

Recommendation 5.2: The SFPD needs to hold supervisors and officers accountable for failure to properly document use of force incidents.

Response to Recommendation 5.2:

SFPD has developed a process to hold supervisors accountable for failing to properly document use of force incidents. SFPD issued a department bulletin (17-006), which mandates that supervisors complete a Supervisory Use of Force Evaluation Form for each reportable use of force. *See also* Department Bulletin 18-171 (supersedes DB 17-006). After each reportable use of force, a supervisor completes a Supervisory Use of Force Evaluation Form, in which the supervisor provides various details about an officer's use of force, including whether the supervisor believes that the use of force was within department policy. The supervisor emails the Supervisory Use of Force Evaluation Form to the Early Intervention System (EIS) Unit. If there is data missing or incomplete on the form, the EIS Supervisor prepares a missing/incomplete data memo and gives it to the commanding officer for the relevant station or unit. The commanding officer is required to respond to the missing/incomplete data memo with a corrected Supervisory Use of Force Evaluation Form and he or she must note on the missing/incomplete data memo whether the supervisor who provided the incomplete Supervisory Use of Force Evaluation Form was given remedial training on how to complete the form and whether any further follow up is needed with the supervisor. While SFPD has not taken any formal disciplinary action against a supervisor for incomplete or inaccurate Supervisory Use of Force Evaluation Forms to date, the Department has ordered 75 supervisors to undergo counseling or retraining since October 2018 because of deficiencies found in the submissions.

Based upon all of the above, the Department of Justice finds that SFPD is in substantial compliance with this recommendation. Please let us know if you have any questions or would like to discuss these further. Thank you.

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Finding # 5

The SFPD does not consistently document the types of force used by officers. Out of a sample of more than 500 reported incidents of use of force, only five had documented the type of use of force on the Use of Force Log. Department Bulletin 14-111 - Documenting Use of Force, drafted April 4, 2014, requires officers to document the type and amount of force used, including the use of impact weapons, with supervisors responsible for ensuring compliance with the policy. However, through 2015, the team found that force data remained incomplete. The overall lack of consistent data collection is indicative of limited oversight of force reporting.

Recommendation # 5.2 The SFPD needs to hold supervisors and officers accountable for failure to properly document use of force incidents.

Response Date: 5/19/20

Executive Summary:

Department Bulletin (DB) 17-006 (Supersedes DB 15-237, Amends D.G.O. 5.01) mandated that supervisors must complete a Supervisory Use of Force Evaluation Form for each reportable use of force, and submit through the chain of command before the end of their watch. The Supervisory Use of Force Evaluation was rolled out department wide on January 9, 2017. The Supervisory Use of Force Evaluation form existed as a method to collect data, and as a checklist to be used on during the use of force investigation.

Included with DB 17-006 was a step by step guide which showed line by line how to fill out the form and where to get this information from. This guide was attached to the Department Bulletin and was easily accessible to all Supervisors who reference the DB on the proper procedures.

On October 11, 2018, DB 18-171 (Supersedes DB 17-006, Amends D.G.O. 5.01) – [Attachment # 1]. was issued in order to reflect updated and improved changes on the Supervisory Use of Force Evaluation Form. Included with DB 18-171 is a step by step guide which shows line by line how to fill out the form and where to get this information from. This guide was attached to the Department Bulletin and is easily accessible to all Supervisors who reference the DB on the proper procedures. This shows a continual improvement loop as the department improves on procedures around Use of Force policies.

In addition, DGO 5.01 Section VII B I – [Attachment # 2]. lists the following responsibilities for an officer during a Use of Force incident. These responsibilities are:

1. Officer's Responsibility. Any reportable use of force shall be documented in detail in an incident report, supplement incident report, or statement form. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.
 1. When the officer using force is preparing the incident report, the officer shall include the following information:



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- The subject's action necessitating the use of force, including the threat presented by the subject;
- Efforts to de-escalate prior to the use of force; and if no, why not;
- Any warning given and if no, why;
- The type of force used;
- Injury sustained by the subject;
- Injury sustained by the officer or another person;
- Information regarding medical assessment or evaluation, including whether the subject refused;
- The supervisor's name, rank, star number and the time notified.

DKO 5.01 (Section VII B 2 Supervisor's Responsibility) – [Attachment # 2] describes in detail how a supervisory evaluation is conducted during a use of force investigation.

