

Public Safety Review Committee
Policy Subcommittee
July 15, 2020, 6:00pm

Present: Myadze, Konkel, Anglim

Absent: Mitnick

Others Present: Al Rickey, Acting Police Chief Wahl, Captain Winters

Listening to call: Nicholas Davies, Alec Esther, Bernie Albright, Robert Bechtold, Mason Muerhoff, Sarah Kaiksow, Tarah Stangler, Julia Kunz, David Sterken, Donna Kimberley, Jonah Chester, Tim Patton, Gloria Reyes, Sarah Chodorow, Nicholas Davies. Registered: Farah Kaiksow, does not support/oppose, would like to speak, Kimberly Graff, opposed, does not wish to speak.

PUBLIC COMMENT: – There was no public comment

APPROVAL OF MINUTES– Anglim approved the July 3, 2020 minutes. Konkel seconded the motion. The minutes were unanimously approved.

Additional Information - This meeting was aired on Madison City Cable Channel and can be found at www.cityofmadison.com under additional meetings.

1. Presentation from the police department on how policies get updated to include an overview of Changes to Code of Conduct and Standard Operating Procedures police (policy can be found here: <https://www.cityofmadison.com/police/chief/standardoperatingprocedures.cfm>)

Chief Wahl shared all SOPS are on a review cycle process that take place every year, every other year, or every three years. Commanders or subject matter experts in the department look at every SOP that falls under their list and look for new changes, current, reflect best practices, or legal changes. If there is a new SOP it would go through subject matter experts internally as the starting point and it may involve external stakeholders. The final review process goes through the Management Team and Internal Affairs. New SOPs or changes to the SOP are posted as a draft to the department website to allow for public comment. If there are SOPs that are unusual or need more input they would be shared with additional stakeholders for review. He shared an example if there was the body cam SOP there would be more steps in the process before finalizing the SOP.

Konkel inquired how does the public know the SOPs are posted to the department's website without looking at the website everyday? Chief Wahl shared the department has reached out to City IT on an email option however felt at the time ITs capacity to work on that was not feasible, but shared it could be looked back into again. Captain Winter suggested for public consumption it may be possible to post on the department's social media platforms to reach a broader audience. Chief Wahl shared they could look into that process as well. Anglim inquired if the SOPs have a quasi- legal influence, power, or a penalty for an officer willingly or failing by the SOPs? Chief Wahl responded the SOPs or the code of conduct are the basis for internal discipline and used as a guide to hold the officer accountable through

the internal discipline process and in terms as an external legal force they don't. There has been language added on the policy that is doesn't create any legal enforceable rights for any other agencies and is just used for the department as internal documents and expectation guidelines for the employees behavior.

Konkel inquired how many people have offered feedback to the SOP's on the departments website and what do you do with it and have there been any changes. Chief Wahl shared there has been very little feedback, once the draft is posted on the website it has went through the internal process and if there is a change suggested he looks at it and decides if there are changes needed. He shared that he received a suggestion from Konkel and the changes were made.

2. Acting Police Chief Wahl to go over questions from the subcommittee on the following Standard Operating Procedures (SOPs) – Mutual Aid, Uniform Standards, Weaponry, Demonstrations and Assemblies, De-Escalation, News Media Relations, Use of Non-Deadly Force, Use of Force Data Collection, Special Events Team Grenadiers, and Special Events Team Field Extrication Team. SOPs can be found at – <https://www.cityofmadison.com/police/chief/standardoperatingprocedures.cfm>

UNIFORM STANDARDS SOP

Where is the language for SET riot gear?

Can something be done to have a more readable name tag?

How is the resolution that passed council about riot gear identification incorporated into this SOP.

The SOP doesn't address detail with SET or SWAT wear, it references the process for identifying approved issued equipment and goes through an internal process and any change to the uniform goes before the Chief for approval. The Finance unit works with purchasing uniforms and maintains a list of approved items and is the same with identification with SET gear with names on shirts. Konkel questioned the shiny silver uniform badge that can be difficult to read because of the font size and when the sun hits it they can be hard to read the officers name. Chief shared some officers have went to the military embroidered shirt and others like the traditional look. It can be expensive to change for 500 plus officers and the processes are not always simple but shared it could be looked into. Konkel shared when asking for an officer's name it may become confrontational. Chief responded most officers should carry a business card and also shared the officer is required to let you know who they are. Konkel inquired about the SET gear and not being able to identify names. Chief responded he was not involved in the process with the fonts, etc. on the uniforms but from what he seen at the recent protests officers had names in multiple spots. Although, he can check into this as well but again it was shared it comes with a cost. Anglim mentioned she was not sure on which SOP but with carrying handguns the language is very particular in saying that the ID should be attached near the holster and mentioned that SET may be different from everyday kinds of carry but it may be of interest to pull some of that together. Chief shared it can be looked into with incorporating the uniform SOP with something referring to SET identification.

