

# Oakland Police Department Office of the Inspector General

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## 1<sup>st</sup> and 2<sup>nd</sup> Combined Quarterly Report January – June 2021

**Oakland Police Department**  
**Office of Inspector General**

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## Introduction

The City continues to grapple with an ongoing global pandemic and increases in crime as we enter the third quarter of 2021. In February, Chief Leronne Armstrong was appointed Chief of Police and shortly after becoming Chief, established the Bureau of Risk Management, which includes OIG, and is led by Deputy Chief Angelica Mendoza. In June, I was appointed as Inspector General upon the departure of Lieutenant Christopher Sansone. I have been with OPD for 23 years and have most recently served as the Commander for the Internal Affairs Division (IAD) Investigations Section.

Staffing transitions and pandemic related issues have continued to challenge OIG and have contributed to delays in publishing reports. This 2021 1<sup>st</sup> and 2<sup>nd</sup> Combined Quarterly Progress Report includes a review of OPD's 2020 Search Warrants and an Inspection of OPD 2020 Vehicle Pursuit Investigation and Review Timelines.

The Department's Search Warrant Policy (Departmental Training Bulletin I-F, *Search Warrants*) requires an annual review of search warrants and associated documents. This review of search warrants that were completed in 2020 focused on the completeness and accuracy of search warrant packets; documentation of supervisory review and approval; and required search warrant training.

Departmental General Order J-4 (DGO J-4), *Pursuit Driving*, mandates an annual review of pursuits. The Department requires multiple levels of review to ensure vehicle pursuits are being conducted and supervised in accordance with policy. Timely investigations and reviews are a critical component of reducing risk through the swift identification and correction of deficiencies. This review of vehicle pursuit investigations evaluated the timeliness of the reviews and compliance determinations, and documentation of any extensions or delays in the review process.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Cliff Wong', with a long horizontal flourish extending to the right.

Lieutenant Clifford Wong  
Inspector General  
Oakland Police Department

## Review of 2020 OPD Search Warrants

*By Auditors Mehiya Thomas and Kristin Burgess-Medeiros*

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### Objectives

1. Determine whether search warrants and search warrant affidavits included all required elements.
2. Determine if search warrants and affidavits are complete and accurate, include the affiant's stated facts establishing probable cause, and reflect the affiant's background, training, and experience.
3. Determine whether the search warrant reviewing supervisor and commander approved the search warrant packets, prior to submission to a magistrate.
4. Determine whether officers video recorded the entire pre-search walkthrough and post-search walkthrough.
5. Determine whether affiants submitted all required search warrant forms to the Criminal Investigation Division (CID) Search Warrant Coordinator.
6. Determine whether affiants submitted the search warrant packets to CID in a timely manner.
7. Determine whether the CID Search Warrant Coordinator approved the search warrant return packets and forwarded the forms to the CID Commander for final review.
8. Determine whether the CID Commander approved the search warrant return packets.
9. Determine whether the search warrants were served within 10 days of issuance as required by the County (unless there was a holiday).
10. Verify all evidence recorded on the Search Warrant Inventory Sheet is listed on the associated Property Record and, if applicable, the Drug Analysis Unit Daily Summary of Drug Cases Received Log sheet.
11. Determine whether officers authoring search warrants and reviewing supervisors completed the required online "Search Warrant Fundamentals" course through the POST Learning Portal website and, if authored/reviewed an "X-buy" search warrant, attended the in-house OPD Search Warrant and Informant Management Course (40

hours) OR the four (4) hour "X-Buy" specific search warrant training.

### Key Strengths

Overall, the Department is complying with policy requirements for preparing, reviewing, and serving search warrants.

### Key Weaknesses

- Upon review of the 87 sampled affidavits, the Auditor found the affidavits complete, with the exception of the affiants' training, background, and experience, which were missing from the 13 DUI (blood draw) search warrants and two search warrants for the purpose of confiscating deadly weapons possessed by a person experiencing a mental health crisis, despite no exception in policy allowing this information to be omitted.
- Upon review of 23 residential and vehicle search warrant packets where evidence was seized, the Auditor found that affiants are not always including the Department's search warrant inventory form in the search warrant packets submitted to CID, rather, in seven cases, they only included Alameda County's electronic search warrant inventory and return form, resulting in some search warrant packets missing a copy of the inventory form that is provided to the person from whom the items were seized.
- The Department's policy does not address the time-period for affiants submitting search warrant (return) packets to CID after the date of service and therefore some search warrant (return) packets are being submitted several months after the warrant was served, delaying CID's review for errors.
- There were five affiants and one reviewing sergeant who did not attend the Department's required Search Warrant Fundamentals training course prior to authoring/reviewing a search warrant.

### Key Recommendations

See page 20 for a list of detailed recommendations.

## Executive Summary

On January 4, 2021, the Office of Inspector General (OIG) initiated its annual review of the Oakland Police Department's 2020 search warrants as mandated in Departmental Training Bulletin I-F, *Search Warrants*. The purpose of this Training Bulletin is to set forth procedures for drafting, obtaining, and serving a search warrant. Additionally, Training Bulletin I-F.1, *E-Warrants*, sets forth procedures for the application, review, issuance and processing of search warrants using Alameda County's Consolidated Records Information Management System eProcess (E-Warrants).<sup>1</sup>

The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure by the government and requires police officers to establish probable cause before they can obtain a search warrant or a warrant for an arrest. Hence, if the information contained in the search warrant is insufficient to show probable cause, the search or arrest is invalid, and the suspect can have charges against them dismissed. Therefore, to avoid technical and legal violations and to ensure a search is reasonable, the Department requires multiple layers of supervisory oversight for search warrants. Furthermore, the Department requires additional oversight by the Office of Inspector General, who is required to conduct annual compliance reviews of search warrants.<sup>2</sup>

Departmental Training Bulletin I-F, *Search Warrants*, defines a *search warrant* as an order in writing, in the name of the people, signed by a magistrate<sup>3</sup>, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property.<sup>4</sup> It defines a *search warrant affidavit* as a legal document signed under penalty of perjury containing the facts upon which probable cause is based.<sup>5</sup> In order for officers to search a residence, a vehicle, a cell phone, a social media account, or to take a driving under the influence (DUI) blood draw, an affiant<sup>6</sup> must obtain a written *search warrant* that establishes probable cause, describes the evidence being sought, and specifies the areas to be searched. The affiant must include a detailed description of those elements in the search warrant and search warrant affidavit for the search to be reasonable.

For this review, the OIG examined a sample of 87 search warrant and affidavit packets from January 1, 2020, to December 31, 2020, to ensure that search warrants and affidavits were complete and accurate; properly reviewed and approved; and served in a timely manner. Additionally, the review focused on proper documentation of evidence seized; video recordings of residential search warrants; and required search warrant training. During this audit, OIG determined that overall, the Department is complying with policy, but found a few areas in need of improvement.

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<sup>1</sup> Training Bulletin I-F.1, *E-Warrants*, dated March 2, 2016, Pg. 1

<sup>2</sup> Training Bulletin I-F, *Search Warrants*, dated March 22, 2016, XII. Pg. 8

<sup>3</sup> A Judge

<sup>4</sup> Training Bulletin I-F, II. B. Pg. 1

<sup>5</sup> Training Bulletin I-F, II. C. Pg. 1

<sup>6</sup> Training Bulletin I-F, II. A. Pg. 1, "An Affiant is the person who authors the search warrant and who declares under penalty of perjury that the information contained in the affidavit, based upon his/her personal knowledge, and including all incorporated documents, is true."

- Upon review of the 87 sampled affidavits, the Auditor found the affidavits complete, with the exception of the affiants' training, background, and experience, which were missing from the 13 DUI (blood draw) search warrants and two search warrants for the purpose of confiscating deadly weapons possessed by a person experiencing a mental health crisis, despite no exception in policy allowing this information to be omitted.
- Upon review of 23 residential and vehicle search warrant packets where evidence was seized, the Auditor found that affiants are not always including the Department's search warrant inventory and return form in the search warrant packets submitted to CID, rather, in seven cases, they only included the Alameda County's electronic search warrant inventory and return form, resulting in some search warrant packets missing a copy of the inventory form that is provided to the person from whom the items were seized.
- The Department's policy does not address the time-period for affiants submitting search warrant (return) packets to CID after the date of service and therefore some search warrant (return) packets are being submitted several months after the warrant was served, delaying CID's review for errors.
- There were five affiants and one reviewing sergeant who did not attend the Department's required Search Warrant Fundamentals training course prior to authoring/reviewing the search warrant.

Based on the findings, OIG recommends that:

1. All search warrants include the affiant's training, background and experience, unless the Department determines the information is not required for certain search warrant types, and if so, policy should be updated to codify any exceptions to the requirement;
2. The correct departmental search warrant inventory form is referenced in policy and in PowerDMS<sup>7</sup> and CID checks for the correct form upon receipt of the search warrant packet;
3. The search warrant policies are updated to include a timeline for which search warrant packets should be submitted to CID; and
4. The Department set forth internal mechanisms to ensure all officers receive the required search warrant training prior to authoring or reviewing a search warrant.

## Background

The Department's search warrant policy (Training Bulletin I-F, *Search Warrants*, effective date 22 Mar 16), requires OIG to conduct an annual audit of search warrants and associated documents. Due to staffing and competing priorities, there was no search warrant audit completed in 2018. In 2019, the OIG conducted a search warrant audit, which focused on policy language and risk assessments/special operations plans in addition to search warrant documentation. OIG found that while search warrant forms were being completed and submitted properly, improvement was needed in policy regarding risk

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<sup>7</sup> PowerDMS is an online application accessible to all Department employees which contains Departmental policies, procedures and forms.

assessments and operations plans, and affiants were using multiple versions of the search warrant inventory and return forms.

### **Policy Requirements for Obtaining and Documenting a Search Warrant**

The Department's Training Bulletin I-F, *Search Warrants*, dated March 22, 2016, requires the following process for requesting, documenting, and reviewing search warrants:

#### **1. Search Warrant Documents Authored by Affiant**

When an affiant has probable cause to believe a crime has been committed and/or that certain property has a connection with a crime and is currently present at a specified location, the affiant must author the following forms to seize the property or evidence.

- **Search Warrant Affidavit**—a legal document signed under penalty of perjury containing the facts that indicate there is probable cause to believe a crime has been committed, and certain property or evidence of that crime is present at the location to be searched
- **Search Warrant**—a written order, to be signed by a magistrate, listing a person(s), thing(s), or personal property to be searched
- **Search Warrant Sealing Order** (if requested by the affiant)—a request, approved by the magistrate, to conceal official information that would compromise the investigation and to protect the public interest (i.e., a confidential informant, etc.)<sup>8</sup>

#### **2. Affiant Obtains Approval to Submit Search Warrant Documentation to the Magistrate**

Once the affiant authors the search warrant affidavit and search warrant, and, if applicable a search warrant sealing order, the affiant must complete a Search Warrant Approval Tracking Sheet (TF-3343, Revised April 2016) and submit the form along with the completed search warrant documentation to a supervisor and commander for review. The Auditor noted there are times when the affiant is required to attach additional documentation to facilitate the review:

- If the affiant states in the search warrant affidavit that drugs (i.e., cocaine, methamphetamine, heroin, etc.) were tested, the affiant must submit a Chemical Analysis Report (TF-708), acquired from the Criminalistics Division<sup>9</sup>, along with the search warrant documentation.<sup>10</sup>
- If a reviewer(s) has any concerns regarding information written in the search warrant documentation, the affiant may be required to submit additional related documents (i.e., crime reports, photographs, and/or diagrams) as supporting evidence to justify the need for a search warrant.

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<sup>8</sup> SUPERIOR COURT OF CALIFORNIA County of Alameda, Search Warrant Sealing Order. [Microsoft Word - SW Sealing Order.docx \(alcodea.org\)](#)

<sup>9</sup> The Department's onsite laboratory in which matter (i.e., drugs, fingerprints, firearms, etc.) recovered from crime scenes is analyzed.

<sup>10</sup> Training Bulletin I-F, V. B. Pg. 4

When the supervisor and commander deem the search warrant documentation complete and accurate, they document their review and approval of the search warrant and affidavit on the Search Warrant Approval Tracking Sheet. Subsequently, the affiant is permitted to submit the search warrant and search warrant affidavit and, if applicable, the search warrant sealing order and sealed document, to a magistrate for review and signature.

### **3. Search Warrant Service Documented**

Training Bulletin I-F, *Search Warrants*, requires the affiant to complete the Search Warrant Inventory and Return form (TF-3079-1) and, if necessary, the Search Warrant Inventory and Return Continuation form (TF-3079-2), when evidence is seized, and provide a copy to the person from whom the evidence was taken. In the absence of a person, a copy of the completed Search Warrant Inventory and Return form (TF-3079-1) shall be left at the location (Penal Code 1535).<sup>11</sup>

Additionally, policy requires that any search warrant service shall be documented in a crime report regardless of whether evidence is recovered. The officer shall document any known damages resulting from the search warrant service (e.g., broken doors, safes, fences).<sup>12</sup>

#### ***Portable Digital Recording Device (PDRD)***

An officer who is present during the execution of the search warrant must use a Portable Digital Recording Device (PDRD), also known as a Body Worn Camera (BWC), while conducting a pre-search walk-through of the location or area to be searched to record the condition of the location or area, prior to commencing the search. Upon completion of the search, officers shall use a PDRD while conducting a post-search walk-through of the location or area to be searched to record the condition of the location or area. Officers shall focus on damages to, or destruction of property caused during the search warrant service. If a PDRD is not available, officers shall use an alternate video recording device to record the walk-through.<sup>13</sup>

### **4. Completed Search Warrant Records Reviewed and Retained**

Upon completion of the search warrant service, the primary investigator (affiant) forwards the following search warrant forms to the CID Commander and Search Warrant Coordinator for review:

- The original Search Warrant Approval Tracking Sheet (TF-3343)
- A copy of the search warrant
- A copy of the affidavit
- A copy of the Search Warrant Inventory and Return form (TF-3079-1)
- A copy of the Search Warrant Inventory and Return Continuation (TF-3079-2), if necessary

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<sup>11</sup> Training Bulletin I-F, VIII.C. Pg. 7

<sup>12</sup> Training Bulletin I-F, IX.E. Pg. 7

<sup>13</sup> Training Bulletin I-F, VIII.A/B. Pg.6-7



The Search Warrant Coordinator reviews the search warrant forms for completeness and accuracy and signs and dates the forms before forwarding the forms to the CID Commander. The CID Commander also reviews the forms to ensure compliance with policy before signing, dating, and approving the form. Once determined to be compliant, the Coordinator scans the search warrant forms into a Portable Document Format (PDF) and places the search warrant PDF in an electronic folder. Lastly, the affiant, or designee, submits the Court's search warrant return packet to the Court Clerk at any County of Alameda Superior Court Clerk.<sup>14</sup>

### **Search Warrant Training**

Training Bulletin I-F, *Search warrants* requires that "all sworn members shall complete the online Search Warrant Fundamentals course through the POST Learning Portal website."<sup>15</sup> The course teaches officers the fundamentals of writing search warrants; the parts of an affidavit; and what happens after the affiant has written the search warrant and it was signed by a magistrate. The course also provides scenario-based interactions to ensure officers have opportunities to practice writing location descriptions, a statement of expertise, and a complete statement of probable cause.<sup>16</sup>

In addition, and because it is important for officers to understand the process and legality regarding controlled purchases of narcotics, commonly referred to as "X-Buys," the Department offers an internal 40-hour Basic Search Warrant and Informant Management Course that is required training for those conducting X-buys and writing X-buy search warrants. This course provides training on topics such as "X-Buys," residential search warrants, cellular phone download search warrants, social media account search warrants, DUI blood draw search warrants and vehicle tow search warrants, and how to document and complete a "Hero Sheet" to reflect the affiant's background, training, experience.<sup>17</sup>

### **References**

- *Training Bulletin I-F, Search Warrants, dated March 22, 2016*
- *Training Bulletin I-F.1, E-Warrants, dated March 22, 2016*

## **Scope/Population and Methodology**

### **Audit Scope**

The scope of this audit consisted of a review of a sample of search warrants completed in 2020 to assess the completeness and accuracy of the Department's search warrant packets, prior to submission to the magistrate, and to assess the completeness and accuracy of the Department's search warrant return packets, after the search warrants were served. The Auditor conducted these assessments to ensure the sample of search warrants were properly prepared, submitted, and approved by supervisors and/or commanders, prior to submission to the magistrate for approval; properly documented and reviewed

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<sup>14</sup> Training Bulletin I-F, X.B.1-2. Pg. 8

<sup>15</sup> Training Bulletin I-F, XIII. Pg. 8

<sup>16</sup> Multimedia Courses. Search Warrant Fundamentals Web. POST, 22 Jul. 2019, [www.catalog.post.ca.gov/MultiMedia.aspx](http://www.catalog.post.ca.gov/MultiMedia.aspx). [California POST Course Catalog](http://www.catalog.post.ca.gov/MultiMedia.aspx)

<sup>17</sup> Basic Search Warrant & Informant Management Curriculum (December 9-12, 2019) provided by OPD's Training Division

subsequent to being served; and executed within 10 days from the date of issuance. The Auditor reviewed body worn camera video-audio footage during the searches of residences to determine whether officers recorded a pre-search walk-through prior to commencing the search and a post-search walk-through at the conclusion of the search. In addition, the Auditor reviewed training records to ensure sworn members authoring search warrants during the audit period of January 1, 2020, to December 31, 2020, completed required departmental search warrant training. Finally, the Auditor interviewed CID personnel (Police Records Specialist, Sergeants, Lieutenants and Captain). Where additional information or clarification was needed, the Auditor interviewed additional Department personnel.

