

Albuquerque Police Department's

# January – June 2023 OIS Review

Completed September 2023

Albuquerque Police Department  
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Between January 1 – June 30, 2023, the Albuquerque Police Department (“APD”) experienced seven (7) officer involved shootings (“OIS”). An OIS is an undesired result for APD as APD strives to avoid using deadly force in favor of de-escalation or less lethal force options; however, de-escalation or less lethal options are not always practical or successful. Additionally, an OIS also represents a circumstance where APD officers or members of the public were placed in a life-threatening situation. Given the high number of shootings in 2022, APD determined it would convene an executive working group to review the OIS and prepare findings and recommendations. APD is dedicated to conducting these reviews on a semi-annual basis. It is essential to note the lens used by the working group and how the group compliments other types of oversight for using force.

### **APD Policy**

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

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

### **Other Types of Review**

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

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

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

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

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

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

### **Review by Working Group**

The working group consists of a cross-section of reviewers. This group included four deputy chiefs, one major, one legal advisor, and one external contractor who specializes in uses of force. APD hired the contractor who retired with 31 years of law enforcement experience and expertise to provide additional insight from an external, professional perspective in the OIS review process. The purpose of this working group is not to duplicate the efforts by the various types of oversight currently existing for OIS, but to approach the seven OIS in a different light. The group did not re-examine whether the shootings were within APD’s policy or the quality of the investigations. Even if every OIS was within policy, one of the purposes of this working group was to explore whether there are methods to reduce the overall number of OIS. In conducting this analysis, the working group explicitly applied the “20/20 vision of hindsight”, using information gathered after the shooting as well as information on other OIS to assess these incidents. The working group’s findings do not address whether the officer’s actions were objectively reasonable. Further to the extent the working group identified similarities in OIS, these are insufficient to evidence a pattern of conduct. When reviewing the OIS, the working group gave special consideration to whether de-escalation was used and where using a less lethal tool earlier in the encounter might have avoided the need for deadly force. To be clear, a determination that officers may have missed an opportunity for less-lethal force does not indicate that less-lethal force rather than deadly force should have been used at the time of the shooting, but that less-lethal force *might* have brought the incident to a resolution before the need for deadly force arose.

## **Discussion of Individual OIS in chronological order**

### *1. Case #23-004809*

On March 29, 2023, at approximately 1833 hours, officers were dispatched to a domestic violence call in the Southwest Area Command of a male dragging a female while hitting another female. The caller further stated the male was under the influence of narcotics. Another call came into APD dispatch where the caller stated the same male individual was now armed with a gun and firing the gun in the front yard. While officers were en route, a separate bystander reported the individual was shooting his firearm. Once on-scene, officers approached the individual using a force array (lethal and less-lethal force tools), saw he was armed with a firearm, and gave verbal commands to drop his gun. The individual hid behind a parked car and at least one officer observed the individual point his firearm at bystanders. Multiple officers fired their rifle or handguns at the individual. The individual ran away from officers into a neighboring yard where he grabbed an innocent bystander, who then began fighting with the individual over a firearm, when the individual attempted to take the bystander hostage. At some point a firearm was thrown and air support was able to confirm he no longer had that gun. Officers deployed an ECW and a 40mm, and used empty-hand techniques to arrest the individual and place him into custody. The rounds fired by officers did not strike the individual or any bystanders. The shooting was non-lethal.

#### *Items for Consideration:*

The working group considered the surrounding environment during this incident. The group made a recommendation to emphasize the importance of environmental and situational awareness, to include decreasing the possibility of striking any unintended persons or property when the decision is made to use lethal force.

The working group determined the situation did not allow time for de-escalation. Further, the working group determined there was no missed opportunity for less-lethal force prior to the OIS; however, officers transitioned and used less-lethal force prior to taking him into custody once the individual no longer had the gun but continued to actively resist arrest.

### *2. Case # 23-0037214*

On May 10, 2023, at approximately 1937 hours, officers were dispatched to a gunshot activation call which included 6 shots in the Southeast Area Command. When gunshots are fired and detected, the gunshot detection system alerts APD with information. A few minutes after officers' arrival and upon officers attempting to contact a male individual, he fired at officers. One sergeant returned fired at the individual who then ran from police and officers lost sight of the individual. A female later contacted an officer advising her son showed up at her house with a gunshot wound, that he had two handguns with him, and that he was schizophrenic claiming earlier in the day that someone was out to get him. This information was not available to APD at the time of the initial contact with the individual.

