

LOS ANGELES POLICE COMMISSION

*Quarterly Use of Force Report*

*First Quarter 2012*

*Public Report*



OFFICE OF THE INSPECTOR GENERAL

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Inspector General

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## **QUARTERLY USE OF FORCE REPORT FOR THE FIRST QUARTER OF 2012**

In March 2012, the Los Angeles Board of Police Commissioners (Commission) directed the Office of the Inspector General (OIG) to begin issuing regular quarterly reports on the use of force, particularly Categorical Uses of Force, at the Los Angeles Police Department (LAPD). Each report is to focus on a select group of trends or topics noted by the OIG during the previous quarter.

This document represents the first of those reports and encompasses cases adjudicated during the First Quarter (1Qtr) of 2012, as well as reports released by the Department during that period. It focuses on three primary topics: (1) statistics regarding Categorical Uses of Force (CUOFs) by and aggravated assaults against LAPD officers; (2) the repeated or prolonged use of the TASER Electronic Control Device; and (3) the involvement of non-Force Investigation Division personnel in the investigation of CUOF incidents.

### **I. STATISTICS ON THE CATEGORICAL USE OF FORCE AT THE LAPD**

In February 2012, the Department presented its annual Categorical Use of Force Statistics for 2011, encompassing data for the most recent five-year period. The report also included statistics about aggravated assaults against LAPD officers. As part of its quarterly review, the OIG has examined those statistics, as well as underlying data, to determine whether there appear to be broad trends in the type and location of the reported incidents.

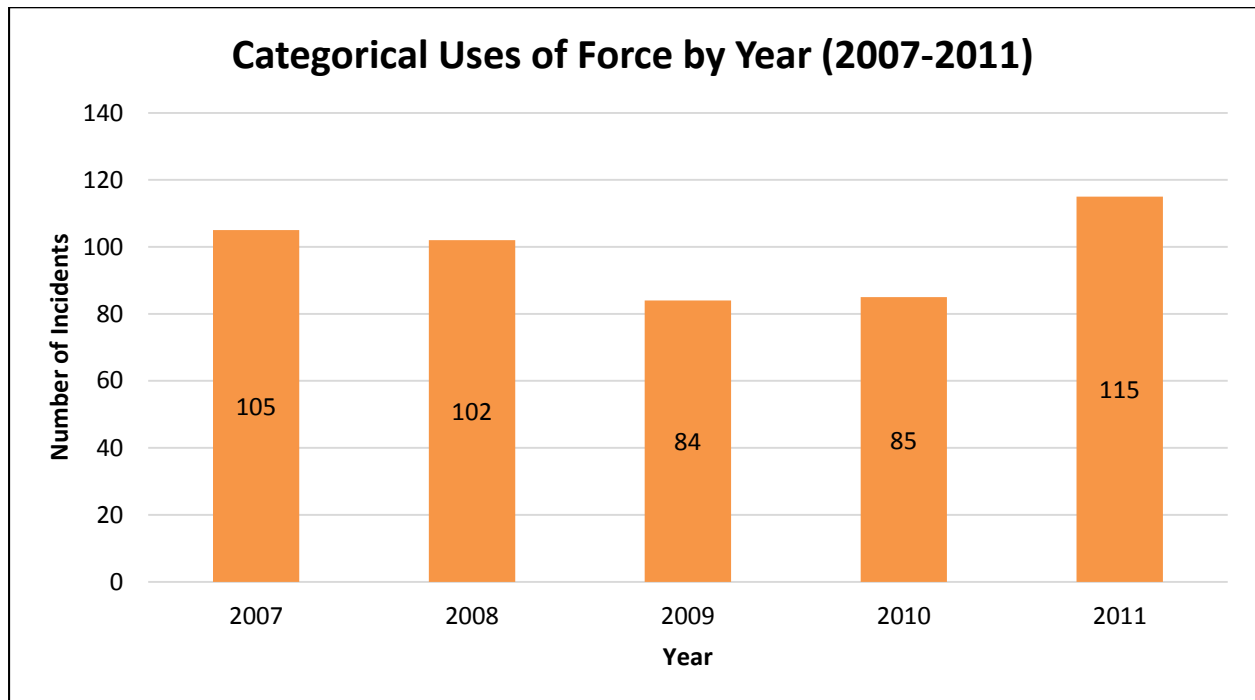
#### **A. Overall Categorical Uses of Force**

As shown in the chart on the following page, the total number of CUOFs, which had been declining since 2007, steeply increased in 2011 to its highest point in 5 years. This growth -- encompassing 30 additional incidents -- represents a 35 percent increase over 2010 numbers.<sup>1</sup>

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<sup>1</sup> The statistics used in this report differ slightly from those presented in the Department's earlier report, as they have been adjusted to reflect the reclassification of several incidents. These numbers are drawn from data provided by the Use of Force Review Division, as well as the OIG's own records. It should also be noted that definitions for some CUOF categories have been modified somewhat over the past five years, which may account for some fluctuations in those categories. The definition of an officer-involved shooting (OIS), however, has not changed.



Although there have been small fluctuations in other areas, the 2011 rise in CUOFs was largely driven by increases in incidents involving shootings by officers.<sup>2</sup> As shown in the chart on the following page:

- Officer-involved shooting (OIS) incidents, where a person was shot at, grew by 23 cases, a 58 percent increase over the prior year.<sup>3</sup>
- Incidents where a person was hit by officer gunfire contributed the vast portion of OIS growth, with an increase of 21 cases (81 percent) over 2010. No-hit shootings rose by 14 percent.<sup>4</sup>
- Incidents involving animal targets (Animal Shootings) rose significantly, increasing by 8 cases -- 47 percent -- over the same period.