**Audit Population and Sample**

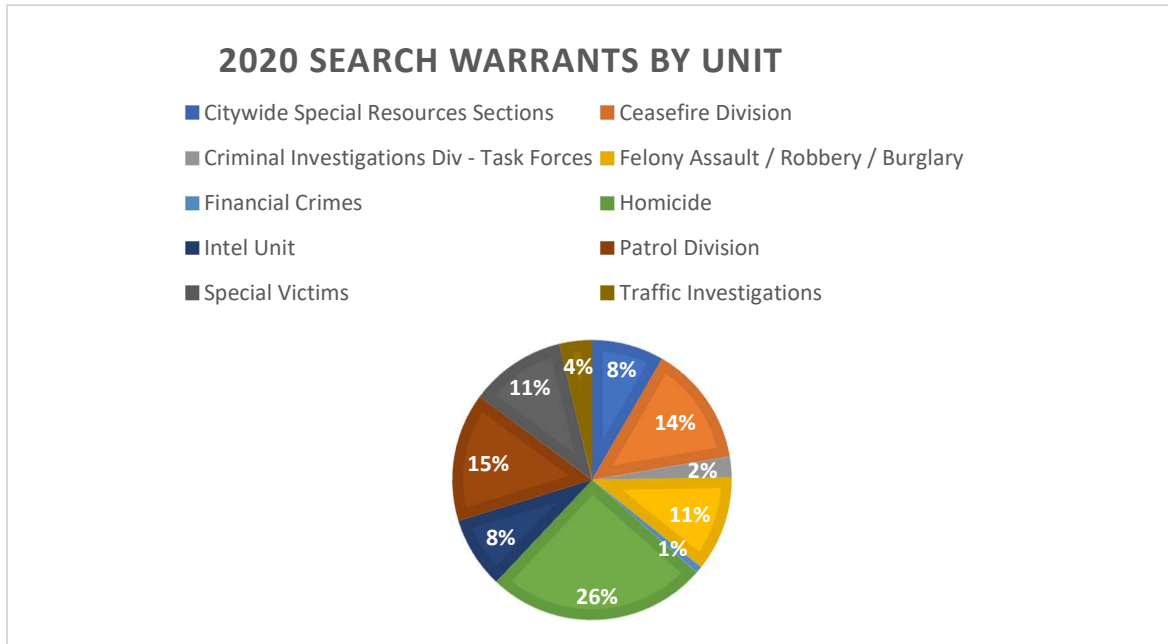
The Auditor requested and obtained access to the CID search warrant tracking sheet<sup>18</sup> and all 2020 search warrant packets via CID’s Search Warrant Coordinator. There were **874** search warrants submitted to CID during the audit period of January 1, 2020, through December 31, 2020, and the Auditor categorized the search warrants by departmental Unit to identify the number of search warrants generated in each Unit. Using a one-tail test<sup>19</sup> to achieve a 95% confidence level with an error rate of +/- 4%, the Auditor selected a proportional sample of **87** search warrants to ensure the sample included search warrants from each of the Units in the population (See Table 1 below).

**Table 1: 2020 Search Warrant Population and Sample**

<b>UNIT</b>	<b># of Search Warrants in the population</b>	<b>% of Population</b>	<b># of Search Warrants in Sample</b>
Citywide Special Resources Sections	<b>73</b>	<b>8%</b>	<b>7</b>
Ceasefire Division	<b>122</b>	<b>14%</b>	<b>12</b>
Criminal Investigations Division Task Forces	<b>21</b>	<b>2%</b>	<b>1</b>
Felony Assault / Robbery / Burglary	<b>96</b>	<b>11%</b>	<b>10</b>
Financial Crimes	<b>7</b>	<b>1%</b>	<b>1</b>
Homicide	<b>223</b>	<b>26%</b>	<b>23</b>
Intel Unit	<b>72</b>	<b>8%</b>	<b>7</b>
Patrol Division	<b>130</b>	<b>15%</b>	<b>13</b>
Special Victims	<b>97</b>	<b>11%</b>	<b>10</b>
Traffic Investigations	<b>33</b>	<b>4%</b>	<b>3</b>
<b>Total Number of Search Warrants served in 2020</b>	<b>874</b>	<b>100%</b>	<b>87</b>

<sup>18</sup> An electronic file that includes all search warrants processed during the 2020 calendar year.

<sup>19</sup> A one-tail test is a statistical test measuring the statistical significance in one direction of interest, and for the purposes of this review, was used to determine a sample size.



See Appendix A for the methodology.

## Findings

### Finding #1

Upon review of the 87 sampled search warrants and affidavits, the Auditor found that the affiants who prepared the search warrants and affidavits provided detailed descriptions of the required elements, when applicable, in 100% of search warrants and affidavits reviewed.

When there is probable cause to believe a crime has been committed and/or that certain property has a connection with a crime and is currently present at a specified location, an affiant (officer) must author two documents, 1) a search warrant, to be signed by a magistrate and 2) an affidavit detailing the probable cause. According to Training Bulletin I-F, *Search Warrants*, in order to establish valid probable cause to issue or obtain a search warrant (for the seizure of specific evidence), search warrants and affidavits must clearly provide a detailed description of the following elements:<sup>20</sup>

- **Location(s) to be searched:** shall contain sufficient details for affiants to identify the location(s) to be searched.
- **Person(s) to be searched:** should include, name, date of birth, height, weight, hair color, eye color, complexion, and distinguishing marks (i.e., tattoos, birth marks) and if applicable, should include the CDL, PFN, and CII numbers.
- **Vehicle(s) to be searched:** should include, the year, make, model, color, number of doors, distinguishing characteristics (i.e., custom wheels, tinted windows, damage), vehicle identification number, and license plate number.

<sup>20</sup> Training Bulletin IF, IV. Pg. 2-3

- **Item(s) to be searched:** must contain description of the thing or container searched and its locations.
- **Evidence to be seized:** must list the anticipated evidence location(s), person(s), vehicle(s), and item(s).
- **Special instruction boxes are checked off.** (For search warrant only)
- **Offense(s):** must list a description of the applicable/specific offense(s) committed, is being committed, or will be committed with reference to the criminal code section. (For affidavits only)

Search warrants which fail to describe property with reasonable particularity are considered “general exploit warrants” and are forbidden by both the United States and California Constitutions. General warrants are invalid, and any items seized during their execution are subject to suppression. If any of these elements are lacking, incomplete, erroneous, or otherwise insufficiently stated, the affidavit is insufficient, and any search warrant issued based upon an affidavit with lacking probable cause may be found to be invalid.

The Auditor requested and obtained, via the CID Search Warrant Coordinator, access to CID’s search warrant tracking sheet, an electronic file that includes all search warrants processed during the 2020 calendar year. There were 874 search warrants and affidavits completed during the audit period of January 1, 2020, to December 31, 2020, and a proportional sample of 87 search warrants and affidavits (from various units) were reviewed for this audit. The Auditor noted that depending on the search warrant and affidavit search types (residential search, vehicle search, person search, etc.), not all elements were applicable. A breakdown of the different types of search warrants in the sample, including their applicable elements, are listed below.

- **13 Driving Under the Influence (DUI) Search Warrants and Affidavits**  
(The following elements are applicable: the location, the person, evidence, and offense)
- **17 Residential Search Warrants and Affidavits<sup>21</sup>**  
(The following elements are applicable: the location, the item(s), the evidence, and offense)
- **15 Vehicle Search Warrants and Affidavits**  
(The following elements are applicable: the location, the vehicle(s), the item(s), the evidence, and offense)
- **28 Electronic Communications Information Service Provider Search Warrants and Affidavits**  
(The following elements are applicable: the location, the item(s), the evidence, and offense)
- **14 Electronic Device Information from an Electronic Device Search Warrants and Affidavits**  
(The following elements are applicable: the location, the item(s), the evidence, and offense)

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<sup>21</sup> For the purposes of this review, residential search warrants refer to a search of a place, including a home, apartment, or motel room. One of the 17 residential search warrants was for a jail, but it was not served. Some residential search warrants also included vehicle searches but were categorized as residential search warrants in this review. Search warrants categorized as vehicle search warrants did not include a search of a residence.

Additionally, the Special instruction box element (for search warrants only) is to be checked off, when applicable. Special instructions include night service, no-knock entry, special master, sealing order, non-disclosure order, anticipatory warrant, federal agents’ assistance, and any additional request(s) deemed necessary during the investigation.<sup>22</sup> The numbers of each type of special instructions included in the sample of search warrants reviewed are listed in Table 2 below. There were no search warrants in the sample with special instructions for “no-knock entry.”

**Table 2: Search Warrant Special Instruction Types**

Types of Special Instructions Checkboxes in the Sample	Total Number of Each Type of Special Instruction
Night Service	8
Night service and Sealing order	5
Night service and Nondisclosure order	1
Nondisclosure order	17
Sealing order	4
Sealing order and Nondisclosure order	3
Sealing order and search conducted by Expert (FBI) order	1
Sealing order, night service, and delayed notification order	1
Sealing order, night service, and nondisclosure order	1
Delayed Notification Order	1
Sealed unrelated information order	10
Seal unrelated to information order and nondisclosure order	1
Seal unrelated information, night service, delayed notification order	1
Not Applicable (did not include a special instruction)	33
<b>Total</b>	<b>87</b>

There were six search warrants where the evidence to be seized was solely a vehicle. These types of warrants are typically authored when the vehicle itself is the instrument of a crime (e.g., reckless driving). In these warrants, when the vehicle is expected to be located in “any area where there is access to/for the public or reasonably appears the public has access to,” the affidavit need not list a specific location under “place(s) to be searched.” However, if the vehicle may be located on private property where there is a reasonable expectation of privacy, the specific location should be listed in the affidavit.<sup>23</sup>

Upon reviewing the 87 search warrants and affidavits, the Auditor found that the affiants who prepared the search warrants and affidavits provided detailed descriptions of the required search warrant and affidavit elements, when applicable, in 100% of search warrants and affidavits reviewed.

<sup>22</sup> Training Bulletin IF, IV.A.6. Pg. 2

<sup>23</sup> Interview with Affiant who completed five of the six search warrants solely for seizure of a vehicle, May 10, 2021.

### **Finding #2**

**Upon review of the 87 sampled search warrants, the Auditor found that all data fields were complete and accurate in 100% of search warrants reviewed.**

According to Training Bulletin I-F, *Search Warrants*, “A supervisor and a commander shall review all documents within the search warrant for completeness and accuracy.”<sup>24</sup> To determine if search warrants and affidavits are complete and accurate, the Auditor reviewed the following four data fields in the 87 search warrants sampled.

- **Incident Number** (also referred to as the respective report (RD) Number)
- **Affiants Name** (the officer who prepared the search warrant)
- **Magistrate’s Signature**
- **Magistrate’s Date of signature**

The Auditor reviewed the data fields in the 87 search warrants sampled and found that all data fields were complete and accurate in 100% of search warrants reviewed.

### **Finding #3**

**Upon review of the 87 sampled affidavits, the Auditor found the affidavits complete, with the exception of the affiants’ training, background, and experience, which were missing from the 13 DUI (blood draw) search warrants and two search warrants for the purpose of confiscating deadly weapons possessed by a person experiencing a mental health crisis, despite no exception in policy allowing this information to be omitted.**

According to Training Bulletin I-F, *Search Warrants*, “A supervisor and commander shall review all documents within the affidavit for completeness and accuracy.”<sup>25</sup> In addition, policy requires “the affiant to state the facts establishing probable cause for the seizure of specific evidence,” as well as their accurate training, background, and experience.<sup>26</sup> To determine if affidavits are complete and accurate; the affiant stated facts establishing probable cause; and the affiant’s training, background, and experience were included, the Auditor reviewed the following eight data fields in the 87 Search affidavits sampled.

- **RD Number** (the respective report (RD) and/or incident number)
- **Affiants Name** (the officer who prepared the affidavit)
- **Affiant’s Signature**
- **Date of Affiant’s Signature**
- **Probable Cause Statement** (The facts upon which probable cause is based)
- **Affiant’s Background**
- **Affiant’s Training**
- **Affiant’s Experience**

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<sup>24</sup> Training Bulletin I-F, VII.B. Pg. 5

<sup>25</sup> Training Bulletin I-F, VII.B. Pg. 5

<sup>26</sup> Training Bulletin I-F, IV.B. Pg. 3 and Pg. 10, *Search Warrant Checklist*

Upon review of the 87 sampled affidavits, the Auditor found that the correct RD number and the affiant's name, signature, and the date signed were included in 100% of affidavits reviewed. There were seven affidavits in which the probable cause statement was sealed, and therefore, the Auditor was unable to review the probable cause section of the affidavit. Sealing orders, approved by a magistrate, render sections of the affidavit concealed if the information would compromise the investigation or prejudice the public interest.<sup>27</sup> In the remaining 80 affidavits reviewed, the Auditor was able to confirm the inclusion of a probable cause statement. All search warrants in the sample were signed by a magistrate, indicating probable cause had been established.

The Auditor was able to confirm the inclusion of the affiant's background, training, and experience in all affidavits reviewed except for 23 affidavits where all or part of the affiant's background, training and experience was missing. Eight of the 23 affidavits had sealing/nondisclosure orders, so the Auditor could not verify the inclusion of an affiant's training, background, and experience. The remaining 15 affidavits fell into two categories: 1) DUI (blood draw) search warrants and 2) search warrants for the purpose of confiscating deadly weapons from someone experiencing a mental health crisis.

There were 13 affidavits for DUI (blood draw) search warrants, none of which had sealing orders, and none included the affiant's training, background, and experience. The Department's policy does not include language which exempts DUI (blood draw) search warrants from including this information. Therefore, the Auditor contacted the Traffic Investigations Unit to find out if the Department's practice is to exclude training, background, and experience for DUI (blood draw) search warrants. The Traffic Investigations Unit informed the Auditor that the electronic DUI search warrant form is distinct from the multifunctional electronic search warrant form and is used just for DUI blood draws.<sup>28</sup> The DUI blood draw search warrant form does not include a section for an affiant's training and experience, rather in the Statement of Probable Cause section, the form includes the following statement.

*I am a law enforcement officer employed by the above agency. On the above date and approximate time, I arrested the above-named arrestee for the above Vehicle Code offense and the arrestee has remained in custody. The arrest based on the following circumstances that were witnessed by me, or where indicated, were witnessed by another officer who informed me of the circumstance.*

In comparison, Alameda County's electronic multifunctional search warrant form allows the affiant to check a box that includes their statement of training and experience.

There were two search warrants written for the purpose of confiscating deadly weapons in the possession of someone experiencing a mental health crisis. The Auditor contacted the Department's subject matter expert on mental health encounters who cited California's Welfare and Institutions (W&I) Code 8102 which states, "Whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is a person described in Section 8100 or 8103, is found to own,

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<sup>27</sup> SUPERIOR COURT OF CALIFORNIA County of Alameda, Search Warrant Sealing Order. [Microsoft Word - SW Sealing Order.docx \(alcoda.org\)](#)

<sup>28</sup> Interview of Traffic Investigations Unit Officer on April 28, 2021.

have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon *shall* be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon [emphasis added].”<sup>29</sup>

The Subject Matter Expert confirmed that affiants do not need to include their training, background and experience in search warrant affidavits involving California W&I Code 8102 incidents because officers are required to confiscate weapons under these circumstances.<sup>30</sup>

Although Search Warrant Training Bulletin I-F, *Search Warrants* does not provide any exceptions for including an affiant’s training, background, and experience in the affidavit, in practice, the Department is not always including this information in search warrant affidavits involving DUI (blood draws) or confiscation of deadly weapons from a person experiencing a mental health crisis. Therefore, the Department should ensure all search warrants include the affiant’s training, background and experience, unless it determines the information is not required for certain search warrant types, and if so, policy should be updated to codify any exceptions to the requirement.

#### **Finding #4**

**Upon review of the 87 Search Warrant Approval Tracking Sheets (TF-3343), the Auditor found that the reviewing supervisors and commanders documented their review and approval of the search warrants and affidavits, as required by policy, in 99% of tracking sheets reviewed.**

According to Training Bulletin I-F, *Search Warrants*, “a supervisor and commander shall review all of the documents within the search warrant and affidavit for completeness and accuracy prior to submission to a magistrate. The reviewing supervisor and commander shall document their review and approval of the search warrant and affidavit on the Search Warrant Approval Tracking Sheet (TF-3343).”<sup>31</sup>

The Auditor reviewed the 87 Search Warrant Approval Tracking Sheets sampled to determine whether the tracking sheets were complete and accurate and found that the reviewing supervisors and commanders documented their review and approval of the search warrants and affidavits on the Search Warrant Approval Tracking Sheet (TF-3343), as required by policy, in 99% of search warrants reviewed.

There was one instance in which the reviewing supervisor and commander signed the tracking sheet after the magistrate approved the search warrant and was therefore deemed out of compliance. The error was identified by the Search Warrant Coordinator, and according to an email from the reviewing Commander, the affiant submitted the search warrant to the magistrate prior to supervisor review/approval and received training and a note in their supervisory notes file as a result.

There were two instances in which the reviewing supervisors and commanders forgot to include their serial number on the Search Warrant Approval Tracking Sheets (TF-3343), but their names and

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<sup>29</sup> California Legislative Information. Welfare and Institutions Code Chapter 3. 8102.

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=8102.&lawCode=WIC#:~:text=\(a\)%20Whenever%20a%20person%2C,the%20firearm%20or%20other%20deadly](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=8102.&lawCode=WIC#:~:text=(a)%20Whenever%20a%20person%2C,the%20firearm%20or%20other%20deadly)

<sup>30</sup> Interview with the Department’s Subject Matter Expert on mental health encounters, May 20, 2021.

<sup>31</sup> Training Bulletin I-F, VII.B. Pg. 5



signatures were included. In addition, the Auditor noted that there were 13 DUI search warrants in which the commander did not sign the Search Warrant Approval Tracking Sheet. However, the commander signature was deemed not applicable since policy does not require commander approval for DUI search warrants.<sup>32</sup>

#### **Finding #5**

**The Auditor reviewed a sample of 10 residential search warrant incidents to ensure officers video recorded the residences prior to conducting the search and upon conclusion of the search, as required by policy, and was able to locate video recordings of the pre-search walk-through and the post-search walk-through in 100% of incidents reviewed.**

According to Training Bulletin I-F, *Search Warrants*, “Prior to commencing the search, officers shall use a Portable Digital Recording Device (PDRD) while conducting a pre-search walk-through of the location or area to be searched to document the condition of the location or area. Upon completion of the search, officers shall use a PDRD while conducting a post-search walk-through of the location or area to be searched to document the condition of the location or area.”<sup>33</sup>

Using the 87 search warrant packets in the sample, the Auditor selected a sample of 10 residential search warrants to verify video recordings of pre-search and post-search walk-throughs. The Auditor accessed the VIEVU Solutions System (the Department’s PDRD video management system) and using the search warrant RD numbers, the dates, and times of the search, reviewed multiple officers’ video recordings to identify the officer who recorded the pre-search and post-search walk-throughs. When the officers were identified, the Auditor reviewed their video recordings to confirm that the residences being searched were recorded before and after the search and that the officer recording the walk-throughs clearly stated that the recording was for the purpose of the walk-through. The Auditor located the pre-search and post-search walk-through video recordings for all 10 search warrants and confirmed that the officers clearly stated the purpose of the walk-through.

#### **Finding #6**

**Upon review of 23 residential and vehicle search warrant packets where evidence was seized, the Auditor found that affiants are not always including the Department’s search warrant inventory and return form in the search warrant packets submitted to CID, rather, in seven cases, they only included Alameda County’s electronic search warrant inventory and return form, resulting in some search warrant packets missing a copy of the inventory form that is provided to the person from whom the items were seized.**

Training Bulletin I-F, *Search Warrants* states, “The Affiant, or designee, shall submit the search warrant return packet to the Search Warrant Coordinator at CID.” To determine whether affiants submitted all

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<sup>32</sup> Training Bulletin I-F, VII.B. Pg. 5

<sup>33</sup> Training Bulletin I-F, VIII. Pg.6-7

required search warrant forms to the CID Search Warrant Coordinator, the Auditor reviewed the search warrant return packets in the sample to ensure they included all the following documents.

