Recommendations for the Carnegie Mellon University Police Department & Public Safety at Carnegie Mellon University

21CP Solutions

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I. INTRODUCTION, SCOPE & APPROACH

A. Scope of the Assessment

Carnegie Mellon University ("CMU," "Carnegie Mellon," or "the University") engaged 21CP Solutions ("21CP") to conduct an assessment of the Carnegie Mellon Police Department ("CMUPD" or "the Department") across several specific areas:

(1) A review of the Department's, or the University's, policies, training, processes, and practices across the following critical activities:
- Use of force;
- Stops, searches, and arrests;
- Accountability, including civilian complaints, misconduct and discipline, and body-worn cameras;
- Crowd and protest management; and
- Training

(2) An evaluation of the Department's relationship with nearby law enforcement agencies, including the Pittsburgh Police Department and the University of Pittsburgh Police Department; and

(3) An evaluation of mechanisms for the University and CMUPD to strengthen public safety at the University in the future, including:
- A review and recommendations regarding services provided by campus security services and the relationship of campus security to CMUPD;
- A review and recommendations of the formal mechanisms through which campus security and CMUPD relate, communicate, and coordinate; and
- A review and recommendations regarding types of services and responses that might be better provided by different, alternative, or new campus services.

Across all areas, CMU indicated that, with the impending retirement of current CMUPD Chief Tom Ogden, it also wanted any recommendations that might speak to the critical attributes of and the process of hiring the next Chief of Police.

B. Approach

21CP typically bases its assessments and recommendations on an analysis of three primary sources of information or raw "data": paper, performance, and people. Our assessment of public safety at CMU, and the CMUPD, is no exception.

First, 21CP requested and received an array of written materials and information about and relating to CMUPD's operations and performance and to community safety at Carnegie Mellon. This included policies, procedures, protocols, training materials, annual reports, prior assessments, and other materials. These were evaluated in light of best practices; emerging, promising approaches; and national standards. Throughout this report, we detail or reference the specific materials, and the particular best, emerging, or national practices through which 21CP considered the Department's materials.

Second, 21CP considered some overall, aggregate information about CMUPD's performance and activities, including with respect to uses of force; stops, searches, and arrests; and other functions. 21CP also analyzed data on calls for service and the volume of various types of public safety interactions.

Third, between September and November 2021, 21CP engaged with and obtained feedback from approximately 135 individuals in total. 21CP conducted 19 conversations, focus groups, and interviews with Carnegie Mellon University stakeholders about public safety at CMU and CMUPD. 21CP also convened conversations, focus groups, and interviews with 30 CMUPD personnel of varying roles, ranks, and assignments. Lastly, 21CP received eight anonymous emails through our "voicesofcmu@21cpsolutions.com" email address.

21CP worked with CMU's administration to identify an initial set of groups, organizations, and individuals with whom to speak. The objective for this element of the engagement was to have conversations with people from diverse backgrounds, across an array of roles within and outside the University, and with varying life experiences and experiences with the police. During many conversations, 21CP asked participating community members to think about and share with us other individuals or organizations with whom we should speak to strengthen the diversity of our engagement – with 21CP following up on suggested follow-up contacts.

Individuals elected to speak with us, which means that participation was voluntary and self-selecting. Because participants were not randomly selected, the views of participants in our community conversations may or may not ultimately be reflective of the University community as a whole. Likewise, the "sample" of the University with whom we spoke was not statistically significant. Substantively, this means that it is entirely possible that, during our focus group and interview process, some important views were not, or were not sufficiently, represented simply because of the particular nature of the population with whom we interacted.

Despite these limitations, however, small-group discussions, semi-structured interviews, and focus groups are appropriate and useful methods of qualitative research:[1]

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[1] *See, e.g.*, Steven J. Taylor, et al, *Introduction to Qualitative Research Methods* (4th ed. 2015) (describing various modes and standards of qualitative inquiry); Pranee Liamputtong, *Focus Group*

> [Q]ualitative research . . . allows you to identify issues from the perspective of your study participants, and understand the meanings and interpretations that they give to behaviour, events, or objects . . . . Qualitative research is useful for exploring new topics or understanding complex issues; for explaining people's beliefs and behaviour; and for identifying the social or cultural norms of a culture or society.[2]

Although another set of conversations with different community stakeholders might well yield different or additional insights, the 21CP project team believes that the commonality of a number of themes and the recurrence of several issues and suggestions indicate that the views of the stakeholders with whom we spoke reflected at least some material part of the CMU community.

This report cites, characterizes, and sometimes quotes stakeholder participants from our focus group and interview process. To ensure candid discussions and to preserve the confidentiality of participants who sometimes shared sensitive or traumatic experiences, 21CP did not log the identities of who said what during our stakeholder engagement. Their affiliations were recorded, for context, along with the specific contents of what they said. Accordingly, this report refers to specific stakeholders in generic ways – as "a student," "a faculty member," or the like.

21CP observes at the outset that even as this scope of work necessarily implicates a variety of important issues and community topics, and even as the approach that 21CP took to completing its evaluation involved the analysis of substantial information and engagement with a number of University stakeholders, it is not a fully exhaustive, encyclopedic evaluation of the CMUPD or of public safety at CMU. The University engaged 21CP to address an important but defined set of topics. Where appropriate in this report, we note areas where it may be useful for the University to devote additional resources in the future or to partner with its rich academic and intellectual resources to explore further or conduct additional analysis.

This report aims to provide specific guidance, and practical recommendations, for the University, the CMU community, and the CMUPD based on the particular history, needs, values, and experiences of University stakeholders. However, CMU is not alone in encountering the topics that this report addresses. 21CP has conducted, and is conducting, similar reviews for other universities and municipalities that address many of the same issues and challenges. Perhaps unsurprisingly, given the common challenges that

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Methodology: Principles and Practice (2011) (summarizing approaches to focus group research); Gisela Bichler and Larry Gaines, "An Examination of Police Officers' Insights into Problem Identification and Problem Solving," 51 *Crime & Delinquency* 53 (2005) (applying focus group or group interview techniques to police officers).

[2] Monique Hennink, et al, *Qualitative Research Methods* 9–10 (2011).

communities and police departments are facing, some of the recommendations we propose for CMU and CMUPD, are the same. Even where this report makes common recommendations – and in some places discusses the logic and rationale for those recommendations using the same language, similar examples, or parallel citations as we did in reports to other institutions and communities – the specific realities of CMU and needs of the CMU community are the focus of our recommendations throughout this report.

We approach this report, as we endeavored to approach our work with CMU and our interactions with University stakeholders, with humility. Although we believe that our assessment provided sufficient grounds for specific recommendations grounded in best practices, we are not a part of the CMU community. The ongoing public health situation also prevented 21CP from spending the type of on-the-ground, in-person time with community and Department stakeholders that would typically form a basic part of our assessment methodology. It is very possible, if not probable, that these and other limits may have led us to overlook details, miss nuance, or bypass some areas of importance.

As 21CP routinely observes, this report does not have all of the answers. We do not have all of the answers. For that matter, it is unlikely that any one of CMU's stakeholders alone has all of the answers when it comes to issues of public safety and community well-being at the University. The remainder of this report is intended to help identify a set of specific approaches and actionable recommendations across 21CP's areas of focus that CMU and University stakeholders might consider and take to promote more effective, just, and equitable public safety services at Carnegie Mellon going forward.

II. PUBLIC SAFETY AT CARNEGIE MELLON: HISTORY, CURRENT STAKEHOLDER VIEWS & RECOMMENDATIONS FOR THE FUTURE

A. Background and History of CMUPD and Public Safety Services at CMU

CMUPD is a longstanding unit within Carnegie Mellon University. The Department retains[3] 31 sworn officers, 39 security officers, and 6 dispatchers.[4] The Department's history on campus is lengthy, with formalized security services dating in some fashion as far back as 1964.[5] The Department was accredited by the Pennsylvania Chiefs of Police Association ("PCPA") in 2007, and it has maintained that accreditation in the years since.[6] Indeed, 21CP understands that CMUPD is in the final phase of completing the Department's fifth accreditation. Such accreditation requires adherence to some 139 standards, as well as hundreds of sub-standards. According to CMUPD's 2020 Annual Report, "only 127 agencies (approximately 8%) across the Commonwealth maintain accredited status." [7] The Department was the first University police department in Pennsylvania to achieve accreditation.[8] The Department is currently led by Chief of Police Thomas Ogden, who has 43 years of law enforcement experience – thirteen of which have been as Chief of CMUPD.

CMUPD provides 24-hour, 7-days a week, 365-days-a-year public safety and security services on campus. It receives an average of 13,000 calls per year.[9] The Department's patrol officers, with the support of campus security services and integrated technology services patrol the campus, manage crime and traffic concerns in the immediate area surrounding the campus, are present among campus buildings, and respond to a variety of campus concerns. As CMUPD describes:

> Police officers perform mobile, foot, motorcycle and bicycle patrols of CMU properties; enforce traffic and criminal laws; investigate crimes; and provide community support, outreach and education. Security officers provide access service to facilities as well as general safety services to the university community. Security officers work at fixed posts in a number of CMU facilities, such as Mellon Institute and the Software Engineering Institute. Dispatchers

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[3] CMUPD, like many police agencies, currently faces a workforce shortage, and several funded positions are vacant.

[4] 21CP communications with CMUPD (Feb. 2022).

[5] This date has not been confirmed through documentation, but conversations with CMUPD leadership suggests that the CMUPD originates sometime around 1964.

[6] Carnegie Mellon University, *The Piper*, "Personal Mention" (Dec. 15, 2021), https://www.cmu.edu/piper/news/archives/2021/december/december-16-personals.html.

[7] CMUPD, *Annual Report 2020* 11, https://www.cmu.edu/police/annualreports/carnegie-mellon-university-police-department-2020-annual-report.pdf (last accessed Jan. 27, 2022).

[8] *Id.*

[9] *Id.* at 12.

staff our Communications Center, answer and dispatch all calls for service and control the security camera system on campus.[10]

In 2014, the CMUPD established a Campus Resource Officer ("CRO") Program. Initially, the program was designed to ensure that an officer was always patrolling the campus by foot or bike to help in the prevention of crime. As officers were able to build relationships and get to know campus stakeholders better, the program has grown. Presently, and as this report discusses in greater detail elsewhere, there is a Community Outreach Unit ("COU") with a supervisor and an officer, dedicated to outreach and engagement at CMU. The COU Unit indicates that it works to build relationships and partnerships with campus stakeholders, helps to coordinate events and safety talks, conducts security assessments, meets with students and student groups, and engages in problem-solving activities alongside community members.[11]

Security cameras play a large role in the campus safety protocol at CMU. As of February 2022, CMUPD managed 615 cameras. This includes 473 cameras across 27 academic buildings and 142 cameras across 31 housing buildings.[12] Various campus stakeholders indicated to 21CP that cameras are placed in areas of high population or density, a history of crime or safety concerns, and areas identified as vulnerable either based on location or the presence of unique or special assets. Cameras are located inside buildings in stairwells, entrances, and exits, as well as in specialized labs where dedicated security is necessary.

In focus group discussions, several students raised a fear or hesitancy regarding security cameras on campus, saying that they can contribute to a sense of "always being watched." However, it is 21CP's understanding, based on separate discussions with disparate campus stakeholders and security personnel, that the cameras are not actively watched or monitored. Instead, the cameras are used as a resource, and captured video viewed, only after a crime, incident, or problem has arisen.[13]

Campuses like Carnegie Mellon that offer open access to the outside community through public pathways often encounter challenges relating to how campus safety services interact with unaffiliated members of the wider community. Currently, CMUPD indicates that it does not extend its services beyond the streets that surround the campus. Instead, the Department and its personnel remain tethered closely to the CMU footprint. Officers have

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[10] Carnegie Mellon University, University Police, *About CMU Police Department*, https://www.cmu.edu/police/about/index.html (last visited Jan. 27, 2022).

[11] CMUPD, *Annual Report 2020* 7, https://www.cmu.edu/police/annualreports/carnegie-mellon-university-police-department-2020-annual-report.pdf (last accessed Jan. 27, 2022).

[12] CMUPD, *Public Safety Services* (July 28, 2020) (presentation materials provided to 21CP Solutions).

[13] Although 21CP did not identify any reason to believe that campus security cameras are being actively monitored, it does not appear that this has previously been reduced to a formalized policy. 21CP understands that CMU has such a policy in development and that it may soon be approved. This type of codification of existing practices in writing can help strengthen the commitments of the Department and University in this area.

been instructed to patrol only in surrounding areas that contain significant CMU stakeholder presence such as Beeler Street.[14] Where officers see a felony in progress, they are expected to intervene, but they also must engage with the Pittsburgh Police Department ("PPD") for intervention and support. As a matter of course, CMUPD members are not dispatched to non-CMU calls unless PPD is requesting emergency assistance and the on-duty supervisor approves this action.[15]

Since 2021, CMUPD officers are each equipped with body-worn cameras. All CMUPD vehicles remain equipped with cameras, as well. This report elsewhere discusses aspects of the Department's current protocols for using the body-worn cameras. CMUPD also retains a mobile command post, which they use for large events, such as the presence of a dignitary on campus and for commencement, and when the campus hosts numerous outside guests.

Importantly, CMUPD includes campus security staff. Thus, in addition to the Department's sworn personnel, 39 unarmed security professionals either patrol campus on foot or on bicycles or are assigned to fixed security locations. Security personnel wear a different uniform (a light blue shirt). Each security officer receives orientation training in areas such as building security, key control, procedures related to arrests by officers, and criminal and patrol procedures. Security officers also receive specialized training specific to their patrol assignment. This training includes first aid, CPR/AED, and hazardous material safety.

Security officers serve as the "eyes and ears" of the CMUPD through their patrol efforts and communications with campus stakeholders about safety issues and concerns. They work closely with CMUPD sworn personnel and administrators to respond to and address crime or high-risk occurrences that arise on campus.

B.   Public Safety at Carnegie Mellon

Across focus groups, stakeholder discussions, and interviews, it appeared that much of the campus community maintains a generally positive view of CMUPD, campus security, and public safety services at the University. The Department's own view of themselves as providers of community service, rather than as a traditional law enforcement or policing agency, appears to contribute significantly to the trust and sense of safety that many community members derive from CMUPD. A significant number of community members feel safe on CMU's campus.

At the same time, some community members expressed unease and apprehension about CMUPD and the presence of police on campus. Many, though certainly not all, of these individuals indicated that this discomfort related just as much, if not more, to their experiences prior to coming to Carnegie Mellon, interactions with police departments other

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[14] CMUPD Directive No. 38, Limits of Authority.
[15] *Id.*

than CMUPD, or the national dialogue surrounding the role of law enforcement and its interactions with BIPOC communities and historically underrepresented groups.

A significant majority of stakeholders expressed a desire for enhanced engagement, collaboration, and relationship-building with the Department. Both among those who outlined positive views about CMUPD and those who expressed concerns, a unifying theme was that greater and sustained interactions between the Department and the community would enhance the campus stakeholders' sense of safety and well-being.

The remainder of this section summarizes the major themes regarding public safety at Carnegie Mellon and the role of CMUPD and campus security personnel, that surfaced during 21CP's engagement with a diverse array of University stakeholders. It includes several recommendations for refinements and enhancements that the University and the Department might make to CMU's system of public safety and campus well-being overall.

- **A significant number of University community members feel safe at Carnegie Mellon and say that CMUPD, and campus security, contributes to that feeling of safety.**

For some community members, CMUPD's presence on campus promotes a feeling of safety. One community member observed:

> I do feel pretty safe on campus. There's a decent presence of police staff around, whether patrol cars, bikes, or security guards around campus at the different times of day . . . .

An administrator observed that, in their experience, CMUPD is "very available and quick to respond – when called, they show up." In that administrator's view, the responsiveness is in part a reason that the Department is seen by many on campus as a "respected and trusted member of [the] community." Another agreed, saying that CMUPD officers "are very available and very quick to respond – I have never had to wait a long time for their response."

Several students shared stories about positive interactions with CMUPD. For instance, one student recalled encountering an injured student and called CMUPD, which arrived immediately and acted in a way the student described as "professional." Another recounted that a friend called for help regarding a flasher and "had a good interaction with the Police Department."

Many community members said that the simple presence or visibility of the Department on campus helped enhance their feeling of safety on campus. An administrator indicated that they "feel[] pretty safe" because CMUPD maintains "a decent presence and visibility on campus." A faculty member said that, in their view, it "doesn't feel like [CMUPD's] presence is overbearing," unlike other universities with which they had been affiliated previously. A

Carnegie Mellon alumnus agreed, saying that CMUPD personnel "are there when you need them, but not in your face when you are doing your thing" on campus.

Some stakeholders said that they have little interaction with CMUPD. In focus groups, several students recounted that their only interactions with the Department during their time on campus was when they were locked out and CMUPD personnel responded to assist them.

Community members also expressed generally positive views of campus security personnel. As one stakeholder observed, "My interactions with campus security and security guards has always been positive, and I appreciate their engagement." A number of faculty, students, and staff indicated that they had good experiences with security staff when they were locked out of their rooms in residence halls or offices in University buildings – believing that security personnel were helpful, timely, and courteous. A CMU alumnus recounted that, in their experiences, security staff regularly employed a "caring" and empathetic approach.

- **A number of University stakeholders, including CMUPD itself, describe the Department's day-to-day role as one of community service and campus problem-solving.**

It appears that the sense of confidence and trust that many community members have in CMUPD stems, first and foremost, from what many described as the Department's orientation toward community service. As one community member observed:

> University policing is different than policing a city or municipality. CMUPD is very good at customer service – doing the things in the areas that a municipal or city police department would not do. . . . [CMUPD] understand[s] they're serving the greater Carnegie Mellon community.

A CMUPD employee agreed, saying that "you can't come into the University with the same mindset as the City of Pittsburgh [Police] . . . because it's a lot of enforcement there" versus the "primary focus here" of community service. A parent of a CMU alumnus indicated that there is "not much violence" on campus but several community "issues that need attention."

The Department's calls for service data – aggregate information about the types of problems and issues about which people call for assistance – confirms that its personnel engage in a variety of community-oriented problem-solving but very little calls for service that relate to violence or crime.