POLICE WEAPONARY SOP

Why are officers required to carry chemical agents?

Are there any special rules about chemical agents during COVID-19?

Why are special events, FT&# and SWAT not required to carry a Taser?

What is the purpose of a police officer carrying a knife - folding/retractable or fixed blade?

Chief shared chemical agents are referred to as pepper spray in which all officers working patrol or operations are required to carry and an important use of option to have and said it doesn't cause injury and can be delivered from a little distance away and it's been in use by law enforcement for decades and an option to carry and have available so they are not in the situation to use some other force option.

There are no special rules about using chemical agents during COVID-19.

The language in the Taser section about special events, field training and SWAT is because the department doesn't have enough Tasers. Certain number of officer's check-in/out during their shift. On a normal day there is enough for officers to carry one but when there is a major event there isn't enough.

Carrying a folding knife is for a utility purpose, most common use is to cut a seat belt.

DEMONSTRATIONS AND ASSEMBLIES SOP

Clarification needed on the directive to be impartial and neutral during demonstrations. What are the implications if not followed and what does it mean for the officer if they violate and what is the penalty. Neutrality was discussed with protests and why do the police have to remain neutral as there may be some officers who want to show solidarity and march with protestors.

Other areas discussed and questions raised; when is it decided to use riot gear, when is it decided to advance and use pepper spray and other tools. How do they make the decision and what is the goal as this is not covered in the SOP.

Policies should be more complete and easy for an individual to find what they are looking for. SOP's should have the information included from another SOP. Who writes the policies?

Communication and notification to the protestors that is more specific and a public warning to protestors to get into a safe place before chemical agents are used. Some thought protestors were to be warned three times before chemical agents are used.

What process is there on changing policies and consideration of public on comments? There is a review process on the police department website when SOPs are posted but how much consideration from comments to make changes.

Interest in the numbers from COVID-19 and the stay at home orders and how many people attended to protest and the number of officers that were sent versus how many officers were sent to the George Floyd protest or the Tony Robinson protest at East High School. What was the difference between the two?

There were questions on charges and the inconsistency with who gets charged and who doesn't and recovering the costs.

Who is on the Special Events Team (SET) and how is that decided, do they have use of force complaints? Who are the officers in the riot gear, what kind of training do they have? What does the training look like?

What kinds of tools, chemical agents, etc. What ones do we think are okay under different circumstances and what ones are we hoping to curtail? What will tear gas do to the crowd and is that the desired effect?

Chemical tools should not be used unless there was an extreme circumstance such as "shooting in the streets". It should be very clear.

Disruption amongst the public and what that looks like. John Nolen Drive shut down. How can you keep those people happy that are going about their business and to keep the protestors happy. How do you make it more tolerant for those kinds of events and what is acceptable for the public?

Lots of questions, some of the questions the Chief indicated he doesn't completely understand.

The objective of the impartial or neutral. The department doesn't want to see as taking sides and to be neutral, keep the peace, and to facilitate to those that want to express their first amendment rights. In the context of the last six weeks, it was important for the department to show support for the community and felt it was appropriate to do so in the circumstances the department did. The Chief is not sure how he would get this in the SOP language without opening the door to things the department wouldn't want to allow for. With all of the different causes the department has policed over the years and with the causes it is important to remain neutral and not seen as going on either side. Konkel inquired if someone violated the policy, could they be disciplined? Chief shared if an officer would violate any SOP language they would be and it would be looked into. He also shared if you look into it most of the context with first amendment right activity, neutrality is something that is recognized across the country. Konkel understands how it could go wrong but if the officer is standing and can't react to things it can make them look less human and could escalate things around them, but if they could express a non-neutral stance it may deflate the hostility. Chief understands what Konkel is sharing but he doesn't know how the policy could be crafted. He said there is ways to show personal support without making it a public statement. Konkel felt there is an inconsistency. Myadze inquired if the SOP can be changed to allow officers to be able to engage if it has something to do with an officer situation. Wahl clarified saying by allowing the SOP to be applied where we think we want it to apply, but not with other circumstances where we want officers to take positions he doesn't think is possible but it can

be looked at to see what other agencies are doing, but feels it is very consistent across the country. It may be hard to craft language without opening the door too far.