- The original Search Warrant Approval Tracking Sheet (TF-3343)
- A copy of the search warrant
- A copy of the affidavit
- A copy of Search Warrant Inventory and Return (TF-3079-1)
- A copy of Search Warrant Inventory and Return Continuation (TF-3079-2), If applicable<sup>34</sup>

The Auditor reviewed the 87 search warrant (return) packets in the sample and found that all included the tracking sheet, search warrant, affidavit and a search warrant inventory and return form. However, 45 of the 87 (52%) search warrant packets reviewed included only Alameda County’s electronic search warrant inventory and return form, rather than a Departmental form. Additionally, for those packets that included a departmental form, there were two versions used.

**Table 3: 2020 Search Warrant Inventory and Return Forms**

<b>Name of Form in Which Officers Documented Evidence Seized and Submitted to Search Warrant Coordinator</b>	<b>Number of Forms Submitted</b>
Departmental Search Warrant Inventory and Return (TF 3079-1)	<b>6</b>
Departmental Search Warrant Inventory (TF 3079)	<b>35</b>
Alameda County’s Electronic Search Warrant Inventory and Return	<b>55</b>
Missing from File	<b>0</b>
<b>Total</b>	<b>96</b>

There were 87 search warrant packets in the sample and nine instances in which two different forms were submitted for the same search, bringing the total number to 96 search warrant inventory and return forms that were reviewed. The Auditor noted that at least one version of the inventory form was in every file, and when two forms were used for the same search, the items listed on the forms were the same. Although two of the 87 search warrants were not served, the packets included Alameda County’s electronic search warrant inventory and return form, which stated “Not Served.”

According to Training Bulletin I-F, *Search Warrants*, upon completion of the search warrant service, if property is seized, the affiant shall provide a copy of the Search Warrant Inventory and Return to the person from whom it was taken or in whose possession it was found, or if the person is not present during the time of the search, the affiant is required to leave a copy of the Search Warrant Inventory and Return (TF-3079-1) at the location (Penal Code 1535).<sup>35</sup>

<sup>34</sup> Training Bulletin I-F, X.A. Pg. 7

<sup>35</sup> Training Bulletin I-F, VIII.C.2. Pg. 7

The Auditor reviewed search warrant inventory and return forms associated with 23 residential and vehicle searches where evidence was seized to determine if the affiant completed one of the Department’s Search Warrant Inventory and Return forms (TF 3079.1 or TF-3079), which is required to be provided to the owner of the items seized or left at the location. Upon review of the 23 residential and vehicle search warrant packets, the Auditor found that seven search warrant packets only included Alameda County’s electronic search warrant inventory and return form. Therefore, in those seven cases, the affiants were not submitting the completed departmental search warrant inventory and return form to CID as part of the search warrant packet. The inventory forms for these seven cases were unable to be located in WebSMART,<sup>36</sup> so it is unclear if and where the forms are being maintained since they are not part of the search warrant packet submitted to CID. The Auditor did not confirm if, in these seven cases, the affiants provided the owner of the seized items a printed copy of Alameda County’s inventory form in lieu of one of the OPD inventory forms.

According to two Homicide Sergeants interviewed on April 15, 2021, due to the pandemic, there was increased usage of Alameda County’s E-warrants system to decrease in-person contact. However, the Auditor noted, while the usage of the Alameda County’s electronic search warrant inventory and return form has been encouraged, it is important for the Department to maintain a copy of the form that is provided to the owner of the seized items and a copy should be maintained in the search warrant packet that is submitted to CID.

**Additional Observation**

**The Department has two different versions of the Search Warrant Inventory form and the version referenced in policy (TF 3079-1) was only included in 6 of the 87 search warrant packets reviewed, compared to TF 3079, which was included in 35 of the 87 packets.**

The Auditor reviewed the three versions of the Search Warrant Inventory forms included in the sample, Alameda County’s electronic search warrant inventory and return form and two different versions of the Department’s paper form (TF 3079-1 and TF 3079). Because the Auditor found inconsistencies in the usage of search warrant inventory and return forms, the Auditor focused on the differences between the two departmental versions used. The table below compares the data fields included on each form.

**Table 4: Comparison of OPD’s Search Warrant Inventory Forms**

Search Warrant Inventory (TF 3079)	Search Warrant Inventory (TF 3079-1)
<b>SIMILAR DATA FIELDS</b>	
Search Date, Day	Date Search Warrant Served
Starting and ending time	Start and End Time of The Search
Report number	Crime Report Number
Area(s) searched	Type of Search

<sup>36</sup> WebSMART is a searchable document management application that houses scanned copies of non-paperless crime reports and hard copy documents associated with paperless crime reports.

	(person, place, vehicle, item, electronic device information from an electronic device, electronic communications information from a service provider, and other),
Description of item and location found	Evidence Seized (item No., location found, description of item(s))
Signature and serial number of officers who completed the form and the date	Officer's Signature, Serial number
<b>DIFFERENT DATA FIELDS</b>	
Name of person served	Search Warrant Number
Address of search location	Date Search Warrant Signed
Officers/witnesses present	Name of Issuing Magistrate
	Search Warrant Inventory and Return Notification (i.e., who the search warrant was served to: In person, via mail, via email, via fax, or other)
	Officer's Contact Number
	Where the search warrant, and search warrant inventory and return were left (i.e., on the premise(s) searched) and, per court order to be served on
	Where the search warrant, and search warrant inventory and return, per court order to be served on (date)

The comparison shows the differences in the information collected on each version of the OPD forms. The Department's search warrant inventory and return form TF-3079-1 is the form listed in policy but was only included in 6 search warrant packets. Search warrant inventory and return form TF 3079 is not referenced in policy but is used more often (included in 35 search warrant packets). During OIG's last search warrant compliance review in 2019, the Auditors identified the use of different versions of the search warrant inventory form, and therefore met with the Bureau of Investigations Deputy Chief, Search Warrant Coordinator and the Training Division Captain regarding the different versions of the form. According to the report, the Deputy Chief at the time stated that "the correct version included the names of the officers who conducted the search, and this version is in the Report Writing Room. The other two versions do not require the names of officers present during the search."<sup>37</sup> The Auditors noted at that time that the correct form was entitled Search Warrant Inventory TF-3079. This was the form that was kept in the Report Writing Room but not listed in policy.

In the Department's response to the 2019 search warrant compliance review, dated September 29, 2019, the Deputy Chief at the time stated:

<sup>37</sup> OIG's 1<sup>st</sup> Quarterly Progress Report January-March, 2019, <http://www2.oaklandnet.com/oakca1/groups/police/documents/report/oak072464.pdf>. Pg. 15

*Utilizing the data from the audit, the Training Commander will identify all versions of the Search Warrant Inventory form and consolidate them into one form to be consistent with best practices to include consideration of the Negotiated Settlement Agreement (NSA). The Training Commander will seek approval from the Chief of Police or designee to implement the new form and provide necessary notification and training to sworn personnel. The recommended due date for compliance is 1 Jan 20.*

However, the Department's search warrant policy has not been updated since the 2019 compliance review and therefore policy still requires the completion of search warrant inventory and return form TF-3079-1.

To confirm the importance of consistent use of the search warrant inventory and return form, the Auditor asked a Lieutenant in CID, who has conducted CID reviews of search warrant packets, to confirm which inventory sheets should be included in the packets. The Lieutenant stated that the CID review focuses on the presence of the form, rather than on which form is used and that the policy may have been written prior to the Department using the County's electronic system. He also suggested that, while TF-3079 includes the names of the officers involved in serving the search warrant, the names can be retrieved from the crime reports, if the officers are documented there. The Auditor noted to ensure consistent use of the correct departmental search warrant inventory and return form, policy must be updated to include reference to the correct version of the form. Therefore, the OIG recommends that the Department update policy with the correct version of the departmental search warrant inventory and return form and ensure outdated versions are removed from circulation, including removal from PowerDMS. Additionally, the CID review process should include checking to ensure a copy of the Department's search warrant inventory and return form is included in the packet.

#### **Finding #7**

**The Department's policy does not address the time-period for affiants submitting search warrant (return) packets to CID after the date of service and therefore some search warrant (return) packets are being submitted several months after the warrant was served, delaying CID's review for errors.**

According to Training Bulletin I-F, *Search Warrants*, the affiant, or designee, shall submit the search warrant (return) packet to the Search Warrant Coordinator in CID.<sup>38</sup> However, the policy is silent on how long the affiant has to submit the forms/packets to CID after the search warrant is executed.

On January 14, 2021, the Office of the Inspector (OIG) General met with the Oakland Police Department's Search Warrant Coordinator and Criminal Investigation's Division (CID) Captain, to gain information about their search warrant review and approval process.<sup>39</sup> The OIG asked "How do you confirm receipt of all search warrant (return) packets and how do you track whether any are missing? What is your process?" The Search Warrant Coordinator responded, "I don't know. We will find out a search warrant packet is missing when checking the log after a request is made to see that search

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<sup>38</sup> Training Bulletin I-F, X.A. Pg. 7

<sup>39</sup> The Search Warrant Coordinator is a Police Records Specialist assigned to the Criminal Investigation's Division.

warrant. If not found on the log, I will email the officer to retrieve the search warrant that is needed for the case. Because some officers do not submit their search warrants for up to about a year, I recommend that officers should be required to submit their search warrants as soon as completed.”

To determine whether affiants are submitting the search warrant (return) packets to CID in a timely manner, the Auditor reviewed the 87 search warrant inventory and return forms to capture the dates the search warrants were served and the associated Search Warrant Approval Tracking Sheets to capture the dates the Search Warrant Coordinator reviewed and scanned the packets. The Search Warrant Coordinator confirmed that there can be delays between the time CID receives search warrant packets from affiants and when the CID review is completed. Although the Search Warrant Coordinator does not track the date of receipt from the, she said the CID review is usually completed within a week or two of receiving the packet.<sup>40</sup> Thus, the Auditor used the Search Warrant Coordinator review date to get a sense of the timeliness of affiants’ submission of search warrant packets to CID.

There were two search warrants that were not served. Of the 85 search warrants that were served, the time-period between search warrant service and CID review ranged from 4 days to 315 days. Twenty percent of the 85 search warrants served were reviewed by CID between four and ten months after search warrant service. Even if some of the delay (2 to 4 weeks) was attributed to the CID review period, there was still a significant delay in CID receiving some search warrant packets from affiants. Additionally, there is no mechanism to ensure that CID receives all search warrant packets. As the Search Warrant Coordinator stated in her interview, some search warrant packets are received by CID only after the Coordinator has received a request for the search warrant, and upon not finding it on her log, has to track down the affiant and request the packet.

The lack of a required submission time-period in policy allows for significant delays in tracking and reviewing search warrants. If CID does not receive search warrant (return) packets in a timely manner, they cannot review and provide timely feedback when corrections are needed. Also, with no mechanism to track search warrants that are signed by a magistrate, CID has no way of ensuring receipt of all search warrant packets. Therefore, the OIG recommends the Department determine an appropriate time-period for submission and update policy with a submission time-period requirement. Additionally, the Department should identify a tracking process for all search warrants to ensure CID receives all search warrant packets.

#### **Finding #8**

**Upon review of the 87 sampled Search Warrant Approval Tracking Sheets (TF-3343), the Auditor found that, as required by policy, the Search Warrant Coordinator documented their review of search warrant (return) packets; forwarded all packets to the CID Commander for approval; and once approved, scanned and stored all packets in an electronic folder for all search warrant (return) packets reviewed.**

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<sup>40</sup> Interview with Search Warrant Coordinator on May 26, 2021.

According to Training Bulletin I-F, *Search Warrants*, the Search Warrant Coordinator reviews the search warrant return packet forms for completeness and accuracy and signs and dates the forms before forwarding the forms to the CID Commander. Once determined to be compliant, the Search Warrant Coordinator scans the search warrant forms into a Portable Document Format (PDF) and places the search warrant PDF in an electronic folder.<sup>41</sup>

The Auditor reviewed the 87 sampled Search Warrant Approval Tracking Sheets (TF-3343) to determine whether the Search Warrant Coordinator section was complete and accurate, and the Auditor found that the Search Warrant Coordinator documented their review, forwarded all search warrant (return) packets to the CID Commander for approval, and once approved, scanned, and stored all search warrant (return) packets into a PDF electronic folder for all search warrant (return) packets reviewed. The Auditor noted that the Coordinator would notify affiants when there were mistakes and those were documented via email communications.

#### **Finding #9**

**Upon review of the 87 sampled Search Warrant Approval Tracking Sheets (TF-3343), the Auditor found that the CID Commander documented their review and approval in all search warrant (return) packets, as required by policy.**

According to Training Bulletin I-F, *Search Warrants*, “The Commander reviews the forms to ensure compliance with policy before signing and dating the form.”<sup>42</sup> The Auditor reviewed the 87 Search Warrant Approval Tracking Sheets (TF-3343) sampled to determine whether the CID Commander section was complete and accurate. Upon review, the Auditor found that the CID Commanders documented their review and approved all search warrant (return) packets reviewed.

#### **Finding #10**

**Upon review of the 85 sampled search warrants that were served, the Auditor found that all search warrants were served within 10 days from the date of issuance (unless there was a holiday), as required by Alameda County, but was unable to determine if the search warrants were returned to the County within 10 days.**

According to Training Bulletin I-F, *Search Warrants*, Alameda County requires that “a search warrant shall be executed and returned within 10 days from the date of issuance. If the 10th day is a court holiday or weekend, the next day is permitted. After 10 days, the warrant, unless executed, is void.”<sup>43</sup> The Auditor reviewed the 87 search warrant packets and compared the dates the search warrant was issued (signed by the Magistrate) with the dates the search warrant was served to determine whether the affiants executed the searches within ten days after the search warrant is issued. There were two search warrants that were not served. Upon review of the remaining 85 search warrants, the Auditor

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<sup>41</sup> Training Bulletin I-F, X.A.2. Pg. 7

<sup>42</sup> Training Bulletin I-F, X.A.3. Pg. 7-8

<sup>43</sup> Training Bulletin I-F, X.B.2. Pg. 8



found that all search warrants were served within 10 days from the date of issuance (unless there was a holiday), as required by the policy.

However, the Auditor was unable to determine if the search warrants were returned to the County within 10 days of issuance. The search warrant inventory and return forms include a signature block for the affiant declaring that the inventory listed is true. On the Alameda County electronic inventory form, the signature has a date and time stamp, which indicates the date the affiant submitted the electronic form to the County. In 19 of the search warrants served, the date stamp on the County's electronic inventory form was more than 10 days after the search warrant was issued.

On departmental search warrant inventory and return form 3079, there is also a signature and date block for the declaration, which is handwritten and only two were dated more than 10 days after search warrant issuance. There were six packets that had a departmental search warrant inventory and return form 3079-1, which has a signature block but not a date block, so there is no way to confirm the date the affiant signed the declaration. Nine packets had both the departmental form and the Alameda County form and the dates on the two forms were different in four of the packets. Because the Auditor was unable to confirm if departmental inventory forms were completed, but not submitted to CID, and because the dates differed between the departmental forms and the Alameda County forms, the Auditor was unable to determine accurate return dates for the search warrant (return) packets.

For this review, the Auditor did not have time to check with the County to confirm the dates they received the search warrant returns but will include this in the scope of the next annual review. In the meantime, the Department should remind affiants that search warrant returns must be submitted to the County within 10 days of search warrant issuance.

#### **Finding #11**

**Upon review of 14 residential search warrants where items were seized, the Auditor was able to reconcile evidence recorded on the search warrant inventory and return forms and the associated Property and Evidence Unit's (PEU) Property Records in all but one of the residential search warrants.**

According to Training Bulletin I-F, *Search Warrants*, during the service of a search warrant, "if property is seized, a copy of the Search Warrant Inventory is provided to the person from whom it was taken, or in whose possession it was found."<sup>44</sup> Seventeen of the 87 sampled search warrants involved searches of residences. The Auditor requested the Property Records<sup>45</sup> associated with the 17 residential search warrants from the PEU and reviewed all 17 residential search warrants to verify that evidence recorded on the search warrant inventory and return form was also recorded on the associated PEU Property Record. Upon review of the 17 residential search warrants, the Auditor found that one was not served and two resulted in no evidence being seized. Of the remaining 14 residential search warrants, the

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<sup>44</sup> Training Bulletin I-F, VIII.C.2. Pg. 7

<sup>45</sup> The Property and Evidence Unit's (PEU) Property Record documents all submitted evidentiary items related to an incident number (RD Number).



Auditor was able to reconcile all discrepancies between evidence listed on the search warrant inventory and return form and the Property Record, except for one instance. In the one search warrant incident that was unable to be reconciled, the Lieutenant overseeing the incident informed the Auditor that the officer had made a mistake in not listing a duffle bag on the search warrant inventory and return form since it was seized and entered on the Property Record. The Lieutenant stated that training was conducted with the involved officers to be more specific in the description and separation of items.

The Auditor found the most common reason for discrepancies was due to evidence listed on the Property Record that was related to the incident, but not seized during the search warrant. For example, if a phone was seized during a traffic stop and later an associated residence was searched to find weapons, the phone would not be listed on the inventory sheet because it was seized prior to the search warrant service but would be listed on the property record because it was part of the same incident. There were also cell phones that were seized during the search warrant, but rather than being turned into the PEU at the time of seizure, they were submitted to another entity for analysis and were therefore listed on the search warrant inventory and return form but not yet listed on the Property Record at the time the PEU records were received by the Auditor.