Officers set up a perimeter and requested Air Support, Tactical and K-9 Units for an area search. Officers were able to locate the individual who did have a gunshot wound to the chest, he

was taken into custody, and transported to the hospital for medical treatment. The shooting was non-lethal.

*Items for Consideration:*

It was determined that de-escalation was not an option as the individual fired at officers as they tried to make initial contact with him. There was no missed opportunity for less-lethal force.

3. *Case # 23-0038880*

On May 16, 2023, at approximately 1401 hours, officers were dispatched to an apartment complex in the Southeast Area Command reference a male individual seen walking through the apartment complex with a rifle. The caller provided APD dispatch with the name of the individual. Officers contacted the Investigative Support Unit (ISU) to assist when the field officers were unsuccessful contacting anyone at the apartment. An ISU detective arrived and saw a male exit the apartment and enter a vehicle. The ISU detective was able to identify the male who had felony warrants for homicide and armed robbery (carjacking). The detective requested back-up. Additional detectives arrived on-scene and they observed multiple occupants inside a parked car. A plan was developed to make contact with the individuals and arrest the individual with felony warrants. As officers attempted to make contact, all occupants exited the vehicle, and began running from the parked car. One of the individuals was armed with a firearm and pointed it at the direction of officers who were taking the primary person into custody. One detective fired his rifle, striking the male. All other occupants, to include the one with felony warrants, were taken into custody. The individual shot was not the known offender with warrants. The shooting was non-lethal.

*Items for Consideration:*

It was determined that de-escalation was not an option as the individual pointed his firearm at the direction of officers when they tried to detain them. There was no missed opportunity for less-lethal force.

4. *Case #23-0039782*

On May 19, 2023, at approximately 1504 hours officers were dispatched to an apartment in the Valley Area Command in reference to a suicidal individual who made verbal threats to kill a family member if he saw them. Officers attempted to speak and de-escalate the individual from outside the apartment while he was on a balcony; however, he refused to speak with officers. The individual also refused to speak with a family friend who attempted to assist in de-escalating the situation. Officers were preparing to disengage from the incident when the individual ran out of his apartment door with a 6-foot long pole with a knife tied to the end. The individual charged at an officer with the improvised spear then turned and ran at the other two officers. One officer deployed his ECW two times with no effect at which point two officers fired their handguns. The individual died on scene.

*Items for Consideration:*

It was determined that officers attempted de-escalation for an extended period of time without success. Once the individual exited his apartment with the spear-type weapon, there was not any time for further de-escalation. Officers did use less-lethal prior to the OIS without success. The shooting was lethal.

5. *Case #23-0047865*

On June 16, 2023, at approximately 1850 hours, officers were dispatched to an active shooter call at a local restaurant in the Northeast Area Command where at least two people had been shot. The restaurant was located across the street from a New Mexico State Police (NMSP) Department substation. When NMSP heard the call, they took primary responsibility for the call for service. An APD sergeant working an unrelated tact plan heard the call, he arrived on-scene shortly after the NMSP, located the shooter, and fired his rifle along with NMSP officers. The individual was not shot, but taken to the local hospital after swallowing fentanyl. APD is investigating the APD officer who used force and NMSP is taking primary for the call for service, any criminal charges, and their officer-involved shooting.

*Items for Consideration:*

It was determined that officers could not have used de-escalation given the type of call for service and threat at the time of arrival. There was not a missed opportunity for less-lethal force. There was not any video of the APD officer firing his rifle due to the APD officer's need to immediately respond. The shooting was non-lethal.

6. *Case #23-0050102*

On June 24, 2023, at approximately 1523 hours, officers were dispatched to a local store parking lot in reference to a male individual that was passed out in a vehicle which was parked in the parking lot for at least two hours. The caller provided a description of the vehicle along with the license plate number. Officers ran the license plate and discovered that the registered owner, who matched the description of the male in the car, had both felony and misdemeanor warrants for his arrest. The sergeant on-scene developed a plan and officers began Public Announcements (PA) and placed a tire deflation device<sup>1</sup> behind the vehicle in an attempt to get the driver into custody. The individual awoke and did not follow officers' commands, drove over the tire deflation device, and drove away. The tire deflation device was successful, the tires were deflating, and officers could see the car pull into a nearby parking lot. The individual parked his car and began walking away. Officers attempted to locate the individual on the shopping mall property. An officer observed the individual and attempted to contact him in an alleyway. The officer gave commands which the individual ignored and continued walking away from the officer. At this point, the officer recognized that the individual had knives hanging from his neck. Another officer and sergeant began giving commands and when the individual got closer to the open door of a local grocery store, the sergeant requested a less-lethal 40 millimeter launcher and advised not to allow the individual into the store. The individual began running, entered the store, he pulled out a

firearm, and fired at officers. One officer deployed his ECW then multiple officers fired their guns, striking the individual. No bystanders or officers were shot. The shooting was lethal.