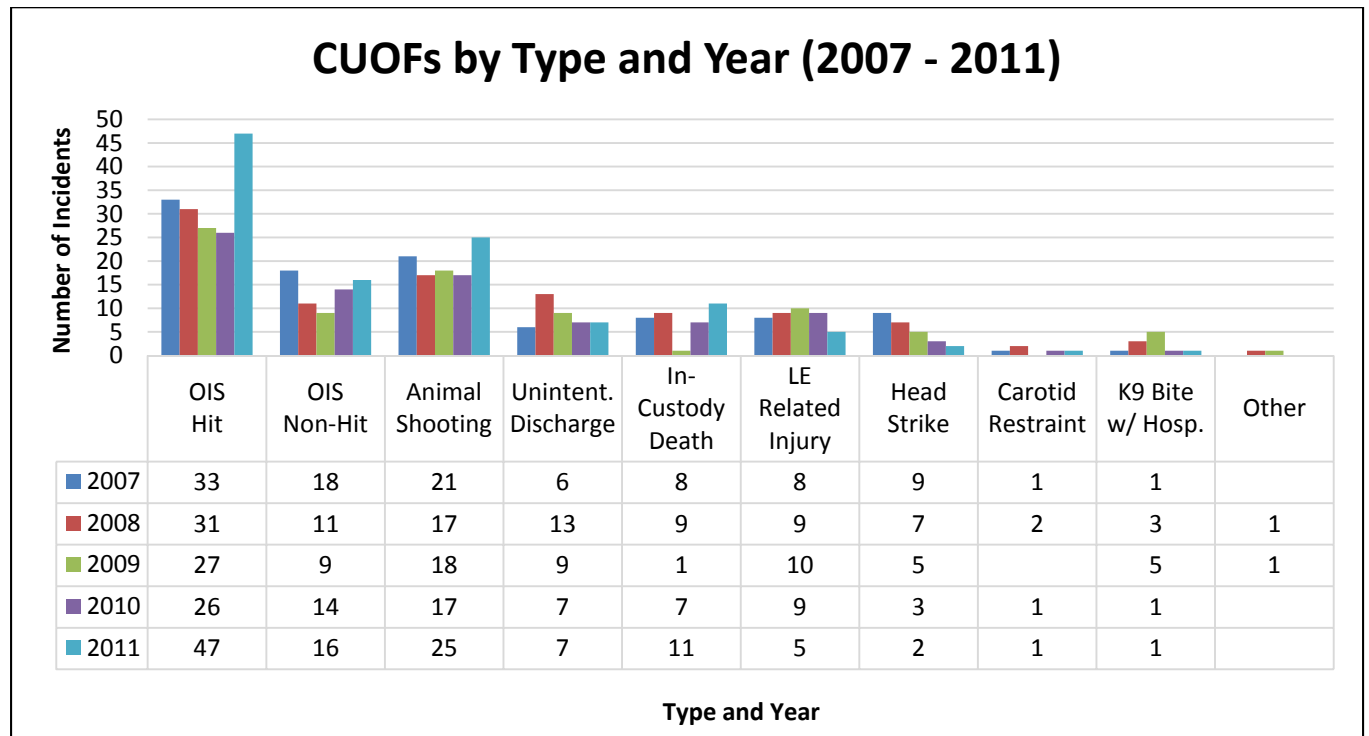
In-custody death (ICD) incidents also showed noticeable growth, with an increase of 57 percent from the previous year. The number of Head Strikes and Law Enforcement-Related Injuries (LERIs), however, decreased.

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<sup>2</sup> An incident involving an accidental discharge of a firearm, whether due to malfunction or operator error, is categorized separately as an Unintentional Discharge (UD).

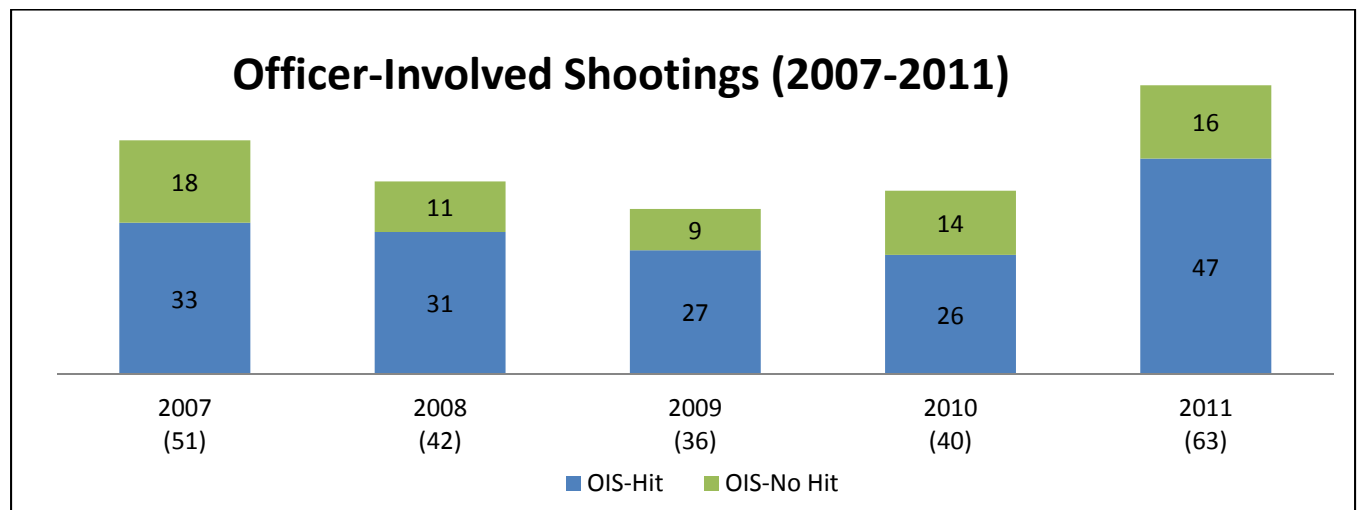
<sup>3</sup> Statistics on no-hit shootings include a 2010 warning shot case and a 2007 attempted-OIS incident, as well as incidents where officers fired at a subject but missed.