#### **Finding #12**

**Upon reviewing the Search Warrant Fundamentals (WEB) Course Attendance Report, the Auditor confirmed that 89% of affiants, 94% of reviewing supervisors, and 100% of reviewing commanders in the sample had completed the required online, three-hour course offered via the Commission on Peace Officer Standards and Training (POST) Learning Portal website. There were five affiants and one reviewing sergeant who did not attend the required Search Warrant Fundamentals training course prior to authoring/reviewing a search warrant.**

According to Training Bulletin I-F, *Search Warrants*, “All sworn members shall complete the online Search Warrant Fundamentals course through the POST Learning Portal website.”<sup>46</sup> The sample was comprised of the 46 different officers who authored the 87 search warrants and 33 supervisors and 18 commanders who reviewed them, totaling 97 sworn members. The Auditor requested the POST Search Warrant Fundamentals (WEB) Course attendance sheets for the 46 affiants, 33 sergeants and 18 commanders from the Training Division to determine whether the affiants who authored the 87 sampled search warrants and the reviewing supervisors and commanders completed the POST Search Warrant Fundamentals Course. Upon review, the Auditor confirmed that 89% of affiants, 94% of reviewing supervisors and 100% of reviewing commanders in the sample had completed the required course. Table 5 below provides the detailed results:

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<sup>46</sup> Training Bulletin I-F, XIII.A. Pg. 8

**Table 5: POST Search Warrant Fundamentals Course Attendance**

Affiants		Reviewing Supervisors		Reviewing Commanders	
# of Affiants	<b>46</b>	# of Supervisors	<b>33</b>	# of Commanders	<b>18</b>
Affiants who attended (IC)	<b>41</b>	Supervisors who attended (IC)	<b>31</b>	Commanders who attended (IC)	<b>18</b>
Affiants who did not attend (NIC)	<b>5</b>	Supervisors who did not attend (NIC)	<b>1</b>	Commanders who did not attend (NIC)	<b>0</b>
Affiants (UTD) if attended	<b>0</b>	Supervisors (UTD) if attended	<b>1</b>	Commanders (UTD) if attended	<b>0</b>
% IC	<b>89%</b>	% IC	<b>94%</b>	% IC	<b>100%</b>
% NIC	<b>11%</b>	% NIC	<b>3%</b>	% NIC	<b>0%</b>
% UTD	<b>0%</b>	% UTD	<b>3%</b>	% UTD	<b>0%</b>

There were five (11%) affiants and one (3%) reviewing supervisor in the sample that did not complete the POST Search Warrant Fundamentals course. Three officers and the reviewing supervisor were assigned to Patrol and two officers were assigned to CID. The Training Division stated three officers were relatively new to the Department and may not have had the opportunity to attend the 3-hours of required Post Search Warrant Fundamentals. The Auditor therefore located the dates the five officers who had not attended the Course at the time they authored the search warrant were sworn in as police officers. Three officers had been sworn police officers for at least two years prior to authoring their search warrants. One officer had been a sworn police officer for one year prior to authoring their search warrant and one officer had only been a sworn police officer for two months prior to authoring their search warrant. In addition, there was one reviewing supervisor in the sample for whom the Auditor was unable to determine compliance with completing the course because he is no longer an active employee. The Training Division stated that anyone who has left the Department would no longer show up on the course attendance list provided by POST.

The Auditor determined that all officers, except the officer who only had two months in sworn police officer status, should have had enough time to take the course. The Auditor noted that one of the five officers missing the course did attend the Department’s 40-hour in-house Search Warrant and Informant Management Course. Also, the reviewing sergeant missing the POST course and the reviewing sergeant for whom the Auditor was unable to determine attendance at the POST course also attended the Department’s 40-hour in-house Search Warrant and Informant Management Course. Lastly, all officers, reviewing supervisors, and commanders who took the course completed the course prior to authoring/reviewing the search warrants in the sample.

The Department’s policy states that “officers must have a sound knowledge of departmental and legal requirements associated with search warrants.” Hence, attending search warrant related training is critical to avoiding technical and legal pitfalls. Lack of proper training puts the Department at risk of violating constitutional rights, suppression of evidence, invalidation of the search warrant, dismissal of cases, and disciplinary action. Therefore, the OIG recommends that the Department set forth internal

mechanisms to ensure all officers receive the required search warrant training prior to authoring or reviewing a search warrant.

**Additional Observation**

**Although not required by policy, 59% of affiants, 61% of reviewing supervisor’s and 56% of reviewing commanders in the sample had completed the 40-hour Search Warrant and Information Management course hosted by the Department prior to authoring/reviewing a search warrant.**

The Department periodically offers an in-house, 40-hour OPD Search Warrant and Informant Management Course. The course is not required prior to authoring or reviewing a search warrant, but it does provide additional training on topics such as “X-Buys,” residential search warrants, cellular phone download search warrants, social media account search warrants, DUI blood draw search warrants and vehicle tow search warrants.<sup>47</sup> Affiants are required to take the 40-hour course or another “X-buy” course prior to conducting an “X-buy” or writing an “X-Buy” search warrant. Although none of the search warrants in the sample reviewed involved an “X-buy,” the Auditor reviewed the Search Warrant and Informant Management course attendance reports provided by the Training Division to determine which affiants, reviewing supervisors, and reviewing commanders in the 87 sampled search warrants had attended the course prior to authoring/reviewing a search warrant. Upon review, the Auditor found that, 59% of affiants, 61% of reviewing supervisors, and 56% of reviewing commanders in the sample had completed the 40-hour Search Warrant and Information Management course hosted by the Department. Table 6 below provides the detailed results.

**Table 6: OPD Search Warrant and Informant Management Course Attendance**

<b>Affiants</b>		<b>Reviewing Supervisors</b>		<b>Reviewing Commanders</b>	
# of Affiants	<b>46</b>	# of Supervisors	<b>33</b>	# of Commanders	<b>18</b>
Affiants who attended	<b>27</b>	Supervisors who attended	<b>20</b>	Commanders who attended	<b>10</b>
Affiants who did not attend	<b>19</b>	Supervisors who did not attend	<b>13</b>	Commanders who did not attend	<b>8</b>
% Attended	<b>59%</b>	% Attended	<b>61%</b>	% Attended	<b>56%</b>

<sup>47</sup> Basic Search Warrant & Informant Management Course, December 9-12, 2019. Curriculum provided by the Department’s Training Division.

## Recommendations

### OIG Findings

### OIG Recommendations

<p><b>Finding #3</b>                  Upon review of the 87 sampled affidavits, the Auditor found the affidavits complete, with the exception of the affiants’ training, background, and experience, which were missing from the 13 DUI (blood draw) search warrants and two search warrants for the purpose of confiscating deadly weapons possessed by a person experiencing a mental health crisis, despite no exception in policy allowing this information to be omitted.</p>	<p><b>Recommendation #1</b>                  The Department should ensure all search warrants include the affiant’s training, background and experience, unless the Department determines the information is not required for certain search warrant types, and if so, policy should be updated to codify any exceptions to the requirement</p>
<p><b>Finding #6</b>                  Upon review of 23 residential and vehicle search warrant packets where evidence was seized, the Auditor found that affiants are not always including the Department’s search warrant inventory and return form in the search warrant packets submitted to CID, rather, in seven cases, they only included Alameda County’s electronic search warrant inventory and return form, resulting in some search warrant packets missing a copy of the inventory form that is provided to the person from whom the items were seized.</p> <p><b>Additional Observation</b>                  The Department has two different versions of the search warrant inventory and return form and the version listed in policy (TF 3079-1) was only included in 6 of the 87 search warrant packets, compared to TF 3079, which was included in 35 packets.</p>	<p><b>Recommendation #2</b>                  The Department should require the affiant to complete and submit to CID a copy of the departmental search warrant inventory and return form that was provided to the person from whom the items were seized (or left at the location). Additionally, the Department should ensure the correct search warrant inventory and return form is referenced in policy and in PowerDMS, and CID should include a check for this form during their required review of search warrant packets.</p>
<p><b>Finding #7</b>                  The Department’s policy does not address the time period for affiants submitting search warrant (return) packets to CID after the date of service and therefore some search warrant (return) packets are being submitted several months after</p>	<p><b>Recommendation #3</b>                  The Department should determine an appropriate time period for submission of search warrant packets to CID and update policy with a submission time period requirement.</p>

<p>the warrant was served, delaying CID's review for errors.</p>	
<p><b>Finding #10</b>                  Upon review of the 85 sampled search warrants that were served, the Auditor found that all search warrants were served within 10 days from the date of issuance (unless there was a holiday), as required by Alameda County, but was unable to determine if the search warrants were returned to the County within 10 days.</p>	<p><b>Recommendation #4</b>                  The Department should remind affiants that search warrant returns must be submitted to the County within 10 days of search warrant issuance.</p>
<p><b>Finding #12</b>                  Upon reviewing the Search Warrant Fundamentals (WEB) Course Attendance Report, the Auditor confirmed that 89% of affiants (officers), 94% of reviewing supervisors, and 100% of reviewing commanders in the sample had completed the required online, three-hour course offered via the Commission on Peace Officer Standards and Training (POST) Learning Portal website. There were five affiants and one reviewing sergeant who did not attend the required Search Warrant Fundamentals training course prior to authoring/reviewing a search warrant.</p>	<p><b>Recommendation #5</b>                  The Department should set forth internal mechanisms to ensure all officers receive the required search warrant training prior to authoring or reviewing a search warrant.</p>

## APPENDIX A

### Methodology

#### **Search Warrant Packets - Prior to Submission to the Magistrate**

##### **Objective 1 – Affiant**

To determine whether search warrants and affidavits included all required elements, the Auditor will review the sample of **87 search warrants and affidavits** (from various units), to determine whether all search warrants and search warrant affidavits included all required elements by reviewing all forms to ensure affiants wrote a description for all six elements in the search warrant, if applicable. According to Search Warrant Training Bulletin I-F,<sup>48</sup> a search warrant affidavit must clearly provide a detailed description of the following six elements in order to provide or establish valid probable cause to issue or obtain a search warrant (for the seizure of specific evidence):

- **Location(s) to be Searched:** shall contain sufficient details for affiants to identify the location(s) to be searched.
- **Person(s) to be Searched:** should include, name, date of birth, height, weight, hair color, eye color, complexion, and distinguishing marks (i.e., tattoos, birth marks) and if applicable, should include the CDL, PFN, and CII numbers.
- **Vehicle(s) to be Searched:** should include, the year, make, model, color, number of doors, distinguishing characteristics (i.e., custom wheels, tinted windows, damage), vehicle identification number, and license plate number.
- **Item(s) to be Searched:** must contain description of the thing or container to be searched and its locations.
- **Evidence to be Seized:** detailed description of all available and necessary sufficient information for affiants to identify the property to be seized.
- **Special instruction boxes are checked off.**<sup>49</sup> (for search warrant only)
- **Offense(s):** must list a description of the applicable/specific offense(s) committed, is being committed, or will be committed with reference to the criminal code section<sup>50</sup> (for affidavits only)

##### **Objective 2 – Completeness and Accuracy**

According to Search Warrant Training Bulletin I-F, “A supervisor and a commander shall review all documents within the search warrant for completeness and accuracy.”<sup>51</sup> To determine if search warrants are complete and accurate, the Auditor reviewed the following four additional data fields in the 87 search warrants sampled:

- **Incident Number** (also referred to as RD Number)
- **Affiants Name** (who prepared the search warrant)

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<sup>48</sup> Training Bulletin I-F, IV.A. 1-6. Pg. 2

<sup>49</sup> Training Bulletin I-F, IV.A. 1-5. Pg. 2

<sup>50</sup> Training Bulletin I-F, IV.B. 1-6. Pg. 3

<sup>51</sup> Training Bulletin I-F, VII.B. Pg. 5

- **Magistrate's Signature**
- **Magistrate's Date of signature**

In addition, to determine if affidavits are complete and accurate; the affiant stated facts establishing probable cause; and reflect the affiant's background, training, and experience, the Auditor reviewed the following eight data fields in the 87 search warrants sampled:

- **RD Number** (the respective report (RD) and/or incident number)
- **Affiant's Name** (the officer who prepared the affidavit)
- **Affiant's Signature**
- **Date of Affiant's Signature**
- **Probable Cause Statement** (The facts upon which probable cause is based)
- **Affiant's background**
- **Affiant's Training**
- **Affiant's Experience**

### **Objective 3 – Search Warrant Reviewing Supervisor AND Commander Review**

To determine whether the search warrant reviewing supervisor and commander approved the search warrant packets, prior to submission to a magistrate,<sup>52</sup> the Auditor conducted the following tests/reviews:

1. The Auditor reviewed the sample of search warrants packets<sup>53</sup> to determine whether the search warrant reviewing supervisors documented (signed/dated) their review and approval of the search warrant packets, on the Search Warrant Approval Tracking Sheet (TF-3343).
2. The Auditor reviewed the sample of search warrants packets to determine whether the search warrant reviewing commanders documented (signed/dated) their review and approval of the search warrant packets, on the Search Warrant Approval Tracking Sheet (TF-3343).
3. The Auditor verified that the sample of search warrant packets were documented (signed/dated/approved) by the magistrate.
4. The Auditor verified that the reviewing supervisors and commanders (signed/dated/approved) the search warrants before the magistrate.

The Auditor noted that Commander approval is not required for DUI search warrants. In addition, the Auditor noted that if any errors or any incomplete forms were found and there was a clear omission, the Auditor would flag it as an indication of a possible problem with the supervisory/command review.

### **Objective 4 – PDRD<sup>54</sup> Recordings of Pre-Search and Post-Search Walk-Throughs**

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<sup>52</sup> Training Bulletin I-F, VII.B. Pg. 5

<sup>53</sup> **The search warrant packet includes:** The Search Warrant, Affidavit, Search Warrant Approval Tracking Sheet (TF-3343), and any other Attachment(s) or exhibit(s) if applicable: (such as: Search warrant sealing order(s) b. Sealed document(s) c. Chemical Analysis Report (TF-708) d. Crime report(s) e. Photo(s) f. Diagram(s)).

<sup>54</sup> Portable Digital Recording Device (PDRD) is a body worn camera.

To determine whether officers correctly activated their PDRDs during the pre-search walkthrough, prior to commencing the search (when serving the search warrant) and to determine whether officers correctly deactivated their PDRDs (when leaving the residence), during the post search walkthrough, the Auditor selected a sample within the review sample and conducted the following tests:

1. The Auditor accessed the VIEVU Solutions System<sup>55</sup> and reviewed the PDRD video footage of the officers involved in serving the search warrant to determine whether one of the officers correctly activated their PDRD and recorded the pre-search walkthrough, prior to commencing the search.
2. Using the VIEVU Solutions System, the Auditor also reviewed the officers' PDRD video footage to determine whether one of the officers involved in serving the search warrant correctly activated their PDRD and recorded the post search walkthrough.
3. If no video was located by the Auditor for the pre-search and post-search walkthroughs, the Auditor contacted the commander listed on the Search Warrant Tracking sheet to request video footage of the pre-search and/or post-search walkthroughs.

### **Search Warrant Return Packets - After Search Warrant Service**

#### **Objective 5 – Affiant**

To determine whether affiants submitted all required search warrant forms to the Criminal Investigation Division (CID) Search Warrant Coordinator,<sup>56</sup> the Auditor reviewed the following documentation to ensure all forms were included in each search warrant PDF:

- The original Search Warrant Approval Tracking Sheet (TF-3343)
- A copy of the search warrant
- A copy of the affidavit
- A copy of Search Warrant Inventory and Return (TF-3079-1)
- A copy of Search Warrant Inventory and Return Continuation (TF-3079-2)<sup>57</sup>

#### **Objective 6 – Timely Submission of Search Warrant (Return) Packets to CID**

To determine whether affiants submitted the search warrant (return) packets to CID in a timely manner, the Auditor reviewed the search warrant inventory and return forms in the sample to capture the dates the search warrants were served and the associated Search Warrant Approval Tracking Sheets to capture the dates the CID Search Warrant Coordinator reviewed and scanned the packets. The Auditor determined that a 45-day time-period was reasonable for submission of packets to CID after search warrant service and used 45 days as a measure of timely returns. The Auditor, therefore, determined how many search warrant packets were submitted to CID within 45 days and how many were submitted later than 45 days. The Auditor also conducted interviews with a CID Lieutenant to get input about reasonable time periods for search warrant packet submission to CID, since Department policy is silent on a time-period.

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<sup>55</sup> The Department's PDRD (body worn camera) management system.

<sup>56</sup> Training Bulletin I-F, X.A.1. Pg. 7

<sup>57</sup> Training Bulletin I-F, X.A.1. Pg. 7



### **Objective 7 – Search Warrant Coordinator Review**

To determine whether the Search Warrant Coordinator approved the search warrant return packets<sup>58</sup> and forwarded the forms to the CID Commander for final review,<sup>59</sup> the Auditor reviewed the sample of search warrant return packets to determine whether the Search Warrant Coordinator documented (signed/dated) their review and approval of the search warrant return packets on the Search Warrant Approval Tracking Sheet (TF-3343) and forwarded the search warrant return packets to the CID Commander for final review.

### **Objective 8 – CID Commander Review**

To determine whether the CID Commander approved the search warrant return packets, the Auditor reviewed the sample of search warrant return packets to determine whether the CID Commanders documented (signed/dated) their review and approval of the search warrant return packets, on the Search Warrant Approval Tracking Sheet (TF-3343).

### **Objective 9 – Search Warrants were served within 10 days as required by the County**

According to Search Warrant Training Bulletin I-F, *Search Warrants*, “A search warrant shall be executed within 10 days from the date of issuance. If the 10th day is a court holiday or weekend, the next day is permitted. After 10 days, the warrant, unless executed, is void.”<sup>60</sup> To determine whether the search warrants were served within 10 days of magistrate approval (unless there was a holiday), as required by the County, the Auditor reviewed the sample of search warrant packets and compared the dates the search warrant was issued (signed by the magistrate) with the dates the search warrant was served. The Auditor also reviewed the dates the Search Warrant Coordinator signed the search warrant packets, to determine how long it took CID to receive search warrants after search warrant service.

### **Objective 10 – Verification of Search Warrant Evidence**

To verify all evidence recorded on the search warrant inventory and return form is listed on the associated Property and Evidence Unit (PEU) Property Record and, if applicable, the Drug Analysis Unit’s *Daily Summary of Drug Cases Received Log*,<sup>61</sup> the Auditor conducted the following steps.

1. The Auditor selected only those search warrants involving a search of a residence. There were 17 search warrants involving the search of a residence.

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<sup>58</sup> Training Bulletin I-F, X.A.2.a. Pg. 7

<sup>59</sup> Training Bulletin I-F, X.A.2.b. Pg. 7

<sup>60</sup> Training Bulletin I-F, X.B.2. Pg. 8

<sup>61</sup> Used to document any drugs turned in as evidence if the Property and Evidence Unit is closed or the evidence is too large for the PEU to intake.

2. The Auditor requested the associated Property Records from the PEU and, if applicable, the Drug Analysis Unit's *Daily Summary of Drug Cases Received Log* for the 17 residential search warrants.
3. The Auditor compared the evidence listed on the search warrant inventory and return form(s) to the evidence listed on the corresponding PEU Property Record and/or the Drug Analysis Unit's *Daily Summary of Drug Cases Received Log*.
4. If the Auditor found discrepancies between the evidence listed on the two reports, the Auditor reviewed the Crime/Supplemental Report(s) associated with the respective search warrant to validate the seizure of the evidence during the search and reconcile the differences.
5. If the Auditor was unable to reconcile the evidence after reviewing crime/supplemental reports, the Auditor requested an explanation from the supervisors/commanders listed on the tracking sheet.

### **Objective 11 – Search Warrant Training**

To determine whether all sworn members (affiants, supervisors and commanders) authoring and reviewing search warrants completed search warrant training, the Auditor reviewed attendance records for two search warrant training courses.

