

**COUNTY OF LOS ANGELES
OFFICE OF INSPECTOR GENERAL**

**SUMMARY OF FORCE ALLEGATION
INVESTIGATIVE PROCEDURES**

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**by
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INVESTIGATIONS OF ALLEGATIONS OF USE OF FORCE

OVERVIEW

On October 21, 2014, the Los Angeles County Sheriff's Department (Department or LASD) presented the Board with updates on the status of recommendations made by the Citizen's Commission on Jail Violence. Included in the power point presentation was the number of force allegations, i.e. allegation by a prisoner or someone on behalf of a prisoner alleging that inappropriate force was used upon them. The data revealed that in 2013, the Department investigated 95 allegations of force. Of those two resulted in employee counseling, 92 were unfounded and one was founded. In 2014 (through September 30, 2014) there were 53 allegations of force with 42 unfounded, 10 still under review and one founded. The Board of Supervisors instructed the Office of Inspector General to report back to the Board on the protocol used for conducting use of force investigations, specifically for unfounded cases. The OIG is conducting a review and analysis of the Department's force allegation policies and procedures which will be reported in two phases. This report will explain the policy and protocols for investigating allegations of force followed by a review of the facilities' compliance with those policies and protocols. A future report will include a qualitative analysis of unfounded allegation of force investigations from 2013 and 2014.

In order to identify the policy and protocols used by the Sheriff's Department to investigate allegations of force and whether those policies are practiced consistently across facilities, the OIG met with each facility's unit commander and operations staff including Twin Towers Correctional Facility (TTCF), Men's Central Jail (MCJ), Century Regional Detention Facility (CRDF), North County Correctional Facility (NCCF), Pitchess Detention Center North (PDC North), Pitchess Detention Center South (PDC South), and Inmate Reception Center (IRC). In addition the OIG met with staff from Custody Training and Standards Bureau and Custody Support Services.

LASD'S POLICY ON ALLEGATIONS OF FORCE

The Sheriff's Department Manual of Policy and Procedures – Force Policy section 3-10/100.00, "Use of Force Reporting Procedures" specifically addresses "Force Allegations." The policy states these investigations must be completed in a timely manner and the investigation must follow the same methods as a reported use of force investigation.¹

Per policy, when a Department member is notified of an allegation of force, notification must be made immediately to a supervisor with a minimum rank of sergeant. Upon notification the supervisor conducts an inquiry to determine the validity of the allegation. If for any reason that supervisor was alleged to have been involved in or witness to the force, the inquiry is assigned to a different supervisor.

¹ For the Board's convenience, we have attached a copy of the Allegation of Force policy.

The policy states the investigatory guidelines the supervisor must adhere to during the inquiry. These include interviewing the prisoner and witnesses, collecting evidence, taking photographs of any injuries, determining if the force used was captured on the facilities' cameras or CCTV, making sure the prisoner sees a doctor for any injuries and collecting any other evidence available.

The inquiry is then documented in a memorandum from the supervisor to the unit commander and shall include the supervisor's conclusions regarding the validity of the allegation.

After the unit commander reviews the inquiry documents, one of three actions may be taken per the policy. The first is to "close the inquiry if there is no validity to the allegation." The second is to "initiate an administrative investigation if the inquiry reveals possible misconduct that could result in discipline." And third, the unit commander may "initiate a criminal investigation if the inquiry reveals reasonable suspicion that a crime occurred (e.g. assault under color of authority)."

If the unit commander decides that an allegation of force inquiry should be closed because there is no validity to the allegation, he or she must then forward the investigation file (including all video and audio of the inquiry) to the concerned division chief and subsequently to the Discovery Unit for retention.

The command staff at all facilities report that a force allegation investigation (or "inquiry" as the term is used for allegations of force) follows the same investigative guidelines as a reported use of force or an administrative investigation. That is, the same processes for collecting evidence, interviewing prisoners and witnesses and all other fact gathering tools are utilized in the inquiry of an allegation of force as they would be in an administrative investigation.

FINDINGS

The Department reports that protocol for investigating allegations of force is consistent among the facilities and that Department policy for allegations of force is properly followed. To better understand the process as a whole, we will discuss the procedures and protocols for all facilities and then discuss any substantive inconsistencies which bear mentioning.

