

SEATTLE POLICE DEPARTMENT AND DEPARTMENT OF JUSTICE SETTLEMENT AGREEMENT AND MEMORANDUM OF UNDERSTANDING

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BACKGROUND

On March 31, 2011, the United States Department of Justice (DOJ) Civil Rights Division began a comprehensive investigation of the Seattle Police Department (SPD). This investigation was triggered by a series of highly publicized uses of force on unarmed residents from several minority communities in Seattle. On December 16, 2011 the DOJ released the findings of its investigation ([DOJ Findings Letter](#)). It found that the SPD engaged in a pattern or practice of using unnecessary or excessive force in violation of the Fourth Amendment to the United States Constitution and Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994.

The DOJ did not make a finding that SPD engaged in a pattern or practice of discriminatory policing, but the investigation did raise serious concerns on this issue. The City of Seattle and the DOJ entered into a [Settlement Agreement](#) and signed a [Memorandum of Understanding](#) (MOU) to address SPD's use of force, the concerns over bias in its policing practices, and to overhaul its accountability and oversight apparatus to transform the department into a modern urban constitutional police service. This paper (1) provides an overview of the DOJ findings and (2) describes the City's and the SPD's response to the settlement agreement, including the accountability and civilian oversight structures prescribed by the settlement and accompanying MOU.

DOJ FINDINGS

The DOJ made findings or articulated concerns related to (1) use of force; (2) discriminatory policing, also known as bias-based policing; and (3) professional accountability. Those findings are summarized below.

Use of Force

The DOJ found that SPD engaged in a pattern or practice of unnecessary or excessive force on a number of factors including the following:

- When SPD officers used force, they did so in an unconstitutional manner nearly 20 percent of the time based on a randomized, stratified statistically valid sample of SPD's own internal use of force reports.
- SPD officers too quickly resorted to the use of impact weapons, such as batons and flashlights, with baton use unnecessary or excessive 57 percent of the time.
- SPD officers escalated situations and used unnecessary or excessive force when arresting individuals for minor offenses.

- A number of SPD officers used unnecessary or excessive force together against a single subject. Of the excessive use of force incidents that DOJ discovered, 61 percent of the cases involved more than one officer.
- A small number of officers accounted for a disproportionate number of use of force incidents.

Additionally, the DOJ found that these use of force issues were the product of systemic problems stemming from inadequate policies, training and supervision. It claimed that the SPD did not properly monitor or investigate uses of force.

Discriminatory or Bias-based Policing

The DOJ investigation discovered serious concerns about practices that could have a disparate impact on Seattle's many minority communities and could have an adverse impact on the SPD's ability to establish trust with these communities. It found that SPD officers exhibit confusion between a casual, social contact and an investigative detention, also known as a "*Terry*" stop. It offered technical assistance to ensure that SPD officers understand that, unless they have a sufficient factual basis to detain someone, a person is free to walk away from police and free to disregard a police request to come or stay. Officers should also understand that in such circumstances, the decision to "walk away" does not by itself create a reason to detain. A person on the street is not always required to comply with police orders. Some SPD data suggested that inappropriate pedestrian encounters may disproportionately involve youth of color.

The SPD's ability to maintain the trust of the community was hindered by their deficient policies related to bias-based policing and pedestrian stops. Inadequate supervision, poor tactical communications skills, and the failure to proactively and consistently engage the community all contributed to eroding public trust. Finally, the department failed to keep meaningful data that would permit it to evaluate and take action to address allegations of biased policing.

Office of Professional Accountability

The DOJ found that the SPD's [Early Intervention System](#) (EIS) and the [Office of Professional Accountability](#) (OPA) do not provide the intended backstop for the failures of the direct supervisory review process.

The EIS is a strategy to address at-risk behavior. It is separate from, and does not replace, the existing system of discipline for violations of policy.¹ OPA disposed of nearly two-thirds

¹ Once an SPD employee exceeds a preset trigger of risk factors, an Early Intervention Assessment is conducted. The progress of the employee is carefully tracked, and the employee's chain of command is personally responsible and accountable for the implementation of the individual program and such other steps as may be necessary to address any at-risk behavior, demonstrated indicators of stress, or training deficiencies, and ultimately achieve the professional goals set for the officer. It should employ risk management strategies that are not punitive or disciplinary in nature.

of citizens' complaints by sending them to the precincts, where the quality of investigations was poor. OPA's investigation classification and findings systems were so complex that they damaged its credibility and undermined public confidence in the investigative process. The DOJ noted a consistent overuse and misuse of the finding "Supervisory Intervention," which resulted in neither a true finding nor a remediation of the officer. Additionally, supervisory interventions were often improperly used to dispose of allegations as serious as excessive use of force and discriminatory policing simply to avoid the stigma of a formal finding.