***POST Search Warrant Fundamentals (WEB) Course:*** to confirm all affiants, supervisors, and commanders authoring and reviewing search warrants completed the required online, three-hour course, offered via the POST Learning Portal website, entitled "Search Warrant Fundamentals," the Auditor requested from the Training Division the *POST Search Warrant Fundamentals (WEB) Course Attendance Report* with the names of all current sworn members who took the course. If an officer's (within the sample) name was not on the report, the Auditor reviewed the METR<sup>62</sup> reports from the Training Division to determine if the affiants completed any type of search warrant training.

***OPD 40 hour in-house Search Warrant and Informant Management Course OR The four (4) hour "X-Buy" specific search warrant training course:*** to determine whether affiants, sergeants and commanders authoring or reviewing the search warrants in the sample attended the OPD 40 hour in-house Search Warrant and Informant Management Course OR (4) hour "X-Buy" specific search warrant training course, the Auditor requested from the Training Division a list of all OPD in-house Search Warrant and Informant Management Course training attendance sheets and course curriculum. The Auditor reviewed the attendance sheets to identify which officers, supervisors, and commanders in the sample attended the course. The Auditor noted that the OPD course is not required, unless the search warrant involves an "X-buy," and then the OPD 40-hour course or a 4-hour "X-buy" course is required.

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<sup>62</sup> An electronic system used by the OPD to track the type of training and number of hours its employees attend annually.

## Inspection of OPD Vehicle Pursuit Investigation and Review Timelines

*By Auditors Mehiya Thomas and Kristin Burgess-Medeiros*

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### Objective

For pursuits that occurred from January 1, 2020, to December 31, 2020, determine whether the pursuit review process was conducted in a timely manner.

### Key Strengths

All 67 pursuit reviews, from date of pursuit incident to Departmental Safety Committee or Chief approval, were completed within 180 days. Therefore, no pursuits found out of compliance missed the complaint investigative timeline requirements.

### Key Weaknesses

- Although policy requires that vehicle pursuits are investigated or reviewed by a supervisor and forwarded through the appropriate chain of review within 7 days of the incident, of the 67 pursuits reviewed, 84% of level 2 pursuit investigations and 23% of level 3 pursuit reviews completed by the supervisor exceeded the 7-day timeline. In 10 of 19 (53%) level 2 pursuit incidents, supervisors took more than three weeks to complete their investigation, indicating that 7 days may not be sufficient to complete a level 2 pursuit investigation.
- Aside from the 7-day timeline for the supervisor's investigation or review, Department policy does not include timeline requirements for the rest of the chain of review for pursuit report packets. This may have potentially contributed to longer review periods and delays in the final compliance determination for some level 2 and 3 pursuit incidents. Although none of the 67 pursuits reviewed exceeded 180 days from date of pursuit to

compliance determination, in some cases individual reviewers took more than three weeks to complete their review.

- Of the 67 pursuits reviewed, lieutenants re-tasked 68% of level 2 pursuit packets and 31% of level 3 pursuit packets back to the reviewing sergeants for additional work or corrections, contributing to some lieutenants' reviews taking more than three weeks. Of the 42 pursuits reviewed by a captain, captains re-tasked 16% of level 2 pursuit packets and 9% of level 3 pursuit packets back to the reviewing sergeants and lieutenants for additional work or corrections.
- A review of Vision Chronological Activity Logs found that sergeants only documented the reason for delay in 3 of the 27 level 2 and 3 pursuits that exceeded the 7-day timeline requirement. Additionally, although department policy does not include timeline requirements for the rest of the chain of review, documentation in the Vision Chronological Activity Logs was inconsistent among the rest of the reviewers regarding why the reviews took as long as they did, making it difficult to determine whether the length of time to review was justified.

### Key Recommendations

The inspection resulted in 6 recommendations, with the most significant one being that OPD should determine appropriate timelines for the chain of review's pursuit reviews and update policy with said timeline requirements (see pages 59-61 for a complete list of the audit recommendations).

## Executive Summary

In April 2021, the Office of Inspector General initiated an inspection of the Oakland Police Department's 2020 vehicle pursuit investigation and review timelines. Departmental General Order J-4 (DGO J-4), *Pursuit Driving*, mandates an annual audit of pursuits. The purpose of a vehicle pursuit<sup>63</sup> is to safely apprehend violators when they refuse to voluntarily comply with the law without unnecessarily endangering the public, department employees, occupants in fleeing vehicles, and property. Immediate apprehension of a violator, however, is never more important than the safety of the public or officers. Because of the inherent risk associated with vehicle pursuits (e.g., collisions and injuries), the Department requires multiple levels of review to ensure vehicle pursuits are being conducted and supervised in accordance with policy. Timely investigations and reviews are a critical component of reducing risk through the swift identification and correction of deficiencies.

The Department's pursuit policy categorizes pursuits into three different levels (level 1, level 2, and level 3) based on the seriousness of outcomes (property damage or injury) and the tactics used during the pursuit. Level 1 vehicle pursuits are those pursuits that result in death or serious injury likely to cause death and are investigated by the Internal Affairs Division. A level 2 vehicle pursuit is a pursuit that involves injury or property damage or whenever a pursuit intervention maneuver<sup>64</sup> is utilized. A level 3 vehicle pursuit is a pursuit which does not result in injury or property damage and where no pursuit intervention maneuvers are utilized. Level 2 and 3 pursuits are reviewed by the chain of review up through the Departmental Safety Committee.

For this inspection, the OIG reviewed a total of 67 completed level 2 and level 3 pursuits from January 1, 2020, to December 31, 2020, to ensure they were being investigated and reviewed in a timely manner and in accordance with OPD's policy. During this inspection, OIG determined that policy is deficient in its timeline requirements, potentially contributing to longer review periods and delays in the final compliance determination for level 2 and 3 pursuit incidents. The only mandated timeline in policy is for the supervisory investigation of level 2 pursuits and supervisory review of level 3 pursuits, which is 7 days. The pursuit policy is silent on the chain of review's timelines (e.g., Lieutenants, Captains, BFO Administration, and Departmental Safety Coordinator/Committee). Also, despite the additional work to investigate a level 2 pursuit versus review of a level 3 pursuit, the timeline for supervisors to complete level 2 investigations and level 3 reviews is the same.

Even with the lack of timelines in policy for the chain of review's vehicle pursuits, there were no pursuits that exceeded the 180-day timeline required for internal investigations. Departmental General Order M-

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<sup>63</sup> Departmental General Order (DGO) J-4, *Pursuit Driving*, defines a *Vehicle Pursuit* as an event involving one or more law enforcement officers attempting to apprehend a suspected or actual violator of the law in a motor vehicle while the driver is using evasive tactics, such as high-speed driving, driving off a highway or turning suddenly and failing to yield to the officer's signal to stop.

<sup>64</sup> A pursuit intervention maneuver is one or more authorized techniques designed to terminate a vehicle pursuit in a safe and prudent manner.

03, *Complaints Against Departmental Personnel or Procedures*, requires that complaint investigations be completed, reviewed, and approved within 180 days unless approved by the Internal Affairs Division (IAD) commander.<sup>65</sup> Therefore, the Department's practice is to complete the pursuit board prior to the 180 date, in the event a pursuit is found out of compliance and referred to IAD. Specifically, the inspection found:

- Although policy requires that vehicle pursuits are investigated or reviewed by a supervisor and forwarded through the appropriate chain of review within 7 days of the incident, of the 67 pursuits reviewed, 84% of level 2 pursuit investigations and 23% of level 3 pursuit reviews completed by the supervisor exceeded the 7-day timeline. In 10 of 19 (53%) level 2 pursuit incidents, supervisors took more than three weeks to complete the investigation, indicating that 7 days may not be sufficient to complete a level 2 pursuit investigation.
- Six sergeants exceeded the 7-day pursuit review timeline requirement multiple times.
- Aside from the 7-day timeline for the supervisor's investigation or review, Department policy does not include timeline requirements for the rest of the chain of review for pursuit packets. This may have potentially contributed to longer review periods and delays in the final compliance determination for some level 2 and 3 pursuit incidents. Although none of the 67 pursuits reviewed exceeded 180 days from date of pursuit to compliance determination, in some cases individual reviewers took more than three weeks to complete the review.
- The Department's policy is not sufficiently clear on the need for a captain's review. Of the nineteen level 2 pursuit packets reviewed, the Auditor found that five (26%) were forwarded by the lieutenant directly to BFO Admin rather than the captain, four of which were rerouted back to the captain and one missed the captain's review altogether.<sup>66</sup>
- Of the 67 pursuits reviewed, lieutenants re-tasked 68% of level 2 pursuit packets and 31% of level 3 pursuit packets back to the reviewing sergeants for additional work or corrections, contributing to some lieutenants' reviews taking more than three weeks. Of the 42 pursuits reviewed by a captain, captains re-tasked 16% of level 2 pursuit packets and 9% of level 3 pursuit packets back to the reviewing sergeants and lieutenants for additional work or corrections.
- A review of Vision Chronological Activity Logs found that sergeants only documented the reason for delay in 3 of the 27 level 2 and 3 pursuits that exceeded the 7-day timeline requirement. Additionally, although department policy does not include timeline requirements for the rest of the chain of review, documentation in the Vision Chronological Activity Logs was inconsistent

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<sup>65</sup> Departmental General Order (DGO) M-03 - *Complaints Against Departmental Personnel or Procedures*, effective 22 DEC 17. V.B.1. pg. 21.

<sup>66</sup> Department General Order J-4, *Pursuit Driving*, states, "For the purpose of this order, the appropriate chain-of-review shall be through the first level-commander under which the involved officer was working during that tour of duty when the pursuit occurred." In all 2020 pursuits reviewed, the first level commander was a lieutenant. The Department's practice is to include a captain in the chain of review for level 2 pursuits and TF-3257, *Pursuit Review Tracking Sheet for level 2 and 3 Pursuits*, dated March 2015, includes a signature block for the Division/Area Commander (a captain).

among the rest of the reviewers regarding why the reviews took as long as they did, making it difficult to determine whether the length of time to review was justified.

Based on the findings, OIG recommends the Department:

1. Assess the supervisor's 7-day timeline requirement for level 2 pursuit investigations and determine an appropriate amount of time commensurate with the amount of work to conduct a level 2 pursuit investigation. Also, the Department should determine the parameters of extension requests (number and duration of extensions) for level 2 pursuit investigations and level 3 pursuit reviews and codify these parameters and updated timeline requirements in policy;
2. Assess training needs for sergeants who repeatedly exceed the pursuit review timelines and ensure accountability if missed timelines persist for sergeants and the chain-of-command (those responsible for monitoring investigative timelines);
3. Determine an appropriate timeline for the chain of review's (lieutenants, captains, BFO Administration and Department Safety Coordinator/Committee) pursuit review process and update policy with review timeline requirements;
4. Provide pursuit investigation and review training to sergeants to reduce the delays caused by additional work needed or corrections identified by the chain of review;
5. Update policy to clarify the chain of review workflow for level 2 and level 3 pursuits, including which pursuits require a captain's review; and
6. Require sergeants and the chain of review to document the reasons for delays in the Vision Chronological Activity Logs.

This review was focused on pursuits occurring in 2020. In March 2021, the Department created the Bureau of Risk Management, which includes a new Risk Impact Unit dedicated to tracking use of force and pursuit investigations, as well as facilitating use of force and pursuit review boards. Additionally, the Department issued TF-8140 clarifying timeline requirements for pursuit reviews and extension approvals. These measures, in addition to the recommendations made in this inspection, should help the Department improve the timeliness of pursuit reviews.

## Background

The Department's Pursuit Driving policy (Departmental General Order J-4, *Pursuit Driving*, effective date 25 Aug 14), requires OIG to conduct an annual audit of vehicle pursuits and associated documents. In 2018, the OIG conducted a review titled *Comparative Analysis of Vehicle Pursuit Policy Audit*. The OIG undertook a review of the Department's pursuit policy which was revised in August 2014. Police vehicle pursuits presented significant risks to the Department and the public, so the Department revised its policy in 2014 to limit the types of crimes for which officers could pursue a vehicle. Changes in pursuit characteristics and outcomes were compared for pursuits that occurred before and after the policy change in 2014. In addition, the review looked at the way the Department tracked pursuits. The review found a significant drop in the number of pursuits after the policy change, but little change in the rate of property damage and injuries. The audit also found the Department was appropriately completing and

tracking vehicle pursuit investigations and the pursuit packets included most of the required documentation, but there were no procedures in place for tracking the mandated submission of the CHP 187A forms to the California Highway Patrol. Therefore, OIG made one recommendation to implement procedures for recording the submission of California Highway Patrol (CHP) 187A forms and adhering to the state mandated reporting guidelines.

In 2019, the OIG conducted an *Assessment of the Oakland Police Department's 2018 Vehicle Pursuits* due to a 75% increase in the number of pursuits between 2017 and 2018. The purpose of that review was to identify factors that contributed to the significant increase, as well as explore ways to mitigate risks associated with vehicle pursuits. In that review, the OIG found there were 45 more pursuits in 2018 compared to 2017 and identified three factors that contributed to the 75% increase in the number of vehicle pursuits from 2017 to 2018.

- There were 13 more officers (26%) who initiated pursuits in 2018 compared to 2017;
- Pursuits for vehicles involved in robberies made up the largest percentage of total pursuits and increased by 117% from 2017 to 2018 (35 additional pursuits); and
- In late 2017, OPD increased its emphasis on intelligence-led policing, a strategy that involves timely access to intelligence and focuses officers' efforts on specific targets. Officers engaged in the highest number of pursuits in 2018 indicated they were identifying more vehicles involved in crimes based on intelligence.

Therefore, OIG recommended closely monitoring officers who have high numbers of pursuits, assessing the risks and benefits of pursuits associated with strong-arm robberies<sup>67</sup> potentially committed by juveniles, and exploring additional technologies to mitigate risk.

### ***Pursuit Policy and Practice***

Department General Order J-4, *Pursuit Driving*, details the responsibilities of supervisors and commanders pertaining to the pursuit driving of subordinates and the use of pursuit intervention maneuvers. Given the inherent risk of vehicle pursuits, the policy limits the types of crimes for which officers can pursue a suspect, requires supervisory approval to pursue and lists several risk factors to be considered by officers and supervisors when making the decision to initiate, continue, or terminate a vehicle pursuit. Furthermore, policy requires supervisors to complete a pursuit investigation for level 2 pursuits and a review of level 3 pursuits, which are then forwarded through the chain of review.

The Department's policy categorizes pursuits into three different levels (level 1, level 2, and level 3) based on the seriousness of outcomes (property damage or injury) and the tactics used during the pursuit. For this inspection, OIG focused only on level 2 and level 3 pursuits. A level 2 pursuit is a vehicle pursuit that involves injury or property damage or whenever a pursuit intervention maneuver<sup>68</sup> is utilized. A level 3 pursuit is a vehicle pursuit not resulting in injury or property damage and where no

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<sup>67</sup> Strong-arm robberies involve physical force, such as pushing, punching, kicking, etc., rather than a weapon.

<sup>68</sup> A pursuit intervention maneuver is one or more authorized techniques designed to terminate a vehicle pursuit in a safe and prudent manner.

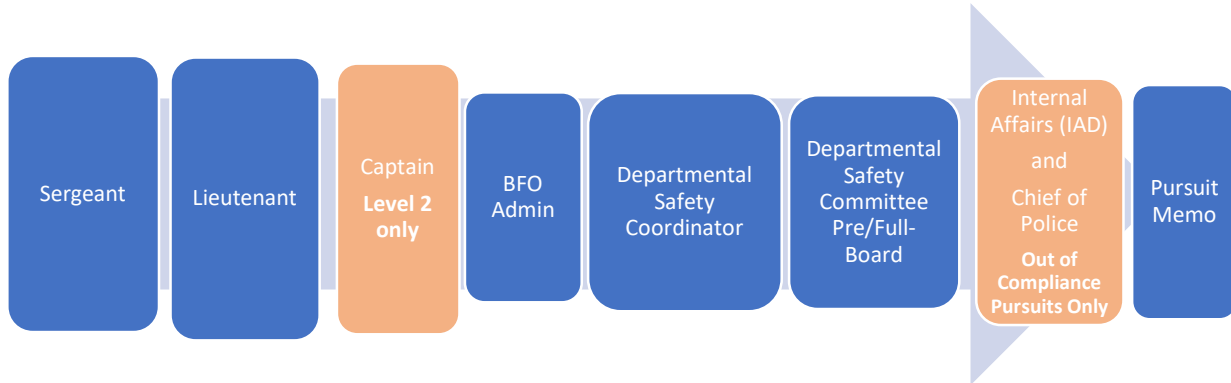
pursuit intervention maneuver is utilized. Department General Order J-4, *Pursuit Driving* requires that a supervisor investigate and complete an investigative pursuit report for level 2 pursuits and forward the pursuit packet through the appropriate chain of review. It also states, “For the purpose of this order, the appropriate chain of review shall be through the first level-commander under which the involved officer was working during that tour of duty when the pursuit occurred.” When a sergeant completes the pursuit report, the first level commander in the chain of review is a lieutenant. According to the Departmental Safety Coordinator, in practice, level 2 pursuits are reviewed by the first and second level commanders (a lieutenant and a captain). Additionally, Departmental Form TF-3257, *Pursuit Review Tracking Sheet for level 2 and 3 Pursuits*, dated March 2015, includes a signature block for the Division/Area Commander (a captain).

Level 3 pursuits do not require the completion of an investigative report, rather just a supervisor review of the offense report and associated documents. The supervisor prepares a pursuit packet and forwards the packet through the appropriate chain of review, which is through the first level commander (a lieutenant). After the command review, both level 2 and 3 pursuits are forwarded to BFO Administration and then to the Departmental Safety Coordinator/Committee. Table 1 includes the workflow for level 2 and 3 pursuits as it occurs in practice.

**Table 1: Chain of review workflow for level 2 and level 3 pursuit reviews**

Level 2 Pursuits	Level 3 Pursuits
Sergeant completes the <b>pursuit investigation</b> and forwards the pursuit packet to the Lieutenant	Sergeant completes the <b>pursuit review</b> and forwards the pursuit packet to the Lieutenant
Lieutenant reviews and forwards the pursuit packet to the <b>Captain</b>	Lieutenant reviews and forwards the pursuit packet to <b>BFO Administration</b>
Captain reviews and forwards the pursuit packet to BFO Administration	<b>*Lieutenants may choose to forward to a captain for additional review or a captain may request to review, although a captain’s review is not required by policy.</b>
BFO Administration reviews and forwards the pursuit packet to the Departmental Safety Coordinator	
Departmental Safety Coordinator reviews and schedules a board for the Departmental Safety Committee to review (pre-board for level 3 pursuits and full board for level 2 pursuits and select level 3 pursuits), during which the final compliance finding is determined.	
After the Board’s review, the Departmental Safety Committee forwards all pursuits found out of compliance to the Internal Affairs Division to initiate the discipline process and to the Chief of Police for final approval. Additionally, the Departmental Safety Coordinator completes a memorandum which memorializes the Board’s findings.	