The Process of Investigating an Allegation of Force

There are several ways in which the Department may be notified of an allegation of force. They include a prisoner filling out a complaint form available at all custody facilities;² a prisoner verbally notifying the sergeant on duty;³ a prisoner's relative contacting the facility watch commander; or any third party contacting the facility on behalf of the prisoner.

Once notification is received by the Department member (generally a sergeant), the watch commander is immediately notified of and briefed on the allegation of force. The watch commander immediately assigns the inquiry to a sergeant who begins the inquiry process by interviewing the prisoner on video regarding the alleged use of force.⁴ At some facilities, the sergeant will conduct the interview of the prisoner with either another sergeant or a supervising ("bonus") deputy. At other facilities the sergeant conducts the interview alone unless personnel at the rank of bonus deputy or higher is available to assist.

After the interview of the prisoner, the sergeant escorts the prisoner to see medical staff for treatment of any injuries. The policy requires that prisoners are seen by medical staff even if they indicate that they are uninjured and do not require medical attention. All seven facilities report that they adhere strictly to this policy to document any injuries or lack thereof.⁵

If the facility is equipped with cameras, the sergeant determines if the alleged force incident was captured on CCTV. If the incident was captured on CCTV and the deputy or deputies failed to report the force, the recording is secured, the inquiry stops and either an administrative or criminal investigation is immediately opened. If the incident was not captured on video, the sergeant will seek to collect other evidence such as prisoner witness statements to corroborate the prisoner's allegation.⁶ Photographs of the prisoner and the location of the incident are also taken as part of the investigative process.

Finally, if the prisoner has named a deputy (or deputies) in the allegation of force, the sergeant will ask the deputy about the incident and will require that the deputy write a memorandum as to what occurred. If the prisoner cannot name the deputy who allegedly used force on him, the sergeant will seek to identify the Department members working at the time and location of the incident.

² Facilities have boxes where prisoners may retrieve and fill out an "Inmate Request/Complaint Form." The prisoner then drops the form into a separate locked box where the sergeant on duty will retrieve the forms at least once during his or her shift. Only sergeants have the key for the locked boxes for retrieval of forms.

³ Occasionally a prisoner will contact the facility *after* he has been released to report an allegation of force that occurred while he was in custody. The prisoner may not have reported the force while in custody due to fear of retaliation. In such cases, the facility will send a sergeant to meet with and interview the former prisoner.

⁴ A sergeant or deputy who is accused of inappropriate or unreported force or misconduct is never assigned to investigate an allegation.

⁵ Because we have not yet viewed any allegations of force inquiry packages, we are at this time unable to substantiate this claim.

⁶ If the prisoner does not name other prisoner witnesses, the sergeant will interview prisoners who may have been within the vicinity at the time of the alleged incident to determine if they heard or saw the alleged incident.

The Review Process for Allegation of Force Inquiries

Once the sergeant has completed the inquiry, a memorandum called an “Investigative Summary” is written to the watch commander which includes a summary of the interviews, videos, audios, and photographs. The watch commander reviews the inquiry and advises the sergeant of any further investigation that is lacking or needed. If the watch commander is satisfied that it is a complete inquiry, he will attach a memorandum with his recommendation and submit the matter to the compliance lieutenant for the next level of review. The compliance lieutenant will review the inquiry to determine if any further investigation is needed. If the compliance lieutenant is also satisfied that the inquiry is complete, he or she will forward the completed inquiry to the operations lieutenant. At some facilities the operations lieutenant will only review serious allegations of force. In facilities where the operations lieutenant does not review every allegation, the case is sent directly to the unit commander by the compliance lieutenant. At facilities where the operations lieutenant does review every allegation of force, he will either concur (if a recommendation was already made by the previous reviewer) or he will make a recommendation prior to forwarding it to the unit commander for disposition.

Depending on the facility, the source of the initial recommendation of whether the inquiry should be closed (unfounded) or an administrative or criminal investigation should be opened differed somewhat. For example, at some facilities the investigating sergeant may make a recommendation while at other facilities it is the watch commander or the operations lieutenant making the initial recommendation for disposition of the inquiry. Regardless of whether the operations staff recommended a disposition for the inquiry, the unit commander is the final arbiter prior to the division level review.⁷

We found that at some facilities the watch commander writes a memorandum with a recommendation on disposition to the unit commander. If the unit commander concurs, he may do so without writing any additional memorandum to the division commander. At other facilities the unit commander will always write a memorandum with his recommendation to the division commander. These inconsistencies are not detrimental to the investigation itself, however, guidelines or policy regarding the process would create consistency among all seven facilities.