*Items for Consideration:*

It was determined that officers attempted de-escalation when the vehicle was parked at the initial call for service. The officers had a lawful objective to attempt to contact the individual given his outstanding warrants. Officers could not have used de-escalation once he entered the grocery store based upon the deadly threat presented by the individual shooting at officers. There may have been a missed opportunity for less-lethal force once contact was made in the alleyway and prior to entry into the store.

7. *Case#23-0051644*

On June 29, 2023, at approximately 2123 hours, officers were dispatched to a stabbing call in the drive-thru of a local fast-food restaurant. The driver of a vehicle in the drive-thru was stabbed in the neck by his passenger who fled on foot. Officers obtained the description of the offender during their investigation. At approximately 2349 hours, an unrelated person advised an officer that a male individual was at the bus stop at Louisiana and Lomas waving a knife around. The physical description matched the stabbing offender. An officer observed the individual around the bus stop and was providing updates to other officers via radio. Additional officers drove past the bus stop and stopped north of the location. Several officers began giving the individual commands to drop the knife. The individual did not comply and was in close proximity to several bystanders. Multiple officers discharge their firearms, striking the individual with the knife and two unarmed bystanders. Officers stopped shooting and began giving the injured individual with the knife more commands to drop the knife, which were ignored at which time two officers discharged their firearms. The individual and two bystanders were struck. The bystanders were transported and treated at a local hospital. The shooting was lethal for the offender and non-lethal for the two bystanders.

*Items for Consideration:*

It was determined that officers may not have had time for de-escalation during the initial shooting, but could have prior to the second shooting. There was not a missed opportunity for less-lethal force upon the initial contact, but there may have been before the second shooting.

**Observations regarding OIS**

*Locations of OIS*

Three of the seven OIS were located in the Southeast Area Command, two in the Southwest Area Command, one in the Valley Area Command, and one in the Northeast Area Command.

### *Original and Final Call Type*

Calls for service are coded with a call type based on the initial information provided to the APD Emergency Communications Center (Dispatch). At times, coding is updated based on additional information discovered throughout the call for service. The change in call type is done to accurately code the call for service. 57% (4/7) started and ended with the same call type; however, 43% (3/7) were updated to accurately reflect the proper information.

<b>Original Call</b>	<b>Final Call</b>
Aggr assault/bat	Family dispute
Shts Frd/Sht Spo	Shts Frd/Sht Spo
Susp Pers/Vehs	Shooting
Suicide	Suicide
Disturbance	Shooting
Susp Pers/Vehs	Susp Pers/Vehs
Stabbing	Stabbing

### *Use of Weapons*

100% (7/7) of OIS involved an individual armed with a gun or knife/edged weapon, with 71% (5/7) armed with a gun, 34% (3/7) armed with a knife/edged weapon. It should be noted that one individual was armed with both knives and a gun. In addition, 29% (2/7) of OIS involved individuals were shooting at officers at the time of the OIS.

### *Use of Less-Lethal Munitions*

In two OIS, less-lethal force was attempted prior using deadly force. The working group determined two OIS involved situations where the use of less-lethal force earlier in the encounter *might* have resolved the situation and thus, avoided the need for deadly force. In one instance, one officer used less-lethal force; however, had the first officer used less-lethal force, it may have reduced the need for additional officers to use force. In the other instance, less-lethal force could have been used prior to the second shooting. In making this assessment, it is important to note that the working group cannot predict how the individual would have responded to the use of less-lethal force. It is entirely possible the situation would have still resulted in the use of deadly force.

### *Use of De-Escalation*

De-escalation (defined by APD policy) was used in two (2) shootings. Four (4) OIS, the working group determined de-escalation was not feasible based on the facts of each case. The working group determined de-escalation may have been used in one (1) of the OIS after the initial shots had been fired, but before the second.

### *Identification of Individual Prior to OIS*

APD has various systems for identifying individuals with prior contact with the police, both to identify individuals with mental illness and prior violent encounters with the police. Of



course, this information can only be used when officers identify the individual. Out of 7 OIS, officers knew the identity of the individual prior to the shooting in 4 instances (57%).