### **Bureau of Field Operations Administration (BFO Admin)**

Per policy, BFO Admin is responsible for forwarding the original CHP 187A form<sup>69</sup>, which is completed by the supervisor, to the Training Section; forwarding a copy of the level 2 pursuit packets to the Departmental Safety Coordinator; forwarding original pursuit packets to the Training Section; maintaining a spreadsheet tracking information obtained from the pursuit packets; and maintaining statistics regarding “Non-Response Pursuits” logged.<sup>70</sup> In practice, BFO Admin is also responsible for completing a quality control check of all level 2 and level 3 pursuits and forwarding the pursuit packets to the Departmental Safety Coordinator.

### **The Departmental Safety Coordinator**

Per policy, the Departmental Safety Coordinator submits within 30 days the California Highway Patrol (CHP) 187A form for all pursuits involving Oakland police personnel to the CHP; reviews all level 2 and level 3 pursuits for compliance with OPD’s policy, training recommendations and/or liability issues; identifies patterns that may indicate unsafe practices and procedures;<sup>71</sup> and forwards a quarterly report of all pursuits to the Safety Committee Chairperson and the Chief of Police, advising them of pursuit incidents requiring review by the Departmental Safety Committee.<sup>72</sup> In practice, the Departmental Safety Coordinator also tracks all pursuit activity using a spreadsheet based on the Pursuit Tracking Logs received from the Communications Section on a daily basis.

### **Departmental Safety Committee**

According to policy, upon notification from the Departmental Safety Coordinator, members of the Departmental Safety Committee will review all level 2 and 3 pursuits for compliance with OPD policy, training recommendations, and/or liability issues.<sup>73</sup> In practice, all level 3 pursuits first go to the Departmental Safety Committee for a preliminary board review (pre-board). The pre-board includes a presentation from the Departmental Safety Coordinator, who presents preliminary recommendations for the level 3 pursuit in question. The Committee then votes to make a compliance determination, which is the final finding for pursuits found in compliance. For pursuits found out of compliance, the

<sup>69</sup> California Vehicle Code Section 14602.1 requires that every local law enforcement agency complete a California Highway Patrol (CHP) report concerning a police pursuit, and forward to the CHP.

<sup>70</sup> DGO J-4, *Pursuit Driving*, effective 25Aug 14. XIII. I.1-5. pg. 22-23.

<sup>71</sup> Department General Order (DGO) G-4, *Departmental Safety*, dated 24 Aug 9. II. D.1. pg.2.

<sup>72</sup> DGO J-4, *Pursuit Driving*, effective 25Aug 14. XV. A.1-3. pg. 24.

<sup>73</sup> DGO J-4, *Pursuit Driving*, effective 25Aug 14. XV. B.pg. 24.

pursuit is referred to the full board. All level 2 pursuits automatically go to a full board, as well as any level 3 pursuits referred by the Committee. The full board includes a presentation from the investigating supervisor and subject members involved in the pursuit.<sup>74</sup> The Departmental Safety Committee Chairperson or designee forwards all pursuits found out of compliance to the Internal Affairs Division to initiate the discipline process.<sup>75</sup> All pursuits found out of compliance go to the Chief of Police for final approval.

According to Departmental General Order G-04, *Departmental Safety*, dated August 24, 1998, the Departmental Safety Committee is comprised of permanent and temporary members.<sup>76</sup>

#### **Permanent Members**

- Commander of the Personnel and Training Division, who shall serve as Chairperson
- Departmental Safety Coordinator
- Traffic Division Administrative Sergeant
- City Attorney Representative (non-voting)

**Temporary Members** (Appointed biannually by the Chief of Police on January 15 and July 15 to serve six-month terms)

- One Captain
- One Lieutenant
- One Sergeant
- One Police Officer

According to the Departmental Safety Coordinator, in practice, there are two sergeants assigned as temporary members of the Departmental Safety Committee.

## **Scope/Population and Methodology**

### **Audit Scope**

This inspection consisted of a review of the timeliness of OPD's vehicle pursuit review process for level 2 and 3 pursuits. The Auditor reviewed all level 2 and 3 pursuits that occurred during the period of January 1, 2020, to December 31, 2020, to ensure they were investigated and reviewed in a timely manner and in accordance with OPD's policy.

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<sup>74</sup> DGO J-4, *Pursuit Driving*, effective 25Aug 14. XV.C.pg. 24.

<sup>75</sup> DGO J-4, *Pursuit Driving*, effective 25Aug 14. XV.F.pg. 25.

<sup>76</sup> DGO G-4, *Departmental Safety*, dated 24 Aug 98. III. A.1.a-d. pg.4-5. For pursuit boards, the Departmental Safety Committee has been adjusted periodically. In *OIG's Assessment of the Oakland Police Department's 2018 Vehicle Pursuits* published in 2019, the Auditors found that the pursuit board members at the time did not match the members listed in DGO G-04. In 2021, the Chairperson was changed to a rotating captain because the Training Division Commander is no longer a captain's position.

**Audit Population**

To determine the audit population, the Auditor requested from the Departmental Safety Coordinator the 2020 pursuit spreadsheet that contains a list of all vehicle pursuit incidents that occurred from January 1, 2020, to December 31, 2020. There were 69 pursuit incidents during that time-period, including one level 1 pursuit, 20 level 2 pursuits, and 48 level 3 pursuits. Only level 2 and 3 pursuits which had completed the review process were reviewed. One level 1 pursuit and one level 2 pursuit still under review at the time the inspection was initiated were removed from the population. Therefore, a total of 67 completed pursuits were reviewed (19 level 2 and 48 level 3 pursuits). A breakdown of the level 2 and 3 pursuits and compliance findings are reflected in the table below.

**Table 2: Level 2 and Level 3 Pursuit Population and Compliance Findings**

Pursuit Level	Level 2	Level 3	Totals
<b>Total Population</b>	<b>19</b>	<b>48</b>	<b>67</b>
<b>Total In-Compliance</b>			
	<b>16</b>	<b>45</b>	<b>61</b>
<b>Total Out-of-Compliance</b>			
	<b>3</b>	<b>3</b>	<b>6</b>

**Audit Methodology**

To determine whether the pursuit investigation and review process is being conducted in a timely manner, the Auditor took the following steps:

The Auditor reviewed the 2020 pursuit spreadsheet provided by the Departmental Safety Coordinator, the pursuit Chronological Activity Logs in Vision<sup>77</sup> and the complaint records in Vision (for out of compliance pursuits only) to identify and collect the review dates for each reviewer for the 67 pursuit incidents.

1. **Date the pursuit incident occurred** (start).
2. **Date the supervisor forwarded the report to the next reviewer** (the supervisor was a sergeant in all 67 pursuit incidents reviewed).
3. **Date the lieutenant (first level commander) forwarded the report to the next reviewer.**
4. **Date the captain (second level commander) forwarded the report to the next reviewer** (when captain participated in the review process).
5. **Date BFO Admin forwarded the report to the next reviewer.**
6. **Date pursuit was heard by the Departmental Safety Committee at a pre-board or full board.**
7. **Date the Internal Affairs Division received the pursuit finding from the Departmental Safety Coordinator** (for out of compliance pursuits only).
8. **Date the Chief or designee approved the findings for out of compliance pursuits.**

The Auditor calculated the days between each reviewer in the workflow listed above to determine how long it took each reviewer to complete the level 2 and level 3 pursuit review and forward the pursuit packets to the next level in the chain of review.

<sup>77</sup>Vision is an electronic database that stores employee records such as assignments, training, uses of force, pursuits, etc. The pursuit form in Vision has a Chronological Activity Log that tracks system events (e.g., when the report is created and when a task is created) and manual entries by investigators/reviewers.

The Auditor also reviewed the Chronological Activity Logs for the 67 pursuit records in Vision to identify if the reason for any delays was documented.

Finally, the Auditor interviewed the Departmental Safety Coordinator and the two sergeants assigned to BFO Admin to get an overview of the Department's practice regarding pursuit reviews and timelines.

## References

- Department General Order J-4, *Pursuit Driving*, effective date August 25, 2014.
- Departmental General Order M-03, *Complaints Against Departmental Personnel or Procedures*, effective date December 22, 2017.
- Oakland Police Department, Report Writing Manual (RWM P-03), *Pursuit Report: Vision Form Completion Instructions*, effective date November 23, 2019 (Reference DGO J-04).
- Department General Order G-4, *Departmental Safety*, effective date August 24, 1998.

## Findings

### Finding #1

**Although policy requires that vehicle pursuits are investigated or reviewed by a supervisor and forwarded through the appropriate chain of review within 7 days of the incident, of the 67 pursuits reviewed, 84% of level 2 pursuit investigations and 23% of level 3 pursuit reviews completed by the supervisor exceeded the 7-day timeline. In 10 of 19 (53%) level 2 pursuit incidents, supervisors took more than three weeks to complete the investigation, indicating that 7 days may not be sufficient to complete a level 2 pursuit investigation.**

According to Department General Order J-4, *Pursuit Driving*, within **7 calendar days** of the pursuit, the reporting supervisor<sup>78</sup>/commander shall complete the appropriate pursuit report for each incident<sup>79</sup> and forward the pursuit packet for review through the appropriate chain of review.<sup>80</sup> For level 2 pursuits, sergeants are required to complete a level 2 pursuit (involving injury or property damage) investigation and investigative report to include:

- A summary of the pursuit including the events that led to engaging in the pursuit.
- Documentation of any discrepancies of interviews (or statements) of non-personnel and personnel witnesses.
- A determination as to whether the pursuit was in compliance with Departmental policy based on the analysis of the facts revealed by the investigation.
- Documentation of any relevant training issues revealed by the investigation; and

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<sup>78</sup> In all cases reviewed, the supervisor was a sergeant and are hereinafter referred to as "sergeant."

<sup>79</sup> Departmental General Order (DGO) J-4, *Pursuit Driving*, effective 25 Aug 14. XIII.D11.2. Pg.19.

<sup>80</sup> Per DGO J-4, *Pursuit Driving* (Pg. 21)," For the purpose of this order, the appropriate chain-of-review shall be through the first level-commander under which the involved officer was working during that tour of duty when the pursuit occurred."

- Analysis of relevant evidence including Portable Digital Recording Device (PDRD) video.<sup>81</sup>

In contrast, level 3 pursuits (not resulting in injury or property damage) do not require the completion of an investigative report, rather just a sergeant's review of the offense report and associated documents.

To determine whether sergeants completed the level 2 pursuit investigative reports and the level 3 pursuit reviews and forwarded the pursuit packets to a lieutenant within 7 days of the pursuit incident date, the Auditor requested and obtained, via the Departmental Safety Coordinator, access to the 2020 pursuit spreadsheet.<sup>82</sup> There were a total of 67 pursuits reviewed, including 19 level 2 pursuits and 48 level 3 pursuits during January 1, 2020, to December 31, 2020. The Auditor reviewed the 2020 pursuit spreadsheet and the Vision<sup>83</sup> pursuit records to capture the date the level 2 and level 3 pursuit incidents occurred and the date the sergeants forwarded the level 2 and level 3 pursuit packets to the lieutenants for review. In addition, the Auditor reviewed Chronological Activity Logs for the 67 pursuit records in Vision to confirm that the 2020 pursuit spreadsheet dates were correct and if the reason for any delays was documented.

Upon review of the 19 level 2 pursuit packets, the Auditor found that sergeants exceeded the 7-day timeline for completion of the investigation in 16 of the 19 (84%) level 2 pursuit incidents. Eleven of the 16 level 2 pursuit packets that exceeded the 7-day timeline had documented approved extensions, but only two provided explanations for the cause of the delay. In one pursuit incident, according to the Vision Chronological Activity Logs, the original pursuit file was deleted, and the sergeant had to create a second file. In another incident, the sergeant was unable to work on the file because he was assigned to work a Mobile Field Force (MMF) during a protest. The other nine pursuit incidents had no documented reason for the delay in the Vision Chronological Activity Logs that led to the need for an extension. Additionally, five of the 16 level 2 pursuit packets that exceeded the 7-day timeline did not include any documentation of extension requests or any explanation for the cause of the delay. Therefore, the Auditor was unable to determine the cause of the delay in 14 pursuit incidents that exceeded the 7-day timeline.

Of the 16 pursuit packets where the investigation took longer than 7 days, the time between the date the pursuit incidents occurred and the date the sergeants forwarded the pursuit packets to the lieutenants ranged from 8 days to 120 days. In six level 2 pursuit incidents, sergeants only exceeded the 7-day timeline by one to six days, however, in ten incidents, sergeants exceeded the 7-day timeline by more than two weeks, five of which exceeded the 7-day timeline by a month or more. The average amount of time sergeants took to complete all 19 level 2 pursuit packets was 33 days. The table below lists all level 2 pursuits that exceeded the 7-day supervisory investigative timeline.

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<sup>81</sup> DGO J-4, *Pursuit Driving*, effective 25 Aug 14. XIII.D.1. Pg.19-20, effective 25 Aug 14

<sup>82</sup> The Departmental Safety Coordinator's 2020 pursuit spreadsheet is an electronic spreadsheet used to track pursuit incidents and data during the 2020 calendar year.

<sup>83</sup> Vision is an electronic database that stores employee records such as assignments, training, uses of force, pursuits, etc. The pursuit form in Vision has a Chronological Activity Log that tracks system events (e.g., when the report is created and when a task is created) and manual entries by investigators/reviewers.

**Table 3: Numbers of days it took the sergeants to forward the level 2 pursuit packets to the lieutenant for incidents exceeding the 7-day supervisory review**

Date of Pursuit Incident	Date Sergeant forwarded to Lieutenant	# of days to forward to Lieutenant	# of days exceeded (7) day timeline	Extension Requested (Yes or No)	Was Cause of Delay Documented?
3/16/2020	3/24/2020	8	1	No	No
6/6/2020	6/14/2020	8	1	Yes	No
12/11/2020	12/19/2020	8	1	No	No
1/13/2020	1/22/2020	9	2	Yes	No
12/10/2020	12/19/2020	9	2	No	No
6/28/2020	7/11/2020	13	6	No	No
5/29/2020	6/23/2020	25	18	Yes	No
11/2/2020	11/30/2020	28	21	Yes	No
2/5/2020	3/5/2020	29	22	Yes	No
7/28/2020	8/28/2020	31	24	Yes	No
9/14/2020	10/18/2020	34	27	Yes	No
1/8/2020	2/15/2020	38	31	Yes	Yes
1/29/2020	4/3/2020	65	58	No	No
9/11/2020	12/9/2020	89	82	Yes	No
5/23/2020	8/24/2020	93	86	Yes	Yes
8/7/2020	12/5/2020	120	113	Yes	No

Upon review of the 48 level 3 pursuit packets, the Auditor found that there were 11 (23%) level 3 pursuit packets that exceeded the 7-day timeline. Four of the 11 level 3 pursuit packets that exceeded the 7-day timeline had documented approved extensions, but only one provided an explanation for the cause of the delay. According to the Vision Chronological Activity Log, the sergeant needed more time to review the pursuit audio before forwarding the file to the lieutenant, therefore, he requested an extension. The other three pursuit incidents had no documented reason for the delay in the Vision Chronological Activity Log that led to the need for an extension. Additionally, 7 of the 11 level 3 pursuit packets that exceeded the 7-day timeline did not include any documentation of extension requests or any explanation for the cause of the delay. Therefore, the Auditor was unable to determine the cause of the delay in 10 pursuit incidents that exceeded the 7-day timeline.

Of the 11 level 3 pursuit packets where the review took longer than 7 days, the time between the date the pursuit incidents occurred and the date the sergeants forwarded the pursuit packets to the lieutenants ranged from 8 days to 91 days. In eight level 3 pursuit incidents, sergeants exceeded the 7-day timeline by one to eight days and in two incidents, they exceeded the 7-day timeline by two weeks. In one pursuit, the sergeant exceeded the 7-day timeline by 12 weeks. The table below lists all level 3 pursuits that exceeded the 7-day supervisory review timeline.

**Table 4: Numbers of days it took the sergeants to forward the level 3 pursuit packets to the lieutenant for incidents exceeding the 7-day supervisory review**

Date of Pursuit Incident	Date Sergeant forwarded to Lieutenant	# of days to forward to Lieutenant	# of days exceeded (7) day timeline	Extension Requested (Yes or No)	Was Cause of Delay Documented?
4/4/2020	4/12/2020	8	1	No	No
8/2/2020	8/10/2020	8	1	No	No
1/14/2020	1/23/2020	9	2	No	No
1/23/2020	2/3/2020	11	4	Yes	Yes
10/1/2020	10/14/2020	13	6	Yes	No
11/30/2020	12/13/2020	13	6	No	No
12/29/2020	1/12/2021	14	7	Yes	No
11/19/2020	12/4/2020	15	8	Yes	No
10/12/2020	11/1/2020	20	13	No	No
11/14/2020	12/5/2020	21	14	No	No
2/14/2020	5/15/2020	91	84	No	No

Department General Order J-4, *Pursuit Driving* has the same timeline requirement for the level 2 supervisory pursuit investigation and the level 3 supervisory pursuit review despite the additional work required for the level 2 pursuit investigations. Although policy requires that vehicle pursuit investigations be completed and forwarded through the chain of review within 7 days of the incident, this timeline may be insufficient for level 2 pursuit investigations given the amount of work necessary for analyzing the evidence, including body worn camera footage, and preparing the investigative report. The Auditor noted that 53% of level 2 pursuit investigations took between 3 and 17 weeks to be completed and forwarded to the next level in the chain of review and the average amount of time for completion was 33 days. In contrast, 77% of level 3 supervisory pursuit reviews were completed within the 7-day timeline, and except for one pursuit that took 91 days, no level 3 supervisory pursuit reviews took more than three weeks. On average, the level 3 supervisory pursuit reviews took 8 days. Level 3 pursuit reviews do not require the completion of an investigative report, only a supervisor review of the offense report and associated documents.

Although extensions were requested in many of the pursuit incidents that exceeded the 7-day timeline, policy is silent on extension requests. The OIG recommends that the Department assess the supervisor’s 7-day timeline requirement for level 2 pursuit investigations and determine an appropriate amount of time commensurate with the amount of work required to conduct a level 2 pursuit investigation. The Department should also determine the parameters of extension requests (number and duration of extensions) for level 2 pursuit investigations and level 3 pursuit reviews and codify in policy these parameters and any updated timeline requirements.