Table 1. CMUPD Calls for Service, 2018–2020

Call Type	2018		2019		2020		Total (2018–2020)	
ADMINISTRATIVE		0%	1	0%	13	0%	14	0%
ALARM	1931	11%	1881	14%	867	9%	4679	12%
ALL OTHER OFFENSES (CRIMINAL)	2	0%	4	0%		0%	6	0%
ANIMAL	2	0%	4	0%		0%	6	0%
ARSON	4	0%		0%		0%	4	0%
ASSAULT FIREARM	1	0%		0%		0%	1	0%
BOOT REMOVAL		0%	2	0%	1	0%	3	0%
BURGLARY		0%	1	0%		0%	1	0%
BURGLARY ALARM	385	2%	279	2%	379	4%	1043	3%
BURGLARY FORCIBLE ENTRY	3	0%	1	0%		0%	4	0%
CLASS 1		0%	2	0%	1	0%	3	0%
CMU OFFENSE	83	0%	61	0%	20	0%	164	0%
CONFIDENTIAL/ INFORMATION RECEIVED	8	0%	6	0%	10	0%	24	0%
CONFIDENTIAL/SEXUAL HARASSMENT	1	0%	2	0%		0%	3	0%
CRIME PREVENTION	93	1%	76	1%	18	0%	187	0%
DEFIANT TRESPASS WARNING		0%	1	0%	1	0%	2	0%
DISORDERLY CONDUCT	25	0%	16	0%	12	0%	53	0%
DISP/THEFT	124	1%	75	1%	34	0%	233	1%
DOOR OPENING	8258	48%	6540	49%	5471	58%	20269	51%
DOOR OPENING (STUDENT RESIDENCE)	901	5%	378	3%	44	0%	1323	3%
DRUG		0%		0%	1	0%	1	0%
ELEVATOR ENTRAPMENT	92	1%	102	1%	50	1%	244	1%
EMS STANDBY	22	0%	21	0%	1	0%	44	0%
ESCORT/TRANSPORT INCLUDES WALKING	67	0%	33	0%	9	0%	109	0%
FIRE	22	0%	19	0%	6	0%	47	0%
FIRE ALARM	185	1%	200	2%	189	2%	574	1%
FRAUD	7	0%	9	0%	15	0%	31	0%
FORGERY AND COUNTERFEITING		0%		0%	1	0%	1	0%
FOUND PROPERTY	395	2%	352	3%	143	2%	890	2%
HAZMAT		0%	3	0%		0%	3	0%
HR DETAIL	1	0%	6	0%	2	0%	9	0%
HR TERMINATION ASSISTANCE	3	0%		0%		0%	3	0%

INCOHATE		0%	1	0%		0%	1	0%
INFORMATION RECEIVED	553	3%	535	4%	420	4%	1508	4%
LARCENY	1	0%	1	0%		0%	2	0%
LIQUOR LAW		0%	17	0%	11	0%	28	0%
LOST ID	3	0%	4	0%	3	0%	10	0%
LOST PROPERTY	84	0%	81	1%	25	0%	190	0%
LOST/STOLEN KEYS	1	0%	2	0%	1	0%	4	0%
MAINTENANCE/SAFETY	12	0%		0%	4	0%	16	0%
MEDICAL	586	3%	433	3%	121	1%	1140	3%
MENTAL HEALTH	3	0%	8	0%	1	0%	12	0%
MISSING PERSON	4	0%	1	0%		0%	5	0%
MOTOR VEHICLE THEFT	1	0%		0%		0%	1	0%
MOV	1	0%		0%	3	0%	4	0%
NOISE COMPLAINT	70	0%	62	0%	18	0%	150	0%
NOTIFICATION		0%		0%	1	0%	1	0%
ODOR INVESTIGATION	13	0%	9	0%	2	0%	24	0%
ODOR OF MARIJUANA	107	1%	61	0%	17	0%	185	0%
ODOR OF NATURAL GAS	49	0%	20	0%	9	0%	78	0%
OPEN DOOR	26	0%	20	0%	55	1%	101	0%
OTHER ASSAULT		0%	1	0%	3	0%	4	0%
OUTSIDE AGENCY ASSIST	264	2%	246	2%	174	2%	684	2%
PA SCHOOL CODE	1	0%		0%		0%	1	0%
PARKING CITATIONS	215	1%	148	1%	21	0%	384	1%
PERSON SCREAMING		0%		0%	1	0%	1	0%
PROPERTY DAMAGE	25	0%	19	0%	12	0%	56	0%
PROPERTY FOUND		0%	1	0%	3	0%	4	0%
PROPERTY RETURNED	102	1%	44	0%	24	0%	170	0%
PROTEST	3	0%	9	0%	18	0%	30	0%
REQUEST FOR ASSISTANCE	387	2%	300	2%	188	2%	875	2%
ROBBERY STRONG ARM		0%		0%	1	0%	1	0%
SAFE WALK	17	0%	13	0%	1	0%	31	0%
SECURING DOOR	836	5%	371	3%	547	6%	1754	4%
SERVICE	211	1%	76	1%	37	0%	324	1%
SEX OFFENSES	4	0%	2	0%		0%	6	0%
STOLEN ID		0%	1	0%		0%	1	0%
STOLEN PROPERTY	8	0%		0%		0%	8	0%
SUICIDE	2	0%	1	0%	1	0%	4	0%
SUSPICIOUS ACTIVITY	65	0%	31	0%	36	0%	132	0%
SUSPICIOUS PERSON	146	1%	145	1%	81	1%	372	1%
SUSPICIOUS SUBSTANCE		0%		0%	1	0%	1	0%
SUSPICIOUS VEHICLE	46	0%	36	0%	17	0%	99	0%

THEFT		0%		0%	1	0%	1	0%
UNSECURED AREA/DOOR		0%	2	0%	3	0%	5	0%
VANDALISM	7	0%	19	0%	8	0%	34	0%
VEHICLE		0%		0%	1	0%	1	0%
VEHICLE COLLISION	92	1%	83	1%	34	0%	209	1%
WARRANT ARREST	6	0%	2	0%	1	0%	9	0%
WARRANT SERVICE	4	0%	6	0%		0%	10	0%
WEATHER DAMAGE		0%		0%	1	0%	1	0%
WELFARE CHECK	155	1%	105	1%	68	1%	328	1%
(BLANK)		0%		0%		0%		0%
(NOT APPLICABLE)	519	3%	315	2%	104	1%	938	2%
Grand Total	**17244**	**100%**	**13306**	**100%**	**9366**	**100%**	**39916**	**100%**

Source: 21CP Aggregate Analysis of CMUPD Data

Notes: Blank cells indicate that CMUPD recorded no calls-for-service activity within the given category in the associated calendar year.

21CP notes that CMUPD also provided another data set that appears to capture responses for service along with self-initiated activity. Although these numbers are different, because they capture additional activities, the overall patterns that Table 1 indicates are also reflected in those separate numbers: that the Department engages in a variety of community-focused and campus assistance activities and relatively infrequently address violence or serious instances of crime.

Many community members reinforced a view of CMUPD that often engages in meaningful activities that have little or nothing to do with "law enforcement" or traditional police activities. As one officer put it, CMUPD is a Department that is "grounded in commitment to community." Many CMUPD personnel expressly noted that a large majority of their "duties are service-oriented rather than hands-on law enforcement."

One community member indicated that, in their experience, the Department "is always ready to ask the next question in order to help" them and to coordinate responses and resources with other departments in the University. Another noted that "if a student calls the police department with a problem or issue that has nothing to do with the police, they will get them to the right person or office, not just blow them off." As one University stakeholder summarized, "a majority of our community is comfortable, when someone needs helping, knowing that University police are available 24/7/365 . . . to at least get the response initiated." A faculty member indicated that they "appreciate [the Department's] orientation toward problem solving . . . ." An alumnus observed that at Carnegie Mellon, "you have to have people who know . . . campus and the nuances like the back of their hand," and indicated that the Department fulfills this role. A staff member suggested that "[t]he way that [CMUPD] Chief Ogden manages" the Department helps to foster a "sense of community" in which people "talk things through and figure out the best way to help" solve problems.

In this way, CMUPD appears to frequently operate as a problem-solving entity that works collaboratively with University and other outside resources to address community member problems, issues, and concerns. A CMU officer noted that, for "the majority of problems we have with students, there is always a resource we can push them towards." One community member remarked that, "there is so much collaboration that takes place" between CMUPD and other parts of the University "that we all feel like we're all just one department" trying to find the right way to address community challenges.

- **CMUPD's existing relationships with the campus community remains a critical driver of perceptions of the Department.**

It appears that, to at least some relevant extent, the positive views that many have of CMUPD stem from relationships – either their own interactions across time with the Department or the appreciation of the Department's overall efforts to relate, interact, and build connections with members of the University community. As one faculty member noted, the Department's focus is on "higher education['s] approach to policing" and the "feelings of safety" that community members have, which requires an engagement- and relationship-focused approach to public safety services. One community member observed that CMUPD "is a very relational police. The CMUPD has worked hard over the years to build those relationships." To this end, current CMUPD Chief Ogden told 21CP that he has "learned here that communication" with the community and cultivating relationships across campus "is really important."

- **Many people on campus attribute CMUPD's campus service orientation to the current Chief of Police.**

Although police departments, like all institutions and organizations, ideally must endure, grow, and perform regardless of the identities or skills of the individuals within them, leadership influences culture and performance. Across 21CP's engagements with communities and police departments across the country, it is uncommon to find the high and sustained level of praise provided to a police leader that University and Department stakeholders give to Chief Thomas Ogden.

For instance, an administrator asserted that "The shoes that Chief Ogden will leave behind are enormous." Another concurred, saying that he "has by and large done a tremendous job in so many aspects." One CMUPD member asserted, simply, "I would follow Chief Ogden anywhere." Another observed that the Chief "set a remarkable path for the Police Department . . . . I'm amazed by what he's put in place, and the thought-out professionalism about how the Department is run," including the "constant update of new things coming into policing" like de-escalation and mental health response strategies. Further, for many, it is clear that Chief Ogden "has the University's well-being" in mind beyond simply focusing on the Department.

In particular, Chief Ogden is credited with turning around what had been a Department that was viewed, both within and outside the University, as troubled. One community stakeholder who has been at the University for a number of years observed when they arrived at the University prior to Chief Ogden being appointed Chief of Police, "our police department was just in a complete mess." In particular, the stakeholder noted, "there was a lot of racial tension." A CMUPD police officer with prior experience at a nearby law enforcement agency noted that they remembered CMUPD being "kind of like a joke," with "everything that happened on campus" being "dumped off on Pittsburgh PD." According to the officer, "that all changed when Chief Ogden came in." Another officer agreed, saying that the Chief "wants nothing but the best. He knows he's on his way out and is doing everything he can to make the police department the best it can be."

- **Some community members do not feel as safe on campus as they want, with CMUPD either not influencing their sense of safety or making them feel less safe. For many community members who express criticism or have concerns about the Department, their views are informed just as much, if not more, by experiences with other police departments or law enforcement generally as by interactions with CMUPD.**

Other community members say that they do not feel as safe on campus as they could or as they may want. One student recounted:

> I and other students do not feel safe at night . . . [There are] poorly lit areas [with] not many people [and] lots of bushes that people can hide behind. I do not think [the] blue light system is helpful and effective for those situations.

In a focus group with parents, multiple participants cited anxiety about the safety of their students walking from one place to another on campus at night. Faculty members also cited concerns about walking to parking garages late at night. Staff members also observed that "darkness is a challenge at night" with respect to feelings of safety.

Another focus group participant suggested that their feelings of safety originated elsewhere with the community rather than with the Department: "[It's] never really been a point of not feeling safe, but I have peers around here to help. Police might be there, but I feel disconnected from police, so I do not think of the Police Department."

Some members of the community expressed general discomfort about the presence of police on campus. A significant number of individuals who expressed some concerns about CMUPD or negative views about campus police cited their experience with, or views of, other police departments and the current national dialogue surrounding police, race, and underrepresented groups:

- I work as RA, and I hesitate to call police because I worry that the Police Department may treat some students differently or biased. I haven't seen anything, but some of the residents may feel uncomfortable calling the police, having an awareness of how PPD [the Pittsburgh Police Department] acts and the broader awareness of national greater context of police.

- [On partnering with the police or building relationships with CMUPD,] some students who are reserved tend to be BIPOC, trans or LGBTQ, international students are mostly those that are hesitant. [The] marginalized are more skeptical; black and brown students are most concerned, trans too. Their lived experiences before CMU, and their anxiety about pre-CMU trauma and how to help students and staff work through to try to transition from their pre-CMU experiences and now their CMU life.

- [The] LGBTQ+ and black and brown people have the most problematic experience with police.

- Communities of color at CMU are in the minority, and there is apprehension in engagement with the Police Department, mostly because of [the police's] relationship with greater society.

- [CMU has to] consider the diverse nature and experiences of students coming to campus. Some are aware of safety, while others do not think about it the same way – perhaps influenced by where you grew up.

- I would often see officers standing by the entrance to Dougherty for no real apparent reason . . . . It seems weird that there are three armed people standing at the entrance to this academic building . . . . I am a white woman walking on campus and have never had fear I am being looked at a certain way by police. I have heard third person-that our international students feel safer by the police presence on campus.... They have also said they feel weird about seeing police with guns as that's not common but they are glad for security. On the other hand, domestic students do not prefer the police on campus.

- I recently heard that students at time feel unsafe based on interactions with CMUPD engagement . . . . [Their presence in student spaces sometimes] is intrusive and makes that private space feel exposed and uncomfortable.

During our engagement, we heard members of the CMU community share their concerns about the CMUPD-community relationship and interactions. A CMU officer echoed this, noting that, at times, "there is real mistrust, but not from actions we've made – more from their personal history." Another officer noted that, especially for a lot of students, officers "do not know their history or prior dealings with police, so they can get more pushback or an uphill battle to build relationships."

Some community members recounted negative experiences of BIPOC individuals on campus with CMUPD. A graduate student reported that BIPOC "people at times feel singled out for being in a building in off hours" and that public safety personnel, including either or both CMUPD and campus security personnel, sometimes "can be very aggressive" in such interactions.

To this end, many University community members draw a distinction between their experiences with, and views toward, CMUPD on the one hand and other law enforcement agencies on the other. As one student observed, "in general, I trust the CMUPD far more than the PPD." A University alumnus noted that, here as "CMUPD has a responsibility to take care of the CMU community, PPD does not," which makes CMUPD's involvement on campus much better than having to "reply on local law enforcement" who "do not care about" CMU. Another agreed, observing that "PPD doesn't know CMU or all of the details and sensitivities on . . . campus . . . . You have to have people who know the campus and the nuances like the back of their hand." One campus stakeholder wished that they could "call the University police to deal with off campus issues involving CMU students" rather than needing to call PPD. Some who have positive views about the CMUPD and experienced positive interacts simultaneously have concerns about police in other contexts – and want to ensure that the Department is equipped, through policies, protocols, and procedures, to confront and surpass the challenges that police in other communities face. CMUPD Chief Ogden observed to 21CP that "[t]o win the trust of some people who say they don't agree with anything I ever say but they trust me to keep them safe, well, that's pretty cool."

- **A common theme among both those who have positive views of CMUPD and those who have negative views of the Department is the sense that greater community engagement and relationship-building can enhance public safety at CMU.**

21CP was particularly struck by the consistent desire expressed among the University community for expanded and strengthened relationships, interactions, and collaboration between the campus community and CMUPD. Regardless of whether individuals felt safe or unsafe on campus or maintained positive or negative views of CMUPD, a vast majority of community members advocated for meaningful, ongoing opportunities to engage with the Department and its personnel.

One community member observed simply that expanded "relationship building and comfort" with CMUPD "can go a long way to helping . . . especially BIPOC and international students." Another echoed this sentiment, contending that "if the Police Department made a more intentional effort reaching each diverse community, one-on-one, [that] could go as far as addressing safety issues as anything else." Yet another stakeholder indicated that, although CMUPD needs to "understand that not all love the police, so [they] cannot force the relationship . . . , [they] need to keep trying, building from the ground up" across the University community.

However, even as many cited the benefits of enhanced CMUPD engagement and relationship-building with the campus community, it is clear that some community members are not aligned with initiatives that would expand the presence of the Department on campus. As one stakeholder summarized, "Community policing and relationship building would go a long way, but there are also students that do not want more police interaction or engagement, and would not hang around with the police." To this end, a faculty member, echoing the sentiments of others, observed that "improving public safety at Carnegie Mellon has to be done within the context of our university. Anything short of that is a dis-service to the entire community."

Recommendation 1. CMU and CMUPD should actively work to build upon and enhance the strong foundation of public safety at the University in which CMUPD is one of many actors invested with responsibilities for responding to and addressing community concerns.

A notable theme from community listening session was the desire among many University stakeholders for more engagement and partnership with CMUPD. For those who have positive views or experienced positive interactions with CMUPD, increased interaction can build upon an existing, strong foundation and ensure that the Department is more deeply interwoven with the community that it serves. As one student noted that "it would be nice to have names and connect to faces in the police department, getting to know them."

For those who have more negative views about police and CMUPD, expanded communication and outreach still, for at least some, appears to be desired. Students in particular, seem interested in understanding more about the CMUPD and its work on campus. As one student noted, summarizing the comments of several:

> [I] would like to see some effort to justify existence of the CMUPD because most students are not sure why they exist, mostly because of lack of communication about who they are, purpose, so that folks can know. We want to answer the question, "What is their purpose?"

As this report emphasizes, the most common general sentiment across students, faculty, and staff at Carnegie Mellon appears to be that CMUPD does a good job in serving the University

community. Even among those who are highly critical of police in the national context, or who believe that the Department should do a better job along any of a number of dimensions, there appeared to be the widespread belief that CMUPD should enhance its efforts to seek out and engage with a diverse group of community members on an ongoing basis.

This engagement could manifest in a number of different but concrete ways:

- CMUPD and the campus community appear to value dialogue and discussion in ways that improve understanding and embrace diversity of thought and idea. The Department can take an active role in engaging with campus champions as well as stakeholders who have questions and concerns about the presence and role of police and security on the campus. The University and Department can work to foster opportunities for deliberate, thoughtful, and honest dialogue among Department personnel and diverse community members and groups that allows for open sharing and listening. Additional ideas that 21CP heard from the Department directly, such as expanding CMUPD's opportunities to participate in new student orientations, may also be helpful in this regard.

- Many University community members in listening sessions expressed a desire for greater, sustained integration of CMUPD personnel into campus planning, events, and activities. For example, staff and CMUPD personnel both separately mentioned capital planning and development as a gap vis-à-vis CMUPD involvement. They point out that the construction of new buildings or the remodeling or expansion of existing infrastructure and locations requires planning and thinking about security resources and needs.

- Some campus stakeholders expressed an interest in more collaboration with CMUPD around training. Some community members said that they wanted to collaborate and hold joint training and development experiences with the CMUPD. Specific examples of potential joint CMUPD-community training that stakeholders suggested included training on safety and emergency preparedness (e.g. active shooter response; evacuation protocol); mental health response; sexual assault response; de-escalation for faculty, staff and Resident Advisors; and the diverse perspectives and experiences of various campus communities (e.g., BIPOC communities, international students, and LBGTQIA community members).

- A number of CMU students cited an interest in expanded educational workshops or awareness initiatives. This might include training or guidance on self-defense, how to guard against property theft, and cybercrimes. Many campus stakeholders also noted the unique vulnerability of international students to scams and other fraud, suggesting that CMUPD could enhance its educational efforts on that front.

- The Department can commit to strengthening and formally growing its community-focused, problem-solving policing approach by expressly identifying resources and non-sworn responses that it can harness when addressing community challenges. As noted elsewhere in this report, CMUPD's current operations and organizational structure appears to be providing a comprehensive and cohesive approach to campus safety and well-being. CMU's current model – where campus security officers work within and for the CMUPD, and the CMUPD works with a problem-solving orientation that actively works to coordinate non-police responses and solutions as appropriate – appears to be understood within the formal public safety structure and the wider University. CMUPD officers appear empowered to seek the assistance of other, non-CMUPD resources to help address community member issues and problems.

Despite a commitment to this problem-oriented, community-focused approach, a number of community members challenged the Department and the University to go further and do better with respect to the coordination of CMUPD and other campus resources. As one stakeholder remarked, "we need to have a more collaborative response model . . . [and] maybe add other resources to support" the Department's ongoing work.

As 21CP has observed in work with other communities, including other colleges and universities, neither the authority nor the responsibility of addressing all public safety issues and challenges can fall to a police department. A myriad of other stakeholders and organizations also promote campus safety and community well-being. From Counseling and Psychological Services ("CaPS") and the Center for Student Diversity and Inclusion to Facilities Management Services ("FMS") and the Division of Student Affairs, Carnegie Mellon maintains a wealth of resources that exist to support the well-being and promote the thriving of those who live, study, and work at the University.

Many focus group participants recounted experiences where Police Department personnel solved problems by linking community members with the right campus resources. However, it appeared in discussions with Department personnel that this stems from a combination of culture, familiarity with the University and its resources, and individual officer initiative rather than formalized approaches, policies, or protocols.

21CP recommends that the Department and University develop, possibly as part of the Community Safety Plan discussed below, (1) formalized mechanisms to ensure that the best and most appropriate campus response is brought to bear to any given situation or community problem, and (2) formalized resources and guides to CMUPD officers to ensure that their problem-solving capacities benefit from continually comprehensive and up-to-date information about campus and regional resources. In short, CMU can stand to operationalize and enhance what community members and Department members alike say that CMUPD is currently doing – actively looking to other University resources to assist it in promoting public safety on campus – but in a way that can be more systematic and far-reaching.

C.   Recommendations

Recommendation 1.   CMUPD should work to expand and enhance community engagement, collaboration, and problem-solving by developing a Community Safety Plan that refines the scope of responsibilities for CMUPD personnel and articulates clear pathways for enhanced community relationships.

CMUPD's recently established its Community Outreach Unit ("COU" or "the Unit") to facilitate proactive and engaged collaboration between some members of the CMUPD and the campus community. The Unit is staffed by a frontline supervisor and an officer. COU and its efforts mirror the types of efforts of some municipal policing agencies in which previously decentralized officers are located geographically closer to constituents as a means of promoting relationship-building, rapport, and the provision of more tailored public safety services.[16]

Some CMUPD personnel and community members mentioned the Unit as a promising way for the Department to facilitate face-to-face and accessible interaction with the community. At the same time, given its relatively short existence, not all community members knew about the Unit. Among those who did, many identified concrete ways that COU could grow and develop. One community member observed:

> The Community Outreach Team is a newer concept. It would be exciting to see what they could do more of in terms of proactive engagement/educational program for students. They could focus on general safety things, situational awareness, [and] health and safety-related topics.

To the extent that some types of formalized community engagement remain the primary responsibility of the COU, it is likely that the Unit will need more than two members. Expanding COU staffing to allow for consistent and robust collaboration might facilitate sustained relationship-building in an environment where there are frequent transitions in the student and faculty populations – requiring the ongoing formation of new relationships across time.