#### *Identification of Individuals in Crisis*

None of the individuals involved in an OIS had a history of calls involving mental health.

#### *Compliance with APD policy*

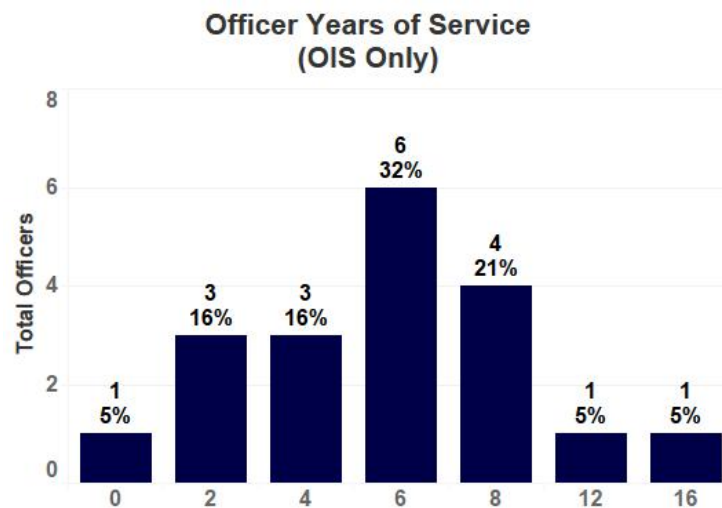
Only one case has completed the entire investigative and review process. That case was deemed within APD policy.

#### *Timing of OIS*

57% (4 out of 7) of OIS occurred on either Wednesday or Friday. 86% (6/7) OIS occurred between the hours of 3:00pm – 10:00pm. Based upon available data, the working group could not determine any trends or links between time of day or day of the week with an OIS.

#### *Experienced of Officers-Involved*

Thirteen of the nineteen officers involved in an OIS had six or fewer years of experience. This represents nearly 68% of officers involved in January – June 2023 OIS.



#### *Prior Force*

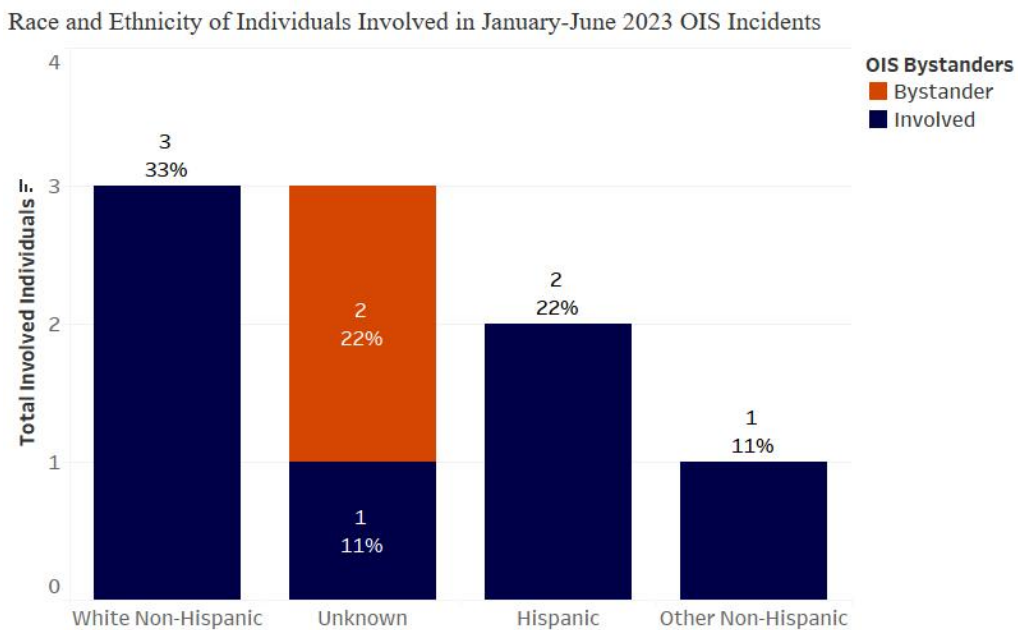
The 19 officers involved in the OIS had a total of 170 prior applications of force since the beginning of 2021. Multiple applications of force can be included in one incident. The 170 applications range from ECW deployment, ECW show of force, or show of force pointing of a handgun, to empty-hand techniques. One officer involved in an OIS in 2023 had one prior OIS.