<sup>4</sup> For the purposes of this report, cases where it is unknown whether a person was hit are counted as no-hit incidents.



### B. Officer-Involved Shootings

Officer-involved shooting incidents (not including animal shootings) made up approximately 55 percent of all CUOFs in 2011, a markedly higher proportion than in previous years. As noted above, hit shootings grew at a much faster rate than did no-hit shootings, but this seems to be a ratio adjustment from 2010, which showed an unusually low hit proportion of 65 percent. In most years, about 75 percent of reported LAPD officer-involved shootings result in a person being hit, as they did in 2011. About 41 percent of all shootings in 2011 resulted in the death of the subject.



Taken overall, the 63 officer-involved shootings in 2011 show a significant increase not only over 2010 but also over previous years. The OIS numbers steadily declined between 2007 and 2009 but began to rise in 2010. Even when the relatively high level of incidents in 2007 is taken into account, however, shootings averaged approximately 42 incidents per year between 2007 and 2010. The 2011 statistic represents an approximately 50 percent increase over that number.

#### *Area of Occurrence*

The charts on the following page show OIS statistics by area of occurrence.<sup>5</sup> While several areas reported significant OIS increases in 2011, growth was most pronounced in Southeast and 77<sup>th</sup> Street Areas, which reported 12 and 9 incidents, respectively. Those numbers are, by a significant margin, the highest totals for any Area in any year in the past 5 years and represent a steep increase over the past 2 years. According to the data:

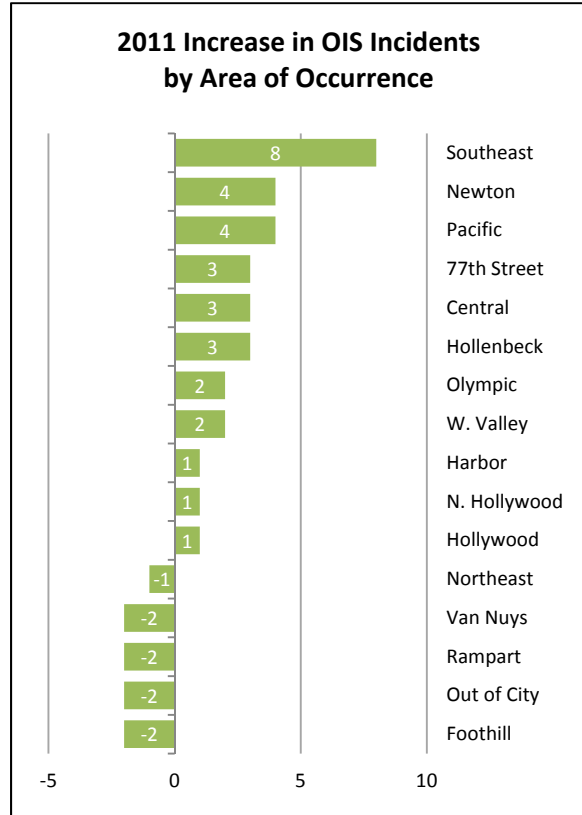
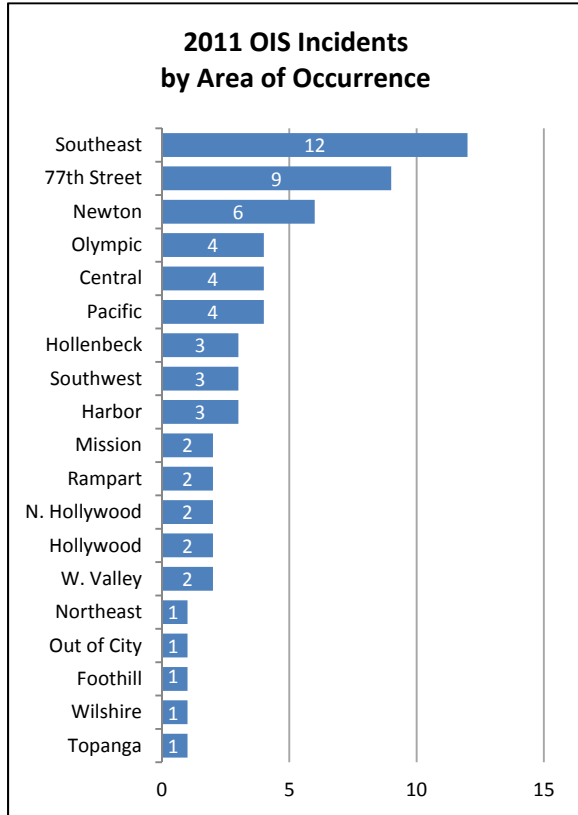
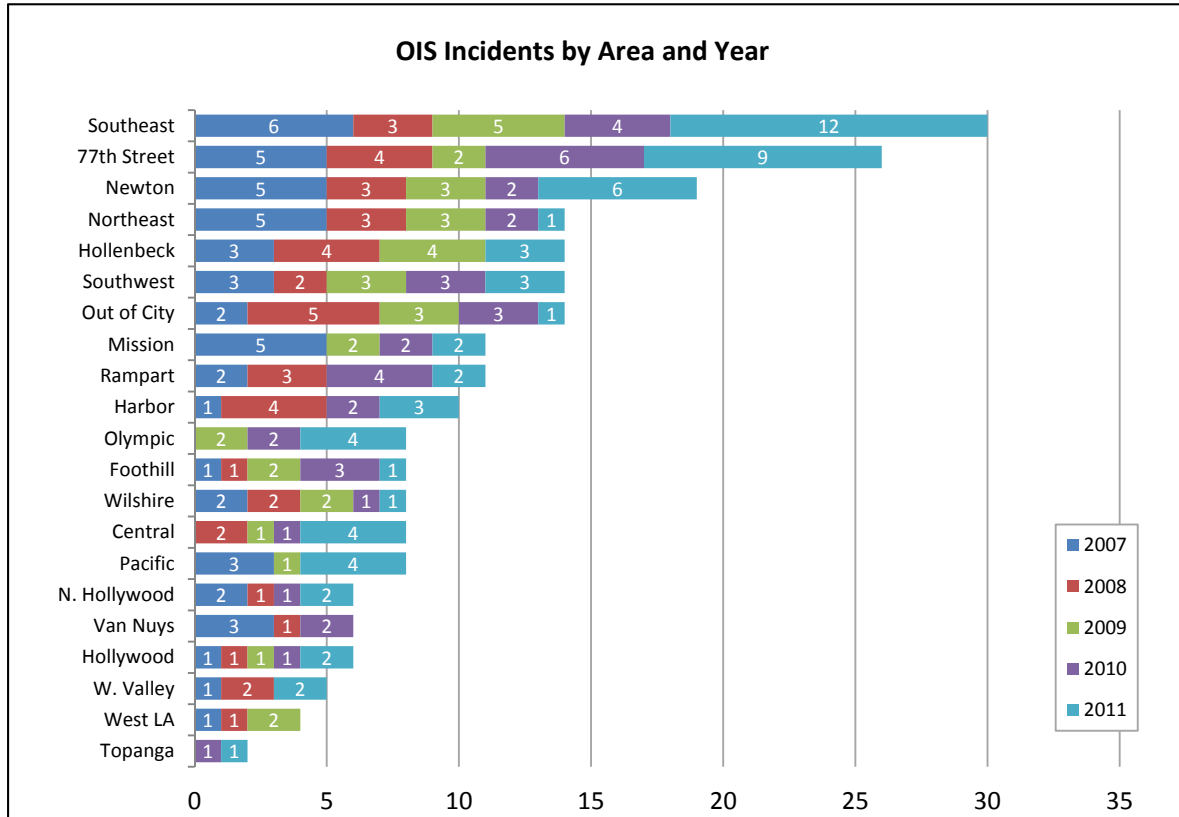
- OIS incidents in Southeast Area alone rose by 8 incidents, or 200 percent, in 2011. The 2011 statistic of 12 incidents is at least twice that of any other year in the past 5 years.
- While 77<sup>th</sup> Street Area shows an increase of just 3 shootings in 2011, this was a continuation of significant growth -- by 4 incidents -- in 2010. Prior to that year, OIS incidents in the Area had been decreasing.
- Newton, Pacific, and Central Areas also showed significant increases in 2011.

During the Commission meeting on November 1, 2011, the Department reported on the 2011 CUOF statistics for the Third Quarter of 2011 and indicated that it had identified an increase in Southeast and 77<sup>th</sup> Street Areas in comparison with their 5-year average. At that time, the Department requested that the Operations-South Bureau (OSB) Commanding Officer look into this issue and be prepared to discuss any findings during the Department's presentation of the annual statistics for 2011. On February 11, 2012, the Commanding Officer, OSB, briefed the Commission on his findings and was available to answer any questions.

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<sup>5</sup> While most OIS incidents occurring in a particular Area involve personnel assigned to that Area, this is not always the case. For example, involved officers may be assigned to a non-geographic division such as the Metropolitan Division or may simply be from another Area. Some incidents may also involve personnel from multiple divisions.



### **C. Aggravated Assaults On Police Officers**

The Department's report included statistics showing that the number of aggravated assaults on LAPD officers had increased along with officer-involved shootings and other CUOFs, albeit to a lesser degree. According to the report, there were 193 such incidents – categorized as Assault with a Deadly Weapon (ADW) Against or Attempted Murder on a Police Officer – in 2011, a 22 percent increase over 2010.<sup>6</sup>

As part of its review of trends in OIS and other CUOF incidents, the OIG obtained and analyzed detailed information about these assaults.<sup>7</sup> The review revealed some complexities within the data that may provide additional context for the statistics.

#### *1. Multiple Assaults Per Incident*

A review of the assault data provided by the Department revealed a difference in how they are measured when compared to CUOFs. Aggravated assaults on police officers are measured on a per-crime/per-victim basis, while CUOFs are counted on a per-incident basis, regardless of the number of officers (or suspects) involved. For example, a single shooting incident in 2011 involved 16 documented assaults. Although 15 officers fired their weapons, this incident is counted as one OIS.