Even as 21CP recognizes the promise that some within the community, and the Department itself, see in the Community Outreach Unit, community engagement, relationship-building, and collaboration should not be the sole responsibility of the COU. In many police departments that have attempted to have dedicated "community policing" or "community engagement" units – in which it is the express assignment of some officers to engage with

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[16] *See, e.g.*, W.G. Skogan & T. Williamson, "An Overview of Community Policing: Origins, Concepts, and Implementation," *in The Handbook of Knowledge-Based Policing: Current Conceptions and Future Directions* 43 (Tom Williamson ed., 2008); R. Geva & O. Shem-Tov, "Setting Up Community Policing Centers: Participatory Action Research in Decentralized Policing Services," 3 *Police Practice and Research* 189 (2002).

community members – the job of community interaction and problem-solving comes to be seen as accomplished primarily or exclusively by the specialized unit. 21CP typically recommends that departments expressly position community engagement, collaboration, and problem-solving not as a specialized job for just a few members of a department but, instead, an overriding approach to policing that must inform the day-to-day activities of all officers. For CMUPD, it seems especially true, in light of the Unit's current, limited staffing, that the COU cannot conduct all community engagement and partnership by itself.

Consequently, the University and CMUPD need to examine opportunities for sworn officers and campus security personnel who are not part of COU to engage and collaborate proactively with campus community members. Specifically, the Department and University might consider:

- As security personnel serve as (and are appreciated for being) CMUPD's eyes and ears, are there opportunities for campus security to collaborate with campus stakeholders (e.g., administrators, students) from within their respective geographic-based assignments?

- Can non-COU Department personnel participate more robustly in orientation efforts for new students, faculty, and staff – providing education on public safety on campus and on available safety resources?

- Can campus security engage with students, faculty and administration, in prevention efforts (e.g., CPTED[17]-type efforts), or in education efforts directed to campus community members, on topics such as securing their electronic devices and property?

To this end, 21CP recommends that the University and CMUPD consider creating, in partnership with the wider University community, a Campus Safety Plan that identifies specific objectives, roles, and responsibilities for various CMUPD and University organizations and staff with respect to community problem-solving, well-being, and safety. A recent meta-analysis concluded that formal strategic planning can have a "positive" and "significant impact on organizational performance," with the structure and "formality" of the planning – including both "internal and external analyses" – an important predictor of success.[18] Such a formalized, community-informed Campus Safety Plan for Carnegie Mellon can serve as a springboard for distinguishing the types of intensive, formalized, and institutional engagement that COU might perform from the type of daily, one-on-one problem-solving that all officers and security personnel might perform.

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[17] *See* The International Crime Prevention Through Environmental Design Association, https://www.cpted.net (last visited Jan. 24, 2022).

[18] B. George, et al, "Does Strategic Planning Improve Organizational Performance? A Meta-Analysis," 79 *Public Administration Review* 810, 810 (2019).

In addition to clarifying roles of COU, security personnel, and others in the public safety structure, the Campus Safety Plan might consider formal mechanisms for involving campus assets beyond the police in responding to specific types of community problems. As a graduate student told 21CP, the University needs to consider "how . . . all the campus services we have come together to provide that holistic view . . . of campus safety . . . ."

For instance, various Department personnel lamented that they are sometimes put in the position of transporting students experiencing mental health challenges in a police car. Exploring mechanisms for CaPS to respond instead of, with, or with the support of CMUPD where appropriate, might promote and enhance public safety while positioning the Department as one of many resources with respect to addressing individuals facing mental health challenges on campus. Although officers seemed to agree that CaPS is responsive and that their "service is great," they noted that, with "a lot of students . . . under a lot of stress and anxiety," even situations that do not implicate a mental health crisis but still involve mental health dynamics "need to be handled sensitively."

In short, even as it appears that CMUPD has done a lot right with respect to community problem-solving, relationship-building, and engagement over the last number of years, the creation of the COU and the desire of many within the community for even closer and sustained collaboration points to the Department and University memorializing the roles and responsibilities of various public safety personnel with respect to core community engagement activities. Although the Department and security personnel have done a lot to build a foundation of engagement and community collaboration, the University would benefit, going forward, from a document that identifies what is expected of each part of CMUPD and security personnel with respect to the larger campus safety picture. Indeed, current CMUPD Chief Ogden made this point explicit, noting that "security guards need more attention and focus. [They are] integrated but need to be part of the program more than they are."

Recommendation 2.   CMUPD should look for ways to enhance the quality, salience, and utility of its communications with the wider University community.

As CMUPD and CMU strengthen collaboration and support across various components of the University, the Department should identify mechanisms for enhancing and expanding its communication with the University community. Specifically, 21CP recommends that CMUPD expand their use of social media,[19] and that the Department's website serve as both a repository for information-sharing and a portal for various social media access points and communications.

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[19] *See, e.g.*, Christopher D. O'Connor & Huda Zaidi, "Communicating With Purpose: Image Work, Social Media, and Policing," 94 *The Police Journal: Theory, Practice and Principles* 333 (2021); Robin Hoffman & Thomas Feltes, "Social Media for Community Oriented Policing: Best Practices from Around the World and Future Challenges," 19 *European Law Enforcement Research Bulletin* (Winter/Spring 2020).

With respect to its website, the Department should build a more robust hub for addressing its current internal and external efforts regarding campus security and safety. The site should move beyond the provision of basic information currently provided to house more interactive and engaging material that allows current and prospective community members to learn about the resources available to promote campus safety and well-being at CMU. For example, some universities maintain dashboards that provide updated information on crime and safety issues.[20] Some departments provide a dedicated area for resources about how community members might seek to prevent, address, or seek help for various safety issues. CMU indicates that it is hiring a communications manager that, as part of the role's broader charge, will provide support for police, which has not been a resource that has been available previously.

As this report discusses elsewhere, 21CP heard from a number of stakeholders that they did not fully understand what CMUPD does, how the Department relates to other resources on campus, and how the Department can assist with various community issues. Better and broader engagement with the community through a revamped website and more intensive use of social media are helpful mechanisms for communicating with the broader community about CMUPD's roles and responsibilities.

21CP understands that the CMUPD does not currently have sustained access to its own website and social media. Instead, the Department must get permission and cooperation from other University channels with respect to outward-facing communications. Where CMUPD must first report to elsewhere within the University for approval regarding public-facing communications, the University may want to consider the advantages of building out more agile communication protocols for the Department so that it can manage at least some communications with the campus community for themselves.

Recommendation 3.   CMUPD should conduct regular needs assessments to learn more from students, faculty, staff, and administrators regarding their collaborative and partnership interests.

Learning, growth, and development are at the heart of the missions of institutions of higher education. In discussions with 21CP, CMUPD Chief Ogden expressly noted that, going forward, the Department needs to "survey the community about their concerns and then address them" because "everyone must know they matter." 21CP agrees and recommends that CMUPD adopt and implement a systematic process for collecting feedback and suggestions from the community at regularized intervals. Indeed, a report from the United States Department of Justice's Office of Community Oriented Policing Services found that

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[20] *See, e.g.*, University of Michigan, Division of Public Safety & Security, *Crime & Safety Data*, https://www.dpss.umich.edu/content/crime-safety-data/ (last visited Jan. 24, 2022); Harvard University Police Department, *Workload and Crime Dashboard* https://www.hupd.harvard.edu/dashboard (last visited Jan. 24, 2022).

ongoing conversations, dialogue, and information-sharing between students and police can foster greater, mutual understanding and relationship-building.[21]

Certainly, the Department can utilize already existing data (e.g. calls for service, citizen complaints, requests for service) to inform what it does and how it does it. However, especially given the desire among a number of stakeholders for expanded engagement and collaboration with the CMUPD, a systematic community survey and/or formalized community needs assessment may provide a more organized methodology or framework for identifying community interests and desires when it comes to public safety. A survey or needs assessment might provide a specific, new mechanism for the CMUPD to reach out to and obtain feedback from less engaged or accessible members of the community (e.g. non-administrators) as well as less-vocal voices and perspectives.

Because CMU's student populations are transient, there is value in conducting a needs assessment at regular intervals – to capture changes in problems, issues, challenges, and needs as new individuals join the University community. Staff, faculty, and administrators also change over time, and the needs of those groups can evolve, which also points to conducting community surveys and/or needs assessments at regular intervals.

To the extent that the Department engages in a periodic survey process, CMUPD to should seek to create or adopt an instrument that allows for the capture of community member experiences, feelings, and perceptions of safety at CMU. To accomplish this work, CMUPD could partner with other units within the University community (e.g. the Institutional Research Unit or other researchers with relevant methodological expertise) to administer the survey, and analyze the data – perhaps offering a neutral support system for understanding community needs and interests. The Department could work with CMU partners to create its own, University-specific survey or it might use existing surveys on public safety as a template.[22]

D.   Role of Campus Safety Services

CMUPD's approach to providing campus safety includes a structure in which sworn public safety officers and campus security officers are administratively and operationally located

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[21] Elsie L. Scott, Ronald W. Walters Leadership and Public Policy Center, Howard University, U.S. Department of Justice, Office of Community Oriented Policing Services, *Engaging College Students in 21st Century Law Enforcement: Final Report* (2021), https://cops.usdoj.gov/RIC/Publications/cops-w0965-pub.pdf.

[22] *See, e.g.*, International Association of Campus Law Enforcement Administrators, *Resource Documents: Police & Public Safety Evolving Practices*, https://www.iaclea.org/future-of-policing-resource-documents (last visited Jan. 26, 2022); U.S. Department of Education, *2021 Campus Safety and Security Survey*, https://surveys.ope.ed.gov/campussafety/#/ (last visited Jan. 26, 2022); Norfolk State University, *NSU Police Department*, https://webapps.nsu.edu/forms/campussafety/ (last visited Jan. 26, 2022); Penn State University, *Crime & Safety Data*, https://www.police.psu.edu/university-police-community-survey-reports (last visited Jan. 26, 2022)

within the same organizational unit. Unlike a number of other institutions of higher education, this means that sworn police personnel and non-sworn security personnel are housed within the same Department.

21CP discussed the day-to-day realities and relationship between security and sworn personnel with police officers, security officers, CMUPD supervisors, administrators, faculty, and staff. Generally, it appears that this unified structure is working well. As one CMUPD staff member observed:

> Working in same structure builds a cohesive unit. It helps with communication and coordination; we all work together with same dispatch; use same radio systems; when police then shift to security there is institutional knowledge that also helps and provides a common understanding of policies, procedures.

A significant majority of stakeholders view the work of campus security officers across campus and in various CMU locations as positive and reassuring:

- [Campus security] do lots of walk-throughs to support students and staff. They fill the gaps. They walk around for visibility.

- My interactions with campus security and security guards ha[ve] always been positive, and I appreciate their engagement.

The remainder of this section outlines some recommendations for building on the strong, existing foundation – both within CMUPD and the Carnegie Mellon community – with respect to non-sworn campus security personnel by working to enhance, strengthen, and formalize their existing role in public safety on campus.

Recommendation 4.   The University should preserve and continue to refine the role of the CMUPD campus security staff in safety and response services.

Given the positive feedback from the community about the support and visibility of campus security, 21CP believes that campus security staff could be integrated even more prominently into campus engagement and partnership efforts. A number of stakeholders, although they had positive things to say about campus security, indicated that security personnel "are not involved in the community," with some stakeholders suggesting "a disconnect between officers and security guards" in terms of community involvement.

Specifically, CMUPD should explore, in collaboration with campus security and police officers, the opportunities for increasing capacity through an enhanced role for security staff. For instance:

- Are there opportunities for campus security to support the Community Outreach Unit in its engagement and collaboration?

- Are there ways in which campus security can work with location-specific administrators, staff, and students to better understand location-specific needs and support those needs?

- Could campus security serve a more active role in disseminating information to the campus community about the activities and services of the CMUPD and about public safety more generally?

Recommendation 5.   CMU and CMUPD should create and implement a more comprehensive training and professional development program for campus security.

Currently, campus security personnel are required to complete a number of trainings. Most of these focus on the various technical aspects of their work (e.g., training on CPR and pathogens). Although campus security have participated in some broader trainings (e.g., active shooter training), 21CP understands that they mostly served to play the role of "victims" and actors in scenarios rather than as students or recipients of training.

21CP recommends that CMUPD design and implement a more comprehensive system of opportunities for the campus security personnel that more fully supports of the kind of integrated service delivery that the Department aspires security personnel to provide. Campus security staff should be afforded many of the same training opportunities as sworn police officers, including instructional opportunities on campus community engagement, understanding diverse populations, de-escalation, crisis intervention, and health and wellness.

Recommendation 6.   CMU and CMUPD should review and assess staffing and deployment across policing and security functions in an effort to reduce mandatory overtime and the feeling among some public safety staff that they are over-extended.

21CP was not tasked with conducting a comprehensive staffing analysis and cannot definitively verify, one way or another, the staffing dynamics within CMUPD. However, 21CP can report that, in conversations with officers and security personnel, both groups stressed that staffing challenges have sometimes impaired the ability of both groups to engage in the ways they would want. One Department employee indicated:

> We are short on officers and twice as short on guards. It's hard to retain both.
> In the hiring of guards, many want to become an officer. So this is like a path
> to becoming a sworn officer, so they end up losing guards to other jobs.

Focus group participants cited mandatory overtime as a source of sometimes significant frustrations for CMUPD employees:

- Some people want and like OT but there is a lot of forced overtime which has a bad impact on personnel.

- New officers have quit because of mandated overtime.

- [The Department] is good for those who want OT, but, now, people, especially younger folks, do not want to work so much. They are constantly working, which might affect turnover. [If they] pay the right wage . . . , you won't have the same turnover . . . [More] competitive pay is needed"

21CP also learned that CMU is currently short on dispatchers, with four employed but six authorized in the current budget.

Additionally, staff report that that they increasingly have to participate in training outside of a normal working shift – on what they call "pass days." It is unclear to 21CP if this is a standard practice, or if the Department only utilizes this under unusual circumstances. We suggest a review of the practice to ensure that officer training and professional development does not come to be seen as a burdensome, "extra" obligation but a foundational part of core duties.

At the same time, many participants acknowledged the challenges of recruiting and retaining officers and personnel in the current economic, social, and public health climate. Certainly, the past 18 to 24 months have been unprecedented. With respect to staffing, CMUPD and the CMU community is facing a challenge that many public safety agencies – and many businesses and organizations more generally – are facing as it relates to adequate staffing.

To this end, we heard some CMUPD staff talk about the challenges of a CMUPD career path. While some staff see employment with CMUPD as a rewarding career path, and have served the CMU community for many years, we heard others express concerns about retaining existing personnel. 21CP heard of instances where new employees were hired and trained only to leave within a short period of time. Some current CMUPD personnel recounted a few former officers who left the Department for municipal departments that pay more. A more deliberate and comprehensive staffing plan, combined with enhanced training and development, could serve as tools both to strengthen retention of existing personnel and attract new personnel.

CMUPD should work closely with CMU leadership and human resource staff to identify more effective and fruitful ways to recruit and retain CMUPD personnel. Strategies that emphasize and promote the ways that CMUPD is different from municipal policing may be particularly important in this regard.

III.   CURRENT CMUPD OPERATIONS

A.   Use of Force

Although several areas of improvement were identified, 21CP was impressed – through its review of written materials and discussions with CMUPD personnel – by the thoughtfulness and thoroughness of CMUPD's use of force policy, procedures, and protocols. Across the various agencies that 21CP has evaluated in the past several years, CMUPD's policy is among the strongest in terms of reflecting best practices and emerging, promising approaches. That includes several large, municipal agencies.

The Department's core Use of Force Policy already includes a number of best and emerging best practices with respect to force that many other police departments have yet to adopt or are only just implementing. For example:

- CMU's Use of Force Policy, Directive No. 25, expressly requires that all force be necessary, "proportional to the threat or resistance present in the situation," and objectively reasonable.[23]

- The use of force is positioned to be used only as "a last resort,"[24] or only where "immediate measures must be undertaken by an officer in order to protect human life."[25]

- CMUPD requires that officers "warn the offender that force will be used when possible."[26]   The requirement appropriately appears to apply to all force, regardless of type or severity.

- The Use of Force Policy requires officers to "provide proper medical treatment following the use of force."[27]

- The policy lists various levels of resistance and levels of control, indicating that an officer's response must be proportional or consistent with a subject's actions or resistance.[28]

- Policy prohibits the firing of "warning shots."[29]

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[23] CMUPD, Directive No. 25, Use of Force, Section II (rev. Mar. 5, 2021).
[24] *Id.*
[25] *Id.* at Section IV-E.
[26] *Id.* at Section V-C-2.
[27] *Id.* at Section II.
[28] CMUPD, Directive No. 25, Use of Force, Sections IV-O–P.
[29] *Id.* at Section V-D-2-C.

- Officers may not shoot at or from a moving vehicle.[30]

CMUPD appears, based on data provided to 21CP, to use force rarely. Specifically, it classified *no* incidents as "Use of Force Incidents" in "Enforcement Activity Summaries" provided to 21CP for the years 2018 through 2020. As discussed within the context of Recommendation 9, below, the Department separately provided ten unique "Subject Resistance Forms" on which at least some officer responses during the period of 2018 through 2020 consistent with reportable force per CMUPD's existing Use of Force Policy were detailed. Regardless of whether the number of incidents involving force totaled zero or ten in the period, the incidence of force is low within the context of approximately 38,953 calls for service during the 2018 through 2020 period.

Nevertheless, 21CP has identified some specific mechanisms that the Department can consider to further strengthen its policies and practices surrounding force.

Recommendation 7.   CMUPD's use of force policy should contain a revised statement of purpose that emphasizes the Department's values regarding the use of force – expressly affirming the sanctity of human life, emphasizing the imperative that force be minimized or avoided when possible, and articulating the community's values and expectations regarding the preservation of life and use of force.

CMUPD's current use of force policy begins by articulating an overriding "purpose" and "policy."[31] Much within those statements is appropriate and consistent with best practices nationally, including but not limited to:

- Permitting only force "that is objectively reasonable and necessary to overcome resistance . . . , affect a lawful arrest, and protect officers and the public";
- Positioning force as "a last resort";
- Requiring any force used to be "proportional to the threat or resistance" posed by a subject;
- Addressing de-escalation; and articulating "a duty to intervene" if officers witness excessive force; and
- Requiring officers to "provide proper medical treatment following the use of force."[32]

Even as the current features of CMUPD's current statements of "purpose" and "policy" are correct, appropriate, and necessary, the existing use of force policy can be strengthened by expressly articulating the overriding philosophy that drive many of the policy's other

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[30] *Id.* at Section V-D.
[31] *Id.* at Sections I, II.
[32] *Id.* at Section II.

considerations. Specifically, President Obama's Task Force on 21st Century Policing observed that "a clearly stated 'sanctity of life' philosophy must . . . be in the forefront of every officer's mind."[33] To this end, the United States Conference of Mayors recommends that "[p]olice departments' policies should consistently emphasize that the sanctity of life is a central principle of policing."[34]

Some examples of overarching policy statements that make the connection between force and the sanctity of life, including the minimization or avoidance of force when possible, include:

- **Philadelphia Police Department** – "The primary duty of all police officers is to preserve human life."[35]

- **Baltimore Police Department** – "Members shall make every effort to preserve human life in all situations."[36]

- **Las Vegas Metropolitan Police Department** — "It is the policy of this department that officers hold the highest regard for the dignity and liberty of all persons, and place minimal reliance upon the use of force. The department respects the value of every human life and that the application of deadly force is a measure to be employed in the most extreme circumstances."[37]

Recommendation 8.   CMUPD policy should clarify that force may be used only to help serve a lawful purpose.

Current CMUPD policy articulates when force may be authorized.[38] Specifically, the policy authorizes officers to use "approved control techniques and authorized equipment": (a) "[t]o stop potentially dangerous and unlawful behavior"; (b) "[t]o protect the officer or another from injury or death"; (c) [t]o protect subjects form injuring themselves"; and (d) "[i]n the process of effecting a lawful arrest when the subject officers resistance."

Even as the current policy's various, enumerated circumstances are appropriate examples of circumstances in which officers may need to use force, the policy could benefit from more generally emphasizing that, in any circumstance, the use of force must be related to an

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[33] *Final Report of the President's Task Force on 21st Century Policing* 19 (2015).

[34] United States Conference of Mayors, Report on Police Reform and Racial Justice, "Sanctity of Life," https://www.usmayors.org/issues/police-reform/sanctity-of-life/ (last accessed Jan. 4, 2022).