THE SETTLEMENT AGREEMENT AND MEMORANDUM OF UNDERSTANDING

As a result of the findings, in July, 2012, the DOJ and the City of Seattle entered into a Settlement Agreement and a MOU to "ensure that police services are delivered to the people of Seattle in a manner that fully complies with the Constitution and laws of the United States, effectively ensures public and officer safety, and promotes public confidence in the Seattle Police Department ("SPD") and its officers."²

Settlement Agreement

The agreement is structured to provide clear, measurable requirements while providing the flexibility to craft solutions that were right for the community. To do this, the parties agreed to move the agreement as an order of the United States District Court for the Western District of Washington and agreed that the MOU was a contract between the City and the United States. In both agreements, the parties, a jointly selected monitor, and a Community Police Commission (CPC), the creation of which was required by the Settlement Agreement, each have specific roles and responsibilities.

Table 1 presents the elements of the Settlement Agreement and the MOU, the specific elements of each topic and summary details.

Table 1: DOJ Settlement Agreement Issues and Responsibilities

Subject	Item	Details
Use of Force	<ul style="list-style-type: none">• Use of force principles• Weapon-specific policies• Use of force reporting and investigation• Force investigation team• Use of force committee• Training• Warnings to SPD employees prior to personnel investigations, also known as <i>Garrity</i> warnings	Guide SPD on policy revision and development as it crafts policies that are weapon specific. SPD will form an investigative team to investigate serious uses of force and form a committee to review uses of force. Training on policies and Garrity will follow.
Crisis Intervention	<ul style="list-style-type: none">• Officer Training	SPD will continue training officers on how to interact with individuals with mental illness, substance abuse and other behavior issues; and to track information about interactions with these individuals.

²Settlement Agreement, p.5. line 2. Retrieved from
http://www.justice.gov/sites/default/files/crt/legacy/2012/07/31/spd_consentdecree_7-27-12.pdf

Stops and Detentions	<ul style="list-style-type: none"> • Policy • Training • Supervision • Community Police Commission 	SPD will provide clear guidance to clarify that social contacts and non-custodial interviews are voluntary. SPD will also train officers and review reports. CPC may make recommendations on the subject.
Bias-free Policing	<ul style="list-style-type: none"> • Policy • Training • Supervision • Community Police Commission 	SPD will clarify its unbiased policing policy, develop and train officers, supervisors and command staff; CPC may make recommendations.
Supervision	<ul style="list-style-type: none"> • Supervisor Staffing and Assignments • Early Intervention System 	SPD will deploy an adequate number of qualified first-line supervisors where a patrol officer is assigned to a single, consistent, clearly identified first-line supervisor.
Office of Professional Accountability (OPA)	<ul style="list-style-type: none"> • Reporting Misconduct and Retaliation • OPA Manual • OPA Liaison Officers 	OPA to work with supervisors to monitor supervisor actions and facilitate EIS.
Monitoring	<ul style="list-style-type: none"> • Jointly Selected Monitor 	SPD will oversee the settlement agreement and provide technical support. The monitor may also provide assistance to the CPC.

Source: Settlement agreement, MOU and MOU summary between DOJ and City of Seattle

Memorandum of Understanding

The MOU is a component of the comprehensive settlement agreement. Like other documents related to the DOJ findings, the MOU was filed with the Court. Its contents are consistent with those of the Settlement Agreement. The MOU establishes the CPC, creates a Crisis Intervention Committee (CIC), and defines the parameters of the agreement.

The MOU requires the City to establish the CPC within 90-days of the document's effective date. Representation on the CPC must include residents from each precinct, police personnel, faith communities, minority and ethnic organizations, and student or youth entities. It details how the commission should operate, outlines its responsibilities, and dictates that it must maintain regular contact with the City, hold public meetings at regular intervals, and make recommendations that get posted on the City's website. To comply with this requirement the City created the CPC through [Ordinance 124021](#) in 2012.

The MOU also instructs the department to create a CIC built off the current coordination efforts with mental health providers within the City. The committee should serve as a problem-solving forum for interagency issues and include representation from the civilian leadership of the City government; Public Health-Seattle & King County; King County's Sheriff's Office; King County Prosecutor's Office; City of Seattle Municipal Court; the City Attorney's Office; Washington State Department of Social and Health Services' Division of Behavioral Health and Recovery; the Washington affiliate of the National Alliance on Mental Illness; the Downtown Emergency Services Center; professionals from the emergency health care receiving facilities; the King County Jail; and mental health and homeless services professionals and advocates or others. This group should develop resources, create policies and procedures for referrals, and evaluate SPD's crisis intervention training curriculum and crisis intervention program