**Additional Observation**

**Six sergeants exceeded the 7-day pursuit review timeline requirement multiple times.**

There were 15 sergeants who completed the 19 level 2 pursuit investigations, 12 of whom exceeded the 7-day timeline. Of the 12 sergeants who exceeded the 7-day timeline, four conducted two level 2 pursuit

investigations each and they all exceeded the 7-day timeline. Two of the four sergeants had significant delays, one of which took 89 and 93 days to complete the two level 2 pursuit investigations. The other sergeant took 65 and 120 days to complete the two level 2 pursuit investigations and was also late on two level 3 pursuit reviews (15 and 91 days). There were two additional sergeants who each had two level 3 pursuit reviews that took longer than the 7-day timeline. Five of the six sergeants who exceeded the 7-day review timeline more than once were assigned to one Area of the City (Area 5) and one of the sergeants was assigned to Area 3. The OIG recommends that the Department assess training needs for sergeants who repeatedly exceed the pursuit review timelines and ensure accountability if the missed timelines persist, for sergeants and the chain-of-command (those responsible for monitoring investigative timelines).

### **Finding #2**

**Aside from the 7-day timeline for the supervisor's investigation or review, Department policy does not include timeline requirements for the rest of the chain of review for pursuit packets. This may have potentially contributed to longer review periods and delays in the final compliance determination for some level 2 and 3 pursuit incidents. Although none of the 67 pursuits reviewed exceeded 180 days from date of pursuit to compliance determination, in some cases, individual reviewers took more than three weeks to complete the review.**

Departmental General Order J-4, *Pursuit Driving*, requires that supervisors review level 2 and level 3 pursuits, prepare a pursuit packet and forward the packet through the chain of review within 7 calendar days of the pursuit date. All level 2 and level 3 pursuits are ultimately reviewed by the Departmental Safety Committee at either a preliminary board review (pre-board) or a full board review depending on the level of the pursuit. In practice, all level 3 pursuits first go to the Departmental Safety Committee for a pre-board and all level 2 pursuits automatically go to a full board, as well as any level 3 pursuits referred by the Committee. The Department Safety Committee makes a compliance finding during the pre-board or full board. Any pursuits found out of compliance are forwarded to the Internal Affairs Division to generate a complaint file and prepare for the disciplinary process. The Chief of Police reviews and approves all pursuits found to be out of compliance. While there are no timeline requirements in DGO J-4 regarding the pursuit review process, aside from the initial 7 days for the supervisor's review, Departmental General Order M-03, *Complaints Against Departmental Personnel or Procedures* requires that complaint investigations be completed, reviewed, and approved within 180 days unless approved by the IAD commander.<sup>84</sup> Therefore, the Department's practice is to schedule pursuit boards prior to the 180-date, allowing time for any pursuits found out of compliance to be processed by IAD and forwarded to the Chief of Police for final approval within 180 days.

On May 19, 2021, the OIG met with the Oakland Police Departmental Safety Coordinator to get a clear understanding of the pursuit review process. According to the Departmental Safety Coordinator:

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<sup>84</sup> Departmental General Order (DGO) M-03 - *Complaints Against Departmental Personnel or Procedures*, effective 22 DEC 17. V.B.1. pg. 21.



“Even though policy only requires a review through the first level-commander,<sup>85</sup> OPD’s practice requires that all level 2 pursuits should go up to the captain. The captain’s review is only required for level 2 pursuits because level 2 pursuits are more serious incidents that require an investigative report. Additionally, the Department follows the following pursuit review workflow process for level 2 and level 3 pursuits:”

**Chart 1: Chain of review workflow for Level 2 and Level 3 Pursuit Reviews**



To determine whether the chain of review’s pursuit review process for level 2 and level 3 pursuits are being conducted in a timely manner and within the 180-day timeline per DGO M-3, the Auditor accessed the 2020 pursuit spreadsheet and the Vision pursuit records for the 67 pursuits during January 1, 2020, to December 31, 2020 reviewed for this inspection. The Auditor reviewed the 2020 pursuit spreadsheet and Vision pursuit records to capture the dates each reviewer in the chain of review received the level 2 and level 3 pursuit packets and the dates each reviewer reviewed and tasked the pursuit packets to the next reviewer in the workflow. In addition, the Auditor reviewed the Chronological Activity Logs for the 67 pursuit reports in Vision to confirm that the 2020 pursuit spreadsheet dates were correct and if the reason for any delays were documented.

Of the 19 level 2 pursuit packets reviewed, 10 had a reviewer (lieutenant, captain or BFO Admin) who took more than three weeks to complete the review. In five level 2 pursuits, the lieutenant took between 26 and 56 days to complete the review and all five lieutenants were assigned to the same Area of the City (Area 5). In three level 2 pursuits, the captain took between 23 and 29 days to complete the review, two were assigned to Area 3 and one was assigned to Area 1. In two pursuits, BFO Admin took 27 and 34 days to complete the review. Contributing to the longer review periods for some reviewers was the re-tasking of pursuit packets back to sergeants for additional work or corrections (see Finding #3).

On average, it took 32 days between the date the pursuit packet was received by the Departmental Safety Coordinator from BFO Admin and the date the pursuit board convened to make a compliance determination. In addition to many other responsibilities, the Departmental Safety Coordinator reviews all pursuits, tracks pursuit data and schedules boards for the Departmental Safety Committee. Therefore, the Departmental Safety Coordinator/Committee requires more time than the other

<sup>85</sup> Per DGO J-4, the appropriate chain-of-review shall be through the first level-commander under which the involved officer was working during that tour of duty when the pursuit occurred.

reviewers. When scheduling the boards, the Coordinator must work with multiple schedules (sergeants, commanders and subject matter experts). While boards are usually scheduled to hear multiple pursuit incidents, there are times when pursuit incidents have to be rescheduled because the board runs out of time or determines more information is necessary before making a final compliance determination.

For many level 2 pursuits, since sergeants were taking several weeks to complete investigations, reviewers taking three or more weeks to complete reviews further increased the total amount of time to complete the pursuit review process. Sergeants averaged 33 days to complete their investigations and the rest of the review process averaged 64 days (lieutenants averaged 20 days, captains averaged 7 days, BFO Admin averaged 5 days and the Departmental Safety Coordinator/Committee averaged 32 days). The total review process from date of pursuit incident to date of pursuit board ranged from 52 to 174 days. Apart from one level 2 pursuit, the pursuit board occurred well within 180 days of the pursuit incident date. In the one level 2 pursuit that took 174 days for the entire review to be completed, the sergeant took 120 days to complete the investigation and the lieutenant took 49 days to complete the review. The rest of the reviewers completed the reviews expeditiously. Furthermore, the pursuit was found in compliance, so it did not require a referral to IAD.

Tables 5 and 6 include the amount of time it took each reviewer in the workflow to review and forward the 19 level 2 pursuit packets to the next reviewer.

**Table 5: Numbers of days it took the chain of review to forward level 2 pursuit packets through the workflow**

# of days Sergeant to Lieutenant	# of days Lieutenant to Captain	# of days Captain to BFO	# of days BFO to Coordinator	# of days Coordinator to Pursuit Board	# of days Lieutenant to Pursuit Board	# of days Date of Incident to	Pursuit In Compliance?
38	12	5	0	29	46	84	Yes
9	19	2	9	19	49	58	Yes
65	38	1	0	15	54	119	Yes
29	56	0	0	27	83	112	Yes
8	26	5	0	82	113	121	Yes
5	10	1	2	68	81	86	Yes
7	1	N/A	34	43	78	85	Yes
93	5	3	1	42	51	144	Yes
25	20	23	1	0	44	69	Yes
8	8	27	1	23	59	67	Yes
13	12	8	0	19	39	52	Yes
31	18	0	27	37	82	113	Yes
120	49	2	3	0	54	174	Yes
89	35	0	15	6	56	145	No
5	17	16	0	29	62	67	No
34	16	29	0	42	87	121	Yes
28	0	0	2	49	51	79	No
9	14	2	2	42	60	69	Yes
8	15	1	2	42	60	68	Yes

Average # of Days	Average # of Days	Average # of Days	Average # of Days	Average # of Days	Average # of Days	Average # of Days
33	20	7	5	32	64	96

**Table 6: Summary of review time for individuals in the chain of review for level 2 pursuit reviews**

Level 2 Pursuits		
Chain of review	Range of Days to Complete Review	Summary of Days to Complete Review
Sergeant's investigation (7-day requirement)	5 to 120 days	<ul style="list-style-type: none"> <li>Three took 7 days or less</li> <li>Six took between 1 and 3 weeks</li> <li><b>Ten took more than 3 weeks</b></li> </ul>
Lieutenant's review	0 to 56 days	<ul style="list-style-type: none"> <li>Three took 7 days or less</li> <li>Eleven took between 1 and 3 weeks</li> <li><b>Five took more than 3 weeks</b></li> </ul>
Captain's review	0 to 29 days	<ul style="list-style-type: none"> <li>Thirteen took 7 days or less</li> <li>Two took between 1 to 3 weeks</li> <li><b>Three took more than 3 weeks</b></li> </ul> <p>*The Auditor noted that there was one level 2 pursuit that did not have a captain's review documented in Vision. Although a captain may have reviewed the physical packet, the Vision report was not routed through a captain.</p>
BFO Admin review	0 to 34 days	<ul style="list-style-type: none"> <li>Fifteen took 7 days or less</li> <li>Two took between 1 to 3 weeks</li> <li><b>Two took more than 3 weeks</b></li> </ul>
Departmental Safety Coordinator/Departmental Safety Committee review	0 to 82 days	<ul style="list-style-type: none"> <li><b>Two took more than 2 months</b></li> </ul>

For level 3 pursuits, the part of the review process that took the longest was the Departmental Safety Coordinator/Committee review. Of the 48 level 3 pursuits reviewed, the Departmental Safety Coordinator/Committee took an average of 40 days from date the Departmental Safety Coordinator received the pursuit packet from BFO Admin to the date the pursuit board convened to make a compliance determination. In contrast, for level 2 pursuits, the Departmental Safety Coordinator/Committee averaged 32 days for the review. In 10 of the 48 level 3 pursuits, the Departmental Safety Coordinator/Committee took more than two months between being tasked the pursuit packet in Vision and holding the pursuit board.

Level 2 pursuits and level 3 pursuits found out of compliance during the chain of command review take priority when scheduling pursuit boards. In 2020, some level 3 pursuits took longer to get to a board because level 2 pursuits took priority and there was limited time at the board to hear all pursuit incidents in the queue. Therefore, some level 3 pursuits that may have been scheduled to be heard by the board were postponed to the next board, causing a delay.

Lieutenants took an average of 6 days to complete the reviews and only took more than three weeks in one level 3 pursuit. Captains reviewed 23 of the 48 level 3 pursuits and took an average of 5 days to complete the reviews. BFO Admin took an average of 10 days to complete the reviews, with seven pursuits taking more than three weeks.

For the 48 level 3 pursuits reviewed, the sergeants' reviews averaged 8 days and the rest of the review process averaged 59 days. The total review process from pursuit incident date to the pursuit board date averaged 66 days and ranged from 23 days to 142 days, well within the 180-date.

Tables 7 and 8 include the amount of time it took each reviewer in the workflow to review and forward the 48 level 3 pursuit packets to the next reviewer.

**Table 7: Numbers of days it took the chain of review to forward level 3 pursuit packets through the workflow**

# of days Sergeant to Lieutenant	# of days Lieutenant to BFO	# of days Lieutenant to Captain	# of days Captain to BFO	# of days BFO to Coordinator	# of days Coordinator to Pursuit Board Review	# of days Lieutenant to Pursuit Board Review	# of days Date of Incident to Pursuit Board Review	Pursuit In Compliance?
9	N/A	14	1	31	0	46	55	Yes
7	N/A	6	3	9	59	77	84	Yes
11	N/A	3	0	1	68	72	83	Yes
6	N/A	3	3	14	47	67	73	Yes
1	6	N/A	N/A	11	47	64	65	Yes
4	12	N/A	N/A	0	47	59	63	Yes
91	0	N/A	N/A	4	36	40	131	Yes
5	15	N/A	N/A	0	30	45	50	Yes
6	10	N/A	N/A	13	84	107	113	Yes
1	1	N/A	N/A	18	14	33	34	Yes
1	3	N/A	N/A	4	22	29	30	Yes
2	N/A	1	0	1	97	99	101	Yes
8	N/A	0	11	4	44	59	67	No
5	16	N/A	N/A	1	63	80	85	Yes
5	16	N/A	N/A	1	63	80	85	Yes
2	6	N/A	N/A	7	68	81	83	Yes
1	N/A	18	0	1	55	74	75	Yes
3	N/A	6	0	2	63	71	74	Yes
7	2	N/A	N/A	4	70	76	83	Yes
1	N/A	5	3	61	0	69	70	Yes
3	N/A	4	7	1	55	67	70	Yes
6	N/A	1	3	27	29	60	66	Yes
6	4	N/A	N/A	76	14	94	100	Yes
1	N/A	2	6	0	85	93	94	Yes
7	N/A	8	2	0	55	65	72	Yes

7	6	N/A	N/A	43	13	62	69	Yes
8	N/A	1	2	0	48	51	59	Yes
5	2	N/A	N/A	20	28	50	55	Yes
7	N/A	7	4	4	16	31	38	Yes
13	6	N/A	N/A	35	22	63	76	Yes
7	1	N/A	N/A	1	65	67	74	Yes
6	2	N/A	N/A	1	61	64	70	No
20	N/A	2	62	45	13	122	142	Yes
1	4	N/A	N/A	0	57	61	62	Yes
2	5	N/A	N/A	18	23	46	48	Yes
21	5	N/A	N/A	1	33	39	60	Yes
1	0	N/A	N/A	1	26	27	28	Yes
15	N/A	34	1	3	37	75	90	Yes
5	1	N/A	N/A	0	21	22	27	Yes
1	N/A	1	0	2	19	22	23	Yes
13	N/A	3	0	2	26	31	44	Yes
0	19	N/A	N/A	15	42	76	76	Yes
2	N/A	6	1	0	30	37	39	Yes
2	9	N/A	N/A	5	22	36	38	Yes
6	N/A	11	3	2	14	30	36	Yes
7	N/A	1	0	6	16	23	30	Yes
5	7	N/A	N/A	4	37	48	53	Yes
14	N/A	12	3	1	13	29	43	No
Average # of days	Average # of days		Average # of days	Average # of days	Average # of days	Average # of days	Average # of days	
8	6		5	10	40	59	66	

**Table 8: Summary of review time for individuals in the chain of review for level 3 pursuit reviews**

Level 3 Pursuits		
Chain of review	Range of Days to Complete Review	Summary of Days to Complete Review
Sergeant's review process (7-day requirement)	0 to 91 days	<ul style="list-style-type: none"> <li>• Thirty-seven took 7 days or less</li> <li>• Ten took between 1 and 3 weeks</li> <li>• <b>One took more than 3 weeks</b></li> </ul>
Lieutenant's review process (to BFO Admin or Captain)	0 to 34 days	<ul style="list-style-type: none"> <li>• Thirty-five took 7 days or less</li> <li>• Twelve took between 1 and 3 weeks</li> <li>• <b>One took more than 3 weeks</b></li> </ul>
Captain's review process (23 level 3 pursuits were reviewed by a Captain)	0 to 62 days	<ul style="list-style-type: none"> <li>• Twenty-one took 7 days or less</li> <li>• One took between 1 and 3 weeks</li> <li>• <b>One took more than 3 weeks</b></li> </ul>
BFO Admin review process	0 to 76 days	<ul style="list-style-type: none"> <li>• Thirty-three took 7 days or less</li> <li>• Eight took between 1 and 3 weeks</li> <li>• <b>Seven took more than 3 weeks</b></li> </ul>

Departmental Safety Coordinator/Departmental Safety Committee review	0 to 97 days	<ul style="list-style-type: none"> <li><b>Ten took more than two months</b></li> </ul>
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Because out of compliance pursuits must be forwarded to IAD and receive final sign off from the Chief of Police, on August 19, 2021, the OIG met with the Departmental Safety Coordinator to inquire about the practice for reviewing and finalizing out of compliance pursuits. The Departmental Safety Coordinator stated,

“The Department’s practice is to schedule pursuit boards prior to the 180-date, allowing time for any pursuits found out of compliance to be processed by IAD and forwarded to the Chief of Police for final approval within 180 days. Any pursuits found out of compliance are forwarded to the Internal Affairs Division (IAD) within 7 days to generate a complaint file and prepare for the disciplinary process. The out of compliance pursuits are also forwarded to the Chief of Police within 7 days for final approval.”

The Auditor reviewed the six (three level 2 and three level 3) pursuits found out of compliance to determine whether the Departmental Safety Coordinator/Committee sent them to IAD within 7 days, and upon review, the Auditor was able to confirm that all six out of compliance pursuits had IAD case files created within 7 days of the completion of the pursuit board.<sup>86</sup> For the six out of compliance pursuits, the Chief of Police approved the findings within 21 days of the pursuit board date and all approval dates fell within 180 days of the pursuit incident date (Table 10).

**Table 9: Approval dates for out of compliance pursuits**

Pursuit Level	Pursuit Date	Board Date	Date IAD Received	# of days between Pursuit Board and IAD Receipt	Chief's Approval Date	# of days between Pursuit Board and Chief's Approval	# of days between Pursuit Date and Chief's Approval
3	4/4/2020	6/10/2020	6/17/2020	7	6/17/2020	7	74
3	10/7/2020	1/20/2021	1/27/2021	7	1/28/2021	8	113
3	12/29/2020	2/10/2021	2/17/2021	7	2/18/2021	8	51
2	9/11/2020	2/3/2021	2/10/2021	7	2/18/2021	15	160
2	9/12/2020	11/18/2020	11/25/2020	7	12/9/2020	21	88
2	11/2/2020	1/20/2021	1/27/2021	7	1/28/2021	8	87

The Department completed the review process within 180 days for all 67 pursuits reviewed, therefore complying with the timeline requirements in the Department’s complaint policy (DGO M-3) should a pursuit have been found out of compliance. However, some reviewers (lieutenants, captains, and BFO

<sup>86</sup> There were two out of compliance pursuits that were missing the Chief’s approval date in Vision, but the hard copy case packet had the approval date documented. OIG notified the Internal Affairs Division of the missing dates so the Vision record could be updated.

Admin) took more than three weeks to complete the review. Lieutenants exceeded three weeks in 6 pursuits, captains exceeded three weeks in 6 pursuits and BFO Admin exceeded three weeks in 8 pursuits. Additionally, although the Departmental Safety Coordinator/Committee needs more time than other reviewers to review and schedule the boards, there were 12 pursuits in which the review took more than two months.