The Department's reports over the past 5 years have consistently applied the methodology described above. An additional analysis of these data, however, might examine trends in the number of unique incidents over time. Using the date, time, and location of each case, the OIG aggregated all relevant assaults by incident, the results of which are reflected on the following page.<sup>8,9</sup>

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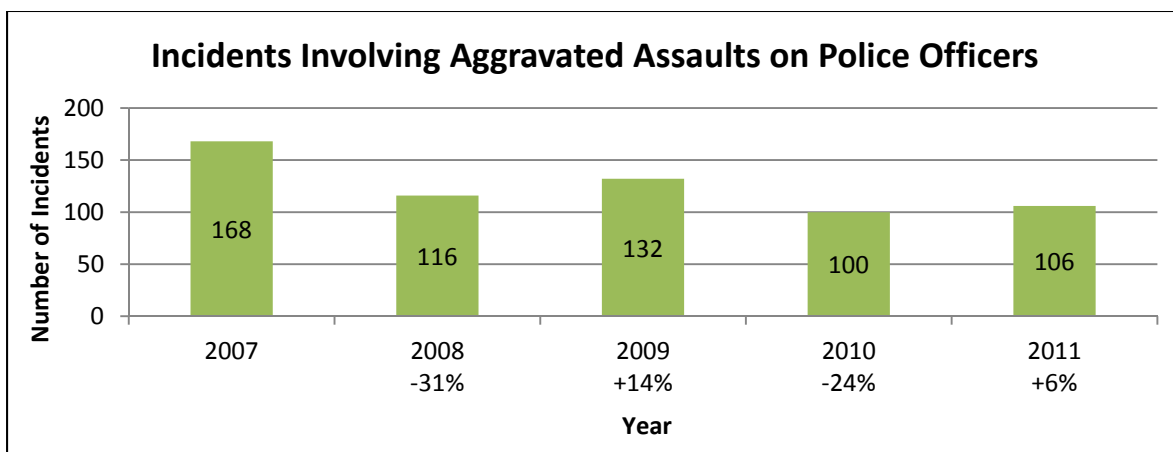
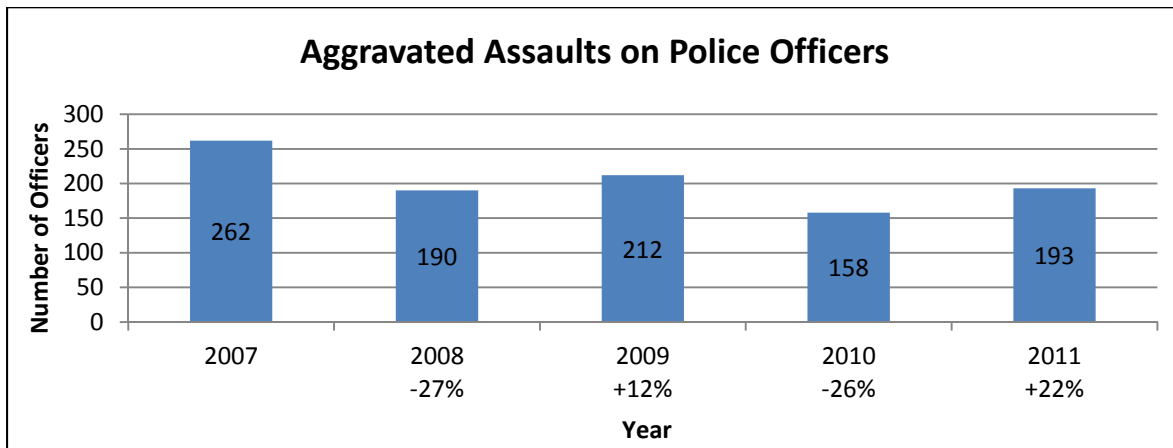
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<sup>6</sup> "2011 Annual Categorical Use of Force Statistics," Los Angeles Police Department, February 3, 2012. A subsequent report on aggravated assaults against police officers listed the number of assaults in 2011 as 194.

<sup>7</sup> For convenience, the term "assault" as used in this section of the report refers specifically to an aggravated assault on a police officer.

<sup>8</sup> Assaults that occurred more than a few minutes apart, even if in the same vicinity with the same suspect, are counted as separate incidents. The total for 2007 also includes 25 documented ADWs that occurred at the May Day protest in MacArthur Park. Because of the large number of officers and reported suspects, these have been counted as separate incidents.

<sup>9</sup> Assault data drawn from COMPSTAT. One incident was reclassified from the year 2011 to 2012.