“Questions may be in the incorrect SOP, the Chief indicated he will bounce around to answer”

Pepper spray has been used very infrequent besides the end of May and early June. The last time officers have been in riot gear and used pepper spray was in 2005 to disperse a crowd. The state has a statute on unlawful assembly which is the guiding principal although the departments standard is in practice a lot higher than what the unlawful assembly statute calls for and that is 3 or more people in an assembly causing a disturbance of public order that it is reasonable to believe the assembly will cause injury to persons or damage to property unless immediately dispersed. He said that is a pretty low standard and the department has had a pretty high burden when the department moved to the level of making a transition from crowd management to crowd control with orders to disperse and the use of pepper spray. This is not covered in the SOP but is covered in the SET training and is a decision made by the Commander and is typically an Assistant Chief or a SET Captain.

Communications and notifications to the group before the order to disperse is something that is built into the training and something that is incorporated with how the department does things. Sometimes it can be a logistic challenge to have mechanisms to deliver warnings. There are hand-held and squad microphones. It will be noted to continue to look at better ways to get the message out before dispersing so everyone hears it.

Officers working different protests; interesting there was a lot more to work the stay at home order protest vs. the George Floyd protest and mainly this was about timing. The Chief indicated the department was informed about the George Floyd protest about a day before. It can be a challenge to get staffing together that quickly.

Question on charges and who gets charged and who doesn't with the street use. For an event when you want to close off a city street there is a process to go through and that is the Parks department. The police department has a part too and if there is needs for police services the organizer would be invoiced and any other city services would be involved. This has been a tricky balance with first amendment expression of rights and charging and what is more commercial activity. This is not up to the Chief to make that decision, the department goes with the city process with what the Mayor goes with and feels the police department shouldn't be the decision maker on this.

Special Events Team officers put in for the assignment when there are vacancies. All ranks are on the team. They train one or two times a year on a variety of items. Previous Chief Williams made a commitment for all officers to be provided with protective gear.

Across the Country there are all sorts of tools and chemical agents that are used to disperse crowds. The department has been very conservative in terms of what they use and deploy. Lots of things they look at such as too high of an injury potential, not effective, or not a good idea for whatever reason. The department has tools for crowd control (batons, pepper spray, tear gas, impact ammunitions) and that is what the department has and what they use and have chosen not to use what other entities use.

A challenge with facilitating movement, civil disobedience, blocking intersections, etc. The department has taken a lot of heat as some don't feel people can block streets, etc. He has taken the position of allowing people to express their first amendment views and feels the department needs to make an effort so they can facilitate. It can be very disruptive to some and difficult balancing when the organizers over the last weeks are not wanting to communicate to the department and it makes it hard for the department to prepare to help and facilitate. The Chief shared the department is continuing to work on and keep things positive. Konkel shared two protests that occurred that were cleared and feels the officers don't have communication on what they want the public to do. She felt the communication should be more than a few times. She said the policy says verbal commands are required but you don't see it happen. The Chief shared he was in the Command Post and he recalls constantly reminding officers to make announcements although he said this will be a thing for the department to improve on. He felt the equipment is part of it to project and there is technical hurdles as well but agrees it is the department's best interest to give anyone who is inclined the opportunity to leave. He will also look at the operational as well as equipment perspective. Konkel asked about when given the okay to use tear gas it feels like there was no time frame after that to stop using it. Chief shared the information is still being looked at but as a general proposition he said the decision to declare an unlawful assembly is going to come from the command post and there is an expectation that officers are doing assessments and making independent decisions as they move through the night. He said he is all about the department doing the best they can and being as professional and effective as they can be in everything they do and if there are areas to improve whether policy or training on equipment he said he would erase it and do what he can do to make it happen.

DE-ESCALATION SOP

Is the policy written for a single person as it doesn't address larger events. The "8 Can't Wait" 6 steps of de-escalation that should be in the policy. The PSRC is going to study "8 Can't Wait" and could be coordinated with those. OIR, Ad-hoc, and NCAAP did a lot of studying and has information on de-escalation on the six steps.

Under examples on the de-escalation SOP; the last example could include any standard operating procedures. The 6 points of de-escalation needs clarity and less leeway for less legal tactics utilized. There are a lot of different interpretations with the examples.

What is the difference from four months ago with until now with making arrests? The jail population is down. Is there something different with de-escalation?

Are officers trained on de-escalation and is that their specialty? Think everyone should be trained.