[35] Philadelphia Police Department, Directive 10.2, Use of Moderate/Limited Force (rev. Dec. 13, 2021), https://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf.

[36] Baltimore Police Department, Policy 1115, Use of Force (Nov. 24, 2019), https://public.powerdms.com/BALTIMOREMD/documents/51042.

[37] Las Vegas Use of Force Policy at 1149, https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf.

[38] CMUPD Directive No. 25, Use of Force, Section V-B-2.

underlying, lawful purpose. Various departments address the underlying concept of force being authorized only for a "lawful purpose" in different ways. For example:

- **Camden County Police Department** – "Officers are granted the unique authority to use force for lawful purposes, including, but not limited to, the following:
    - effectuating a lawful arrest or detention;
    - carrying out a lawful search;
    - overcoming resistance directed at the officer or others;
    - preventing physical harm to the officer or to another person (including intervening in a suicide or other attempt of self-inflicted injury);
    - protecting the officer or a third party from unlawful force; or
    - preventing property damage or loss."[39]

- **Baltimore Police Department** – "A member uses Reasonable Force when the member uses no more force than required to perform a lawful purpose."[40]

- **Denver Police Department** – "Force may only be used if non-force alternatives would be ineffective in effecting a detention for any lawful purpose, an arrest, preventing an escape or preventing an imminent threat of serious bodily injury or death to an officer or another person. The intended action must be required based on the circumstances and will only consist of the amount of force needed to safely accomplish a lawful purpose."[41]

Recommendation 9.   CMUPD should further define and describe the core concept of "objective reasonableness" by (a) providing specific guidance to officers on the factors that may be a part of the reasonableness determination, and (b) describing in greater detail what "objective" means in the context of the reasonableness standard.

CMUPD's Use of Force policy appropriately requires that officers employ "force that is objectively reasonable."[42] In defining "reasonable force," the policy observes that "[f]orce used must be 'objectively reasonable based on the facts and circumstances confronting the

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[39] Camden County Police, Use of Force at 8 (rev. Dec. 31, 2021), http://camdencountypd.org/wp-content/uploads/2021/12/USE-OF-FORCE-123121.pdf.

[40] Baltimore Police Department, Policy 1115, Use of Force (Nov. 24, 2019), https://public.powerdms.com/BALTIMOREMD/documents/51042.

[41] Denver Police Department, Operations Manual, Section 105.01(2), Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf (Sept. 1, 2020).

[42] CMUPD Directive No. 25, Use of Force, Section II.

officer(s) and judged from the perspective of a reasonable officer at the scene," citing the U.S. Supreme Court case, *Graham v. Connor*.[43]

Aside from these two references, however, the policy does not address as specifically as it should precisely what "objective" reasonableness is and what types of factors might routinely bear on the inquiry as to whether force may be objectively reasonable under a given set of circumstances. As current CMUPD cites, in *Graham v. Connor*, the Supreme Court articulated a basic, minimum standard under the United States Constitution for police officers to use force.[44] All use of force must be "objectively reasonable" – or appropriate and consistent with what a reasonable officer would do in light of all the circumstances that the officer who used force encountered.[45] The propriety of force depends not on the situation and circumstances as subjectively perceived or understood by the involved officer but, instead, on what a reasonable officer, under the circumstances, would have perceived and understood. The involved officer's "underlying intent or motivation" is not relevant.[46] In this way, the "underlying intent" or "subjective motivations of the individual officers . . . ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment."[47] This standard is analogous to the "reasonable person" standard that the law applies more generally in contexts that implicate harm or injury to others – where the inquiry is what a reasonable person, in the shoes of the individual actually involved, would have done under the circumstances.[48]

CMUPD policy should therefore describe more specifically what the "objective" component of the reasonableness inquiry means. It may be particularly useful, for instance, for the force policy to expressly indicate that "objective reasonableness" means what a reasonable officer would do in light of all of the facts and circumstances that the officer who used force in fact encountered. In 21CP's experience, the distinction between *objective* and *subjective* reasonableness is a critical distinction that benefits from more in-depth policy treatment.

Additionally, CMUPD policy should also describe some of the types of parameters and factors that frequently enter into the objective reasonableness determination. Although the general "objective reasonableness" inquiry may work for judges in the comfort of their courtrooms tasked with evaluating a given application force after it has happened, the standard is vague and potentially challenging for officers to apply in the context of an unfolding situation

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[43] *Id.* at Section IV-I.

[44] 490 U.S. 387 (1989).

[45] *Graham v. Connor*, 490 U.S. 386, 397 (1989) ("[T]he 'reasonableness' inquiry . . . is an objective one: the question is whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them.").

[46] *Id.*

[47] *Id.*

[48] *See* Stephen G. Gilles, "On Determining Negligence: Hand Formula Balancing, the Reasonable Person Standard, and the Jury," 54 *Vanderbilt Law Review* 813, 822-23 (2001) ("For as long as there has been a tort of negligence, American courts have defined negligence as conduct in which a reasonable man . . . would not have engaged.").

without more particular, real-world guidance. Accordingly, CMUPD policy should directly inventory the types of circumstances that relate to the objective reasonableness of force. For example:

- **New Orleans Police Department** – "When determining whether to use force and in evaluating whether an officer has used reasonable force, the facts and circumstances, when they are known or reasonably should be known by the officer, that should be considered include, but are not limited to:
  (a) The seriousness of the suspected offense or reason for contact with the individual;
  (b) Whether the subject poses a threat of injury to himself, officers or others, and the immediacy and severity of the threat;
  (c) The conduct of the individual being confronted as reasonably perceived by the officer at the time;
  (d) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers versus subjects);
  (e) The effects of drugs or alcohol;
  (f) The subject's mental state or capacity;
  (g) Proximity to weapons or dangerous improvised weapons/devices;
  (h) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained;
  (i) The availability of other options and their possible effectiveness;
  (j) The training and experience of the officer;
  (k) The environment wherein the event is occurring;
  (l) Whether the person appears to be resisting in an active, aggressive, or aggravated manner;
  (m) The risk of escape;
  (n) The apparent need for immediate control of the subject for a prompt resolution of the situation versus the ability to step back, regroup and develop an alternative approach and the time available to the officer to make a decision;
  (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; and
  (p) Any other exigent and articulable circumstances.[49]

- **Las Vegas Metropolitan Police Department** – "Objective factors that affect the reasonableness of the force include:
  1. The severity of the crime.

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[49] New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force at 7 (rev. Apr. 1, 2018), https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/.

2. Whether the subject poses an immediate threat to the safety of officers or others.
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
4. The influence of drugs/alcohol or the mental capacity of the subject.
5. The time available to an officer to make a decision.
6. The availability of officers or resources (including the number of officers present at the time) to de-escalate the situation.
7. The proximity or access of weapons to the subject.
8. The environmental factors and/or other exigent circumstances.[50]

Recommendation 10.   CMUPD's force and/or standalone de-escalation policy should provide a more specific description, and examples, of primary de-escalation techniques and tactics.

The term "de-escalation" generally refers to tactics, techniques, and strategies for successfully and safely resolving incidents with less significant, minimal, or no force. "The term de-escalation can be viewed as a both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal."[51]

CMUPD's Use of Force policy defines de-escalation as "[t]aking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation" with "[t]he goal" of "gain[ing] the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force."[52] The introductory "policy" section of the Use of Force Directive indicates that "[s]afe distance, de-escalation, and back-up shall be employed whenever possible and safe for officers and the public."[53] Elsewhere, officers are advised to "utilize de-escalation techniques when safe and prudent"[54] and to "attempt to gain control by means of verbal commands and de-escalation tactics."[55]

However, the general use of force policy does not provide details as to what strategies, techniques, and approaches constitute "de-escalation." Indeed, the policy's various references

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[50] Las Vegas Metropolitan Police Department, Directive No. PO-035-20, Use of Force, https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/PO-035-20%20Use%20of%20Force.pdf (last rev. May 15, 2020).

[51] International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter "IACP Consensus Policy"].

[52] CMUPD, Directive No. 25, Use of Force, Section IV-A.

[53] *Id.* at Section II.

[54] *Id.* at Section V-A-1.

[55] *Id.* at Section V-B-2.

to de-escalation risk confusing the concept by suggesting that "de-escalation tactics" are something separate or distinct from "verbal commands," "safe distance," or "back-up."

Separately, CMUPD maintains a standalone policy addressing de-escalation, Directive Number 62. 21CP notes at the outset that the Department's maintenance of such an independent policy, outside of its Use of Force policy, specifically on de-escalation is consistent with the best emerging practices nationally – and is something that 21CP routinely recommends in order to emphasize that the obligation of officers to de-escalation applies across interactions with the public an regardless of whether an officer ultimately needs to consider using force.[56] However, 21CP's review suggests that the standalone De-Escalation Policy primarily addresses "effective communication,"[57] the use of "trauma-informed approach[es]" in interactions with members of the community,[58] and techniques for communicating and interacting with "[p]ersons in crisis or [experiencing] mental health issues."[59]

The Policy does address some issues outside of communication techniques. First, it reiterates and reaffirms the standards for using force in Directive 25, cross-referencing that general Use of Force Policy.[60] Second it recounts various "[a]lternatives to consider," indicating that "[t]here are incidents where it may be best to dis-engage and pursue action through a different legal or administrative action."[61] This is highly appropriate and useful guidance on how officers may resolve community issues outside of enforcement action, and is thereby an explanation of one tool in the de-escalation toolkit. However, the relation of using these alternative resolution strategies to an officer's core obligation to de-escalate a situation whenever safe and appropriate is left more vague than it should be.

21CP recommends that CMUPD revise and update both its Use of Force and De-Escalation policies to emphasize and inventory specific tactics beyond communication skills that are primary, critical de-escalation techniques – such as the strategic use of time, distance, cover, back-up, coordinating response with other officers, and the like. For example, the **Cleveland Division of Police**'s policy on de-escalation inventories a variety of de-escalation techniques, including "[s]eparating oneself from the threat and creat[ing] a safe distance to speak with subject(s)," "[s]lowing down the pace of the incident, from the time officers receive the radio broadcast, and utilizing Division trained anxiety and stress management

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[56] *See, e.g.*, Baltimore Police Department, Policy 1107, De-Escalation (Nov. 24, 2019), https://www.baltimorepolice.org/1107-de-escalation; Cleveland Division of Police, De-Escalation (January 1, 2018), https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018De-Escalation.pdf?id=12397; Seattle Police Department Manual, Section 8.100: De-Escalation (rev. Sep. 15, 2019), https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation.

[57] CMUPD, Directive No. 62, De-Escalation, Section IV-A-4.

[58] *Id.*

[59] *Id.* at Section IV-D.

[60] *Id.* at Section IV-B.

[61] *Id.* at Section IV-C.

techniques when necessary," "[s]trategic communication or voice commands to de-escalate the situation," and "[i]ncreas[ing] officer presence, if necessary, to increase strategic options available for bringing a subject under control and/or reduce the severity of the threat."[62] CMUPD's revised policies might combine this type of basic list of individual officer tactics with the current De-Escalation policy's existing techniques for interactions with individuals experiencing behavioral or mental health crisis, extrapolated apply to broader populations, and the current policy's appropriate reference to non-enforcement resolution or non-police assistance as additional de-escalation strategies.

Recommendation 11.   CMUPD should consider mechanisms, in its current use of force policy and its standalone policy on de-escalation, for emphasizing that de-escalation is an affirmative duty of all officers in all circumstances, regardless of whether use of force is used or contemplated.

Reading the Department's Use of Force and De-Escalation policies in tandem, officers likely come away with a general sense that they ought to use strategies, techniques, and tactics other than force whenever doing so may be feasible. For instance, existing elements of Directive No. 62 that relate to interactions with individuals experiencing behavioral health issues strongly insinuate that officers always have a duty to de-escalate situations:

- **Give them space.** Respecting the personal space of the person in crisis is essential to reducing their tension. *Maintaining a safe distance also allows for more reaction time for the officer to respond should the situation turn violent.*[63]

CMUPD can strengthen these policies by clarifying that such de-escalation imperatives apply in all encounters, and not just in those involving subjects experiencing behavioral health issues – likely by providing more specific, precise language that imposes an affirmative duty on all officers to de-escalate all situations whenever safe and feasible to do so. For example:

- **IACP National Consensus Policy on Use of Force** – "An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force."[64]

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[62]   Cleveland   Division   of   Police,   De-Escalation   (January   1,   2018), https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018DeEscalation.pdf?id =12397.
[63] CMUPD, Directive No. 62, De-Escalation, Section IV-D (emphasis added).
[64] IACP Consensus Policy at 3.

- **Seattle Police Department** – "When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics in order to reduce the need for force."[65]

- **New Orleans Police Department** – "When feasible based on the circumstances, officers will use de-escalation techniques, disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases."[66]

- **American Law Institute Principles on Use of Force** – "Agencies should require, through written policy, that officers actively seek to avoid using force whenever possible and appropriate by employing techniques such as de-escalation."[67]

Consequently, a revised treatment of de-escalation should expressly indicate what is implicit in CMUPD maintaining a standalone De-Escalation policy independent of its Use of Force Policy – that the duty to de-escalate is applicable across all incidents and officer performance, regardless of whether the incident ultimately involves force.

Recommendation 12.   CMUPD should expand its current list of circumstances in which the use of physical force is prohibited. This includes prohibiting:

The Department's current Use of Force policy expressly prohibits the use of force in particular classes of circumstances. Specifically:

> Physical force will _NOT_ be used:
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> a. As a threat to make a person comply with an officer's verbal order when no physical violence or resistance is imminent.
> b. To elicit information from a person.
> c. As retaliation for physical or verbal abuse.
> d. Once a subject is restrained and under control.[68]

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[65] Seattle Police Department Manual, Section 8.100: De-Escalation (rev. Sep. 15, 2019), https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation.

[66] New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force Policy at 5, *available at* https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/.

[67] *Principles of the Law: Policing* §5.04 (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), *available at* https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

[68] CMUPD, Directive No. 25, Use of Force, Section V-B-7.

The policy outlines separate prohibitions on the use of deadly force and firearms – including shooting from or a moving vehicle, shooting at a moving vehicle (unless "the occupants of a vehicle present an immediate threat of death or serious bodily injury to an officer or another person and such action will not endanger innocent members of the public"), and warning shots.[69]

As a result, current CMUPD already embraces the value of departmental policy outlining specific guidelines and "rules of the road" for applying force that provide officers with greater detail about what is and is not permitted. Because additional types of force are almost never objectively reasonable, necessary, or proportional, 21CP recommends that CMUPD policy be updated to specifically prohibit various, additional problematic types of force. These include:

- **Techniques and/or modes of transport that run a substantial risk of positional asphyxia.** Positional asphyxia is "death as a result of body position," typically a face-down body position, "that interferes with one's ability to breathe."[70] CMUPD policy should specifically prohibit officers from officers positioning or orienting a subject in a manner that threatens that subject's ability to breathe. For example, the **New York Police Department** requires that officers, across all use of force encounters, "[p]osition the subject to promote free breathing, as soon as safety permits, by sitting the person up or turning the person onto his/her side."[71]

- **Use of force to subdue a subject who is not suspected of any criminal conduct.** Force used against subjects not suspected of criminal conduct is unlikely to be necessary, proportional, and reasonable and should therefore be expressly prohibited. The **Cleveland Division of Police** prohibits officers from using "force to subdue a subject(s) who is not suspected of any criminal conduct, other than to protect an officer's or another person's safety . . . ."[72]

- **Use of force against individuals who are solely engaged in exercising their First Amendment rights.** Because individuals who are solely engaged in the exercise of their First Amendment rights do not, even if noncompliant with officer commands, pose an imminent threat of physical harm to officers or others,

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[69] *Id.* at Section V-D.

[70] National Law Enforcement Technology Center, National Institute of Justice, "Positional Asphyxia— Sudden Death" (June 1995) at 1, https://www.ncjrs.gov/pdffiles/posasph.pdf.

[71] New York Police Department, P.G. 221-02, Use of Force, https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/io_35_16-use-of-force.pdf (May 31, 2016).

[72] Cleveland Division of Police, General Police Orders, Use of Force: General, https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479 300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf.

use of force against such individuals is unlikely to be necessary, proportional, and reasonable.

- **Use of force against subject(s) who only verbally confront officers.** Current CMUPD policy prohibits "retaliation for . . . verbal abuse."[73] CMUPD's Use of Force policy should include a more general prohibition against the use of any type of force against subjects who only verbally confront officers, regardless of whether that force could be reasonably defined as "retaliation."

- **Use of force to overcome only passive resistance.** The **Cleveland Division of Police**'s use of force policy defines "passive resistance":

  > Passive Resistance: Refers to instances in which a subject does not comply with an officer's commands and is uncooperative but is nonviolent and prevents an officer from placing the subject in custody and/or taking control. Passive resistance may include but is not limited to standing stationary and not moving upon lawful direction, falling limply and refusing to move (dead weight), holding onto a fixed object, linking arms to another during a protest or demonstration, or verbally signaling an intention to avoid or prevent being taken into custody.[74]

  That department, like many others, prohibits the use of force against subjects who are only passively noncompliant or resistant because such force will almost always be unnecessary, disproportionate to the threat, and unreasonable under the circumstances. 21CP recommends that CMUPD revise its Use of Force policy to preclude expressly the use of force against individuals who are only passively resisting.

- **Use of head strikes with hard objects unless deadly force is authorized under the circumstances.** Strikes to the head pose a particular, elevated risk of serious injury and death. Accordingly, many police departments classify strikes to a person's head with an impact weapon or hard object as deadly force that may be applied only where a firearm or other type of deadly weapon could be applied and no reasonable alternatives are available.[75] CMUPD policy should similarly

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[73] CMUPD Directive No. 25, Use of Force, Section V-B-7.

[74] Cleveland Division of Police, General Police Orders, Use of Force: Definitions, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018Definitions.pdf?id=12396 (Jan. 1, 2018).

[75] Baltimore Police Department, Policy 1115 at 8 (Nov. 24, 2019), https://www.baltimorepolice.org/1115-use-force; *see also* Seattle Police Department, Manual, Section

prohibit strikes to a subject's head across all situations except those in which deadly force would be authorized and no other reasonable alternatives are available.

- **Use of firearm as an impact weapon.** In addition to generally prohibiting officers from applying hard strikes with hard objects, CMUPD policy should specifically prohibit officers from using firearms as impact weapons. As the **Denver Police Department**'s policy on force indicates, "[f]irearms are not an appropriate impact weapon because of the inherent danger of an accidental discharge."[76]

Relatedly, 21CP recommends that CMUPD clarify its existing provisions relating to the application of force to individuals who are already restrained. Section V-B-7 of the Department's Use of Force policy, as cited above, categorically prohibits force "[o]nce a subject is restrained and under control."[77] However, immediately preceding language in Section V-B-6 indicates that "[o]nce a person is restrained or under control, the use of physical force *will be restricted to the force necessary to retain control*."[78] Section V-B-7 Department's policy seems to recognize, appropriately, that the application of force to individuals who are restrained is highly unlikely to be necessary or proportional under the circumstances – and as such must be avoided.[79] 21CP recommends that CMUPD eliminate the seemingly contradictory language of Section V-B-6 that could be used to justify the application of force against restrained individuals in some instances.

Recommendation 13.   CMUPD should consider more specifically addressing the exhibiting firearms in its use of force policy. It should require the systematic reporting of all instances where officers point firearms at subjects.

Police use of force policies should address not just the use or firing of a firearm but the drawing, brandishing, or exhibiting of a firearm. Recognizing that "drawing or exhibiting a firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm," the **Seattle Police Department** prohibits officers from drawing

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8.050, Use of Force Definitions, http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions (last rev. June 19, 2020).

[76] Denver Police Department, Operations Manual, Section 105.01, Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf (Sept. 1, 2020).

[77] CMUPD, Directive No. 25, Use of Force, Section V-B-7.

[78] *Id.* at Section V-B-6 (emphasis added).

[79] *See, e.g.*, Cleveland Division of Police, General Police Orders, Use of Force: General, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf (Jan. 1, 2018) (prohibiting "force against subject(s) who are handcuffed or otherwise restrained, as the threat that the individual could pose has been dramatically reduced, if not eliminated, because of the restraint").

or exhibiting a firearm unless "the officer has reasonable cause to believe it may be necessary for his or her own safety or for the safety of others."[80] The **Los Angeles** and **Las Vegas Metropolitan Police Departments** maintain nearly identical policy requirements.[81] CMUPD should revise its policy to provide this type of more specific guidance to officers on exhibiting firearms.