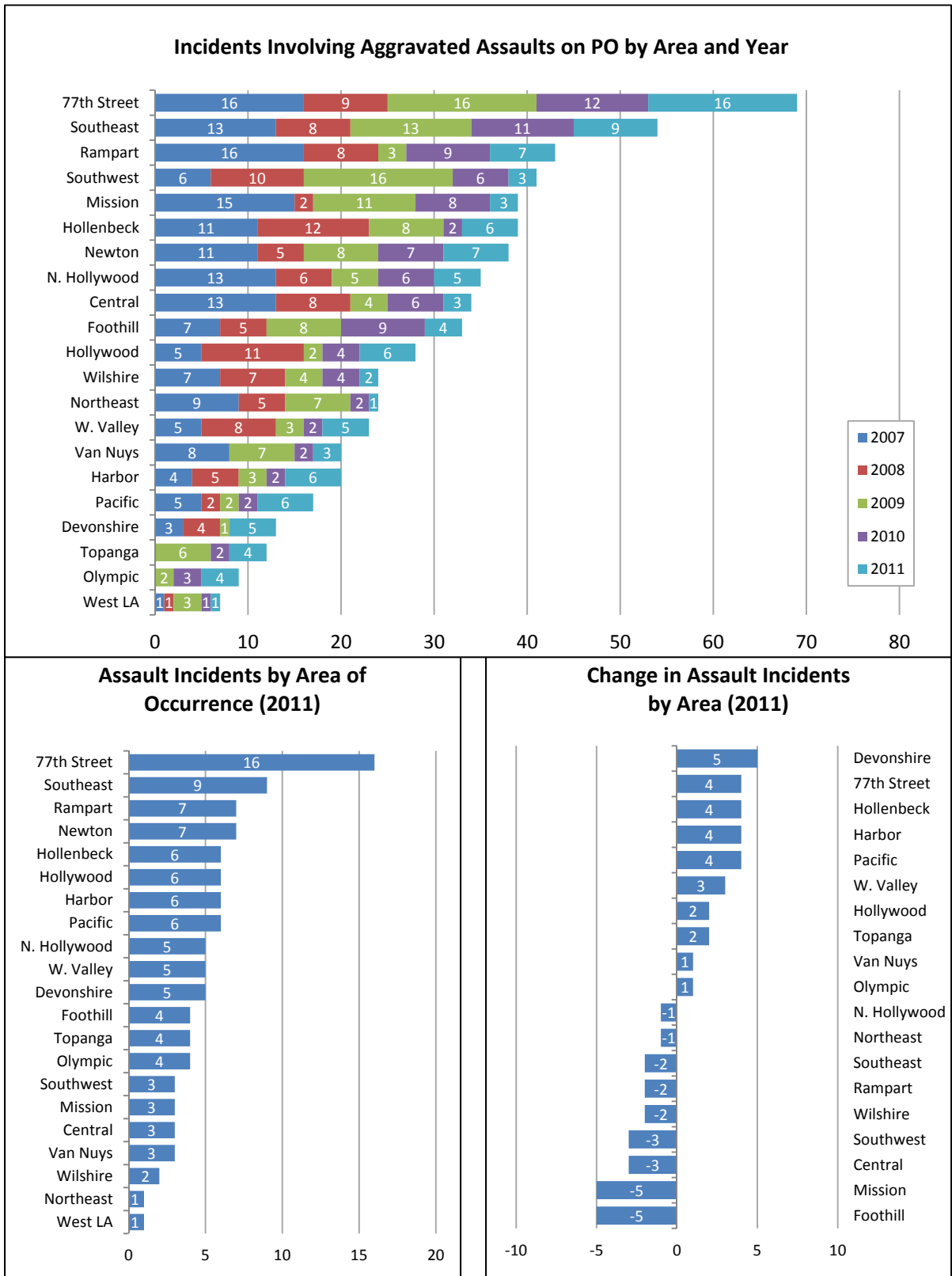


The per-incident statistics show that assault incidents rose by 6 incidents in 2011, a 6 percent increase over 2010. Other than 2010, assault incidents were lower in 2011 than in any other year in the past 5 years. Approximately 36 percent of assault incidents in 2011 involved a CUOF, a proportion higher than previous years. The vast majority of those CUOFs were OIS incidents.

## 2. Area of Occurrence

Using the per-incident calculation, the OIG also looked at assaults by Area of occurrence, including the extent to which the number of incidents changed over time. Those data are displayed in the charts on the next page. As with OIS incidents, the number of assault incidents was highest in 77<sup>th</sup> Street and Southeast Areas overall. Assault incidents were particularly high in 77<sup>th</sup> Street, which showed significant growth between 2010 and 2011, despite having dipped in 2010. Other Areas with notable growth in 2011 include Devonshire, Hollenbeck, Harbor, and Pacific Areas. In contrast, however, incidents involving assaults against an officer in Southeast Area have decreased over the past 2 years. As such, there does not appear to be a clear correlation between the data regarding OIS shooting incidents and the data regarding incidents involving assaults on officers.





**D. Conclusion and Next Steps**

The Department has agreed to develop a standardized format for the reporting of statistics on Categorical Uses of Force, which may include data on officer, suspect, and incident characteristics. The Department has further agreed to work with the OIG in developing the format. This format will then be presented to the Commission for its review and approval.

**II. MULTIPLE AND CONTINUOUS ACTIVATIONS OF THE TASER ELECTRONIC CONTROL DEVICE**

Three of the cases adjudicated during 1Qtr -- two In-Custody Death (ICD) cases and one Law Enforcement-Related Injury (LERI) case -- involved the use of the TASER on a subject. In each of those cases, the TASER was activated multiple times, with a range of 3 to 25 applications per incident.

In recent years, the topic of multiple or prolonged application of the device has been the subject of manufacturer guidance, as well as guidelines developed by the Police Executive Research Forum (PERF) and others. During the preparation of this report, the OIG recommended that the Department's TASER training be re-evaluated in light of these guidelines. In response to this recommendation, the Department has recently revised its TASER training directive.

The OIG noted this issue during its analysis of a LERI incident during which the TASER was applied to a single subject between 7 and 18 times.<sup>10</sup> According to the officers present, most of the charges appeared to have little to no effect on the subject, who exhibited great strength and appeared insensible to pain. He was admitted to the hospital following the incident due to elevated enzyme levels and placed on a mental evaluation hold.

In its review of the incident, the OIG noted that a 2011 set of collaborative guidelines established by the PERF and the Department of Justice recommended the following:

Personnel should be trained to use an [Electronic Control Device or ECD]<sup>11</sup> for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Training protocols should emphasize that multiple

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<sup>10</sup> Although the officer in question recalled activating the device approximately 7 times, computerized trackers for the weapons involved reported 18 activations during the incident. It is not clear how many TASER charges were actually applied to the suspect.

