

**CITY OF OAKLAND**  
*AGENDA REPORT*

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 SEP 16 PH 3: 51

**TO:** Office of the City Administrator  
**ATTN:** Deborah Edgerly  
**FROM:** Oakland Police Department  
**DATE:** September 28, 2004

**RE: A Status Report from the Chief of Police on Risk Management Measures Taken by the Police Department to Reduce Civil Claims and Other Payouts and Promote Employee Safety**

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## **SUMMARY**

This status report provides an overview of risk management measures initiated in the Police Department to reduce civil claims and other payouts made by the City and the Department. The measures include pro-active risk management procedures, enhanced oversight through internal and peer review boards, increased field supervision, improved supervisory and management oversight systems, strengthened management level accountability and employee incentives. The measures are designed to prevent, reduce, and mitigate losses resulting from incidents of alleged police misconduct, promote employee safety and reduce civil claims by 15%.

## **FISCAL IMPACT**

All risk management strategies discussed in this report are being implemented within existing Department budget allocations. They are designed to reduce the Department's and the City's potential exposure to civil claims and other payouts for alleged police misconduct.

## **BACKGROUND**

The Negotiated Settlement Agreement (NSA), brought about by the "Riders Incident," revealed certain inadequacies in Department procedures, adherence to proper practices and management accountability. The Department is well into the process of implementing new policies and procedures, as specified in the NSA to address these issues. Most of the procedures specified in the NSA will have a direct, positive impact on reducing the Department's exposure to civil claims and other payouts for alleged police misconduct. Many of the reforms specifically focus on supervisory and management oversight and accountability.

## **KEY ISSUES AND IMPACTS**

### **Risk Management Oversight and Accountability Program**

The goal of the Risk Management Oversight and Accountability Program is to develop methods to:

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- Improve officer safety
- Increase the quality of service to the community
- Minimize financial losses to the City
- Improve the integrity of the Police Department
- Reduce civil claims against the Police Department by 15%

The Department is accomplishing these goals through the implementation of various policies and procedures designed to meet the challenges of the risk management environment. All commanders and managers in the Police Department are responsible for managing risk in their respective units and among their personnel. Accountability for risk management is maintained at every level, bottom to top, to ensure prompt identification of potential liabilities and quick application of corrective measures to abate future risks.

### **Risk Management Program Coordinator**

The Department has created the position of Risk Management Program Coordinator, staffed by a Captain of Police assigned to the Bureau of Services. This person is responsible for the overall monitoring, coordination and oversight of the Department's Risk Management Oversight and Accountability Program. The captain reviews all issues which may contain risk management factors, ensures preventative or corrective actions are initiated and, with the cooperation of the Office of Inspector General, oversees policy compliance audits. When lack of ability or unwillingness to comply with established risk management policies is determined, the captain oversees efforts to bring the accountable commander or manager into compliance. This activity is reported, via the chain of command to the Chief of Police who holds the respective deputy chief accountable for bringing the individual or unit into compliance and maintaining said compliance.

### **Departmental Boards and Committees**

The Department has established and regularly convenes a number of boards and committees to review problematic police incidents. These boards and committees were established to:

1. Identify the facts of an incident for future reference, determine unsafe work practices or conditions, and recommend corrective action.
2. Identify the adequacy of equipment used by or available to Department personnel.
3. Identify training needs.
4. Identify the need for Department policy changes.
5. Assist in mitigating future reoccurrences.

The following subsections describe some, but not all, of the risk management program related boards and committees currently operating in the Police Department.

### ***Firearms Discharge Board of Review***

The Firearms Discharge Board of Review conducts a review of all incidents involving the discharge of a firearm. These are held within 30 days of the incident unless there are extenuating circumstances. Increasing the frequency of these boards allows the Department to take immediate corrective measures to address any patterns of behavior, deficiencies in policy or training needs.