Similar logic applies to officers pointing a firearm at a subject. Pointing a firearm *at* someone, in contrast to unholstering a weapon or keeping a firearm at the *sul* or "low ready position," constitutes a "seizure" under the Fourth Amendment[82] – because a reasonable person in the situation would not feel free to leave. Departments from **Oakland** to **Seattle** to **Cleveland** all consider pointing a weapon *at* an individual to constitute reportable use of force.[83] Some jurisdictions require instances where officers draw or exhibit their firearms but do not point it at an individual to be performance that should be reported even if not necessarily a use of force.

CMUPD policy currently requires officers to report whenever "[f]irearms are drawn within the view of, and in the presence of a subject who officers perceive to pose a threat."[84] 21CP endorses the concept of requiring of at least some type of reporting whenever firearms are drawn and use of force reporting whenever firearms are pointed at an individual. The Department's current policy wording – primarily because it appears to limit reporting only to instances where the officers perceive the subject to a pose a threat – risks the under-reporting of some types of performance that CMUPD would be advised to track rigorously and review.

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[80] Seattle Police Department Manual, 8.300, https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools (rev. Apr. 15, 2021).

[81] Los Angeles Police Department, "Policy on the Use of Force–Revised" (June 29, 2020), https://www.lapdonline.org/newsroom/policy-on-the-use-of-force-revised/; Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

[82] *Thompson v. Rahr*, 885 F.3d 582, 586 (9th Cir. 2018) (concluding that the pointing of a firearm at an individual was not objectively reasonable and that the force was "not minor"); *accord Baird v. Renbarger*, 576 F.3d 340 (7th Cir. 2009) (finding that the pointing of a gun at an individual could be unreasonable under the Fourth Amendment without a threat to the safety of officers or others); *see also* Oakland Police Department Manual, General Order K-3, Use of Force Policy at 7, http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf ("The pointing of a firearm at a person is a seizure and requires legal justification.").

[83] Seattle Police Department Manual, 8.300, https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools (rev. Apr. 15, 2021); Cleveland Division of Police, General Police Orders, Use of Force: General at 1,https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf; Oakland Police Department Manual, General Order K-3, Use of Force Policy at 6, http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf.

[84] CMUPD, Directive No. 25, Use of Force, Section V-B-8-A-1.

21CP observes that, depending on the circumstances, officers are often justified in exhibiting a firearm or pointing a firearm at an individual. In certain types and classes of instances, the safety of officers and bystanders requires a firearm to be immediately available to officers.

The purpose of this recommendation – that CMUPD provide more precise guidance to officers on when drawing and exhibiting firearms is appropriate and ensure more systematic reporting of the exhibiting and point of firearms – is not to discourage the exhibiting or pointing of a firearm in all instances. Instead, the recommendation here is that CMUPD better align its policies to current legal requirements and ensure that officers systematically report when they do exhibit or point their firearms so that the Department can better review and analyze such performance.

Recommendation 14.   CMUPD should more clearly require that all officers carry, and be trained on, less-lethal instruments. CMUPD's policy should provide expanded, more specific direction on the use of various, authorized less-lethal instruments.

Equipping officers with less-lethal tools has been associated with a lower rate of injuries for both officers and civilians.[85] A number of police departments require that officers carry less-lethal instruments:

- **Cleveland Division of Police** – "Uniformed officers shall carry the Conducted Electrical Weapon (CEW) if qualified, and a second intermediate weapon: ASP baton or Oleoresin Capsicum (OC) Spray. If not CEW qualified, officers shall carry both approved intermediate weapons: ASP baton and OC Spray. Officers may elect to carry all three intermediate weapons."[86]

- **Seattle Police Department** – "Uniformed officers are required to carry at least one less lethal tool. Uniformed officers who have been issued a TASER shall carry it."[87]

Current CMUPD policy alludes to "less lethal" instruments but does not describe any duty of officers to carry such instruments. Specifically:

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[85] John M. MacDonald, et al, "The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events," 99 *American Journal of Public Health* 2268, 2268 (2009) (finding that the "[i]ncidence of . . . injuries can be reduced dramatically when law enforcement agencies responsibly employ less-lethal weapons in lieu of physical force").

[86] Cleveland Division of Police, General Police Order, Section 2.01.04, Use of Force – Intermediate Weapons, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018IntermediateWeapons.pdf?id=12399 (Jan. 1, 2018).

[87] Seattle Police Department, Policy Manual, Section 8.050 – Use of Force Tools, http://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools (June 19, 2020).

- Directive No. 25 defines a "less-lethal weapon" as "[a]ny weapon, other than a lethal weapon, used to control persons or defend an officer or persons from harm."[88]

- Directive No. 25 lists "aerosol restraint spray (Less Lethal Weapon)" as an example of "Soft Intermediate Weapon Control" in its description of various "levels of control" or force.[89] That same section also lists "Less Lethal Force," or "[d]evices designed and intended to apply force not intended nor likely to cause the death of the subject or serious bodily injury," as a separate "level of control."[90]

- Directive No. 25 requires that all incidents involving the "[u]se of any less lethal device authorized by the CMUPD" be reported as a use of force.[91]

- Directive No. 25 lists, as "defensive tactics" that should be included as a subject of at least annual use of force training, "OC spray" and "baton training," as well as training on unspecified "[l]ess lethal devices."[92]

- Directive No. 55 ostensibly addresses "Less Lethal Devices and Use" but appears to be restricted to guidance on the use of "[a] department authorized 12[-]gauge shotgun specifically equipped and designated for less-lethal projectiles only."[93]

21CP understands from CMUPD personnel that officers can be authorized to carry various less-lethal instruments, including OC (pepper) spray and the baton. The Department also has beanbag shotguns in a number of its vehicles. Although the Department has discussed equipping officers with Tasers, it has not done so to date, citing concerns about the potential for over-use and possible health or medical effects to subjects against whom it is used.[94] Nevertheless, the Department should more specifically require that officers carry, and receive training on, less-lethal instruments.

At the same time, the Department should revise its policies to include more comprehensive and specific guidance on the use of the specific less-lethal instruments that policy requires or authorizes officers to carry. Given the specificity of some of the instrument-specific

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[88] CMUPD, Directive No. 25, Use of Force, Section IV-F.

[89] *Id.* at Section IV-P-4.

[90] *Id.* at Section IV-P-4.

[91] *Id.* at Section V-B-8-A.

[92] *Id.* at Section II.

[93] CMUPD, Directive No. 55, Less Lethal Devices and Use, Section III.

[94] If CMUPD ever determined that it should equip officers with Tasers, specific policy guidance should be provided to officers on when and how to use them. *See, e.g.*, The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 137 (2019); Axon, General Taser Procedures, Using a Taser CEW, *Cuffing Under Power*, https://my.axon.com/s/article/Cuffing-under Power?language=en_US#:~:text=Cuffing%20under%20 Power,Applying%20handcuffs%20to%20a%20subject%20who%20is%20experiencing%20a%20Neuro, safety%20to%20officers%20and%20subjects. (last visited Jan. 11, 2022).

considerations, this report cannot exhaustively inventory all potential policy guidance that CMUPD may find useful to provide to officers in expanded policy guidance on less-lethal force. We do briefly present some additional policy guidance that the Department should consider across some of the most-common less-lethal instrument types. If the Department ever determines that Department personnel should be equipped with Tasers, specific guidance on the application of that instrument should also be crafted.

Batons/Impact Weapons

- Classify "strikes to vulnerable body parts" as "lethal force because of their high risk of serious injury and death."[95]
- Prohibit "[u]sing flashlights or other hard objects in place of batons."[96]

OC/Pepper Spray

- Provide guidance that "especially in windy conditions" OC spray "can hit people other than intended targets, including other officers."[97]
- Prohibit "[u]sing pepper spray on passive resisters or to disperse crowds."[98]

Recommendation 15.   CMUPD should revise and streamline its use of force reporting requirements to ensure that all use of force is uniformly and routinely captured.

The Department's Use of Force Policy requires that officers report the use of any force. The exception appears to be any *de minimis* force – classified as "mere physical contact" in policy – that does not cause or result in injury or the complaint of injury.[99] (This exception aligns with the acknowledgment by courts and use of force case law that some "[p]hysical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury" is a necessary, expected, and reasonable part of some ordinary police interactions.[100])

21CP requested CMUPD's Use of Force reports since 2018. The Department provided 10 "Subject Resistance Forms" covering the period of 2018 through 2020. Some forms documented officer actions that were not more significant than verbal commands or forcible

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[95] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 138 (2019).

[96] *Id.*

[97] *Id.* at 139.

[98] *Id.*

[99] CMUPD, Directive No. 25, Use of Force, Section V-B-8-A–B. Section V-B-8-A-B cross-references a non-existent Sub-Section 8a(6). We assume that the referenced exception is to all of the rules outlined in Section 8(a) generally. This could be made clearer in the policy going forward.

[100] Seattle Police Department, Manual, Section 8.050, Use of Force Definitions (last rev. Apr. 15, 2021), https://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions.
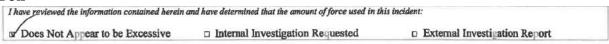
handcuffing. However, in other instances, take-downs, pushes, the use of a motor vehicle, taking the subject to the ground by grabbing the subject's shirt, and tackling the subject were marked.

Further, and confusingly, the Subject Resistance Form itself includes as options from which the officer may select for "level of control used" a "Kick," "OC Spray," "Impact Weapon," and "Intentional Discharge of Firearm," among others. To the extent that Subject Resistance Forms do not document Uses of Force, it is unclear as to why these options – which by any definition would be force – are included on the form.

Especially given the relatively low frequency with which CMUPD appears to employ force, the distinction between a "Use of Force" report referenced in the Department's Use of Force Policy and a "Subject Resistance" report risks confusion. Indeed, one CMUPD member observed that "[w]hen we have to physically fight somebody, that's when we get to use of force" that would be reported as a Use of Force incident. This explanation does not align as closely as it should to best practices with respect to use of force definitions and reporting or to what is specifically outlined in Directive No. 25 with respect to force reporting.

Performance that is reported on a Subject Resistance Report is generally reviewed by supervisors. Indeed, the Report includes a short "Supervisory Review/Approval" section. Typically, the involved officer(s)' supervisor memorializes some brief conclusions about the appropriateness of officer actions taken. The supervisor must then complete the checkbox pictured in Figure 1:

Figure 1: CMUPD Subject Resistance Form, Supervisor Review/Approval Check Box

I have reviewed the information contained herein and have determined that the amount of force used in this incident:

☑ Does Not Appear to be Excessive   ☐ Internal Investigation Requested   ☐ External Investigation Report

Source: CMUPD

Here, supervisors are making conclusions about "the amount of force used in this incident" and whether it either "does not appear to be excessive" or, instead, should be the subject of an internal or external investigation. The Subject Resistance Form is functioning, practically, like a Use of Force form – which would be acceptable and consistent with CMUPD if not for some instances where the officer force described may not have risen to the level of reportable force.

Adding to the confusion is that CPD separately reported that it had been involved in 0 "Use of Force Incidents" in 2018, 0 in 2019, and 0 in 2020. It appears that, for at least some of the 10 unique Subject Resistance Forms addressing incidents occurring in 2018, 2019, and 2020, officers listed and described a "Level of Control" used that amounted to reportable force. It is not clear to 21CP why the incidents described in at least some of the Subject Resistance forms should not be classified as "Use of Force Incidents."

Ultimately, CMUPD simply needs to streamline, clarify, and simplify its reporting requirements with respect to force. Its current force reporting policy in Directive No. 25, which appears to mandate the reporting of any force except *de minimis* force not causing injury or the complaint of injury, is clear and generally appropriate. (21CP would recommend that CMUPD also make reportable as force any force that generates a complaint of injury *and/or* pain.) Reporting should occur on an electronic or hard-copy report called a "Use of Force Report." That report should contain, among other things, an account of the subject's behavior, officer's response, the use of force used, the circumstances, and a detailed narrative of the encounter and application(s) of force. A supervisor, after conducting a factual inquiry as necessary, should provide a detailed, substantive review; reach determinations as to whether the force *was or was not consistent with CMUPD policy* (not, more generically and as indicated on the current Subject Resistance Form, "does not appear to be excessive"); and a report detailing the rationale for the supervisor's conclusions. It should also ensure that any incident that involves the use of any reportable force is classified, for reporting and statistical purposes, as a "Use of Force Incident."

B. Stops, Searches and Arrests

CMUPD's policy on Searches, Directive No. 26, is one of the most thorough, thoughtful, forward-looking, and practical policies on the topic that 21CP has reviewed. It commendably provides guidance to officers on the scope of searches, both with and without warrants, and the particular rules that govern the various types of warrantless searches that courts have recognized over the years.

As the following recommendations propose, the Department should expand on this strong foundation by addressing in policy, with the same depth and thoughtfulness, the subject of stops and seizures of individuals in the first instance. It should also capture, analyze, and review information on the stops and detentions of individuals in a more systematic and robust manner.

Recommendation 16. CMUPD should provide additional, specific policy guidance to officers on effectuating seizures of individuals.

Laws and obligations surrounding stops, searches, seizures, and arrests are notoriously complicated.[101] The differences among various types of encounters with individuals, the boundaries and restrictions on various types of searches, and the requisite levels of legal justifications that officers must have before conducting various types of stops, searches, and

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[101] *See generally* Stephen Budiansky, "Rescuing Search and Seizure," *The Atlantic* (Oct. 2020), https://www.theatlantic.com/magazine/archive/2000/10/rescuing-search-and-seizure/378402/. (observing that Fourth Amendment-related legal "rules are hard for a layperson to make much sense of" with the application of various exceptions to the warrant requirement especially "bewildering").

arrests are complex and nuanced. This complexity makes the clarity and comprehensiveness of an agency's policy guidance to officers especially critical.

CMUPD's Directive No. 26, entitled "Search & Seizure," tends to focus disproportionately on the search and seizure of *things* and *objects*. Although its definition of "Seizure of a Person" is appropriate, that policy does not detail – and no other Department policy details – the specific considerations and standards involving the initiation of a stop/detention in the first instance, i.e. the seizure of a *person*.

CMUPD should draft a new policy, or expand the scope of its current directive on searches, that addresses the stop, detention, and seizure of persons. Such a policy would specifically outline, using a structure that parallels existing Directive No. 26, the various levels of civilian-police interactions and the standards and guidelines that attach to each type. For example, the difference between a consensual encounter or non-custodial interview on the one hand and an investigatory/*Terry* stop depends on whether a reasonable individual under the circumstances would feel free to leave. A policy that specifically addresses stops would explain this and provide the types of factors and circumstances that courts have found to have a bearing in the inquiry, including:

- The number of officers present;
- An officer's physical contact with the individual;
- Whether the officer's language or tone of voice suggests that compliance with their requests is compelled;
- Display of a weapon;
- Blocking the individual or the individual's vehicle; and
- Anything tend to indicate that the choice to end the encounter is not available to the individual.

The policy should also describe with greater particularity the reasonable suspicion standard and the types of factors that may be weighed.

As CMUPD expands its existing Fourth Amendment policy guidance beyond searches and use of force, it may look to the approach of a number of other police departments that maintain either (a) longer, comprehensive policies covering an array of issues relating to stops and searches, or (b) sets of interrelated policies that address various, major sub-topics. For instance:

- **New Orleans Police Department** – The department maintains policies on Search and Seizure generally, Stops/*Terry* Stops, Search Warrants, and Vehicle Stops.[102]

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[102] New Orleans Police Department, Chapters 1.2.4, 1.2.4.3, available at https://www.nola.gov/nopd/policies/ (last visited Jan. 17, 2021).

- **Cleveland Division of Police** – The agency maintains separate but inter-related policies on Search and Seizure, Investigatory Stops, Strip Searches & Body Cavity Searches, Probable Cause/Warrantless Arrests, and Miranda Warnings & Waivers.[103]

- **Baltimore Police Department** – Among other policies, the agency maintains a comprehensive, standalone policy on "Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches." It provides guidance on the legal requirements and parameters governing interactions ranging from voluntary contacts to arrests, including traffic stops.[104]

Whether in one, longer policy or in several, shorter policies covering discrete topics, CMUPD's policy guidance overall should address when officers may initiate a non-voluntary encounter, what they may do during such non-voluntary interactions, and when and how such encounters may conclude.

Recommendation 17. CMUPD should specifically document all non-voluntary interactions with individuals (regardless of whether the individual is on foot, in a vehicle, or otherwise situated).

Currently, CMUPD logs information about some, but not all, non-voluntary interactions with individuals through a variety of different mechanisms:

- The Department's Directive No. 30 requires officers to complete an Incident or Crime Report across a host of incidents involving particular types of enforcement activity. However, these after-incident reporting requirements do not appear to attach to stops and detentions of individuals where there is *no* enforcement action taken.

- Directive No. 26 requires the completion of an Incident Report when officers conduct searches.

- The Department's CAD system may record the officer's activity (i.e., that they stopped someone) but the system does not log comprehensive information about the nature of the encounter, the characteristics of those involved, and the officer's legal rationale or justification for the encounter.

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[103] City of Cleveland, Search and Seizure Policies, http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PoliceSettlementAgreement/SearchandSeizures (last visited Jan. 17, 2021).
[104] Baltimore Police Department, Policy 1112: Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches (Oct. 12, 2020), https://www.baltimorepolice.org/1112-draft-field-interviews-investigative-stops-weapons-pat-downs-and-searches.

- CMUPD personnel indicated that any stop will also likely be recorded on body-worn cameras. However, even as this is an incredibly useful reporting and accountability mechanism, all information about stops residing in videos limits aggregate reporting and provides no information about the officer's rationale and justification for the stop and detention.

As a result of this patchwork of reporting requirements, *some but not all* non-voluntary encounters between CMUPD personnel and community members are being logged. The Department would benefit, across a variety of perspectives from, knowing more precisely and systematically when its officers are involuntarily stopping and detaining individuals and what transpires during such interactions.

The documentation of all non-voluntary contacts – that is, all those that implicate significant Fourth Amendment considerations and guidelines because they are interactions in which a reasonable subject, under the circumstances, would not feel free to leave – allows for both real-time review of officer performance and the overall, aggregate analysis of departmental performance and trends. Without all non-voluntary encounters with individuals being documented, supervisors are unable to review all Fourth Amendment seizures to ensure that officers are complying with core legal obligations. Likewise, department-wide trends across individual stops implicate important considerations about the efficacy and efficiency of the department, staffing and workload demands, the effectiveness of various departmental approaches aimed at addressing crime and public safety issues, and the identification of potential disparities in enforcement activities.

Because "[s]top data collection is an essential practice for every law enforcement agency, no matter how small or specialized,"[105] CMUPD policy and practice should expressly require that, for all non-voluntary encounters, officers provide information about:

- The location of the investigatory stop or encounter;
- The race, ethnicity, gender, and age of the subject;
- A specific, free-response description of the legal justification for the stop or encounter (such as the reasonable articulable suspicion necessary to justify a *Terry* stop);
- The duration of the stop or encounter;
- Whether a frisk or other search was conducted, and what, if anything, was discovered pursuant to the search; and

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[105] Marie Pryor, et al, Center for Policing Equity & Policing Project at NYU School of Law, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* 13 (2020), https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5f7335d7294be10059d32d1c/1601385959666/COPS-Guidebook+Final+Release+Version.pdf.

- The outcome of the interaction (such as an arrest, citation, warning, or the interaction concluding without any specific action or activity).[106]

Rather than recording information about non-voluntary encounters across several types of reports, or via a number of different mechanisms (incident reports, crime reports, the CAD system, body-worn camera systems), in formats that are not able to be easily aggregated, the Department would benefit from maintaining a single "non-voluntary contact report" (preferably, for the sake of efficiency, in electronic format) – such that officers always complete the report whenever an encounter starts as a non-voluntary interaction or becomes non-voluntary during the course of the interaction.

In crafting policies requiring reporting and the specific mechanisms for the reporting of all non-voluntary contacts with civilians, the Department can consult an ever-growing body of national guidance on systematically capturing information about these interactions.[107]

Recommendation 18.   CMUPD policy should require that supervisors review documentation of all non-voluntary interactions, including searches.