An additional layer of review of force allegation inquiries was implemented in February 2013.⁸ Upon completion of the inquiry by the unit, the matter is sent to the Custody Force Response Team (CFRT) prior to the division level review. The CFRT reviews the investigation to

⁷ In situations where the evidence appears to be a “he said he said” situation, the unit will look at the history of both the prisoner’s prior allegations and the deputy’s prior uses of force to determine if a preponderance of evidence standard can be met.

⁸ The Department reports prior to 2013, there were procedural inconsistencies among the facilities in investigating allegations of force.

determine if it is a complete and thorough inquiry.⁹ If the team finds that further investigation is needed, the case is returned to the unit for follow-up investigation and subsequently returned to the CFRT for another review. Once the CFRT deems the investigation complete, a memorandum is written to the division commander receiving the case for review. If the CFRT disagrees with the unit commander's disposition of the inquiry, i.e., that it should be closed for lack of a policy violation, the CFRT submits a memorandum to the division commander explaining its disagreement with the unit's disposition of the inquiry.

If the division commander determines that the case requires further investigation, it is once again returned to the unit. If the division commander deems the case complete, it is forwarded to the division chief with the division commander's recommendation. The division chief reviews the investigation to ensure that it is thorough and makes the final disposition. Finally, upon completion of all reviews, CFRT will send the entire investigation packet to the Discovery Unit for retention.

Results

The investigative approach set forth in policy for determining the validity of an allegation of force is similar if not identical to that used in an administrative investigation. As stated earlier, we have not yet reviewed any allegation of force inquiry packages, thus, until that review is complete, we can only report on what each facility has advised us. Furthermore, only after a completed review of inquiries into allegations of force can we substantively determine if the investigations were thorough and objective. Our request for copies of the 2013 and 2014 unfounded allegations of force packages previously report upon by the Department is currently pending.

The review process of an allegation of force appears robust and thorough. To sum up the above detailed process, an allegation of force is reviewed by multiple command staff at the unit. It is then sent to CFRT for another review. Finally it is reviewed at division level by a commander and a chief. The multiple layers of review are designed to ensure that no allegation of force that may have validity is closed without close scrutiny.

The OIG found that while the force allegations policy is silent as to other possible dispositions for an inquiry, the Inmate Request/Complaint Form has several disposition codes that may be utilized.¹⁰ For example, the reverse side of the Inmate Request/Complaint Form that is to be retained by the facility, lists disposition option codes such as "Founded,"¹¹ "Unfounded,"¹²

⁹ CFRT assigns each allegation of force to a sergeant who has been extensively trained in investigating uses of force including allegations of force investigations.

¹⁰ All Request/Complaint Forms received from prisoners must be scanned and input to Custody Automated Reporting and tracking System (CARTS).

¹¹ In the "Administrative Investigations Handbook" The Department defines "Founded" as "when the investigation establishes that the allegation is true, and when the action on the part of the Department members is prohibited by law or Department Policy."

“Unresolved,”¹³ “Exonerated,”¹⁴ “Unit Level Investigation,” “I.A.B. Investigation,” “I.C.I.B. Investigation,” “Unable to Make Determination,” in addition to other disposition codes which appear to be geared towards resolution of a prisoner request like bedding and clothing. Custody Services Division advises that dispositions such as “Unresolved” and “Unable to Make a Determination,” are utilized by the facilities in allegations of force inquiry dispositions where appropriate. The distinction between “Unfounded” and “Exonerated” may prove significant in improving the accuracy of the Department’s disciplinary process.

Furthermore, we found that although an allegation of force inquiry may be closed as unfounded due to the claim not having any validity, the investigation may have shed light on other matters that need addressing. For example, the unit commander or operations staff may determine that the deputy or deputies may benefit from training, counseling, or a Performance Log Entry (PLE). Thus, it appears that the Department is seeking to improve the performance of staff through this investigative process.