### ***Use of Force Review Board***

The Use of Force Review Board (UFRB) conducts a review of all non-lethal force incidents. These reviews are completed quarterly. The most recent change in the UFRB is the board now determines policy compliance whereas before it only made recommendations for training and/or policy changes. In addition, if an incident is determined to be out of policy, a referral is made to the Internal Affairs Division for investigation. The findings of the UFRB will be published and distributed. The UFRB also serves as an additional body to review and investigate all use of force investigations. Finally, the UFRB continues to identify unsound tactics and practices and to recognize the use of good tactics and techniques, while recommending appropriate recognition of members who employ proper application.

### ***Department Safety Committee***

The Department Safety Committee meets quarterly to review all vehicular accidents referred to the committee or appealed by officers. All vehicle pursuits are reviewed by the committee. To increase accountability, supervisors of the pursuing officers are now subjects of the board, not just witnesses. After review of an incident, if the committee determines there was a violation in policy, the committee makes a referral to the Internal Affairs Division. This includes an allegation against the supervisor who knew or reasonably should have known of the policy violation. The committee also makes recommendations for on-going safety programs.

### ***Risk Management Committee***

Each month staff from the Police Department, Office of the City Attorney and Office of Risk Management meet to:

- Discuss and review legal claims and/or lawsuits arising from police actions.
- As appropriate, review the adequacy of key police policies.

Members of the committee include the Chief of Police, a Deputy Chief of Police, Internal Affairs Commander, Assistant City Attorney, Deputy City Attorneys, and Office of Risk Management Manager.

### Review of Legal Claims and Lawsuits

Legal claims and civil suits are reviewed to determine:

- Whether to litigate or settle a claim/suit.
- If any new information has been discovered by the Office of the City Attorney that may cause the opening or reopening of an internal investigation within the timelines permitted by California Government Codes Section 3304(d)(6).<sup>1</sup>
- Whether there are any questionable patterns or practices that may unnecessarily expose the City, Police Department, or an officer to a legal claim or lawsuit.

Based on the review and information received, the Police Department takes appropriate corrective measures to mitigate the likelihood of future recurrences. Such measures include, but are not limited to:

- Training / retraining
- Policy modification
- Review of specific cases with involved members/employees and their commanders/managers.
- Discipline

### Policy Review

The Office of the City Attorney reviews key Police Department policies to ensure they are consistent with current federal, state and local laws, and/or best practices. One existing policy currently under review is the Department's Crowd Control Policy. This review and the subsequent revisions being made to the policy resulted from the April 7, 2003 Port of Oakland incident, prompted by demonstrations at the outbreak of the war in Iraq. When finalized, the policy will reflect industry standards.

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<sup>1</sup> Government Code Section 3304(d)(6) reads:

- d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

- (6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

### ***Workers Compensation Committee***

The Department conducts monthly and quarterly meetings with Risk Management personnel and the City's Workers Compensation Administrator (JT2) to monitor and direct workers compensation cases. The monthly meetings concentrate on the review of new cases and the return of workers to modified duty. The quarterly meetings focus on return-to-work strategies, such as using a mutually agreed upon medical examiner to resolve differing medical opinions or covertly filming a worker's actual physical capabilities, and facilitating the timely disability retirement of eligible personnel.

### ***Early Intervention System (EIS) Review Panel***

The EIS Review Panel is comprised of a Deputy Chief, the Personnel Division Commander, the Department's medical officer, two police officers from the Patrol Division, a representative from the Oakland Police Officers Association and a psychologist from the Managed Health Network. The Review Panel examines the performance and/or conduct patterns which gave rise to the referral, considers input from the subject officer, and makes recommendations on follow-up action.

### **Other Risk Management Measures**

#### ***Increased Supervision***

Bureau of Field Operations Policy and Procedure 03-02, SUPERVISORY SPAN OF CONTROL, dated January 15, 2004, requires the Patrol Division to maintain an eight to one (8:1) officer to supervisor ratio. This ratio affords the supervisor with the optimum opportunity to maintain effective control and oversight of officers assigned to field duties. When an officer's primary supervisor is absent, the accountable commander ensures a supervisor is assigned to oversee the day to day activities of the officers assigned to the absent supervisor.