Without all stops documented, supervisors cannot review all non-voluntary encounters. Even for those non-voluntary interactions that are documented, no policy mandates review for legal justification. In the absence of such a policy, it does not appear that CMUPD supervisors are regularly reviewing all stops, and documenting such review, from the standpoint of compliance with applicable law. CMUPD provided Incident Reports for six (6) encounters that involved searches that occurred between 2018 and 2020. Several of the reviewed reports did not adequately explain the officer's specific reasoning for conducting a pat-down or search under the circumstances. From the documentation available, it was not clear whether supervisors specifically reviewed the Incident Reports to ensure that officer performance was consistent with the substantive guidelines in Directive No. 26.

Once the Department ensures documentation of all non-voluntary interactions, it should ensure that supervisors review documentation of all such interactions to ensure that officer performance is consistent with policy. Policy should require review of stops by the end of the supervisor's shift, or within a reasonable period of time thereafter. Many departments require supervisors to review officer stops:

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[106] *See, e.g.*, Cleveland Division of Police, General Order, Investigatory Stops (Apr. 25, 2019), https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d81088a7a152a6219030763/156 8737418788/Ex+B+Investigatory+Stops.pdf (listing required types of information and data that officers must report).

[107] *See, e.g.*, The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 104–05 (2019); Marie Pryor, et al, Center for Policing Equity & the Policing Project at NYU School of Law, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* (2020), https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2 compressed.pdf.

- **New Orleans Police Department** – "After receiving a submitted FIC [Field Interview Card, which documents stops], a supervisor of the submitting officer's unit shall review the FIC to determine if each stop, frisk, or search was supported by documentation of reasonable suspicion of probable cause; whether it is consistent with NOPD regulations, policy, and federal and state law; and whether it showed a need for corrective action or review of agency policy, strategy, tactics, or training . . . . "[108]

- **Cleveland Division of Police** – "Supervisors shall review all documentation of investigatory stops for completeness and adherence to law and Division policy."[109]

- **Newark Police Division** – "All entered investigative stop data information will be reviewed and approved by the appropriate desk . . . by the end of the submitting officer's tour of duty . . . Investigative stop entries failing to meet the reasonable suspicion standard shall be rejected . . . . "[110]

Recommendation 19.   CMUPD should require the regular analysis (at least annually) of the data of all non-voluntary encounters with individuals to understand patterns and any potential disparities or disparate impacts with respect to the subjects of such encounters.

Department-wide trends across individual stops implicate the efficacy and efficiency of the department, staffing and workload demands, the effectiveness of various departmental approaches aimed at addressing crime and public safety issues, and the identification of group-based disparities among enforcement activities.

To its credit, CMUPD appears to conduct an annual analysis of data on certain departmental practices through the lens of impartial policing and bias. Each of these analyses from 2018, 2019, and 2020, which the Department provided to 21CP, proceed within the same format. In each year, the report notes that "there were no citizen complaints related to impartial policing."[111] Next, the analysis observes "[n]o indication of bias based policing upon review of monthly UCR Submissions," though the analysis provides no accounting or support for the conclusion.[112] The memorandum subsequently details the arrests that the Department made

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[108] New Orleans Police Department, Operations Manual, Chapter 41.12, Field Interview Cards ¶ 25, https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-12-Field-Interview-Card-EFFECTIVE-12-20-20.pdf/?lang=en-US (Dec. 20, 2020).

[109] Cleveland Division of Police, General Police Orders, Investigatory Stops, https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d81088a7a152a6219030763/1568737418788/Ex+B+Investigatory+Stops.pdf (Apr. 25, 2019).

[110] Newark Police Division, General Order 18-14, https://www.newarkpdmonitor.com/wp-content/uploads/2019/04/Stops-Policy.pdf (Dec. 31, 2018).

[111] Memo from Sgt. Nello Bruno to Lt. Robert Obpferman re: 2020 Impartial Policing Analysis at 1 (Jan. 5, 2021).

[112] *Id.*

in the preceding year, broken down by race, ethnicity, and gender.[113] It note that "[a]ll of the case reports involving the arrests of minority subjects were reviewed and there was no indication of biased based policing in any incident," though, again, no description, accounting, or support is provided for the conclusion.[114] Finally, the memorandum reports that "[a]ll Field contacts were reviewed and yielded no evidence or patterns of persons stopped by CMUPD."[115]

Although bias and discriminatory policing are not topics expressly addressed within the scope of 21CP's engagement, we observe that the Department's admirable attempts to analyze its activities through the lens of bias and disparate impact can be strengthened by a more comprehensive, less conclusory set of analyses. With respect to arrests, the analysis would be strengthened by a much more detailed description of how arrests were reviewed and what factors or features were the focus of the review. Separately, the quantitative analysis would benefit from the disaggregation of various racial and ethnic groups from the "minority" group cited in the report.[116] That is, rather than comparing the "minority vs. non-minority" breakdowns of CMUPD arrests to the "minority vs. non-minority" shares of the Pittsburgh and Carnegie Mellon University populations respectively, the Department should compare arrest rates for specific races and ethnicities – which it captures and summarizes in the Impartial Policing Analysis[117] – to Pittsburgh and the University communities.

With respect to stops, Department's impartial policing analyses cannot be as complete as they should be because CMUPD does not document all non-voluntary interactions. For this reason, the Department's impartial policing analyses to date can only speak in terms of contacts with civilians in the field that happened to be fall into a category that warranted documentation

C.   Accountability

"Accountability" refers to "the quality or state of being accountable" and an individual or entity's "obligation or willingness to accept responsibility for one's actions."[118] President Obama's Task Force on 21st Century Policing situated this concept in the context of contemporary policing, emphasizing that police are, first and foremost, accountable to the communities they serve:

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[113] *Id.*

[114] *Id.* at 2.

[115] *Id.*

[116] Memo from Sgt. Nello Bruno to Lt. Robert Obpferman re: 2020 Impartial Policing Analysis at 2 (Jan. 5, 2021).

[117] *Id.*

[118] Accountability, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/accountability (last visited Mar. 18, 2021).

> Rethinking . . . the role of police in a democracy requires leadership and commitment across law enforcement organizations to ensure internal and external policies, practices, and procedures that guide individual officers and make organizations more accountable to the communities they serve.[119]

Often, "[w]hen people talk about accountability in policing, they usually are referring to the back end. Something bad has happened, it is not what should have happened, and so someone must be held accountable."[120] However, the umbrella term "accountability" also encompasses *front-end* accountability, which involves ensuring that there are "rules in place before officials act, which are transparent, and formulated with public input."[121] In this way, accountability can be thought of in the narrow, retrospective sense – imposing consequences for misconduct or poor performance after it has occurred – and in a broader, forward-looking sense – defining ways of aligning police performance with the community's values and needs, thereby making the police "accountable" to the community.

Recommendation 20. CMUPD should review and assess Directive 45 to consider whether mechanisms for internal procedural justice processes are in place in manner that can ensure fair, equitable, and timely implementation of disciplinary and administrative investigations.

The current CMUPD system for internal investigations and officer discipline, as detailed in Directive No. 45, "Discipline and Administrative Investigations," provides a generally adequate description of how complaints may be brought to the attention of CMUPD leadership, and the process for the investigation of such complaints.

21CP's discussions with CMUPD officers and personnel review revealed a public safety workforce that is mostly satisfied in terms of investigative processes, which include the ability to grieve discipline under the current Collective Bargaining Agreement. However, there was less consensus with respect to perceptions about the consistency in implementation of practices put forth in Directive No. 45. These general concerns were consistent with some of the issues that 21CP's review of that policy raised.

For instance, Directive No. 45 indicates that "[c]omplaints of a minor nature shall be reviewed by a supervisor," while "[c]omplaints of a serious nature, including repeated, minor discrepancies, are to be reported to the Office of the Chief, for a determination of a proceedings."[122] Because CMUPD is a relatively small agency, it may be that precisely what constitutes a "minor" nature suitable for supervisors to address, compared to what is sufficiently "serious" that it warrants routing to the Chief's Office, is either self-evident or

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[119] *Final Report of the President's Task Force on 21st Century Policing* 2 (2015).

[120] Maria Ponomarenko & Barry Friedman, "Democratic Accountability and Policing," *in* 4 *Reforming Criminal Justice: Punishment, Incarceration and Release* 5, 5 (Erik Luna ed., 2017).

[121] *Id.* at 8.

[122] CMUPD, Directive No. 45, Discipline and Administrative Investigations at 6.

the matter of informal determinations and consultation among command staff. However, the policy does not define or distinguish between complaints of a "minor" and "serious." Because officers and members of the public need to know, in advance, how complaints will be addressed before they arise, policies on complaints and internal investigations need to describe specifically how issues will be investigated.

Generally, "[a] complete investigation should take place where the allegations, if true, would likely result in formal discipline."[123] Unless a complaint qualifies as one of "[a] small number" that "allege facts that defy science and reason . . . and should be closed with a finding that the complainant's claim was impossible to investigate because the allegations were physically, logically, or technically impossible under any reasonable construal," all complaints alleging misconduct should receive a factual investigation.[124] CMUPD's relative size may well make it especially reasonable and feasible to conduct a factual inquiry for all complaints or allegations of misconduct, regardless of severity.

"'Procedural justice' refers to the idea of fairness in the processes that resolve disputes and allocate resources," with research showing "that perceptions of fairness are driven not only by outcomes but also by the fairness and consistency of the processes used to reach those outcomes."[125] In policing, the focus is often on external procedural justice, or "the way law enforcement – particularly front[-]line officers – and other legal authorities interact with the public."[126]

However, there is another type of procedural justice critical for law enforcement agencies to address: *internal* procedural justice. Internal procedural justice refers to "officers' perceptions that their colleagues' actions – particularly those of their supervisors – are fair and understandable."[127] This implicates the practices that an agency's leadership sets and the extent to which the agency's employees adequately understand expectations in advance and believe that all employees are equally held accountable to adhering to them. Officers who feel respected by the Department, their supervisors, and their peers in this way are more likely to accept departmental policies, understand supervisor and organizational decisions, and comply with departmental expectations voluntarily. It follows that officers who feel respected by their organizations may be more likely to reflect these values in their interactions with the people they serve.[128]

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[123] Office of Community Oriented Policing Services, U.S. Department of Justice, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 29 (2007).
[124] *Id.*
[125] U.S. Department of Justice, Office of Community Oriented Policing Services, "Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors," 8 *Dispatch* 4 (Apr. 2015), https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.
[126] *Id.*
[127] *Id.*
[128] *Final Report of the President's Task Force on 21st Century Policing* 10 (2015).

Ultimately, CMUPD would benefit from a review of its internal investigations and discipline policies and procedures that ensures a procedurally just process, that CMUPD employees are aware of and understand the process, and that supervisors and leadership are consistently carrying out policy directives.

Moreover, the CMUPD would further benefit from a regular practice of having diverse internal CMUPD members of the unit participate in reviews of policy directives and implementation. This reflective process would ensure that dissemination and adoption are effective across all members of the agency.

Recommendation 21.   CMUPD should review and assess Directive 59 at least bi-annually to ensure that body-worn camera policies, training, and practices are aligned with Pennsylvania Law, best practices, and lessons learned.

CMUPD implemented body cameras in 2021. CMUPD's current policy guidance to officers on the use of body-worn cameras is contained in Directive No. 59. Overall, it reflects the complexity of implementation and oversight, as well as matters pertaining to storage, retention, and the release of camera footage.

As CMUPD continues to refine its body-worn camera policy, it should consider addressing a few, specific issues. First, body-worn camera technology implicates privacy issues. Unlike other types of surveillance cameras or in-car video systems, body-worn cameras can "give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service."[129] Consequently, the body camera policies of a number of jurisdictions provide specific guidance on the use of cameras in sexual assault cases,[130] an area that is often the subject of attention and focus with respect to public safety issues in a university environment. Separately, some officers also may feel that the cameras, at least in some circumstances, intrude on their personal privacy – potentially capturing mundane or private elements of their time. Although Directive No. 59 prohibits officers from recording other officers "without their knowledge during routine, non-enforcement relative activities" or in locations "where there would be a reasonable expectation of privacy" like "locker rooms" and "restrooms,"[131] the policy might more meaningfully engage with issues related to cameras

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[129] Police Executive Research Forum/Community Oriented Policing Services, U.S. Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 11 (2014).

[130] *See* National Sexual Violence Resource Center, *SART Toolkit Section 5.6*, https://www.nsvrc.org/sarts/toolkit/5-6 (last visited Feb. 23, 2020); Pennsylvania Coalition Against Rape, *The Use of Body-Worn Cameras with Victims of Sexual Violence* (2017), https://pcar.org/sites/default/files/resource-pdfs/body_worn_cameras_factsheet.pdf; Mary D. Fan, "Privacy, Public Disclosure, Police Body Cameras: Policy Splits," 68 *Alabama L. Rev.* 395 (2016), https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1059&context=faculty-articles.

[131] CMUPD, Directive No. 59, Body Worn Cameras, Section IV-E-5.

potentially personal cell phone conversations, non-material personal activities, and the like when they are otherwise appropriately activated per Section IV-D.[132]

Although Directive No. 59 is substantially clearer than some law enforcement policies about when officers should and should not activate their body cameras, the Department should continue to apply officer experiences and continued engagement with the field to refine further its policies. For instance, 21CP assumes that the purpose of the provision that officers deactivate recording "[d]uring officer-to-officer conversations"[133] is intended to address privacy considerations around conversations among colleagues that do not pertain to enforcement activity, interactions with the public, or job functions – such that "water cooler" conversations or daily exchanges are not recorded. However, as worded, it is unclear as to whether officers who were at a traffic crash scene – one of the contexts listed where body cameras would need to be activated – should or should not deactivate the camera if they were consulting with other officers at the scene during their inquiry into what transpired.

21CP recommends that CMUPD regularly review and revise its body-worn camera policies as appropriate, and at least bi-annually, to reflect changes in state law, best practices, and lessons learned from the field.

Recommendation 22.   CMUPD should create and provide a more visible, web-based mechanism for community members and civilians to file a complaint.

Generally, "[t]he public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear."[134]   Instead, a law enforcement agency should ensure that community members can make a complaint through whatever mechanism or mode may be most accessible or comfortable.

CMUPD's Directive No. 45 appropriately contemplates a number of avenues through which complaints from the public may originate, including via phone, a CMUPD member or employee, "[i]n writing," "[a]nonymously," "[b]y e-mail and through the CMUPD website," and "[i]n person."[135] Consistent with best practices, the policy requires that "[a]ll complaints received by the department" be subject to follow-up.[136]

Although Directive No. 45 expressly contemplates receiving complaints "through the CMUPD website," the current CMUPD webpage does not include any information or

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[132] *Id.* at Section IV-D-1-A.

[133] *Id.* at Section IV-D-7-B.

[134] United States Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 17 (2008), https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf.

[135] CMUPD, Directive No. 45, Discipline and Administrative Investigations at 6.

[136] *Id.*

guidelines on how a member of the community can share a concern or file a complaint.[137] A link for filing a complaint should be prominent on the CMUPD's webpage. Further, information about the complaint process should be made available to the community, via the website, to ensure transparency and understanding of CMUPD policy (e.g., Directive No. 45) relative to internal processes.

Recommendation 23.   To ensure greater understanding of the complaint process, accountability mechanisms, and the Department's overall operations, CMUPD should post on its website all policies, manuals, and related written materials (such as forms or electronic data templates) and keep such materials up-to-date.

The Department's current website includes a page called "Policies, Training, and Reports."[138] With respect to policy and training, the page links to sub-pages that serve as "a summary of key CMUPD policies" and training – and not to the underlying policy or training documents themselves.[139] This lack of access to basic information about how the Department functions potentially impedes the University's ability to ensure *front-end* accountability – or alignment between the needs and values of the community and the rules and structures in place within CMUPD that are designed to meet those needs. As one stakeholder noted, the Department's "policies . . . should be more transparent" and accessible to interested community members.

The President's Task Force on 21st Century Policing found that, "[t]o embrace a culture of transparency, law enforcement agencies should make all department policies available for public review . . . ."[140] It noted that this type of "technology-based community engagement" can "increase[] community trust and access."[141]   CMUPD should join the numerous jurisdictions that currently provide their complete policy manuals online for community access and review.[142]

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[137] Carnegie Mellon University, *University Police* (last visited Jan. 17, 2022), https://www.cmu.edu/police/index.html.

[138] Carnegie Mellon University, University Police, *Policies, Training, and Reports*, https://www.cmu.edu/police/reporting-policy-training/index.html (last visited Jan. 17, 2022).

[139] *Id.*

[140] *Final Report of the President's Task Force on 21st Century Policing* 13 (2015).

[141] *Id.* at 36.

[142] *See, e.g.*, Salt Lake City Police Department, SLCPD Policy Manual, http://www.slcdocs.com/police/ppm.pdf (last rev. Feb. 12, 2019); San Mateo County Sheriff's Office, Policy Manual, https://www.smcsheriff.com/sites/default/files/content_files/San_Mateo_County_SO_Policy_Manual%28Web_1_19%29.pdf (last rev. Feb. 4, 2019); New Orleans Police Department, *Policies*, https://www.nola.gov/nopd/policies/ (last visited Jan. 17, 2022); San Francisco Police Department, Your SFPD, Policies, *General Orders*, https://www.sanfranciscopolice.org/your-sfpd/policies/general-orders (last visited Jan. 17, 2022); Phoenix Police Department, *Operations/Orders*, https://www.phoenix.gov/policesite/Documents/operations_orders.pdf (last visited Jan. 17, 2022); Greenville North Carolina, Police, *Policy and Procedures*, https://www.greenvillenc.gov/government/police/policy-and-procedures (last visited Jan. 17, 2022).

D.   Crowd & Protest Management

The First Amendment right to freedom of speech, and the right to exercise that freedom through peaceful assembly and protest, is a foundational characteristic of American society. A critical role of a police agency is to protect the rights of people to peacefully assemble, demonstrate, protest, or rally, while also protecting the lives and property of the community. This is especially true on college campuses:

> The expression of student voice, both on and off campus, has a long tradition throughout the history of American higher education. The nature of colleges and universities fosters such expression, and American colleges and universities, in particular, provide environments suited for student activism.[143]

CMUPD's Directive No. 21, Unusual Occurrences, outlines the Department's responsibilities relating to, and provides guidelines for, responding to unusual occurrences, emergencies, and natural and human-made disasters. This includes response to mass arrests, demonstrations, civil disobedience, active shooter, bomb threats, and situations involving hazardous materials.

With respect to demonstrations, protests, and First Amendment activity, Directive No. 21 specifically provides:

> It is neither the intention nor desire of the CMUPD to suppress or restrain constitutionally protected rights of free speech, assembly, religion, or any other lawful activity. The Department will expend reasonable resources that are necessary to protect those lawfully exercising their rights pursuant to the First Amendment.   However, in doing so, the CMUPD recognizes that the observation of a clear and present danger to the health, safety and welfare of the general public, or a violation of university policy, or Pennsylvania Statutes, will require police officers to take appropriate enforcement actions.   The CMUPD will treat demonstrators, onlookers, counter-demonstrators and any other individual exerting rights under the First Amendment of the U.S. Constitution of the United States equally with a goal of safety, free speech, and protection.[144]

Overall, this Directive appears to capably balance the preservation and protection of First Amendment rights with public safety. In this way, it is thoughtful and consistent with best

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[143] Christopher J. Broadhurst, "Campus Activism in the 21st Century: A Historical Framing," 167 *New Directions   for   Higher   Education*   3   (2014), https://www.researchgate.net/profile/Christopher_Broadhurst/publication/265604889_Campus_Activism_in_the_21st_Century_A_Historical_Framing/links/5b86b3254585151fd13b8bc9/Campus-Activism-in-the-21st-Century-A-Historical-Framing.pdf.

[144] CMUPD Directive No. 21, Unusual Occurrences at 9.

practices nationally. The policy commendably distinguishes among crowd, demonstration and protest, and civil disobedience environments.[145]

Nevertheless, 21CP did identify some particular ways that CMUPD might further strengthen its policies and procedures for managing protests, demonstrations, and crowds.

Recommendation 24.   CMUPD should detail more specifics about how officers should process mass arrests, including how approval for arrests should be obtained (including having counsel on scene), guidance on paperwork and documentation that officers should provide (such as photos of the arresting officer and subject), and how Department personnel should coordinate with Allegheny County Jail.

Mass arrest is among the most problematic aspect of crowd response and management. Recent reviews of demonstration management situations that involved mass arrests in Philadelphia, Pennsylvania;[146] Ferguson, Missouri;[147] and Aurora, Colorado[148] all identified issues with mass arrests during First Amendment activities, including problems with the Department providing a lack of clear direction to officers on when and how to conduct such arrests; the volume of arrests effectuated; documentation of the arrests; and the manner in which arrested individuals were transported.