The de-escalation policy is focused more on small one-on-one encounters with a subject the officer is trying to control and not a large crowd management environment. On the police department's website there is information on crowd management. Konkel inquired with the Madison Method and if it is a policy. Chief shared it is not a policy it's part of training for new SET officers and something that is reinforced at briefings for every SET event and could be considered to use as policy somewhere, it guides everything the department uses for crowd management and control. Konkel felt it would be

useful and written in the SOP as the observations that were made. Chief indicated that is something the department can look at but he did share they have done hundreds of events and hundreds have went successful because of the Madison Method and feels like he would disagree to say that they don't practice it because they do and have demonstrated it for years. The Chief shared the last events in May/June are outliers from in terms of outcomes. Konkel feels there has been the same previous discussions on protests but feels like there have not been improvements from 1996. Captain Winter shared the difference is the destruction that occurred in May/June and that she would argue on that being different with the physical violence and the departments need to respond as well. Myadze inquired if there were supremacist groups as he heard rumors to cause trouble. Chief shared there has not been evidence or support for that but have seen people open-carrying downtown but not causing any issues. He shared there were a small group of people who clearly were out to cause problems which makes it difficult to police in large group.

Everyone in the department went to de-escalation training and now it is incorporated into any hands on use of force and also pre-service training with new officers.

COVID-19 pandemic has played a big part with reducing the risk of officers being exposed so officers are encouraged to use citations instead of making arrests and to make every effort to not make physical arrests. The jail has also requested the department to not make arrests unnecessarily as they have expressed concerned with COVID. The Chief believes that is what is contributing to the reduced jail population with those efforts.

USE OF NON-DEADLY FORCE SOP –

There was discussion on the SOP with the words objectively and subjectively when law enforcement is using force. It was said in the first paragraph, the primary duties should be to protect life, which is good, but the second paragraph says objectively reasonable which makes it not clear on what it means.

There was discussion on the legal aspect if an officer does something that is wrong?

Can there be language with an indication from the police department with what is coming next as there is no communication when pepper spray, tear gas, etc. is going to be sprayed. The policy only indicates how it is going to be used. Also, feels the policy should be centered on more communication, de-escalation, etc. There was discussion on how the SOP is written by which paragraph comes first with regard to following protocols.

The SOP does not require to have communication going into other measures. Use of deadly force is still unclear from a member of the public and there is a need for communication before use of non-deadly force (chemical agents not used at all) Felt that communication could greatly solve situations seen at protests.

The policy shares that projectiles will not be used to move or disperse crowds. This is not always observed.

There was discussion on complaints and legitimate complaints and the small percentage of officers that are convicted as doing something wrong. There was mention on officers that don't want to or don't have a card to give to a citizen when requested, the complaint process as being long and drawn out with a lot of work on the citizen, the ability to identify officers is difficult in crowd situations and name plates that are shiny are hard to read.

Medics in the crowd and providing aid to those injured in the crowd. What is the procedure?

Use of non-deadly force authorized - How do you justify using non-deadly force to "maintain on order", what does "maintaining order" consist of?

Force considerations - What alternative methods were used to control the crowds?

Force considerations - What offenses are considered "severe" enough to use non-deadly force?

Special circumstances - "control of a person through presence and verbal commands shall always be the preferred method of control" - There seemed to be very few verbal commands to the crowd, please explain what is expected to be tried first.

De-Escalation - De-escalation SOP seems to be written for individuals not the SET or SET FXT - do they have different De-escalation policies?

Use of OC spray - what is the difference between active and passive resistance?

Use of OC spray - what constitutes a "threat"

Use of OC spray - what manner of use is "prescribed by the Chief of Police through MPD training"

Use of OC spray - How would you offer people the opportunity to wash or flush the areas affected? How often is this done?

Chemical agent use - what "manner" is "prescribed by the chief of police through MPD training" for use of chemical agents?

Baton use - At what point should officers be using batons - how do they determine that a "lesser degree of force" is insufficient?

Impact projectiles - They are only supposed to be used to overcome violent or assaultive behavior or to control persons to prevent them from harming an officer or another person - under which circumstances did you use these against the protesters

Impact projectiles - the policy requires taking people to the emergency room for medical clearance if they have been hit by one of these, how can you justify their use if there is no way that you will follow up with the required medical care?

Impact projectiles - How is it responsible to fire these into a crowd not knowing who you might hit and where, particularly because if a person is hit in the wrong area of the body it is deadly force?

Impact projectiles - The policies say "impact projectiles will not be used in crowd control situations." why were they used?