#### ***Use of Management Accountability Summaries***

Police Department Special Order 6041, dated August 17, 2001, requires all front line commanders and managers to conduct what is known as a "Management Accountability Summary" on all internal investigations, whether the complaint was sustained or not. The order requires the commander or manager to review the complaint history of the person(s) listed in the complaint for the previous five (5) years, assessing if the most recent complaint reveals a pattern of conduct that may require intervention.

Commanders and managers conducting summaries are instructed to act pro-actively and also to make recommendations of a non-disciplinary nature (e.g.: changes to Department policy and/or procedures, additional training, changes to supervisory practices, etc.). These first-line managerial recommendations are reviewed through the chain of command. If approved, the accountable commander or manager is directed to take the appropriate preventative measures and

document all actions in the internal investigation file that prompted the recommendation. Once complete, the file, with the annotated actions, is reviewed via the chain of command and filed with the Internal Affairs Division.

### ***Rewrite of Department Use of Force Policies***

A review of the Department's Use of Force policy and research regarding the best practices in the law enforcement industry revealed that the Department's policies could be revised with an emphasis on "force options" and the "de-escalation of force." The current policy is based on a force continuum which lists the Department's force options in ascending order, the first option being the least intrusive and the final option being lethal force. Officers were taught to start with the first option. If that failed, officers would consider the next option before moving up the continuum to another option.

Officers would initially try verbal persuasion, but if that failed, they would move up the continuum to the next option, physical prowess. However, once an officer gave up the tactical advantage by moving in close enough to attempt a control hold or other physical techniques, several of the other force options would no longer be available to the officer. Officers would frequently find themselves in physical altercations - - possibly opting to employ palm and hammer fist strikes or sometimes utilizing closed fist punches in an attempt to subdue a combative suspect. If that failed, officers had few other options available other than an impact weapon. Ultimately, this resulted in injuries to both citizens and officers. In many instances a law suit ensued.

The revisions being made to the Use of Force policy will emphasize force options, but not necessarily in ascending or descending order, rather as options on a "wheel." The revised policy will emphasize the selection of the most appropriate force option for the situation while allowing for other options to still be considered. However, the key piece in the revised Use of Force policy is the training curriculum.

The Department is instituting a Tactical Communications and Verbal Judo course for all officers in its Advanced Officers School. Officers will be taught to utilize these skills to de-escalate a situation before and after any use of force. Officers will learn to continually assess the situation and any potential threat. In addition, the revised policy will stress less intrusive options (i.e. Verbal Judo, pepper spray, and superiority of manpower) to reduce injuries to citizens and officers.

### ***City Vehicle Accident Loss Reduction Action Plan***

In Fiscal Year 2001 - 2002, the Police Department implemented a City Vehicle Accident Loss Reduction Action Plan. The plan uses a multi-disciplinary approach to reduce preventable vehicle collisions, thereby reducing the number of civil claims filed. The plan requires the review of every vehicle collision by the Department's Safety Officer. The Safety Officer makes a finding as to whether or not the accident in question was preventable. In those instances where

the collision is deemed preventable, the Training Division initiates an investigation into the causing factors of the accident. The investigation results in recommendations for corrective action to include vehicle repair or maintenance issues, remedial training for the involved officer, discipline for negligent acts (including loss of pay and fines), and possible Department-wide updated driver training to address global vehicle operation performance deficiencies. Commanders and supervisors of officers involved in vehicle accidents are also scrutinized for the measures they take to reduce “preventable” vehicle accidents.

### ***Civil Rights Claim Reduction Action Plan***

Implemented in Fiscal Year 2001 - 2002, the Civil Rights Claim Reduction Action Plan addresses civil claims filed against the Police Department due to alleged Civil Rights violations. A major outgrowth of the plan was the development and implementation of a number of the measures outlined in this report. Most significant are the increased levels of supervision, the Management Accountability Summaries, and the Early Intervention System. Through its proactive measures, the plan has contributed to the overall 20% reduction in the number of civil claims against the Police Department during Fiscal Year 2003 - 2004.