Other Observations: Database Tracking

During the course of our inquiry, we found that there is no consistency in database tracking for allegations of force.¹⁵ For example, it appears that if a prisoner files a complaint against staff regarding an allegation of force by filling out the Inmate Complaint/Request Form, that form is scanned into the Custody Automated Reporting and Tracking System (CARTS) which is used to track prisoner grievances. However, if a prisoner verbally advises a sergeant of an allegation of force (and thus no form has been submitted by the prisoner) that allegation may or may not be entered in CARTS. The Department has advised that it is currently working on writing policy to bring consistency into the tracking process. This, in addition to the implementation of a database where all tracking is contained, should resolve any inconsistency among the facilities for

¹² “Unfounded” is defined as “when the investigation establishes by a preponderance of evidence that the allegation is not true.”

¹³ “Unresolved” is defined as “when the investigation fails to resolve the conflict between the complainant’s allegation and the Department member’s version of the incident; when there is no preponderance of evidence to support either version of the incident.”

¹⁴ A complaint shall be classified as “Exonerated” when the investigation establishes by clear and convincing evidence either (1) that the employee was not personally involved or in any other way connected with the incident or incidents in question or (2) that the allegation giving rise to the investigation was demonstrably false and brought in demonstrable bad faith or by virtue of an obvious and demonstrable mental disease or defect or (3) that the allegation in question, broadly construed and even if true, would not, in any circumstance, constitute a violation of law or Department policy, rules, or procedures and not otherwise censurable.

¹⁵ We hope this will be resolved with the implementation of the Performance Recording and Monitoring System (PRMS).

tracking allegations of force in the future. Currently, each facility utilizes an internal spreadsheet unique to that facility for tracking of allegations of force.¹⁶

Further Review and Analysis

The OIG has requested from the Sheriff's Department the allegations of force investigations deemed to be unfounded in 2013 and 2014 (presented in the power point by LASD to the Board on October 21, 2014). Upon receipt, we will conduct a qualitative review of each case to determine whether proper policy and protocols were followed in addition to whether the investigations were thorough, fair and complete with appropriate dispositions. At that time we expect to report out findings regarding the quality and consistency of these inquiry and investigations packages.

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¹⁶ Some facilities have Excel spreadsheets while others have an internal database to keep track of force allegations.

Force Allegations

Allegations of force, whether made by the person upon whom the alleged force was used or by a third party, shall be investigated in a timely manner similar to a force investigation (e.g., interview the complainant and witnesses, collect evidence, gather documents, respond to the scene, take photographs, etc.). The Department member to whom the force allegation was reported shall report the allegation to their immediate supervisor (with a minimum rank of Sergeant). That supervisor shall immediately conduct an inquiry in order to determine the validity of the allegation (i.e., whether it is corroborated by statements and/or evidence). However, if that supervisor was alleged to have been involved in, or a witness to, the incident, the inquiry shall be assigned to another supervisor.

The supervisor conducting the inquiry shall adhere to the following guidelines:

- Follow up on information provided by the individual making the allegation (i.e., interview person(s) whom the individual said were present and/or witnessed the incident, look for and collect evidence that the individual mentions);
- Collect evidence and take statements;
- Take photographs of the location, if appropriate;
- Review any medical records (in cases of an inmate, review the inmate injury report). If an inmate injury report was not prepared for an inmate, ensure that one is prepared and the inmate is medically treated;
- Photograph all visible injuries (if applicable); and, thoroughly document/describe all statements taken and evidence collected; and
- Determine if the force incident was recorded and secure any such recordings of the incident.

An inquiry into a force allegation shall be documented in a memorandum from the supervisor to the Unit Commander and shall include the supervisor's conclusions regarding the validity to the allegation. The Unit Commander shall take one of the following actions:

- Close the inquiry if there is no validity to the allegation;
- Initiate an administrative investigation if the inquiry reveals possible misconduct that could result in discipline, such as unreported use of force; or
- Initiate a criminal investigation if the inquiry reveals reasonable suspicion that a crime occurred (e.g., assault under the color of authority).

Closed force allegation inquiries shall be forwarded to the concerned Division Chief or Division Director for review/concurrence and subsequently forwarded to the Discovery Unit for retention.