

Albuquerque Police Department's

July – December 2023 OIS Review

Completed 2024

Albuquerque Police Department
4-15-2024

Between July 1 – December 2023, the Albuquerque Police Department (“APD”) experienced seven (7) officer involved shootings (“OIS”). An OIS is an undesired result for APD as APD strives to avoid using deadly force in favor of de-escalation or less lethal force options; however, de-escalation or less lethal options are not always practical or successful. Additionally, an OIS also represents a circumstance where APD officers or members of the public were placed in a life-threatening situation. Given the high number of shootings in 2022, APD determined it would convene an executive working group to review the OIS and prepare findings and recommendations. Although the number of OIS was reduced in 2023, APD remains dedicated to conducting these reviews on a semi-annual basis. It is essential to note the lens used by the working group and how the group compliments other types of oversight for using force.

APD Policy

An OIS is considered the use of deadly force under APD’s use of force policy regardless, of whether the individual is killed, or even struck, by law enforcement. APD’s deadly force policy provides: “department personnel shall not use deadly force against an individual unless the officer has an objectively reasonable belief that an individual poses a threat of death or serious physical injury to Department personnel or another” (Policy 2-52). In addition, APD officers must attempt to use de-escalation, when feasible, prior to using deadly force and the use of deadly force must be the minimum force necessary under the circumstances.

Although APD’s policy imposes greater restriction on an officer’s use of force than the minimum amount required by the Fourth Amendment to the United States Constitution, APD’s policy is based upon the objective reasonableness framework articulated by the United States Supreme Court in Graham v. Connor, 490 U.S. 286 (1989). “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Graham, 490 U.S. at 396. “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,” [] violates the Fourth Amendment. Id. (citation omitted). “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” Id., at 396-397. The Graham standard considers the totality of circumstances of a use of force encounter.

Other Types of Review

Pursuant to APD policy and consistent with the Court-Approved Settlement Agreement (“CASA”) with the United States Department of Justice (“DOJ”), every officer-involved shooting is investigated by the Internal Affairs Force Division (“IAFD”). Through the end of 2023, the External Force Investigation Team (“EFIT”) supports ungraduated IAFD personnel in completing timely and quality use of force investigations. The requirements of the substance and quality of completed IAFD investigations as well as training and procedure for IAFD investigations are outlined in Paragraphs 60-77 of the CASA.

All completed OIS investigations are presented to the Force Review Board (“FRB”). The purpose of the FRB is described by Paragraph 78 of the CASA. The FRB discusses each case and

assesses the incidents for policy, training, equipment, or tactical concerns. In addition, on a quarterly basis, the FRB is presented with use of force data to identify significant trends and correct any deficiencies Data Analytics Division reveals. Due to the timing of this review, not all OIS have completed review by IAFD and FRB.

The Multi-Agency Task Force described in the CASA is tasked with conducting criminal investigations into all OIS and other instances of potential criminal conduct by APD officers.

Finally, the City has multiple methods for addressing civilian complaints against police, including the excessive use of deadly force. The Civilian Police Oversight Agency has the authority to investigate civilian complaints against police officers. The procedure for civilian complaints is described in the CASA.

Under the CASA, the Independent Monitoring Team (“IMT”) headed by Dr. James Ginger assesses the status of APD’s compliance with the paragraphs referenced above. Additionally, the CASA (Paragraphs 14-16) contains general requirements regarding all types of use of force. Pursuant to the CASA, the IMT and DOJ review and approve all policies and training regarding use of force. The IMT monitors APD’s use of deadly force as well as the processes in place to investigate and review uses of deadly force. In addition to the monitoring conducted by the IMT, APD provides information directly to the DOJ. The DOJ has been providing additional review and technical assistance regarding de-escalation and use of force against individuals with mental illness. It should be noted that not all 2023 OIS have completed each of these processes, in this case, most have not.