2. "Supervisor's Responsibility" it states:

"When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order. The supervisor shall:

1. Immediately respond to the scene unless a response is impractical, poses a danger, or where officers' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
2. Ensure the scene is secure and observe injured subjects or officers;
3. Ensure that witnesses (including officers) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses, however supervisors shall ensure identification to the best of their ability;
4. Ensure photographs of injuries are taken and all other evidence is booked;
5. Remain available to review the officer's incident report, supplemental incident report and written statement at the direction of the superior officer. A supervisor shall not approve an incident report or written statement involving a use of force that does not comply with the requirements as set forth in VII.B. 1. above;
6. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.
7. Complete and submit the Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch;
8. Complete the Use of Force Log (SFPD 128) – [Attachment # 3] and attach one copy of the incident report by the end of watch."



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Compliance Measures:

1. **Process established for ensuring supervisors and officers properly document use of force incidents.** -Refer to Executive Summary

Compliance Measure Status – Met (compliance measure met pursuant to DATE of RFI. Information has been cut and pasted into answer)

2. **Accountability for not properly documenting use of force incidents.**

DB 18-171 (Updated Supervisory Use of Force Evaluation Form) (Issued 10/03/18-Supersedes DB 17-006, Amends DGO 5.01) – [Attachment # 1] mandates that supervisors must complete a Supervisory Use of Force Evaluation Form for each reportable use of force and submit through the chain of command before the end of their watch.

The EIS unit receives the completed Supervisory Evaluation Forms – [Attachment # 4] daily by email. EIS then complies the corresponding incident report and Use of Force log to look for discrepancies. (See Use of Force Details Summary Report and Monthly Use of Force Audit Reports below).

In the past, SFPD did not track clerical errors involving the completion of Use of Force Log. Previously, the Supervisory Use of Force Evaluation forms were sent back to the Captain at the district level for corrections. The data from the Supervisory Use of Force Evaluation form is then entered into the Administrative —Investigative Management (AIM) database where all use of force data can then be disseminated to the mandated divisions or units, and used as part of the Early Intervention System. See Memorandum.

In October 2018, SFPD started tracking clerical errors on a using an excel spreadsheet.

On 12/7/2018, Unit Order 18-02, Supervisory Use of Force Evaluation Form-Missing Data – [Attachment # 5] procedures, was established to address this compliance measure.

See sample of Memorandum sent from EIS Unit to Commanding Officer at Tenderloin Station regarding missing data/incomplete. The memorandum now asks two questions:

- Was the supervisor given remedial training on how to complete the form?
- further follow-up needed with the Supervisor?
- **Compliance Measure Status – Met** (compliance measure met pursuant to DATE of RFI. Information has been cut and pasted into answer)



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3. Evidence of remedial action if deficiencies are found.

Response Date: 04/20/20

In order to satisfy the remaining compliance measure of this recommendation, the Department must provide evidence of any remedial action taken to hold supervisors accountable for failure to properly document use of force incidents on the **Use of Force Log (SFPD 128) – [Attachment # 3]**

Per the RFI, Hillard Heintze (HH) is requesting the Department to “provide evidence of department annual review of remedial or corrective action, including administrative or disciplinary, or since June 2018.” In addition, HH stated in the RFI that the “review process appears to be too focused on clerical and missing data errors as opposed to a substantive evaluation of a supervisor’s or officer’s action.”

On June 25, 2018, Commander Peter Walsh documented a **memorandum – [Attachment # 6]** to former Deputy Chief Michael Connolly regarding Chief Scott’s question, “Is there any documented instance of a supervisor being held accountable via discipline, counseling, etc.?” Commander Walsh stated that “to date, there has been no history of administrative disciplinary action against administrative or clerical errors. In the past, instances involving unchecked boxes were sent back for correction.”

As of April 28, 2020, there continues to be no history of administrative disciplinary action against administrative or clerical errors on a Use of Force Evaluation form which was detailed in a **memorandum – [Attachment # 7]** written by the Commander of Risk Management, Robert O’Sullivan and approved by Assistant Chief Robert Moser.

Commander O’Sullivan’s memorandum also indicated a significant change in the Use of Force Evaluation form to reflect a recommendation made by Mike Dirden of Hillard Heintze. In response to Mr. Dirden’s suggestion, the current **UOF Evaluation Form [SFPD-575B (09/18)] – [Attachment # 4]** has a section for the reviewing supervisor to evaluate and document whether the UOF was within department policy.