In the latter part of 2022, APD began using an Early Intervention System (“EIS”) (addressed by Paragraphs 212-219 of the CASA) which identifies officers with a greater incidence of force or misconduct than their peers. When an officer is identified as high on force and/or

misconduct indicators relative to their peers, the EIS policy requires a supervisor conducts a performance assessment. The supervisor reviews previous force incidents and misconduct investigations and determines whether performance improvements are necessary. Two officers were identified as actionable, one was found to not have any concerns and the other has since began a monitoring plan; however, this monitoring plan is unrelated to uses of force.

*Characteristics of Individuals Involved*

All seven of the involved individuals were men. The youngest individual was 18 and the oldest was 42. The working group did not see any outlying trends based on the race and ethnicity of the individuals in which force was used.



**Action Items:**

The working group identified action items to be completed by assigned personnel in order to improve overall operations during critical incidents such as OIS.

*APD will prioritize in upcoming firearms training that officers will be trained on environmental and situational awareness, decision-making, and threat identification during lethal incidents*

There were four incidents where bystanders were in the vicinity of the offender during an OIS incident, including one incident where two bystanders were shot and injured. APD will provide training in several areas including, but not limited to, firearms safety rules when pointing

or shooting their firearm, identifying threats and non-threats with moving targets, and overall awareness of the environments in which they may need to use deadly force.

*Evaluate the assignments of less-lethal tools, specifically 40 millimeter launchers*

While each officer cannot be assigned every less-lethal tool available, APD will evaluate the current assignments of the 40 millimeter launchers to ensure the officers most likely to become involved in a critical incident, the Field Services Bureau, are more likely to have them assigned to squads.

*Prioritize command and control training and scenarios for upcoming supervisory training*

APD is in the process of developing supervisory training that includes supervisory responsibilities during critical events. The Training Academy will include command and control training that includes decision-making and explicit assignment of officer roles (i.e. communications, lethal, and less-lethal).

*Evaluate policy for potential revision for lethal weapons deployment*

The working group collaborated with the use of force expert contractor during this review period. One recommendation was for APD to evaluate its policy with deployment of lethal weapons, specifically rifles. The department will consider reducing the initial deployment of rifles based on the information at the time with the supervisory capability to evaluate the need for certain weapon types to properly address the involved individual(s).

*Evaluate policy for potential revision for increased roles of supervisors and Emergency Communications Center (APD Dispatch)*

Another recommendation provided by the use of force expert was for APD to determine if there are improved ways for supervisors and dispatchers to actively work together during calls for service with the goal of improving outcomes of calls for service, including but not limited to helping supervisors identify a call involving a mental health component, reminding officers to de-escalate, providing a reminder to turn on their on-body recording devices, or to assist supervisors for additional resources.

**Update for 2022 OIS Review Action Items:**

*Increased training on hands-on/empty-handed tactics*

*Update:* APD completed the annual 2023 Use of Force training in July 2023 in which officers were taught and discussed different force options, including empty-hand tactics. The Training Academy is evaluating how this type of training can be conducted more frequently given this is a time-consuming and in-person training.

*Increased consideration of Less-Lethal Munitions*

*Update:* APD updated the use of force policy to clarify language for the use of less-lethal force. The policy was published in January 2023. Since then, APD completed the annual 2023 Use of

Force training in July 2023. Included in the most recent use of force training was less-lethal weapon choice and weapon transition as the resistance changes.

*Increased supervision*

*Update:* In June 2023, APD published a special order that requires supervisors to respond to specific calls for service to include if a person is armed or armed themselves with a weapon. This special order was reviewed and approved by the IMT and the Department of Justice. For the seven OIS reviewed, there was a supervisor on-scene in 86% (6/7) of the calls for service. For the incident where a supervisor was not on-scene, one would not be expected to be dispatched with the information at the time.

*Continued Mentorship*

*Update:* APD continues to work towards improved mentorship of younger officers.

*Additional Equipment for Officers*

*Update:* APD purchased both ballistic shields and magnifier optics for officers and are in the process of assigning to personnel.

*Clearing Scenes*

*Update:* APD has developed a protocol and is revising policy to reflect the updated protocol.

*Wound Care*

*Update:* During the 2023 Use of Force training, instructors reminded officers to render aid and during Reality-Based Training, had officers explain post-injury requirements.

**Conclusion**

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