Review by Working Group

The working group consists of a cross-section of reviewers. This group included four deputy chiefs, one major, one legal advisor, and one external contractor who specializes in uses of force. APD hired the contractor who retired with 31 years of law enforcement experience and expertise to provide additional insight from an external, professional perspective in the OIS review process. The working group for the review for the second half of 2023 with one exception is the same working group that conducted the 2022 and first of 2023 reviews. Thus, reviewers were also familiar with the historical context of recent OIS.

The purpose of this working group is not to duplicate the efforts by the various types of oversight currently existing for OIS, but to approach the seven OIS in a different light. The group did not re-examine whether the shootings were within APD’s policy or the quality of the investigations. Even if every OIS was within policy, one of the purposes of this working group was to explore whether there are methods to reduce the overall number of OIS. In conducting this analysis, the working group explicitly applied the “20/20 vision of hindsight”, using information gathered after the shooting as well as information on other OIS to assess these incidents. The working group’s findings do not address whether the officer’s actions were objectively reasonable. Further to the extent the working group identified similarities between OIS, these are insufficient to evidence a pattern of conduct. When reviewing the OIS, the working group gave special consideration to whether de-escalation was used and where using a less lethal tool earlier in the encounter might have avoided the need for deadly force. To be clear, a determination that officers

may have missed an opportunity for less-lethal force does not indicate that less-lethal force rather than deadly force should have been used at the time of the shooting, but that less-lethal force *might* have brought the incident to a resolution before the need for deadly force arose. Further, the working group also considered other measures that *might* have avoided the need for a deadly force. Again, these considerations do not follow the legal standard set forth regarding use of deadly force and and/or the duty to properly train and supervise officers. Finally, the summary of facts is based upon the working group's initial review which may be different than the facts definitively determined by IAFD's investigation.

Discussion of Individual OIS in chronological order

1. Case #23-23-0057640

On July 20, 2023, Investigative Support Unit Detectives requested the assistance of APD SWAT for their support and resources to barricade an individual with an active warrant for homicide inside an apartment. In addition to the homicide warrant, the suspect was also known to be armed and dangerous.

APD SWAT responded to the request for service with assistance from the New Mexico State Police SWAT team due a shortage of available APD SWAT members. Upon arrival of SWAT operators, PA Announcements were made to residence in response to which two females and a male individual (unidentified at this time) exited the apartment. One of the female individuals advised law enforcement the suspect was inside the apartment with a two-year-old child. Law enforcement was also informed the child is sensitive to loud sounds, and it was not fully known if the child was being held hostage. A plan was then devised to breach the front door, however, the breaching tool was only able to partially push the door open due to a couch being placed behind the door. A drone was then used to observe the inside of the apartment through the slightly breached front door. An estimated 75 percent of the apartment was cleared, however, a bedroom and bathroom door were closed. A bed was seen pushed up against the bedroom door. During SWAT's movements, announcements were continually made directing the suspect to surrender. The suspect made no attempt to surrender to law enforcement.

Due to the fact that officers had been unable to locate the child and the suspect's intentional attempts to conceal his location and/or prevent law enforcement entry, a second entry point was then made through a bedroom window. In order to gain a visual inside a closet to determine whether the suspect and/or child was inside the closet, an officer entered the bedroom. Upon the officer's entry, the suspect began shooting at officers, striking an officer in the arm. An APD SWAT operator as well as a NMSP SWAT operator returned fired, striking the suspect. The suspect eventually succumbed to his injuries. The child was later located in a bathroom uninjured.

Items for Consideration:

It should be noted several referrals were generated from the FRB including a review of the Memorandum of Agreement with NMSP, the policy for SWAT team leaders, compliance with tactics training, and duties of the SWAT supervisor. IAFD also initiated non-disciplinary referrals as a result of its investigation.

The working group determined APD did attempt de-escalation prior to initiating entry. SWAT did not utilize chemical munitions due to the presence of a young child in the residence. SWAT was attempting to locate the child when the suspect opened fire. Thus, the working group concluded there was no missed opportunity for less-lethal force. Concerns regarding officer safety precautions were already addressed by the IAFD and FRB referrals. Additionally, based upon its review of recent shootings, the working group did not identify any systemic concerns related to this shooting.