The section allows the author to select one of the following three options:

- 1) Yes
- 2) No
- 3) Determination Pending Investigation

If the answer selected is either “No” or “Determination Pending Investigation,” the supervisor completing the UOF Evaluation shall immediately notify their Superior Officer (i.e. Lieutenant) **DGO 1.06 (Section I.A.3 – Duties of Sergeants) – [Attachment # 8]**

Upon notification, the Superior Officer shall immediately notify their senior ranking member (i.e. Captain) who is then required to remain personally responsible for the conduct of the matter until



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relieved of responsibility. The Commanding Officer shall assure that proper investigative steps are being taken while notifying their chain of command as well as the Internal Affairs Division (IAD) and the Department of Police Accountability (DPA). **DGO 1.06 (Section I.A.4 – Investigation of Misconduct) – [Attachment # 9]**

In the event that a supervisor determines that a member's use of force is unreasonable, unnecessary or that an Officer has applied force that results in serious bodily injury or death, the supervisor shall immediately notify his/her superior officer. The Superior Officer shall respond to the scene and assume command while notifying both his/her Commanding Officer and the units responsible for the on-going investigation; IAD and the DPA. **DGO 5.01 (Section VII B 3 Superior Officer Responsibility) – [Attachment # 2]**

In April of 2019, the San Francisco Police Department and the San Francisco District Attorney's Office signed a **Memorandum of Understanding (MOU) – [Attachment # 10]** regarding the investigation of use of force incidents resulting in serious bodily injury. The MOU defines "covered incidents" as any uses of force resulting in injury that requires admission to the hospital or upon an SFPD supervisory evaluation that determines that the use of force appears unreasonable and resulted in serious bodily injury. Serious bodily injury is defined by California Penal Code section 243(f)(4), as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

The MOU states that both the San Francisco Police Department and San Francisco District Attorney's Office will jointly and cooperatively investigate all covered incidents. The SFDA's role will be to lead the independent investigation and assessment of whether SFPD personnel committed any violations of criminal law. Independent of SFDA, the SFPD's role will be to conduct ancillary criminal and administrative investigations of all covered incidents.

In addition, upon the notification on the necessity of an immediate investigation, the Commanding Officer (i.e. Captain) shall notify the Department of Police Accountability (DPA) when a complaint alleges unnecessary force, resulting in serious injury or medical treatment. As required, the Superior Officer shall document the allegation and any investigative steps taken in a memorandum. Upon forwarding the memorandum through the chain of command, the Commanding Officer shall then forward the report promptly to the DPA for further investigation as well as a copy to IAD. **DGO 2.04 (Section 2.04.03 B1-5) – [Attachment # 11]**

The current Use of Force Log **Use of Force Log (SFPD 128) – [Attachment # 3]** requires three levels of approval and signature; Sergeant, Lieutenant and Captain. If during the concurrence process, a higher level of supervision determines that the force used was excessive, unreasonable or unnecessary, then that supervisor would be required to adhere to the duties and responsibilities as defined by **DGO 1.06 (Section I.A.4 – Investigation of Misconduct) – [Attachment # 9]** and **DGO 5.01 (Section VII B 3 Superior Officer Responsibility) – [Attachment # 2]**. In both circumstances, a memorandum would be required detailing all notifications and any further investigative steps taken in the identification of the



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alleged misconduct which would then by matter of procedure; be forwarded through the chain of command and assigned to the appropriate investigative units as described above.

Since October 2018, SFPD EIS Unit started tracking errors on Use of Force Evaluation forms on an excel spreadsheet – [Attachment # 12]. In addition, on 12/07/2018, Unit Order 18-02, Supervisory Use of Force Evaluation Form-Missing Data – [Attachment # 5] procedures, was established to ensure accountability for supervisors who improperly document use of force incidents.

The EIS Unit order states:

When a UOF Evaluation is received by the EIS Unit and it is found to have missing data, the following procedures shall be followed by the EIS Unit in order to gather the missing data.

These procedures will also help commanding officers to hold supervisors accountable and provide remedial training when needed.

Once a UOF Evaluation is received by the EIS Unit, it is logged as being received by the station/unit. The form is then entered into AIM and given a sequential use of force tracking number by the AIM system.