<sup>11</sup> This term, used by the Department, refers to the larger category of weapon of which TASER is the most prominent brand. The LAPD currently uses the TASER X-26 model. Source documents also refer to the device as an ECW (Electronic Control Weapon) or CED (Conducted Energy Device). For consistency, the OIG uses the term ECD throughout this report.

applications or continuous cycling of an [ECD] resulting in an exposure longer than 15 seconds (whether continuous or cumulative) may increase the risk of serious injury or death and should be avoided.<sup>12</sup>

#### **A. LAPD Training**

The Department's tactics directive regarding the TASER allows the use of the device against violent suspects, or those who pose a threat to themselves or others, when certain conditions have been met. Although the directive provides a list of circumstances under which officers should avoid using the weapon, the document did not, until recently, provide any specific guidance regarding multiple activations. The directive stated only that "the suspect should be contained as soon as tactically possible." The directive further noted that the 5-second pulse regulation can be overridden by depressing the safety (thereby allowing the electrical current to flow continuously until it is released) but did not provide specific guidance for the use of the override feature.

#### **B. 1Qtr Cases**

As noted above, three cases adjudicated in 1Qtr involved multiple TASER activations. These are briefly described below.<sup>13 14</sup>

- Officers responded to a call of a man with a gun, agitated and possibly on PCP, breaking into the offices of a homeless drop-in center. Upon arrival, they found the combative suspect being held down by several civilians. The officers stepped in and began trying to subdue the suspect. As he continued to struggle, reportedly displaying "super human strength," an officer applied between 6 and 9 TASER drive-stun cycles to the suspect but none were effective. Using bodyweight and physical force, the officers ultimately managed to handcuff and hobble the suspect and, finding that he was not armed with a gun, moved him outside to a seated position. The officers then discovered that he appeared unconscious.

Paramedics subsequently determined that the suspect was in full cardiac arrest, and he was pronounced dead at the hospital. A medical examiner performed an autopsy and found that the suspect's behavior and toxicology results were "consistent with cocaine-associated agitated delirium." In this case, the examiner noted that the attempts at restraint could not be

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<sup>12</sup> "2011 Electronic Control Weapon Guidelines," A Joint Project of the Police Executive Research Forum and the Office of Community Oriented Policing, U.S. Department of Justice, March 2011, Page 18.

<sup>13</sup> The summaries included in this report provide only a very general and simplified description of each incident. They are necessarily brief and do not provide a full picture of each incident or the complex factors that go into its adjudication. In addition, the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

<sup>14</sup> The vast majority of incidents involving the use of a TASER are categorized as Non-Categorical Uses of Force. The OIG's analysis in this report is based on cases where the TASER was used in connection with a Categorical Use of Force.

ruled out as contributory but that the use of the TASER was “not felt to be a factor in this death.” The mode of death was found to be undetermined.

- Officers responded to a call of a mentally ill man removing his clothes and walking in traffic. The subject did not respond to the directions of the officers, eventually entering a construction site and crawling underneath a modular trailer. When he emerged, officers attempted to take the subject -- who was combative, exhibited “enormous strength,” and was believed to be under the influence of PCP or another substance -- into custody. In the course of doing so, the officers fired several less-lethal impact rounds at him and applied the TASER 3 times in probe mode.<sup>15</sup> The subject was ultimately handcuffed, hobbled, and turned onto his left side, after which he was found to be unresponsive.

Responding paramedics discovered that the subject was not breathing and he was later pronounced dead. After conducting an autopsy, a medical examiner concluded that the cause of death “appeared to be significantly related to methamphetamine and phencyclidine intoxication” but noted that “[g]iven the temporal relationship of the restraints, [...] an asphyxia component could not be definitely excluded.” The mode of death was listed as undetermined.

- Several units were following a suspect who was driving erratically, when the suspect turned his vehicle toward officers in an apparent attempt to hit them and refused to pull over. The suspect was eventually stopped through the use of the Pursuit Intervention Technique (PIT) by an involved sergeant but refused orders to exit his vehicle, instead urging his dog to attack officers. During the encounter, officers fired 2 less-lethal impact rounds at the suspect and activated the TASER approximately 25 times in probe mode, none of which resulted in his surrender.<sup>16</sup> The officers were subsequently able to control the dog and subdue the suspect, handcuffing him and placing him in a hobble restraint device. Following the incident, the suspect was admitted to the hospital with several fractures and a laceration.

### **C. Industry Guidelines**

#### *1) Minimizing ECD Use on an Individual Subject*

The section of the PERF/DOJ guidelines relating to multiple or continuous application of the ECD includes only one of several such recommendations. Notably, product warnings maintained by TASER International, the manufacturer of the device, state:

Reasonable efforts should be made to minimize the number of ECD exposures. ECD users should use the lowest number of ECD exposures that are objectively reasonable to accomplish lawful objectives, and should reassess the subject’s

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<sup>15</sup> The last cycle was cut off after 2 seconds, as the TASER appeared ineffective in facilitating the handcuffing of the subject.