### ***Management of Injured Personnel***

The Police Department’s Workers Compensation Program is monitored by the medical officer, under the supervision of the Personnel Division Commander. Personnel off work for more than 14 days due to industrial injuries are transferred to the Personnel Section for administrative purposes. The medical officer ensures the timeliness and completeness of injury reports that are submitted to the City’s Workers Compensation Administrator (JT2), monitors the return-to-work progress of injured workers, coordinates modified duty assignments in the Department through the City’s Transitional Duty Program, serves as a single-point-of-contact for workers compensation matters to JT2 and Risk Manager, and oversees industrial injury leave benefits for injured workers.

Sworn industrial injury leave (also known as 4850 pay) is specified in California Labor Code Section 4850. It entitles sworn personnel up to one year of paid leave for each industrial injury. The medical officer coordinates with JT2 and monitors the amount of 4850 pay for each injury in order to guard against overpayment of benefits.

The Department aggressively uses the City’s Transitional Duty Program to return workers to modified duty assignments prior to their return to full duty without medical restrictions. When the City Physician clears an injured worker for modified duty, an appropriate assignment is identified by the medical officer and approved by the Personnel Division Commander. The progress of personnel on modified duty assignments is tracked and reported to the Chief of Police weekly.

## **Early Intervention System (EIS)**

### ***Purpose***

The Department's Early Intervention System (EIS) is a pro-active, non-disciplinary program designed to identify and positively influence any conduct or performance-related problems exhibited by individual officers. By applying professionally accepted intervention strategies at an early stage, it is intended that the value and worth of each officer be recognized and that his/her professional career be preserved and their services as a City of Oakland employee be retained. Equally, the program is intended to promote greater trust and confidence between officers and citizens.

### ***Referrals***

The following events, though not inclusive nor exhaustive, are used to identify circumstances warranting a referral to the EIS program:

- Officer-involved shooting
- Use of less than lethal force
- In-custody death
- Citizen complaints
- Arrest for resisting or assault on a peace officer
- Officer-involved traffic accident
- Sick leave usage
- Negative Report Review Notices or Case Evaluation Reports

### ***Follow-up Actions***

Recommendations made by the EIS Review Panel to the Chief of Police constitute the Department's good faith effort to assist officers in positively enhancing his/her performance/behavior. The types of interventions utilized include, but are not limited to, professional counseling, peer counseling, retraining, closer supervision, or non-disciplinary temporary reassignment. The officer's performance is re-evaluated periodically over the succeeding 12-month period to determine if there is improvement.

If the officer declines to voluntarily participate in the program or fails to successfully complete the terms and conditions of the intervention strategy, established procedures leading to discipline and/or dismissal will be used for continuing or future performance or conduct problems.



## **Employee Incentive Program**

### *Purpose*

The Employee Incentive Program is contained in Department General Order B-1, DEPARTMENTAL AWARDS, and was in place prior to the Negotiated Settlement Agreement. The purpose of the program is to establish procedures for publicly recognizing and commending members, employees, and/or units for conducting consistently safe operations and effectively managing risk. These awards and commendations are based on specific acts or programs, by individuals and/or units, that demonstrate exceptional leadership in operational activities.

### *Recognition and Presentation*

Employees are recognized for their outstanding achievement in the Employee Incentive Program by the public presentation of the award element (ribbon bar, certificate, etc.) by the Chief of Police or other designated commander at a unit line-up, quarterly, and/or annual awards ceremony.

The following subsections describe some of the awards currently available to employees through the Employee Incentive Program:

#### *Chief's Leadership Award*

Supervisory and command-level employees who exemplify and consistently demonstrate strong leadership skills shall be personally awarded a Leadership Commendation Award by the Chief of Police. Such leadership skills shall include, but are not limited to, the following: Challenging the status quo and fostering innovation and creativity in police service delivery; displaying enthusiasm and inspiring others through personal effort towards the achievement of the Department's goals and vision; supporting the efforts and developing the talents of others; displaying a commitment to and becoming a model of the Department's values.

#### *Chief's Certificate of Commendation*

The Chief's Certificate of Commendation shall be presented to employees who distinguish themselves through the accomplishment of an outstanding service. For example, the certificate may be awarded for the development of a new procedure or practice that enhances workplace safety.