Impact projectiles - Then policies say they will not be used to "move or disperse crowds" - so why were they used on the days of May 30 - June 2

Aftercare - Is it considered responsible to use force knowing an officer can't follow up with aftercare? Were there any incidents of aftercare during the events of May 30 - June 2

Use of force review and investigations - how many investigations are happening as a result of the incidents May 30 - June 2? How many uses of force were put into the database? What does immediate emergency casualty care exactly look like? Is it the same for both officers and citizens?

This category has no accountability issues (besides potential documentation discrepancies), while it has been apparent that not everyone gets the help they need in situations described in the policy - how would this concern be addressed?

Can communication be a required step before the use of force in general? The policy mentions that is the "preferred" method of communication, but could this language be removed to ensure that this is indeed happening?

If non-deadly force is meant to be as such, why does this SOP still use the phrasing "not likely to cause death" when referring to it?

Can officer discretion be a dangerous precedent to be set, as there can then always be a justification for partaking in misconduct?

Do peaceful protestors constitute "active resistance" or a "threat?"

Did all impacted protestors receive the appropriate medical care as detailed in this SOP over these past 2 months?

Chief shared he will try and answer all of questions but some are intermixed

The department policy is pretty strict with using impact projectiles in crowds to move or disperse crowds but can use in a crowd control scenario if there is an imminent safety threat. All reports that he has seen has met that but this is still in the process of being looked at. He shared this is part of the review process but from the reports he has been reading the officers aiming have been accurate and have been aimed at a particular individual with a specific shot and not aimed into the crowd. The officers that deployed have been trained and have had a lot of reps and experience with the equipment and themselves. Konkol questioned that impact projectiles that they are not to be used in crowd control situations according to the SOP and they would not be used at protest and riots and when reading police reports she said the officer indicated they didn't know where they hit or shot. The Chief shared the behavior was violent and assaultive behavior by picking up bottles and rocks and those are projectiles and the language on crowd control is pretty clear saying absent imminent risk of harm to

officers or citizens they will not be used in crowd control situations but if you have an imminent risk of harm to officers or citizens they will be used in crowd controls and they won't be used to move or disperse crowds. Everything he has seen has been consistent with how they have been used although the they are still looking at things. Konkel inquired on how many projectiles were used. Chief thought there was a high single rounds but does not have all of that information yet. Konkel inquired about someone saying they were not used. Chief shared someone inquired about rubber bullets. Once it was realized the foam rounds were used there was a clarification put out to the public.

What's the difference between active/passive resistance? The Chief shared active is behavior that physically counteracts an officer's efforts and passive is non-complaint and non-threatening behaviors. All officers carry pepper spray on their belt and a certain way to use it and there are larger delivery methods that are through events team (tear gas) with training on determining how and when used. There are different context and delivery systems and depends on circumstances.

If the department does not take the individual into custody and is exposed to OC spray they wouldn't be able to assist. All officers in the training are exposed to pepper spray although uncomfortable it is temporary. Konkel inquired if anyone was treated. Captain Winter's shared one person was because a bottle of water was handed to them to flush their eye. The Chief said if someone would have asked from exposure they would have been helped. The difference of FXT (Field Extraction Team) and SET Medics carry additional medical gear in case they need to provide emergency medical assistance in the field. Anglim inquired if there was a medic platoon on sight on Saturday night after things became chaotic. Captain Winter shared there is not a platoon but the department does 7-8 SET medics that have the training and they are interspersed among the squads and platoons that the department has to have a person with those extra capabilities. They are not EMT/EMS trained although they carry some extra stuff on them to deal with some lesser things. Anglim inquired if the police department is not able to provide medical assistance in these kinds of situations. Chief Wahl shared that with the protest there were large crowds and not the police or fire were set up to provide to the mass medical care. They would be there to help move the crowds for emergency medical personnel and also if they were asked for assistance there would be help. The department policy is set up for customary use of force encounters that involve one subject and that is what it is geared for. Anglim felt this should be clear as there is an implication of after-care.

3. Additional policies that should be reviewed by the committee

No comment

4. Next steps, proposed agenda for the next meeting

In lieu of time there was a suggestion by Konkel to schedule a second meeting and invite Acting Chief Wahl back to continue to work on the SOPs that were not finished. Support Staff Hardiman will find a date that works for the Chief and the subcommittee. Unanimous consent.

ADJOURNMENT

Anglim made a motion to adjourn. Konkel seconded that motion. The meeting was adjourned at 8:15pm.