Several police experts or organizations recommend against using mass arrests during protests and crowd management situations. For instance, the Policing Project at NYU School of Law recommends that mass arrests should be "avoided at all costs" as they escalate tensions with protesters and deplete officer resources at the scene.[149] Professor Ed Maguire of Arizona State University expands on the logic:

> First, whenever possible, arrests should be made sparingly. Mass arrests are often unnecessary and can result in costly civil rights lawsuits. Second, police should only use force against protesters as a last resort when alternative measures have failed. Police sometimes use officer safety concerns as a justification to use force against protesters. Ironically, the indiscriminate use of force by police may place officers at greater risk by increasing the number of angry people who view the use of violence against police as justifiable. Third,

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[145] *Id.* at 10–11.

[146] CNA & Montgomery McCracken, *Philadelphia's Police Department Response to Demonstrations and Civil Unrest, May 30-June 15, 2020* (Dec. 2020).

[147] Institute for Intergovernmental Research, U.S. Department of Justice, Office of Community Oriented Policing Services, A*fter-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson* (2015).

[148] 21CP Solutions, *After-Action Recommendations for the Raleigh Police Department, May 30-31, 2020 Protests* (Nov. 2020).

[149] NYU Policing Project, *Policing Protests to Protect Constitutional Rights and Public Safety* 8 (Oct. 2020).

the use of overly restrictive crowd containment methods may impose an unnecessary burden on peaceful protesters, thus encouraging an atmosphere of defiance and rebellion against police.[150]

At the same time, even some commentators who generally recommend against mass arrests note that they may nevertheless be needed in some circumstances. NYU's Policing Project concedes that "[i]n the rare circumstances in which mass arrests may be necessary, incident commanders should develop a plan that estimates the number of anticipated arrests and ensures sufficient staffing."[151] The Major City Chiefs Association more expressly contemplates the possibility of using mass arrests even as it situates arrests en masse as a "last resort" to be deployed only when "absolutely imperative" to ensure public safety:

> While law enforcement's goal is always to disperse unlawful assemblies peacefully, there are incidents where extraordinary action is required. Crowds may continue to commit acts of violence or other serious crimes after an order to disperse is issued and de-escalation techniques have failed. In some instances, this criminal behavior may even continue after law enforcement uses less lethal munitions. When there is a total loss of control, police departments must have the ability to restore order and protect assembly participants, police officers, and the surrounding community. When facing these circumstances, law enforcement may have to prevent egress from the assembly to isolate individuals engaged in criminal behavior. Police officers may have to arrest everyone in the crowd, especially if the group makes it impossible to identify the specific offenders. A full investigation will be completed after the fact to identify the specific crimes committed by each individual. *The MCCA recommends that this tactic only be used as a last resort and when it is absolutely imperative for public safety.*[152]

Some police departments have developed express guidance on arrests within crowd contexts to address these various concerns and interests. Oakland Police Department policy, for example, provides:

> It is essential to recognize that all members of a crowd of demonstrators are not the same. Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in

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[150] Edward Maguire, "New Directions in Protest Policing," 35 *Saint Louis University Public Law Review* 105 (2015), https://scholarship.law.slu.edu/plr/vol35/iss1/6.

[151] NYU Policing Project, *Policing Protests to Protect Constitutional Rights and Public Safety* 8 (Oct. 2020).

[152] Major City Chiefs Association, First Amendment Assembly Working Group, *Law Enforcement Response to First Amendment Assemblies: Best Practices and Tactics* 9 (Apr. 2021), https://majorcitieschiefs.com/wp-content/uploads/2021/05/MCCA-First-Amendment-Assembly-Working-Group-Final-Report.pdf (emphasis added).

those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger. This understanding does not mean OPD cannot take enforcement action against the crowd as permitted under this policy, but OPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.[153]

Ideally, police departments responding to protests and demonstrations can identify specific persons in the protest who are engaging in violent behavior and separate them from the crowd for an arrest. This precludes the need to issue a dispersal order, allows the other individuals participating in the event to continue exercising their free speech rights, and obviates the need to engage in mass arrests of demonstrators.

The Departments' Directive No. 21 provides minimal procedures for mass arrests. It defines a mass arrest as the "arrest of six or more actors/suspects" in a single incident.[154] It provides guidance on how arrestees should be transported to the Allegheny County Jail; fingerprinted and photographed "as required"; arraigned; and accommodated in the event that the number of arrestees "exceed[s] the capacity of CMUPD."[155]

21CP recommends that CMUPD develop more specific and detailed guidance on mass arrests and include this within a revised Directive No. 21, a Standard Operating Procedure governing arrests, and preferably both. As a general matter, law enforcement agencies must detail clearly the conditions that must be present in order for mass arrests to be appropriate and procedures for how to execute such mass arrests, if or when necessary and appropriate, to ensure the protection of the rights of the arrested, participating officers, and the Department generally. Consequently, the Department needs policy guidance articulating when mass arrests may appropriate and who provides approval for initiating mass arrests within the context of a crowd or demonstration. 21CP recommends that such policy guidance should expressly instruct officers that mass arrests should be employed only when other crowd control techniques or tactics have been deployed and failed, are not feasible under the circumstances, or are not sufficient to address the imminent threat of violence and harm.

Revised policy should also provide additional, specific guidance on the paperwork and documentation that officers need to provide in the event that mass arrests must be conducted. Because mass arrests in crowd contexts can often implicate substantial First Amendment considerations, officers involved in such mass arrests must be familiar with the types of

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[153] Oakland Police Department, Training Bulletin III-G, OPD Crowd Control and Crowd Management Policy at Paragraph C.7 (Oct. 4, 2013), https://cao-94612.s3.amazonaws.com/documents/TB-III-G-Crowd-Control-and-Crowd-Management-Policy-04Oct13-PUBLICATION-COPY.pdf.
[154] CMUPD Directive No. 21, Unusual Occurrences at 8.
[155] *Id.*

information and the level of specificity that will be required in post-incident arrest and incident reporting. Further, although Directive No. 21 currently references transport to the Allegheny County Jail, the policy would benefit from greater detail about how officers should coordinate with the Jail in the context of a mass arrest event.

Recommendation 25. CMUPD should require, rather than encourage, supervisors to assign a police liaison officer to facilitate communication with individuals engaging in protest and First Amendment activity.

For crowd, demonstration, protest, and civil disobedience incidents, Directive No. 21 provides that involved CMUPD personnel should "[m]aintain dialogue and open lines of communication with demonstration or group leaders to assist in maintaining order."[156] It then observes that a Department "supervisor may assign a police liaison officer to the group to facilitate communications."[157]

21CP recommends that this policy language be changed to "shall assign" to require the specific designation of a liaison officer to the crowd. Generally, assigning a police liaison to the group(s) demonstrating is a best practice. 21CP acknowledges that it can be challenging at times to identify precisely who is leading or organizing a demonstration. Likewise, in some instances, leaders or groups reject the attempts of law enforcement personnel to communicate with them. Nevertheless, open lines of communication can assist significantly in ensuring the First Amendment rights of protestors, the safety of individuals involved in demonstrations and crowd situation, the safety of the general public and community, and the safety of officers at the scene.

21CP observes that communication during demonstration, protest, and crowd activities can be enhanced substantially when a police agency works to build relationships with participating groups and both formal and informal leaders *prior to* demonstrations or protest activities. Even as some First amendment activities are spontaneous or unplanned, many others are contemplated well in advance of being conducted. This allows law enforcement agencies the ability to cultivate communication and relationships with protest participants – allowing the participating group the opportunity to help shape and inform CMUPD's plan for providing safety services within the context of the event or activity while providing the Department with the ability and reinforce the agency's support for demonstrators' rights to be heard and to assemble, to delineate legal conduct, to interact during events with community members, to facilitate dialogue and cooperation, and to invite, when possible, after-protest input.[158]

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[156] *Id.* at 11.

[157] *Id.* at 11.

[158] *See* Police Executive Research Forum, *Managing Major Events: Best Practices from the Field* (2011), https://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf.

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This process, known as the Madison Method, is well-recognized as industry standard, and is supported by the Elaborated Society Identify Model of Crowd Behavior, which suggests that such proactive measures of engagement encourage acceptable behavior and encourage groups to "self-police."[159] Even in situations where it is difficult to engage, such as with assemblies that have no clear organization structure or desire to interact with the police, agencies should continue to seek to communicate through whatever channels are available, including via social media and electronic communication.

Recommendation 26.   CMUPD policy should be more specific on who may declare a crowd disorderly and give orders for dispersal.

When a crowd situation devolves to a point where a department believes that it cannot maintain the safety of the crowd, the general public, and/or officers, police can declare a crowd as disorderly and instruct the crowd to disperse. Because these actions effectively terminate the ability for protestors to engage further in First Amendment activity, police departments and personnel must be especially thoughtful and deliberate about when such declarations and dispersal orders are necessary and advisable.

Currently, CMUPD's Directive No. 21 provides that "the police supervisor in charge" may declare a crowd disorderly and give orders for dispersal.[160] No additional guidance is provided as to precisely *when* or *why* a crowd should be considered and declared disorderly.

The Department should revise and expand its existing policies and procedures so that they appropriately grapple with the possibility that even where the Department *could* declare an unlawful assembly and initiate affirmative measures to disperse a crowd, such actions may not be the *best tactical approach* or the *least intrusive response*. Specifically, even where the legal definition of an unlawful assembly might technically be met, CMUPD policy should expressly consider, and instruct personnel to consider:

   (1) *Is there a way to de-escalate the situation?* CMUPD's Directive No. 62, addressing de-escalation, emphasizes the importance of "effective communication" and alternatives to force and enforcement actions.[161] As this report notes above, a duty to de-escalate whenever feasible properly applies across all police interactions – regardless of the nature of a subject's actions or whether an officer ultimately determines that force is necessary to resolve the situation. Consequently, in the same way that individual officers must assess in real-time whether various de-escalation strategies and tactics might address or eliminate threats without force or with more minimal intrusion, CMUPD must specifically and actively determine

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[159] *See* Mike Masterson, "Crowd Management: Adopting a New Paradigm," *Federal Bureau of Investigations Law Enforcement Bulletin* (Aug. 1, 2012), https://leb.fbi.gov/articles/featured-articles/crowd-management-adopting-a-new-paradigm.
[160] CMUPD Directive No. 21, Unusual Occurrences at 12.
[161] CMUPD Directive No. 62, De-Escalation Policy at 1–2.

whether public safety challenges within the context of a crowd might be de-escalated.

(2) *Is there a way to isolate those who are engaging in criminal activity without requiring all protestors to disperse, thereby allowing others to continue demonstrating?* Although it relates to de-escalation, the extent to which individuals engaging in criminal activity may be isolated and addressed without declaring an unlawful assembly must be considered. Although this determination will be situation-specific and fact-bound, CMUPD should consider, before using the comparatively blunt tool of declaring an "unlawful assembly" that applies to all protestors regardless of the lawfulness of their actions, whether the situation could reasonably be resolved by taking efforts to isolate and either gain the compliance of, or arrest, specifically those who are engaging in violent behavior. This may not be possible or feasible in some circumstances – but it may be in others. Ensuring that this is expressly considered during the deliberative process may help to ensure that the Department is methodically weighing the interests of all involved.

For instance, the **Seattle Police Department**'s policy on crowd management maintains a Crowd Management, Intervention, and Control Strategies Matrix, that policy expressly discusses what it calls "Isolated Unlawful Behavior":

> Individual violent acts within the crowd, property damage, unpermitted traffic disruption, and defacement are not protected activities. However, isolated unlawful activity by individuals or small groups within a crowd should not automatically form the basis for declaring an assembly unlawful.
>
> Examples include:
> - Isolated destruction of property
> - Isolated acts of violence
> - Isolated rock or bottle throwers
> - Individual sit-down demonstrators[162]

The policy lists various, specific "Crowd Intervention Strategies" that may be used when there are "Isolated Unlawful Behavior[s]" in a crowd context, such as

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[162] Seattle Police Department, Policy 14.090, "Crowd Management, Intervention, and Control," (last rev. Apr. 15, 2021), https://www.seattle.gov/police-manual/title-14---emergency-operations/14090---crowd-management-intervention-and-control.

"[a]ttempt to use organizers and monitors to gain voluntary compliance" and [i]solate, arrest and remove law violators as quickly as possible."[163]

(3) *Considering all available facts and circumstances, how likely is it that announcing an unlawful assembly and requiring dispersal will decrease the conflict or intensify it?* It is possible that a declaration of an "unlawful assembly," and instructions to individuals that they can no longer participate in a demonstration or exercise their First Amendment rights, may serve as a provocation to a crowd – making individuals angrier, more hostile, and less compliant. Simply, the declaration of an "unlawful assembly," and subsequent police activities aimed at getting a crowd to disperse, may make a chaotic situation even worse. However, in other circumstances, the determination and subsequent police actions consistent with it may be the only way of stopping violence or preventing harm. Although police officials, like any person, cannot be expected to predict the future perfectly or accurately anticipate the reactions of all assembled individuals, revised CMUPD policy should require leadership to weigh the possibility that declaring an "unlawful assembly" will make things worse before exercising the option as the best tactical approach.

Given the complexity of the considerations relating to declaring a crowd disorderly, 21CP also recommends that revised CMUPD policy require a position of rank, rather than simply any CMUPD supervisor, to authorize a declaration of a disorderly crowd and the issuance of a dispersal order.

Recommendation 27.   CMU should preface its policy on Riotous and Disorderly Behavior with a statement that students have a right to express their views and beliefs and to support causes by demonstrations and other means if such expressions do not impinge on the rights of others or the orderly operations of the university.

The University appears to maintain a general Policy on Riotous and Disorderly Behavior Policy, which indicates:

> Security officers have been instructed to arrest members of the campus community and guests who provoke riotous and disorderly behavior or fail to comply with reasonable requests to disperse or return to their residences when riotous or disorderly behavior is taking place. If necessary, the Pittsburgh Police will be called to assist.[164]

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[163] *Id.*

[164] Carnegie Mellon University, University Policies, Riotous and Disorderly Behavior (May 3, 1999), https://www.cmu.edu/policies/safety-and-security/riotous-behavior.html.

21CP understands that an individual or small number of individuals who are *not* engaged in First Amendment-protected activity could engage in disorderly or riotous behavior implicated by this general CMU policy. However, 21CP recommends that the University clarify that nothing in this policy, or any other analogous policy, overrides the constitutional rights of protestors. To this end, other universities, such as Swarthmore University[165] and Michigan State University,[166] provide a preamble to their policies on disorderly conduct and riots that makes clear that the policies do not impinge on a student's First Amendment Rights.

Recommendation 28.   CMUPD should consider refining its guidance to officers on when to activate body-worn cameras during crowd and protest management situations.

Directive No. 21 currently states, "Video recording devices should be used when reasonable suspicion that violence or property damage may occur. Body cameras shall be activated."[167] As written, this potentially reads as though body cameras are activated *only* when there is reasonable suspicion that violence or property damage may occur.

Some advocacy groups have voiced concerns with respect to the police recording of protest participants. Generally, the concerns center around whether, or when, it is appropriate for "police [to] use body cameras to film political activity" when "U.S. law enforcement has a long history of monitoring political activists to suppress dissent."[168] On this view, "[p]olice must not use BWCs [body-worn cameras] to gather information about how people are exercising their First Amendment rights to speak, associate, or practice their religion," as "[g]overnment surveillance chills and deters such protected activity."[169]

Nationally, however, some of these privacy concerns have receded or evolved in the context of large-scaled protest situations or environments in which violence or property destruction occurred. For instance, on June 9, 2020, the City of Seattle changed its policies governing body-worn cameras by Executive Order of the City's Mayor, which "direct[ed] SPD [Seattle Police Department] officers to record body-worn video during protests. This reverses SPD

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[165] Swarthmore University Student Code of Conduct, https://www.swarthmore.edu/student-handbook/student-code-conduct-rules-and-regulations#disorderly_conduct (last visited Feb. 2, 2022).
[166] Michigan State University Policies, https://www.swarthmore.edu/student-handbook/student-code-conduct-rules-and-regulations#disorderly_conduct.
[167] CMUPD Directive No. 21, Unusual Occurrences at 13.
[168] Brynne O'Neal, Brennan Center for Justice, "Activists on Film: Police Body Cameras and the First Amendment" (June 20,2016), https://www.brennancenter.org/our-work/analysis-opinion/activists-film-police-body-cameras-and-first-amendment.
[169] Matthew Guariglia and Adam Schwartz, Electronic Frontier Foundation, "The Justice in Policing Act Does Not Do Enough to Rein in Body-Worn Cameras" (Mar. 2, 2021), https://www.eff.org/deeplinks/2021/03/justice-policing-act-does-not-do-enough-reign-body-worn-cameras.

policy that did not allow recording at peaceful protests unless there was unlawful activity taking place."[170]

Recording more, rather than less, of a crowd event can be advantageous simply because of the inherent uncertainty around whether, or when, a peacefully assembled crowd may become disorderly. For a variety of reasons, it can be useful to capture, where possible, when disorder starts and what, if anything, was the catalyst. The absence of body-worn camera footage during crowd situations that become tense or violent can complicate the ability of the Department to understand its personnel's performance and be transparent with the community about what did and did not transpire.

Ultimately, CMUPD, the University, and the University community will need to strike the right balance in light of community values and interests with respect to the use of body-worn cameras during crowd events. Regardless of outcome, however, 21CP advises the Department to provide more specific and detailed guidance going forward than Directive No. 21 currently outlines.

Recommendation 29.   CMUPD should clearly define in Directive No. 13 and/or 21 how the police department operates under an Emergency Response Team ("ERT") activation. Among other things, it should clarify whether a member of CMUPD should respond to the Emergency Operations Center ("EOC") and how directions are conveyed from the EOC to supervisors and officers at the scene.

The University's Emergency, Preparedness and Response Plan identifies the Chief of Police as part of the ERT.[171] However, if an emergency spans over an extended period, the Chief may well need a replacement in the EOC. At a minimum, it should be clear in policy precisely what level of police management can substitute for the Chief in his/her absence.

Separately, clarity about how information will flow between the Department and EOC is essential in an emergency. Directive No. 21 does reference the University's Emergency, Preparedness and Response Plan and how to access it. However, the remainder of the directive focuses on CMUPD internal procedures. 21CP is not suggesting that this is inappropriate – only that additional clarity and detail with respect to how CMUPD's supervisors and managers may become involved in carrying out the University's Emergency, Preparedness and Response Plan may be helpful.

Recommendation 30.   CMUPD should consider developing and delivering training to all personnel covering First Amendment rights and the Department's

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[170] Seattle Mayor Jenny Durkan, Executive Order 2020-07, Use of Body Cameras at Demonstrations (June 9, 2020), https://www.seattle.gov/police/about-us/body-worn-video.
[171] CMUPD, Directive No. 13, Emergency Operations Plan.

Direct No. 21. It should provide regular, ongoing training on topics related to protest and crowd management.

As noted above, university and college campuses have long been centers of political activity, including large politically-focused gatherings, demonstrations, and protests. Perhaps even more than general municipal settings, it can be expected that larger-scale First Amendment activity may occur on a college campus.

CMUPD's existing Directive No. 21 appropriately commits the Department to "treat[ing] demonstrators, onlookers, counter-demonstrators and any other individual exerting rights under the First Amendment of the U.S. Constitution of the United States equally with a goal of safety, free speech, and protection."[172] To ensure that personnel adhere to this commitment in practice, the Department should develop and implement ongoing training for personnel on First Amendment issues and crowd management considerations. Such trainings should emphasize real-world skills, situation- or scenario-based decision-making, and adult educational techniques that avoid passive instruction while prioritizing interactive opportunities to practice decision-making and practical skills.

E.   Training

Police training has traditionally tended to take the form of static, classroom-based instruction focused on technical skills and legal principles.[173] Training was siloed, redundant, and often limited to what was necessary to meet state requirements or retain qualifications for various force tools or specific skills (such as CPR). If police agencies introduced new instructional topics, the additions were often driven by headlines, lawsuits, or new technologies[174] rather than strategic determinations about professional development. Training was typically provided by in-house instructors – often simply supervisors called into preside over classroom-based instruction – who would recycle existing knowledge and beliefs rather than introducing new ideas and concepts.

Especially over the past few decades, standards and best practices in police training have transformed significantly. Modern police training is built on a foundation of adult learning theory, which, among other things, recognizes that training is most effective when adult students are motivated to learn, are treated as equal partners in the learning process, and can connect the instruction to their experiences.[175]

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[172] CMUPD Directive No. 21, Unusual Occurrences at 9.