Since policy doesn't prescribe timelines beyond the sergeants' review, there is no guidance as to how long each reviewer should take to complete the review. The lack of timeline requirements in policy may be contributing to longer review periods and delays in the final compliance determination for level 2 and level 3 pursuits. Timely reviews should be a priority of the Department to ensure deficiencies are identified and remedied as quickly as possible. Establishing timeline requirements in policy for each reviewer (lieutenant, captain, BFO Admin, and Departmental Safety Coordinator/Departmental Safety Committee) would help with improving the timeliness of the review process and provide an accountability tool for reviewers who miss timelines with no justification. Additionally, ensuring the pursuit policy has clear timelines for the review process will reduce the risk of violating the 180-day timeline requirement in DGO M-3 for out of compliance pursuits. Therefore, the OIG recommends the Department determine an appropriate timeline for the chain of review's (lieutenants, captains, BFO Administration and Department Safety Coordinator/Committee) pursuit review process and update policy with review timeline requirements.

#### **Additional Observation**

**The Department's policy is not sufficiently clear on the need for a captain's review. Of the nineteen level 2 pursuit packets reviewed, the Auditor found that five were forwarded by the lieutenant directly to BFO Admin rather than the captain, four of which were rerouted back to the captain and one missed the captain's review altogether.**

Five pursuit packets were forwarded by the lieutenant directly to BFO Admin, skipping the captain. In four of the five instances, BFO Admin sent the pursuit packets back to the captain for review, which caused slight delays in the review process. In one instance, the captain's review was missed completely in Vision. However, the Auditor noted that the captain could have reviewed the physical packet but did not document the review in Vision.

Policy requires a review through the first level-commander (which would be the lieutenant for all 67 pursuits reviewed), but the Department's practice is to have level 2 pursuit investigations reviewed through the chain of review up to a captain and TF-3257, *Pursuit Review Tracking Sheet for level 2 and 3 Pursuits*, dated March 2015, includes a signature block for the Division/Area Commander (a captain). Inconsistencies in the forwarding of level 2 pursuit packets may be a result of policy not being sufficiently clear about the chain of review, which in turn can lead to unnecessary delays in the review process. Therefore, the OIG recommends the Department update policy to clarify the chain of review workflow for level 2 and level 3 pursuits, including which pursuits require a captain's review.

**Finding #3**

**Of the 67 pursuits reviewed, lieutenants re-tasked 68% of level 2 pursuit packets and 31% of level 3 pursuit packets back to the reviewing sergeants for additional work or corrections, contributing to some lieutenants’ reviews taking more than three weeks. Of the 42 pursuits reviewed by a captain, captains re-tasked 16% of level 2 pursuit packets and 9% of level 3 pursuit packets back to the reviewing sergeants and lieutenants for additional work or corrections.**

According to Departmental General Order J-4, *Pursuit Driving*, within 7 calendar days of a pursuit, the reporting supervisor/commander shall complete the appropriate pursuit report and forward the pursuit packet for review through the appropriate chain of review.<sup>87</sup> To determine whether lieutenants completed the pursuit reviews and forwarded the pursuit packets to the captains in a timely manner for level 2 pursuits and to BFO Admin (or captains) for level 3 pursuits, the Auditor reviewed the Chronological Activity Logs in Vision for the 67 pursuits during January 1, 2020 to December 31, 2020 to capture the date the sergeants forwarded the pursuit packets to the lieutenants and date the lieutenants forwarded the pursuit packets to BFO Admin or the captains.

Upon review of the 19 level 2 pursuits, the Auditor found that 13 (68%) level 2 pursuit packets were sent back to the sergeant by the lieutenant for additional work or to make corrections. The lieutenants’ reviews for those 13 pursuits took between 5 and 56 days. In nine of the 13 pursuits, the lieutenant’s review took over two weeks, five of which took more than three weeks. The table below includes the time-periods of the Lieutenant’s level 2 pursuit reviews for the 13 incidents that involved re-tasking for additional work.

**Table 10: Numbers of days it took the lieutenant to forward the level 2 pursuit packet to the captain for pursuit incidents that were re-tasked back to the sergeant for additional work**

<b>Date Sergeant forwarded to Lieutenant</b>	<b>Date Lieutenant forwarded to Captain</b>	<b># of days it took to forward to Captain</b>
3/5/2020	4/30/2020	56
12/5/2020	1/23/2020	49
4/3/2020	5/11/2020	38
12/9/2020	1/13/2021	35
3/24/2020	4/19/2020	26
6/23/2020	7/13/2020	20
8/28/2020	9/15/2020	18
10/18/2020	11/3/2020	16
12/19/2020	1/3/2021	15
2/15/2020	2/27/2020	12
7/11/2020	7/23/2020	12

<sup>87</sup> Departmental General Order (DGO) J-4, *Pursuit Driving*, effective 25 Aug 14. XIII.D11.2. Pg.19.



6/14/2020	6/22/2020	8
8/24/2020	8/29/2020	5

Upon review of the 48 level 3 pursuits, the Auditor found that 15 (31%) level 3 pursuit packets were sent back to the sergeant by the lieutenant for additional work or to make corrections. The lieutenants' reviews for those 15 pursuits took between 6 and 34 days. In six of those 15 pursuits, the lieutenant's review took over two weeks, one of which took more than three weeks. The table below includes the time-periods of the lieutenants' 15 level 3 pursuit reviews that involved re-tasking for additional work.

**Table 11: Numbers of days it took the lieutenant to forward the level 3 pursuit packet to BFO Admin or the captain for pursuit incidents that were re-tasked back to the sergeant for additional work**

Date Sergeant forwarded to Lieutenant	Date Lieutenant forwarded to BFO Admin or Captain	# of days it took to forward to BFO Admin or Captain
12/4/2020	1/7/2020	34
12/3/2020	12/22/2020	19
4/18/2020	5/6/2020	18
4/12/2020	4/28/2020	16
4/12/2020	4/28/2020	16
2/23/2020	3/9/2020	15
1/23/2020	2/6/2020	14
1/12/2021	1/24/2021	12
3/9/2020	3/19/2020	10
12/8/2020	12/17/2020	9
7/27/2020	8/4/2020	8
12/31/2020	1/7/2021	7
7/30/2020	8/5/2020	6
10/14/2020	10/20/2020	6
12/7/2020	12/13/20	6

To determine whether captains completed the reviews and forwarded the pursuit packets to BFO Admin in a timely manner, the Auditor reviewed the 19 level 2 pursuits and 23 level 3 pursuits that were reviewed by a captain during January 1, 2020 to December 31, 2020 to capture the date the lieutenants forwarded the level 2 and level 3 pursuit packets to the captains and the date the captains forwarded the level 2 and level 3 pursuit packets to BFO Admin for review.

Of the 42 pursuit packets reviewed by a captain, the Auditor found that captains re-tasked three level 2 and two level 3 pursuits back to sergeants for additional work or to make corrections. The captains' reviews for those five pursuits took between 7 and 29 days. The tables below include the time-periods of the captain's pursuit reviews that involved re-tasking for additional work.

**Table 12: Numbers of days it took the captain to forward the level 2 pursuit packets to BFO Admin for pursuit incidents that were re-tasked back to the sergeant for additional work**

Date Lieutenant forwarded to Captain	Date Captain forwarded to BFO Admin	# of days it took to forward to BFO Admin
11/3/2020	12/2/2020	29
6/22/2020	7/19/2020	27
7/23/2020	7/31/2020	8

**Table 13: Numbers of days it took the captain to forward the level 3 pursuit packets to the BFO Admin for pursuit incidents that were re-tasked back to the sergeant for additional work**

Date Lieutenant forwarded to Captain	Date Captain forwarded to BFO Admin	# of days it took to forward to BFO Admin
4/12/2020	4/23/2020	11
5/13/2020	5/20/2020	7

Overall, the longest delays in the lieutenants’ reviews were impacted by re-tasking for additional work or corrections. The timeliness of the lieutenants’ review could be improved if there were fewer pursuit packets completed by sergeants that needed corrections or additional work. Therefore, the OIG recommends the Department provide additional pursuit investigation and review training to reduce the delays caused by additional work needed/corrections identified by the chain of review.

**Finding #4**

**A review of Vision Chronological Activity Logs found that sergeants only documented the reason for delay in 3 of the 27 level 2 and 3 pursuits that exceeded the 7-day timeline requirement. Additionally, although department policy does not include timeline requirements for the rest of the chain of review, documentation in the Vision Chronological Activity Logs was inconsistent among the rest of the reviewers regarding why the reviews took as long as they did, making it difficult to determine whether the length of time to review was justified.**

According to the OPD's Report Writing Manual P-03, *Pursuit Report: Vision Form Completion Instructions*, effective November 23, 2019, the Chronological Activity Log automatically keeps track of Vision system events (e.g., when the report is created and when a task is created). In addition, the Vision Chronological Activity Log allows the users to manually add and log events and comments to the report by adding a log entry.<sup>88</sup> To determine how many sergeants exceeded the 7-day timeline and if the

<sup>88</sup> Oakland Police Department, Report Writing Manual (RWM P-03), effective date 23NOV19, *Pursuit Report: Vision Form Completion Instructions*, (Reference DGO J-04) pg.12.

reason for the delay was documented in the Chronological Activity Logs, the Auditor reviewed the 67 pursuit records in Vision. In addition, although department policy does not include timeline requirements for the rest of the chain of review process, the Auditor reviewed the Chronological Activity Logs for the 67 pursuit records in Vision to determine if any reviewers, from lieutenant to Department Safety Coordinator, included documentation as to why the reviews took as long as they did.

Of the 67 pursuits reviewed, the Auditor found that the sergeants provided documentation in the Vision Chronological Activity Log regarding the reason for the delays in only 13% of level 2 pursuits that exceeded the 7-day timeline and in only 9% of level 3 pursuits that exceeded the 7-day timeline. Even though sergeants took up to 120 days to complete a level 2 pursuit investigation and up to 91 days to complete a level 3 pursuit review, the reason for the extended time-period of review was only documented in three pursuits. The table below shows the number of pursuits where sergeants exceeded the 7-day timeline and whether they documented the reason for delays.

**Table 14: Number of pursuits where sergeants documented the reasons for exceeding the 7-day timeline**

Sergeants' Investigation Process	Level 2 Pursuits	Level 3 Pursuits
# of Pursuits that exceeded the 7-day policy timeline	16	11
# of Pursuits with documentation by the Sergeant for the reason for the delay in the Vision Chronological Activity Logs	2	1
# of Pursuits with no documentation by the Sergeant for the reason for the delay in the Vision Chronological Activity Logs	14	10
% of Pursuits with documentation by the Sergeants	13%	9%
% of Pursuits with no documentation by the Sergeants	87%	91%

In 16 of the 67 pursuits reviewed, lieutenants entered notes into the Vision Chronological log about the need for additional work or corrections. There were an additional 12 pursuits that were identified by the Vision system as being re-tasked back to the sergeant by the lieutenant, but the lieutenant did not include any notes with further explanation. In 5 of the 42 pursuits reviewed by captains, there were notes entered by the captain about the need for additional work or corrections and all showed as being re-tasked back to the sergeant or lieutenant. Even for the pursuits with notes about additional work or corrections needed, it is unclear if that was the sole reason why some pursuit reviews took several weeks. The more significant delays in lieutenants' and captains' pursuit reviews occurred with level 2 pursuits. Additionally, there was no documentation from BFO Admin or the Departmental Safety Coordinator/Committee in the Vision Chronological Activity Logs beyond their approval to move to the next reviewer or compliance determinations in any of the 67 pursuits reviewed.

Even in cases where reviewers took weeks or months to complete the review, up to 56 days for lieutenants, up to 62 days for captains, up to 76 days for BFO Admin and up to 97 days for the

Department Safety Coordinator/Department Safety Committee, there were very few pursuits that included documentation regarding the amount of time it took to complete the review. With little to no documentation about why reviews may have taken as long as they did, it is difficult to determine if the amount of time is justified and if there are any accountability measures needed. Therefore, once the Department reassesses the sergeants’ 7-day timeline and implements timeline requirements for the chain of review, OIG recommends the Department require sergeants and the chain of review to document in the Vision Chronological Activity Logs the reason for the delays anytime the policy timeline is exceeded.

## Conclusion

This inspection found that changes in policy and additional training will help the Department improve the timeliness of pursuit reviews. Prior to the completion of this inspection, the Department published TF-8140, *UOF-Pursuit Timelines* (published in May 2021), which includes the Chief’s directive on timelines for pursuit reviews (**see Attachment A**). Although still not addressed in policy (DGO J-4), timeline requirements for pursuit reviews are clarified in TF-8140 and mirror the review timeline requirements for use of force investigations, including 4 days for lieutenants and 5 days for captains. TF-8140 also includes guidance on the approval of extensions. This additional guidance on review timelines should result in improvements in the timeliness of pursuit reviews.

Additionally, in March 2021, the Department created the Bureau of Risk Management, which includes a new Risk Impact Unit dedicated to tracking use of force and pursuit investigations, as well as facilitating use of force and pursuit boards. Prior to this change, the Department Safety Coordinator (one officer) was responsible for pursuit tracking, review and board scheduling. The Risk Impact Unit is led by a sergeant who oversees two officers. Therefore, the responsibilities that were handled solely by the Department Safety Coordinator in the past are now handled by a Unit of three. These changes in addition to the recommendations made in this inspection should help the Department improve the timeliness of pursuit reviews.

## Recommendations

### OIG Findings

### OIG Recommendations

<b>Finding #1</b>	<b>Recommendation #1</b>
Although policy requires that vehicle pursuits are investigated/reviewed by a supervisor and forwarded through the appropriate chain of review within 7 days of the incident, of the 67 pursuits reviewed, 84% of level 2 pursuit investigations and 23% of level 3 pursuit reviews completed by the supervisor exceeded the 7-day	The Department should assess the supervisor’s 7-day timeline requirement for level 2 pursuit investigations and determine an appropriate amount of time commensurate with the amount of work to conduct a level 2 pursuit investigation. The Department should also determine the

<p>timeline. In 10 of 19 (53%) level 2 pursuit incidents, supervisors took more than three weeks to complete the investigation, indicating that 7 days may not be sufficient to complete a level 2 pursuit investigation.</p>	<p>parameters of extension requests (number and duration of extensions) for level 2 pursuit investigations and level 3 pursuit reviews and codify in policy these parameters and any updated timeline requirements.</p>
<p><b>Additional Observation Finding #1</b>                  Six sergeants exceeded the 7-day pursuit review timeline requirement multiple times.</p>	<p><b>Recommendation #2</b>                  The Department should assess training needs for sergeants who repeatedly exceed the pursuit review timelines and ensure accountability if the missed timelines persist, for sergeants and the chain-of-command (those responsible for monitoring investigative timelines).</p>
<p><b>Finding #2</b>                  Aside from the 7-day timeline for the supervisor’s investigation or review, Department policy does not include timeline requirements for the rest of the chain of review for pursuit packets. This may have potentially contributed to longer review periods and delays in the final compliance determination for some level 2 and 3 pursuit incidents. Although none of the 67 pursuits reviewed exceeded 180 days from date of pursuit to compliance determination, in some cases, individual reviewers took more than three weeks to complete the review.</p>	<p><b>Recommendation #3</b>                  The Department should determine an appropriate timeline for the chain of review’s (lieutenants, captains, BFO Administration and Department Safety Coordinator/Committee) pursuit review process and update policy with review timeline requirements.</p>
<p><b>Additional Observation Finding #2</b>                  The Department’s policy is not sufficiently clear on the need for a captain’s review. Of the nineteen level 2 pursuit packets reviewed, the Auditor found that five were forwarded by the lieutenant directly to BFO Admin rather than the captain, four of which were rerouted back to the captain and one missed the captain’s review altogether.</p>	<p><b>Recommendation #4</b>                  The Department should update policy to clarify the chain of review workflow for level 2 and level 3 pursuits, including which pursuits require a captain’s review.</p>
<p><b>Finding #3</b>                  Of the 67 pursuits reviewed, lieutenants re-tasked 68% of level 2 pursuit packets and 31% of level 3 pursuit packets back to the reviewing sergeants for additional work or corrections, contributing to</p>	<p><b>Recommendation #5</b>                  The Department should provide additional pursuit investigation and review training to reduce the delays caused by additional work</p>

<p>some lieutenants' reviews taking more than three weeks. Of the 42 pursuits reviewed by a captain, captains re-tasked 16% of level 2 pursuit packets and 9% of level 3 pursuit packets back to the reviewing sergeants and lieutenants for additional work or corrections.</p>	<p>needed or corrections identified by the chain of review.</p>
<p><b>Finding #4</b> A review of Vision Chronological Activity Logs found that sergeants only documented the reason for delay in 3 of the 27 level 2 and 3 pursuits that exceeded the 7-day timeline requirement. Additionally, although department policy does not include timeline requirements for the rest of the chain of review, documentation in the Vision Chronological Activity Logs was inconsistent among the rest of the reviewers regarding why the reviews took as long as they did, making it difficult to determine whether the length of time to review was justified.</p>	<p><b>Recommendation #6</b> The Department should require sergeants and the chain of review to document the reasons for delays in the Vision Chronological Activity Logs.</p>

**Attachment A: TF-8140 (Use of Force and Pursuit Review Timelines)**

<b>Level 2 &amp; 3 Use of Force Investigation Timeline</b>			
Investigation completed and forwarded to Lieutenant	Lieutenant shall review and forward to Captain	Captain shall review and forward to BFO Admin	Forward to BFO Admin
<b>Within 7 days</b>	<b>Within 4 days</b>	<b>Within 5 days</b>	UOF case file turned into BFO Admin for quality control
<b>Extensions:</b> <ul style="list-style-type: none"> <li>■ Extensions up to 30 days shall be approved by the reviewing Captain</li> <li>■ Extensions beyond 30 days require Deputy Chief approval</li> </ul>			

<b>Level 4 Use of Force Investigation Timeline</b>		
Supervisor shall review and forward to Lieutenant	Lieutenant shall review and forward to BFO Admin	Forward to BFO Admin
<b>By the end of the supervisor's next scheduled work day</b>	<b>5 days (from the date of when the UOF occurred)</b>	UOF case file turned into BFO Admin for quality control
<b>Extensions:</b> <ul style="list-style-type: none"> <li>■ Extensions up to 30 days shall be approved by the reviewing Captain</li> <li>■ Extensions beyond 30 days require Deputy Chief approval</li> </ul>		

<b>Level 2 &amp; 3 Vehicle Pursuit Investigation Timeline</b>			
Investigation completed and forwarded to Lieutenant	Lieutenant shall review and forward to Captain L2 BFO Admin L3	Captain shall review L2 investigations and Forward to BFO Admin	Forward to BFO Admin
<b>Within seven (7) calendar days of the pursuit</b>	<b>Within 4 days*</b>	<b>Within 5 days*</b>	J-4 case file turned into BFO Admin for quality control
<small>*Note: DGO J-4 does not prescribe these command review timelines; the directive from the Chief of Police is that reviews follow UOF standards.</small>			
<b>Extensions:</b> <ul style="list-style-type: none"> <li>■ Extensions up to 14 days shall be approved by the reviewing Lieutenant</li> <li>■ Extensions beyond 14 days require Captain approval</li> </ul>			