Years	in 5 Years
	-Level-	-Level-	-Level-
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F) ⁺	3	4	5
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F) ⁺			
RR-103 Aid Another to Violate Rule (A-F) ⁺			
RR-104 Contacting of Supervisor			
RR-105 Conduct Prejudicial (A-F) ⁺			
RR-107 Always on Duty			
RR-109.1 Drinking to Excess			
RR-115.1 Conduct Prohibited by Law (A-F) ⁺			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F) ⁺			
RR-117 Disobedience of an Order (C-F) ⁺			
RR-119 Sleeping on Duty			
RR-121 Off Duty in Uniform (A-F) ⁺			
RR-122.2 Abuse of Fellow Officers			
RR-138 Discrimination, Harassment and Retaliation (C-F) ⁺			
RR-141.2 Reporting of Prohibited Associations			
RR-204 Soliciting, Accepting Gifts, Gratuities			
RR-307 Posting Bail			
RR-310 Mistreatment of Prisoners/Suspects			
RR-401 Display of Firearms			
RR-402 Careless Handling of Firearms (C-F) ⁺			
RR-403 Restrictions on Auxiliary Weapons			
RR-702 Using Police Position to Gain Political Office			
RR-1004 Testifying for Defendant			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

⁺Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

⁺⁺The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY D</u>			
<p>CONDUCT SUBSTANTIALLY CONTRARY TO THE VALUES OF THE DEPARTMENT OR THAT SUBSTANTIALLY INTERFERES WITH ITS MISSION, OPERATIONS OR PROFESSIONAL IMAGE, OR THAT INVOLVES A DEMONSTRABLE SERIOUS RISK TO OFFICER OR PUBLIC SAFETY.</p>			
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	1st Violation	2nd Violation	3rd ^{±±} Violation
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F) [±]	in 7 Years	in 7 Years	in 7 Years
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F) [±]	-Level-	-Level-	-Level-
RR-103 Aid Another to Violate Rule (A-F) [±]			
RR-105 Conduct Prejudicial (A-F) [±]			
RR-106.1 Immoral Conduct			
RR-109.2 Unfit for Duty	5	6	7
RR-112.1 Misleading or Inaccurate Statement			
RR-115.1 Conduct Prohibited by Law (A-F) [±]			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F) [±]			
RR-117 Disobedience of an Order (C-F) [±]			
RR-121 Off Duty in Uniform (A-F) [±]			
RR 122.3 Insubordination			
RR-128.2 Impartial Attitude - Bias			
RR-130.1 Aiding and Protecting Fellow Officers – Unreasonable			
RR-138 Discrimination, Harassment and Retaliation (C-F) [±]			
RR-141.1 Prohibited Associations (D-F) [±]			
RR-306 Inappropriate Force (D-F) [±]			
RR-311.1 Compromising Criminal Cases			
RR-312.1 Interfering with Case Assigned to Other Officers			
RR-402 Careless Handling of Firearms (C-F) [±]			
RR-601.1 Communication of Confidential Information, Generally			
RR-603 Destruction of Evidence			
RR-806.2 Use of Badge by Person other than Officer			
RR-1106 Feigning Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.
**The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY E</u>			
CONDUCT THAT INVOLVES THE SERIOUS ABUSE OR MISUSE OF AUTHORITY, UNETHICAL BEHAVIOR, OR AN ACT THAT RESULTS IN AN ACTUAL SERIOUS AND ADVERSE IMPACT ON OFFICER OR PUBLIC SAFETY OR TO THE PROFESSIONALISM OF THE DEPARTMENT.			
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	1st Violation	2nd Violation	3rd ^{**} Violation
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F) ⁺	No Time Limit	No Time Limit	No Time Limit
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F) ⁺	-Level-	-Level-	-Level-
RR-103 Aid Another to Violate Rule (A-F) ⁺			
RR-105 Conduct Prejudicial (A-F) ⁺			
RR-109.3 Drinking on Duty			
RR-114 Intimidation of Persons			
RR-115.1 Conduct Prohibited by Law (A-F) ⁺	6	7	8
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F) ⁺			
RR-117 Disobedience of an Order (C-F) ⁺			
RR-120 Appropriating Property			
RR-121 Off Duty in Uniform (A-F) ⁺			
RR-123 Assault of Fellow Officer			
RR-138 Discrimination, Harassment and Retaliation (C-F) ⁺			
RR-141.1 Prohibited Associations (D-F) ⁺			
RR-203 Accepting Gifts from Persons of Bad Character			
RR-302 Personal Family Disputes			
RR-305 Duty to Protect Prisoner			
RR-306 Inappropriate Force (D-F) ⁺			
RR-309.2 Suggesting Bondsmen or Attorneys for Profit			
RR-402 Careless Handling of Firearms (C-F) ⁺			
RR-601.2 Communication of Confidential Information that Jeopardizes a Police Action			
RR-606 Destruction of Reports or Records			
RR-609 Altering Information on Official Documents			
RR-1107 Physical or Mental Examination			
RR-1108 Release of Medical Information			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

⁺Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

^{**}The 4th or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



Categories, Violations and Level Assignments Table

<u>CATEGORY F</u>	
<p>ANY VIOLATION OF LAW, RULE OR POLICY WHICH: FORESEEABLY RESULTS IN DEATH OR SERIOUS BODILY INJURY; OR CONSTITUTES A WILLFUL AND WANTON DISREGARD OF DEPARTMENT VALUES; OR INVOLVES ANY ACT WHICH DEMONSTRATES A SERIOUS LACK OF THE INTEGRITY, ETHICS OR CHARACTER RELATED TO AN OFFICER'S FITNESS TO HOLD THE POSITION OF POLICE OFFICER; OR INVOLVES EGREGIOUS MISCONDUCT SUBSTANTIALLY CONTRARY TO THE STANDARDS OF CONDUCT REASONABLY EXPECTED OF ONE WHOSE SWORN DUTY IS TO UPHOLD THE LAW; OR INVOLVES ANY CONDUCT WHICH CONSTITUTES THE FAILURE TO ADHERE TO ANY CONTRACTUAL CONDITION OF EMPLOYMENT OR REQUIREMENT OF CERTIFICATION MANDATED BY LAW.</p>	
<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	
<p>RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)* RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)* RR-103 Aid Another to Violate Rule (A-F)* RR-105 Conduct Prejudicial (A-F)* RR-106.2 Sexual Misconduct RR-109.4 Under the Influence RR-111 Controlled Substances RR-112.2 Commission of a Deceptive Act RR-115.1 Conduct Prohibited by Law (A-F)* RR-115.2 Aggravated Conduct Prohibited by Law RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)* RR-117 Disobedience of an Order (C-F)* RR-121 Off Duty in Uniform (A-F)* RR-130.2 Aiding and Protecting Fellow Officers – Intentional RR-137 Collective Bargaining Fair Share Fee RR-138 Discrimination, Harassment and Retaliation (C-F)* RR-141.1 Prohibited Associations (D-F)* RR-202 Soliciting or Accepting a Bribe RR-306 Inappropriate Force (D-F)* RR-308 Aiding an Escapee RR-311.2 Interference with Prosecution RR-312.2 Interfering with Internal Investigation/Questioning RR-312.3 Failure to Provide a Statement RR-402 Careless Handling of a Firearm (C-F)* RR-803 Uniform Restrictions for Officers Under Suspension RR-804 Exercise of Authority While Under Suspension RR-1103 Constructive Resignation RR-1201 POST Certification</p>	<p>1st Violation -Level-</p> <p style="font-size: 2em;">8</p>
<p>*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.</p>	