2. *Case # 23-0065713*

On August 17, 2023 two officers responded to a call of a suspicious person near a newer model sedan in the parking lot of an apartment complex. The vehicle did not have a license plate displayed and the male was spray-painting the wheels black.

Officers detained the male suspect and had him sit on a nearby curb. The male suspect claimed to only speak Spanish despite officers observing that his phone was utilizing a web browser in English. The male suspect then stood up and began running away from Officers on foot. The male ran up the stairs of the apartment complex and then jumped off the balcony. Both officers ran after the male on foot. The male suspect then returned to the sedan, retrieved a handgun from inside the vehicle, and continued his flight on foot around the apartment complex. The officers split up in an attempt to cut the male off. On the west side of the building, an officer caught up to the male suspect and fired multiple rounds from his handgun at the suspect. The male suspect then jumped over a fence and fled from the scene. The suspect was caught a couple days later. The suspect was not struck by the officer's rounds.

Items for Consideration:

It was determined that there was not an opportunity for de-escalation as the individual abruptly presented a firearm. However, there was potentially a missed opportunity for officers to gain control of the suspect before he presented a deadly threat. The working group also discussed how officers are notified of translation services available to officers as there was a potential language barrier issue in this encounter.

3. *Case # 23-0092462*

On November 16, 2023, APD Auto Theft Detectives were conducting surveillance on a stolen vehicle in the area of San Mateo/Lomas. The vehicle was described as a White Toyota pickup truck. Detectives were aware this vehicle had been from a storage unit along with 11 firearms in late October 2023. Detectives attempted a traffic stop in the area of San Mateo/Lomas but the vehicle fled and was followed by Air Support. The vehicle went into a parking garage in the uptown area and dropped off an unidentified passenger. Air Support followed the vehicle Westbound on I40 to the area of I40/Coors. The vehicle then proceeded to the area of Central/98th St and parked in the parking lot near the El Mezquite Market. A male suspect exited the vehicle and began to walk East on the North side of the El Mezquite Market. A detective deployed a 40mm at the suspect. Although the suspect was struck by the less-lethal round, the suspect

continued fleeing from officers. As detectives pursued on the suspect on foot, the suspect turned and pointed a handgun at officers. Several officers fired at the suspect, striking him at least once.

Items for Consideration:

It was determined that de-escalation was not an option as the individual pointed his firearm at the direction of officers when they tried to detain them. Less-lethal force was attempted, but did not stop the suspect's actions; this issue is discussed below. Additionally discussed further below, this OIS is one of several during this review that occurred during a foot pursuit.

4. *Case #23-93907*

On November 21, 2023, officers were dispatched to call regarding a suspect waving a gun around an apartment complex. Responding officers arrived and developed a force array and began searching for the male. The responding officers located the suspect in the nearby apartment complex. Upon officers' attempt to contact him, the male suspect began to run westbound through the apartment complex while possessing two bags. As the responding officers began to run after him, the suspect discarded the two bags and continued running northbound on Vail Ave. The suspect began to run into the yards of nearby homes. During the foot pursuit, the suspect retrieved a gun out of his right pocket and pointed the gun at officers. One officer fired at the suspect, striking him at least once. The suspect did not sustain life-threatening injuries.

Items for Consideration:

It was determined that de-escalation was not an option as the individual immediately ran then pointed his firearm at the direction of officers when they tried to detain them. The working group did not determine there was a missed opportunity for less-lethal force given the circumstances of the situation. Additionally, as discussed further below, this OIS is one of several during this review that occurred during a foot pursuit.

5. *Case #23-0094971*

On November 25th, 2023, officers responded to a shoplifting call near the Cottonwood mall. Two individuals were identified as committing felony shoplifting. Officers were able to detain a female suspect, while the male suspect fled on foot. Officers pursued the male on foot. During the foot chase, the male brandished a pistol and continued running with it in his hands. The suspect entered the Coldstone ice cream shop while armed, prompting officers to attempt to evacuate the business. The male eventually exited the back door and continued fleeing on foot.