If data is missing from the form, the designated data entry person gives the incomplete UOF Evaluation Form to the supervisor of the EIS Unit.

The EIS supervisor shall do the following:

1. *Prepare a memo to the commanding officer of the station/unit outlining what data is missing. The police incident number and supervisor who completed the form shall be identified in the memo along with a due date to have the form completed and sent back to the EIS Unit.*
 - a. *The commanding officer or their designee shall answer two questions asked in the memo. [Updated as described below]*
 - i. *"Was the supervisor given remedial training on how to complete the form?"*
 - ii. *"Is further follow up needed with the supervisor?"*
2. *Print a hard copy of the prepared memo as well as the incomplete UOF Evaluation Form. The memo and the incomplete UOF Evaluation Form are then sent to the attention of the commanding officer to their station/unit for follow up by inter-department mail.*
3. *Email the commanding officer as well as the commanding officer's clerk advising them of the missing data and due date to have the completed form returned by. A digital copy of the memo and the incomplete UOF Evaluation*



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shall be attached to the email along with an advisement that a hard copy has been forwarded to their station/unit through inter-department mail.

4. *Enter the following information into the Use of Force Evaluation Missing Data Log which is maintained by the EIS Unit.*
 - a. *Month the UOF occurred in*
 - b. *Station the form was received from*
 - c. *Police incident number*
 - d. *Date of the UOF incident*
 - e. *Description of the data that was missing*
 - f. *Date the data is due to be returned by*
 - g. *if the data was received back with the missing/corrected data*

Once the EIS Supervisor has completed all 4 steps it is incumbent on the commanding officer or their designee to return the completed memo as well as the completed UOF Evaluation back to the EIS Unit on or before the due date.

The commanding officer shall have discretion on how to provide remedial training and any follow up they deem necessary for the supervisor who completed the UOF Evaluation.

Once the completed UOF Evaluation and memo are returned to the EIS Unit either by inter-department mail or email, the EIS Supervisor shall log that the form was returned with the missing data included. The UOF Evaluation is then returned to the designated data entry person to complete the use of force entry into AIM. The completed form shall then be uploaded into AIM as a digital attachment to the use of force entry.

The completed UOF Evaluation Form and memo shall be scanned and uploaded into the EIS Shared Folder to be kept per SFPD destruction Policy by the EIS Unit Supervisor.

When a UOF Evaluation is received by the EIS Unit and it is found to have missing data, policy requires the EIS supervisor to send a Memorandum to the Commanding Officer of the supervisor who improperly documented the use of force incident. This Memorandum has been updated recently to include remediation training provided to the Sergeant who improperly documented the UOF evaluation, as well as the Lieutenant who approved the inaccurate UOF evaluation.

The previous memorandum asks two follow questions:

- 1) Was the supervisor given remedial on how to complete the form?
- 2) Is further follow up needed with the Supervisor?



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The current memorandum asks the following question:

- 1) Did you provide any remedial training to the supervisor on how to properly complete the Use of Force Evaluation form?
 - a. If so, what type(s) of remedial training methods were used?
- 2) Does the supervisor need any further follow-up to assist him/her to complete the Use of Force Evaluation form without errors in the future?

Please review the attached **Commanding Officers' corrective memorandums – [Attachment # 13]** that document that corrections were made to the **UOF Evaluation Form [SFPD-575B (09/18)] – [Attachment # 4]** and those responsible for the clerical errors were counseled and retrained in accordance with **Unit Order 18-02, Supervisory Use of Force Evaluation Form-Missing Data – [Attachment # 5]**

Since October 2018, there have been seventy-five (75) Sergeants and/or Lieutenants that have been provided counseling and retraining. Please see the breakdown below. For additional information, please see **EIS excel spreadsheet – [Attachment # 12]**

- Year 2018- 23
- Year 2019- 46
- Year to date 2020- 6

Currently in 2020, data indicates that there is a 43% reduction in clerical errors on submitted **UOF Evaluation Form [SFPD-575B (09/18)] – [Attachment # 4]** year to date in comparison to this time in 2019 (Jan – April: total incidents 14).

In conclusion, in order to satisfy the remaining compliance measure (CM3), the SFPD has taken the above listed actions to ensure that remedial action is both addressed and corrected through extensive documentation and tracking; updated UOF Forms to include a more compressive review, and accountability through documented counseling and retraining for all members to include both the Sergeants and Lieutenant responsible for the identified clerical errors.