[173] *See, e.g.*, David Bradford and Joan E. Pynes, "Police Academy Training: Why Hasn't It Kept Up With Practice?," 2 *Police Quarterly* 283 (1999) (describing historical deficiencies in police training).

[174] *See generally* Michael Buerger, "Educating and Training the Future Police Officer," 73 *FBI Law Enforcement Bulletin* 26 (2004) (summarizing static nature of law enforcement training).

[175] *See, e.g.*, Mark R. McCoy, "Teaching Style and the Application of Adult Learning Principles by Police Instructors," 29 *Policing* 77 (2006); Michael L. Birzer, "The Theory of Andragogy Applied to Police Training," 26 *Policing* 29 (2003).

As part of this shift, there has been an ever-growing focus in policing on using "realistic, scenario-based training," rather than passive classroom instruction, "to better manage interactions and minimize force."[176] For example, rather than having officers passively consume a never-ending progression slides or written material about policy provisions or recent legal cases regarding the use of force, "[o]fficers should practice, in interactive environments" topics like "de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making."[177] In the same way that pilots must continually practice their skills in flight simulators, rather than staring at PowerPoint slides about aerodynamics or passively studying checklists of things to do in the event that mechanical issues arise, police officers need to be provided with training programs that allow them to develop skills, practice techniques, and navigate realistic situations so that they can apply lessons learned to their everyday work in the field.

CMUPD's Directive No. 43, Training & Career Development, provides a strong framework for the Department's ongoing training. Because the Department typically hires sworn personnel who have worked as police officers elsewhere, the focus of the Department's training, and of Directive No. 43, is on the delivery of ongoing, in-service training to officers to strengthen and enhance their skills.[178] The Directive sketches out a "field training and evaluation" program for "new dispatcher[s], security guard[s], and police officer[s]."[179] It also provides details on specialized training, roll call training, and remedial training.[180]

The Department's field training program appears to be a structured introduction for new officers to the Carnegie Mellon campus and CMUPD. Based on Northwestern University's field training program, it pairs officers according to the identified strengths and weaknesses of new officers and of veteran officers serving as field training officers. According to the Department, the program often starts with instruction on use of force. As current Chief Ogden observed, "we want [new officers" to understand where it's [force] is necessary, which is very limited on a campus."

Despite the existing Directive appropriately covering a number of important bases, CMUPD can strengthen its approach to training in a few, specific ways.

Recommendation 31.   CMUPD should create a multi-year, comprehensive Training and Professional Development Plan for Department personnel. That Plan should ground CMUPD training and development approach and offerings in

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[176] *Final Report of the President's Task Force on 21st Century Policing* 52 (2015).

[177] The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 143 (2019).

[178] The Directive provides that "[a]ll newly hired or promoted police officers will have attended an approved police training academy, and will successfully complete all required courses of study as specified by the Commonwealth." *Id.* at 4.

[179] CMUPD, Directive No. 43, Training & Career Development at 4.

[180] *Id.* at 6–9.

timely, relevant and evidence-based education and training grounded in adult education practices.

The Department's Directive No. 43, "Training & Career Development," generally commits the Department to "provid[ing] in-service training deemed necessary and appropriate by the Chief of Police."[181]   More specifically, it requires that sworn personnel and security guards "attend annual training" on radiation exposure and blood-borne pathogens.[182]   It provides that "[t]he Department shall conduct training as required" by the Pennsylvania Municipal Police Officers' Education and Training Commission ("MPOETC") across six specified areas:

- CPR;
- First aid;
- Use of force/less lethal/handcuffing/defensive tactics;
- Driver training;
- Directives/new directives and procedures; [and]
- Firearms qualification and training.[183]

In focus group discussions with 21CP, CMUPD personnel generally agree that the Department provides good-quality training and makes a strong investment in them. However, as one command staff member noted, personnel would benefit from "more scenario-based training."

Despite these general requirements in policy and the positive views of Department personnel about current training opportunities, it is challenging to discern the "big picture" plan with respect to training within the CMUPD from policy alone. Especially given that the topic areas specifically listed in the policy omit numerous, critical areas of police activity and necessary instruction (such as search and seizure, bias-free policing, interacting with individuals experiencing behavioral or mental health crises, and many more), 21CP recommends that the Department create and update a more comprehensive Training and Professional Development Plan that addresses training requirements, identified training needs, and specific initiatives and programs designed to meet such requirements and needs. Such a Plan should be strategic in terms of providing officers with pragmatic training readily applicable to day-to-day realities of policing in a university environment and of creating opportunities for officers to cultivate skills necessary for professional growth.   The Department should update the Plan on a regular basis, and at least annually.

Recommendation 32.   The Department should memorialize and share its Training and Professional Development Plans and accomplishments with the larger CMU community.

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[181] *Id.*at 2.
[182] *Id.* at 2.
[183] *Id.* at 2.

Members of the CMU community raised questions in focus groups about the nature and types of training completed by CMUPD personnel. Currently, the Department does not make such information readily available. Although the Department's 2020 Annual Report references training, it does so primarily in an overall, aggregate way. 21CP recommends that the Department expand such coverage in its annual reports to inventory the full scope of the training that the Department provides. Additionally, Department should also consider detailing such information on a page or sub-page on its website.

Recommendation 33. CMUPD should create and maintain comprehensive records of Training & Professional Development provided to all employees.

The Department's Directive No. 43 appropriately contains a section regarding the maintenance of training records, or documentation regarding what personnel have attended and successfully completed what training.[184] In addition to attendance and completion, records "should include information regarding the name of the course, the nature of the training, the date(s), total hours attended, the agency providing the training, and testing results or scores . . . . "[185]

The codification in policy of expectations regarding training records is commendable. Indeed, 21CP's project team has experience with other, large municipal police departments that do not reduce to policy the requirement to document training in a detailed manner.

However, it is unclear if the training records referenced in Directive No. 43 are uniformly documented in a way that allows for them to be maintained in centralized, comprehensive, and easily searchable database or system. It appears that CMUPD maintains a database of training completed by sworn personnel, but this does not appear to be the case for other CMUPD public safety employees (security, dispatch) to whom Directive 43 No. 43 also applies. Specifically, except for a small number of trainings completed by the Accreditation Manager, the database of Training Certificates awarded appears to focus on sworn personnel only.

A single, centralized and comprehensive system for tracking training of *all* CMUPD personnel (including officers, non-sworn PD personnel, security personnel, and others) can assist in the Department's efforts to identify training and development needs, ensure equity in training across personnel classifications and job roles, and gauge if and how training efforts are contributing to the personnel meeting performance expectations.

Recommendation 34. CMUPD should create and implement a plan for collaborative training with CMU stakeholders and external partners.

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[184] CMUPD, Directive No. 43 at 3–4.
[185] *Id.*

The Department can involve the CMU community and outside stakeholders in its training initiatives in a number of ways. First, CMUPD should engage University stakeholders in the design and development of police training initiatives. President Obama's Task Force on 21st Century Policing recommended that "[l]aw enforcement agencies . . . engage community members in the training process."[186] This provides an ability for communities to ensure that the design and type of training for police reflects the needs and characteristics of their communities. It also provides a level of transparency that can increase trust and enhance the quality of police instruction.

Second, CMUPD should engage members of the University and Pittsburgh communities to deliver training and provide instruction to personnel. The idea that only sworn personnel can train police officers is outdated. Modern training programs require curriculum development and adult learning techniques and should be supported by professionals trained in those disciplines. The University, beyond the organizational boundaries of CMUPD, likely has an abundance of resources and experiences that the Department might leverage as it develops and enhances training opportunities. Indeed, in discussions with 21CP's, a number of members of the CMU community have expressed a willingness to work with the Department in developing and delivering training to its personnel.

As recommended elsewhere in this report, all emergency response and management functions (police, fire, and security) should be gathered under a single Public Safety umbrella. This should include both dispatch and response functions. Regardless of whether that recommendation is adopted or not, the previously mentioned University departments and functions should regularly cross-train – so that when a significant event happens, all CMU divisions will have already established the relationships and knowledge necessary to deliver efficient responses to rapidly-evolving, complex safety challenges.

Finally, the Department and University should take the lead efforts in coordinating training with nearby law enforcement agencies and public safety organizations in nearby jurisdictions. As described in greater detail below, this type of joint or cross-jurisdictional training can support understandings about the relationship between CMUPD and nearby public safety entities (including those memorialized in formal agreements), promote working efficiencies and enhanced performance in the field, and generally expand the scope and quality of training resources provided to all agencies or organizations involved. It should be noted that, although cross-training with other police departments may well be very useful, the Department should also consider opportunities for training with social service providers, community organizations, and other entities that are part of the public safety framework in and around the University.

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[186] *Final Report of the President's Task Force on 21st Century Policing* 54 (2015).

IV.   CMUPD INTERACTIONS WITH NEARBY LAW ENFORCEMENT AGENCIES

Partnerships between university police departments and local police departments can be complex.[187]   Challenges include differences in policing strategies, training, and radio communications; ensuring that officers of both departments are aware of their roles and responsibilities when working together; and understanding how the departments patrol neighborhoods surrounding or bordering a campus footprint. In particular, a campus police department's involvement in neighborhoods adjacent to a college campus can "blur the boundaries between campus and community."[188]

21CP understands that, over the years, CMUPD has engaged informally with other law enforcement agencies in an effort to share knowledge and coordinate response strategies outside of any particular incident or event. For instance, the Chief of the Pittsburgh Police Bureau in early 2021 walked the CMU campus to get to know it better.

There can be significant consequences to leaders and officers from different departments interacting for the first time during an emergency or moment of crisis. Confusion about responsibilities, lines of authority, and jurisdiction can complicate and adversely impact the overall ability of involved police departments to provide the types of public safety services required in those moments.

In contrast, clear, advance agreement on roles and responsibilities, and corresponding training to officers in neighboring or overlapping law enforcement jurisdictions, can help make multi-agency responses safer and more effective. Indeed, there are benefits to both campus police departments and university communities when there is a cooperative agreement with the surrounding jurisdiction's police department. Urban campuses can become safer, improve their training, work more efficiently, and even cut costs when campus police departments work closely with other law enforcement agencies.[189]

A campus administration can set the conditions under which a local police department responds to a campus incident and how that response would be handled. A primary way to achieve the benefits while minimizing the challenges of coordinating efforts across police departments is by having a formalized Memorandum of Understanding ("MOU") or a Mutual Aid Agreement.   Typically, a MOU outlines the basic agreement between two law enforcement agencies concerning how they will interact and relate with respect to the other.

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[187] Police Executive Research Forum, *Municipal and Campus Police: Strategies for Working Together in Turbulent Times* (2021), https://www.policeforum.org/assets/MunicipalCampusPolice.pdf.

[188] National Center for Campus Public Safety and Queens University, *Campus Policing in an Urban Environment* 4 (July 2018), https://www.nccpsafety.org/assets/files/library/Campus_Policing_Urban_Environment_Report_Final.pdf.

[189] *Id.* at 11.

A Mutual Aid Agreement is an understanding of how assistance will be requested and provided to one agency by another and usually also covers large-scale incidents.

Typically, law enforcement agencies that operate within the same area, interact with each other regularly, or serve overlapping communities formally articulate expectations for which agency does what and how the agencies interact with one another. Written memoranda of understanding ("MOU"s), sometimes called "mutual aid agreements," can provide:

- Form and structure, setting forth common procedures and expectations;
- Awareness of potential problems and concerns such as those related to liability and insurance; and
- Procedures for reimbursement for the costs of all deployed resources where the parties consent to such an arrangement.[190]

A report by the National Center for Campus Public Safety agrees:

> MOU[s] can help urban campus police departments ensure resources and help will be available when they most need it. These agreements can also set clear expectations about roles and responsibilities and control the financial impact of certain events. They should be reviewed and tested regularly."[191]

It should be noted here that a Memorandum of Understanding or Mutual Aid Agreement is not typically something that is required for the law enforcement agency of a municipality to be able to respond to a college campus. With some specific exceptions, a city or locality's police service retains authority and jurisdiction over a college or university campus, even when the institution has its own police or public safety department.

Consequently, the existence of an MOU or Mutual Aid Agreement does not, in and of itself, create or reduce the involvement of a municipality's police department on a college campus within the department's geographic service boundaries. Likewise, an MOU or Mutual Aid Agreements might, but need not automatically, *require* a university police department to render assistance to a nearby municipal police department. That is, the existence of an MOU or Mutual Aid Agreement does not automatically dictate specific terms or a specific type of relationship.

Instead, MOUs and Mutual Aid Agreements are opportunities for universities and colleges, in collaboration with municipalities and their police departments, to determine for themselves what the appropriate relationships should be between a campus and a municipal police force – both in terms of how a municipal police department will and will not interact

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[190] International Association of Chiefs of Police, *Mutual Aid, Concepts and Issues* Paper 10 (2008).
[191] National Center for Campus Public Safety and Queens University, *Campus Policing in an Urban Environment, Findings from a Forum on Issues in Urban Campus Public Safety* 14 (July 2018).

with the university community and how the university community will and will not interact beyond the boundaries of the university.

21CP observes here that Department personnel were aligned that, as a matter of course, CMU does patrol in some neighborhoods around and beyond the Carnegie Mellon main campus. This is because the University maintains some satellite locations and off-campus housing. However, CMU officers are instructed not to perform police-related activities in areas beyond campus that are not affiliated with the University unless they observe a felony-in-progress. A codification of this approach and understanding is the type of detail that can be useful to be included in a formalized MOU.

Still, we heard from some CMUPD personnel that they do assist the Pittsburgh Police Department, in some capacity or another, with some frequency. A member of command staff estimated that CMUPD officers assist "on nearly a weekly basis." Although the nature of that assistance varies, it often relates to issues or problems that implicate the Carnegie Mellon campus or community members.

Because Carnegie Mellon can craft a MOU that adequately reflects and incorporates the needs and values of the University community, 21CP suggests that the University explore codifying an MOU with the City of Pittsburgh and Pittsburgh Bureau of Police. The following recommendations explore this general proposal in greater detail.

Recommendation 35. CMUPD and the University should work with the Pittsburgh Bureau of Police ("PBP") and the City of Pittsburgh to establish a Memorandum of Understanding detailing each police department's authorities, roles and responsibilities when supporting each other in their operations.

> **Recommendation 35.1. The MOU should, among other items, specify CMUPD patrol boundaries around their campus, dispatch coordination, and shared services.**
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> **Recommendation 35.2. During the development of the MOU the University should ensure that the values and views of the campus community are reflected especially in the areas of assisting PBP in crowd management, responding to calls for officer assistance and critical incidents, and policing surrounding neighborhoods. Additionally, it should be clear when the PBP are permitted to respond to the campus and assist the CMUPD.**

It is widely acknowledged that a single police department cannot staff, prepare for, or respond to large-scale major natural or human-made emergencies that may occur in their jurisdiction. Consequently, many public safety agencies enter into mutual aid agreements with other agencies to obtain support and resources when such emergencies occur and additional resources are necessary to provide for public safety. Although this concept can appear

straightforward, many agencies have learned – unfortunately, sometimes the hard way – that successful mutual aid requires attention to the details of management, command and control, planning, and joint training well in advance of mutual aid or assistance being rendered.[192]

Generally, MOUs should govern the nature of the support contemplated, conditions under which the support is provided, and roles and responsibilities of agencies and their personnel. The purpose for Mutual Aid Agreements or MOUs are to:

- Coordinate planning;
- Multiply the response resources available to any one jurisdiction;
- Ensure timely arrival of aid;
- Arrange for specialized resources; and
- Minimize administrative conflict and litigation post-response.[193]

In addition to the above, a MOU between a university and city police departments should include the following

- Geographic boundaries for campus police jurisdiction;
- Which entity has jurisdiction for responding to crimes occurring off campus on property owned by or adjacent to the institution;
- How campus police and local law enforcement can request and provide assistance on matters outside their own jurisdiction;
- Which law enforcement body has primary jurisdiction for investigating complex cases — such as those involving multiple parties — that are likely to require collaboration among multiple police departments;
- The circumstances under which campus police should respond when they witness traffic violations, criminal behavior, or dangerous activity off campus;
- How local law enforcement will coordinate with the institution when it receives reports, conducts investigations involving students or employees, or when it needs to come on campus to pursue a suspect or execute a warrant;
- Required and discretionary notification situations between the campus police and each local law enforcement entity;
- Details regarding sexual assault prevention, reporting, and response, including sharing of data and strategies and conducting sexual assault investigations; and

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[192] *See* International Association of Chiefs of Police, *Mutual Aid, Concepts and Issues* Paper (2008).
[193] FEMA*, Best Practices: Mutual Aid Agreements – Types of Agreements*, Lessons Learned Information Sharing, https://www.hsdl.org/?view&did=765559 (last accessed Jan. 19, 2022).

- Clery Act compliance, including sharing of crime statistics and other data, as necessary.[194]

Consistent with these general principles, CMUPD and Carnegie Mellon should work with PBP and the City of Pittsburgh to establish a codified MOU that outlines, in as much specificity as possible:

- CMUPD's authority, role, and responsibility in providing public safety services on the CMU campus and in areas adjacent to or near the campus and affiliated areas, including CMUPD's patrol boundaries;
- PBP's authority, role, and responsibility in providing public safety services on the CMU campus and in areas adjacent to or near the campus and affiliated areas, including when PBP may respond to campus to assist CMUPD;
- How dispatch functions will be coordinated between CMUPD and PBP; and
- How any services will be shared between CMUPD and PBP.

In discussions with some CMU stakeholders, it appeared that some community members draw a distinction between CMUPD and PBP. Specifically, some portion of the CMU community trusts and retains a higher level of confidence in CMUPD than PBP. This points toward the University taking care in an MOU to specific clear contours *both* for how CMUPD may assist PBP and how PBP may assist CMUPD.

Recommendation 36.   The authorities, roles and responsibilities outlined in the MOU should be reflected in a Directive and training provided to all CMUPD personnel on the MOU and Directive.

Recent national guidance maintains that a mutual aid agreement should be supported by a Mutual Aid Operational Plan that covers the specific resources, tasks, personnel, asset allocations, roles, responsibilities, integration, and actions that mutual aid participants execute respective to their assignments.[195] Accordingly, after finalizing an MOU, CMUPD will need to translate the agreements in an MOU into a directive or standard operating policy that is made available to the members of the Department. This CMUPD policy document or plan would instruct members of the department how to fulfill their obligations under the MOU.

Recommendation 37.   The key components of the MOU should be broadly communicated to the University community and the surrounding neighborhoods affected by the MOU.

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[194] Alyssa Keehan, United Educators, *Clarifying Jurisdiction of Campus Police,* United Educators (Oct. 2020), https://www.ue.org/risk-management/premises-safety/clarify-the-jurisdiction-of-campus-police/.

[195] FEMA*, Best Practices: Mutual Aid Agreements – Types of Agreements*, Lessons Learned Information Sharing, https://www.hsdl.org/?view&did=765559 (last accessed Jan. 19, 2022).

Students, faculty, staff, and residents of neighborhoods surrounding CMU have an interest in the decisions made by CMU and Pittsburgh that impact how campus safety will be achieved. It is important for CMU community stakeholders to understand, in advance, when and how CMUPD will respond, when PBP may respond, and how the agencies may interact.

Recommendation 38. CMUPD and PBP should explore participating in joint training in areas where their officers and supervisors may interact such as, an active shooter on campus, crowd management, and critical incidents.

CMUPD indicated to 21CP that it conducts active shooter training for officers because they would likely be the first responder if such an incident occurred on campus. However, it is also likely that the Pittsburgh Police Department and other nearby police departments would need to respond and provide additional resources during an active-shooter or other critical incident.

The Campus Security Guidelines created by the Major Cities Chiefs Association found joint training and exercises with campus police and local police to be a way to develop common skills and build relationships among personnel from neighboring and nearby police agencies. By training and conducting exercises on campus, officers from nearby municipalities can familiarize themselves with the campus.[196]

Recommendation 39. CMUPD should account for where their officers conduct police actions. It is important to understand if traffic stops, pedestrian stops, arrests and other police service is happening on or off campus and if there are involving campus members, visitors, or neighbors.

CMUPD reports that they are not currently capturing enforcement data in a way that allows it to analyze interactions in terms of whether they occur "on-campus" or "off-campus." 21CP appreciates that all streets passing through CMU's campus are city streets. However, CMUPD would benefit from more specific information about when, where, and how often CMUPD officers may be taking enforcement action outside campus boundaries.

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[196] Major Cities Chiefs Association, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, *Campus Security Guidelines – Recommended Operational Policies for Local and Campus Law Enforcement Agencies* (2009).

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