Eventually the suspect stopped near several local businesses. Officers were able to establish a perimeter and deploy with several less-lethal options. Officers did attempt to speak with the suspect over several minutes, attempting to address his concerns, and repeatedly asking him to drop the firearm. The suspect did not do so. The suspect began to raise the firearm in the direction of officers on scene prompting an officer assigned to less-lethal to deploy a 40 mm round at the suspect. Shortly after, while the suspect was still pointing the firearm at an officer, an officer fired at the suspect. The suspect passed away from his injuries.

Items for Consideration:

The working group determined officers did attempt de-escalation at the conclusion of the foot pursuit. The officer did an admirable job of attempting to build a rapport with the suspect and even offered to get the suspect a cigarette. Unfortunately, these efforts were not successful in convincing the suspect to drop the weapon. Less-lethal force was attempted shortly before the shooting. Additionally, as discussed further below, this OIS is one of several during this review that occurred during or at the conclusion of a foot pursuit. The working group also noted issues with supervision of the scene.

The shooting itself was determined to violate APD's use force policy. Discipline and other remedial measures stemming from IAFD and the FRB's review are still being evaluated.

6. *Case #23-0098642*

On December 17, 2023, two specialized units initiated a plan to arrest an individual with an active warrant for a probation violation who was also suspected of committing both an armed robbery and aggravated assault with a deadly weapon within the previous week. Detectives conducting surveillance observed the suspect enter an apartment compliance. Detectives planned to set a perimeter and use the PA system to direct the suspect to exit the apartment based upon the suspect's violent history. As detectives attempted to execute this plan, the suspect jumped from a second story window and fled on foot. Detectives deployed a 40mm which did not stop the suspect's actions despite striking him. As the suspect continued to run at detectives, then turned and point a firearm at detectives. Several officers fired at the suspect. The suspect ultimately succumbed to his injuries.

Items for Consideration:

The working group determined there was not an opportunity to de-escalate the situation as the suspect fled before detectives could fully establish their perimeter. Additionally, less-lethal force was attempted prior to the shooting, but was unsuccessful. This issue is addressed further below. Finally, this shooting is one of several which occurred during a foot pursuit.

7. *Case#23-00105287*

On December 30, 2023 at approximately 2017 Hours, SE Dispatch received an automated license plate reader (ALPR) hit for a stolen vehicle in the area of Louisiana/Central Ave. Several officers responded and attempted to perform a high-risk traffic stop on the vehicle in the parking lot of the Adam Food Market. Almost immediately upon officers' attempts to contact the driver of the vehicle, the driver opened fire on officers, striking one officer in the hands. Officers returned fire striking the driver.

Items for Consideration:

It was determined there was no opportunity to de-escalate prior to the shooting. Additionally, as the suspect immediately opened fire on officers, there was not a missed opportunity for less lethal force.

Observations regarding OIS

Original Call Type:

Of the seven OIS in this review, two incidents began as minor offenses, two were initiated related to property crimes, and three were in relation to violent offenses. None of the incidents began as behavioral health calls.

Use of Weapons

100% (7/7) of OIS involved an individual armed with a firearm. In addition, 29% (2/7) of OIS involved individuals were shooting at officers at the time of the OIS; in both of these instances officers were actually struck by the suspect's gunfire prior to the shooting.

Foot Pursuit

5/7 of the shootings occurred during or after a foot pursuit.

Use of Less-Lethal Munitions

In 2022 and 2023, the working group identified several shootings that *might* have been avoided if officers had used less-lethal force to bring the situation under control prior to the need for deadly force arising. During this review period, the working group only identified a single shooting in which there was a potential missed opportunity for less-lethal force. This indicates the corrective action previously taken regarding this issue has been effective.