#### *Captain's (or Unit Commander's) Certificate of Commendation*

The Captain's (or Unit Commander's) Certificate of Commendation may be awarded by a Captain or Unit Commander to an employee who performs an act or a duty in a manner showing dedication and service above what is normally expected or required by the Department. This act or duty may be in support of the Department's risk management and employee safety programs.

*Letter of Appreciation*

Any employee may write, through the chain of command, an Intra-Department memorandum expressing their appreciation for the excellent service provided by another employee. Employees may use this letter to share new and innovative risk management and employee safety procedures that may be reproduced by other units in the Department.

*Outstanding Performance Evaluation*

This commendation is presented to employees who, for three consecutive years, achieve overall “Exceeds Expectations” ratings.

*Good Conduct Award*

This award is awarded to employees who, for three consecutive years, are not the subject of any sustained complaint nor receive discipline, as defined in the Police Department Manual of Rules.

*Perfect Driving Award*

This award is presented to employees who, while assigned to a field assignment (e.g., Patrol, Community Policing, or Traffic Enforcement) for three consecutive years, are not involved in any preventable vehicle collisions.

*Perfect Attendance Award*

This award is presented to employees who, for three consecutive years, lose no work time due to illness or off duty injury.

*Unit Citation Award*

The Unit Citation Award may be conferred upon individuals for meritorious and exemplary performance while assigned to an organizational unit (division, watch, section, unit, team, or other combination of employees) of the Department. The accomplishment shall be the result of combined efforts of the employees of a unit. Examples of performance may include, but are not limited to, no public complaints, no vehicle collisions, or no injuries during a specified time period.

**CONCLUSION**

The practice of risk management includes more than mere post-incident decision making to mitigate financial losses as a result of a plaintiff claim. It is a pro-active and ongoing evaluation of everyday activities to improve safety, service and prevent the occurrence of negative incidents. Department General Order N-12, DEPARTMENTAL AUDITS AND

INSPECTIONS, makes reviews, audits, inspections, and the correction of adverse conditions discovered therein, the function and responsibility of all command and supervisory personnel.

The risk management strategies initiated or modified since the establishment of the Negotiated Settlement Agreement have improved the Police Department by strengthening supervisory and management oversight, raising the level of police services delivered to the Oakland community and reducing the civil claims and other payouts made by the City and the Department due to police misconduct. These reforms have strengthened accountability within the Police Department and OPD is making significant strides toward ensuring the Department's policies are in line with best police practices nationally.

The Employee Incentive Program recognizes employees for their efforts to improve and maintain a safe work environment. The program encourages employees to adopt safe work practices and reduce the occurrence of negative interactions with other employees and the community. Public recognition of such achievements may stimulate others to strive for the same level of safe and effective job performance.

The programs outlined in this report are currently in place and are having a positive impact in reducing civil claims against the Department. According to the Office of the City Attorney's Annual Report for Fiscal Year 2003 – 2004, the total number of claims against the Police Department was reduced by approximately 20% from the preceding fiscal year (221 claims in FY 02-03 versus 176 claims in FY 03-04). These numbers include all those involving city vehicle accidents and alleged civil rights violations. The Police Department anticipates it will maintain this downward trend in civil claims, through consistent application of the programs outlined in this report.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

An effective risk management strategy will reduce or prevent the incidence of litigation in the areas of use of force, civil rights, conduct, and other activities that expose the City to liability costs and judgement pay-outs.

### **Environmental**

There are no environmental opportunities associated with this report.

### **Social Equity**

Improved police services and enhanced police-community relations benefit our entire city.

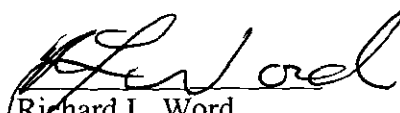
**DISABILITY AND SENIOR CITIZEN ACCESS**

There are no senior citizen or ADA access issues contained in this report.

**RECOMMENDATION**


Staff recommends acceptance of this report.

Respectfully submitted,

  
Richard L. Word  
Chief of Police

Prepared by: Kenneth W. Parris  
Lieutenant of Police  
Bureau of Services

APPROVED FOR FORWARDING TO THE  
FINANCE & MANAGEMENT COMMITTEE:

  
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