Several OIS were preceded by the unsuccessful use of 40 mm impact munitions. The working group explored several concerns regarding this issue, including whether the use of a 40 mm was provoking "sympathetic fire" by other officers on scene, whether 40 mm were used against suspects who are generally not susceptible to this type of force tool, i.e emotionally distributed or intoxicated suspects who often have a higher than average pain tolerance, and the overall effectiveness of this tool.

Upon review of the OIS in the latter half of 2023, the working group determined it did not appear that 40 mm prompted other officers to use deadly force as a form of "sympathetic fire." In each 40 mm, the use of less lethal was adequately announced and/or there was a significant delay between the deployment of the 40mm and the use of deadly force. Additionally, none of the 40 mm deployments involved suspects who are generally less likely to respond to pain compliance techniques. Instead, it appeared, 40mm impacts were sometimes an insufficient deterrence to suspects who were determined to evade law enforcement. Extended range 40 mm rounds are available which are intended to increase the efficacy of this tool.

Use of De-Escalation

Based upon the information available to it, the working group did not identify any OIS where de-escalation was available but failed to be used. The working group found de-escalation was used in 2/7 OIS and was not available as an option given the dangerousness of the suspect's actions in 5/7 OIS.

Identification of Individual Prior to OIS

APD has various systems for identifying individuals with prior contact with the police, both to identify individuals with mental illness and prior violent encounters with the police. Of course, this information can only be used when officers identify the individual. Out of 7 OIS, officers knew the identity of the individual prior to the shooting in 3 instances.

Identification of Individuals in Crisis

Based upon information available to the working group, none of the individuals involved in an OIS had a history of calls involving mental health. Additionally, the working group determined none of the calls involved circumstances where the officers should have determined the individual was in a crisis state.

Compliance with APD policy

Only four cases have completed the entire investigative and review process. In one case, the shooting was deemed out of compliance with APD policy.

Experienced of Officers-Involved

35% of the officers involved had between six-eight years of experience. 38% had less than six years while 21% had more than six years of experience. 55% of the officers involved were e-CIT certified with 8 e-CIT officers using deadly force.

Prior Force

Two officers were involved in two shootings in 2023. There was no statistically significant difference in previous out of policy force between officers who used lethal force and officers who did not.

Characteristics of Individuals Involved

All individuals involved in the shooting were male. Nine of the individuals were Hispanic, 3 were White/non-Hispanic, 1 was other Non-Hispanic, and one was mixed race non-Hispanic. Four of the individuals involved were perceived to be in crisis. Two individuals involved were 18 years old, while the remainder ranged from 24-42 years old.

New Action Items:

The working group identified several new action items based upon its review of OIS from the second half of 2023.

Use of 40 mm impact munitions

Two units at APD currently have these extended range rounds. These units, with the assistance of IAFD, will review deployments with the extended range rounds to determine if these rounds are more effective. If determined to be effective, APD will consider expanding availability of extended range munitions.

Policy Regarding Foot Pursuits

As discussed above, 5/7 OIS took after during a foot pursuit. While foot pursuits alone are not considered a use of force, given that foot pursuits can result in a use of force in an especially dynamic situation, the working group recommended APD develop a foot pursuit policy. The policy will mirror the vehicle pursuit policy which requires officers to consider the potential threat caused by the fleeing suspect, whether the suspect has been identified by law enforcement, and any potential threats presented by engaging in a foot pursuit. Of course, these considerations must also be balanced with APD's mandate to enforce the law.

Uniform/Equipment

It was observed in two OIS that officers were using non-standard equipment (handcuffs and rifle sling). While this equipment does not impact the actual use of force, APD strives to ensure its officers display a professional appearance to include their equipment at all times. APD will ensure officers are issued rifle slings in appropriate colors and designs and ensure policy reflects the uniformity required to such equipment in the future.

Conclusion

This review process has proven beneficial for APD and the community in which it serves. APD intends to continue these reviews on a semi-annual basis moving forward to discuss any future OIS.