<sup>16</sup> In one case, the TASER probes did not properly attach.

behaviors, reactions, and resistance level before initiating or continuing the exposure. If the subject is non-compliant after a number of ECD exposures, consideration should be given to whether alternative control measures in conjunction with or separate from the ECD are appropriate under the circumstances.<sup>17</sup>

In 2011, the National Institute of Justice (NIJ) convened a panel of forensic pathologists, medical examiners, and other relevant specialists to review a sample of deaths involving the use of an ECD. In examining these cases and related research, the panel concluded:

Law enforcement personnel should be aware that the associated risks are unknown and that most deaths associated with [ECD] use involved multiple or prolonged discharges. Therefore, multiple or prolonged activations of [ECD] as a means to accomplish subdual should be minimized or avoided.<sup>18</sup>

## 2) *Arrest-Related Death and "Excited Delirium"*

Much of the literature reviewed by the OIG made special reference to the use of the TASER on subjects exhibiting symptoms of excited delirium. The term "excited delirium" has often been used to describe a group of symptoms that include "agitation, excitability, paranoia, aggression, great strength and unresponsiveness to pain [...]." While the NIJ report acknowledged that the term itself has been criticized, the medical panel noted that "[excited-delirium]-related behavior and medical conditions are [nonetheless] well-recognized."<sup>19</sup>

According to the NIJ panel, persons in such a state -- usually a result of drug intoxication or mental illness -- carry a risk of death in the short term, even absent the use of force or restraints. Yet, because no relevant clinical studies have been performed on persons exhibiting these symptoms, there continues to be uncertainty about their interaction with the ECD. Furthermore, there are some such individuals against whom the use of the weapon in drive-stun mode -- which causes pain but not neuro-muscular incapacitation -- appears ineffective due to pain insensitivity. In conclusion, the report made the following recommendation:

[Police officers should be aware of [...] related behavior and indications, especially hyperthermia, which is easy to recognize and associated with the worst outcomes. [...]  
"[D]rive-stun" mode and other pain compliance methods should not be repeated in these individuals if they are found to have little or no initial effect.<sup>20</sup>

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<sup>17</sup> "TASER X2, X3, X26, and M26 Handheld ECD Warnings, Instructions, and Information: Law Enforcement," TASER International, Inc., November 30, 2011, Page 4.

<sup>18</sup> "Study of Deaths Following Electro Muscular Disruption," National Institute of Justice Special Report, U.S. Department of Justice, May 2011, Page 27.

<sup>19</sup> *Id.*, Page 21.

<sup>20</sup> *Id.*, Page 22.

In its product warning publication, TASER International also discusses the issue of arrest-related death, mentioning “excited delirium” as a factor that may increase susceptibility. The document warns that the device can produce a list of “physiological and metabolic effects” and that “reasonable efforts” should therefore be made to minimize the number of exposures. The document goes on to state that “[i]n a physiologically or metabolically compromised person any physiologic or metabolic change may cause or contribute to death or serious injury.”<sup>21</sup>

#### **D. Conclusion and Next Steps**

It is important to note that in none of the cases described in this section was the TASER found to be the cause of serious injury or death. Moreover, LAPD policy requires that each use of any force option be individually justified by the circumstances. This policy functions, in many cases, to limit the number of times the device is used in a particular incident.

Nonetheless, until recently, LAPD guidelines on the use of the ECD did not reflect recommendations -- by prominent entities such as PERF, the DOJ, or the manufacturer itself -- that exposure should be minimized and that multiple or prolonged uses may be associated with an increased risk of death or serious injury.

During the preparation of this report, the OIG raised this issue with the Department. The Department has responded by developing, in consultation with the OIG, a revised TASER directive that addresses the issue of multiple and prolonged activations.

### **III. NON-FID INVOLVEMENT IN THE INVESTIGATION OF CUOF INCIDENTS**

In three of the CUOF cases adjudicated during 1Qtr, the OIG noted the inappropriate investigative involvement of -- or use of improper techniques by -- personnel not assigned to the Force Investigation Division (FID).

The FID is designated “the sole entity responsible for investigating and reporting all aspects of a CUOF,” including -- generally -- any associated crime.<sup>22</sup> According to Department policy, however, FID has the discretion to delegate investigation of a related crime to Area detectives when that crime was not committed against the involved officer.<sup>23</sup>

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<sup>21</sup> “TASER X2, X3, X26, and M26 Handheld ECD Warnings, Instructions, and Information: Law Enforcement,” TASER International, Inc., November 30, 2011, Page 2.

<sup>22</sup> Special Order No. 8, March 22, 2006 – Force Investigation Division – Established.

<sup>23</sup> The Robbery-Homicide Division may also become involved in cases where an LAPD employee is killed or seriously injured.

### A. 1Qtr Cases

Of the incidents adjudicated during this quarter, the OIG identified three OIS investigations in which the actions of non-FID personnel were problematic. These are briefly described below.

- An officer fired at a suspect after hearing gunshots and seeing the suspect pointing a handgun toward him. In reviewing in-car video related to the investigation, the OIG noted that an officer transporting the suspect engaged in a conversation during which he asked the suspect a series of questions about the incident. In response, the suspect made several statements about the incident, including multiple acknowledgments that he had fired a gun into the air. This conversation was problematic because the suspect -- who had been arrested for ADW Against a Police Officer -- had not yet been provided with a Miranda advisement. Furthermore, any questioning of this suspect, casual or otherwise, should properly have been conducted under the supervision of FID, particularly given that he was the subject of the OIS. The suspect later invoked his right to remain silent and FID was unable to interview him. The officer did not alert FID to the suspect's admissions.

A second person associated with that case, who had been detained as a potential suspect, was also interviewed without being provided with a Miranda warning. Per Department policy, it was decided that the criminal investigation of the possible ADW would be conducted at the Area level and that joint interviews would be conducted by FID and Area investigators. This interview, however, was begun before the arrival of the FID detective, and the Area officers did not advise the interviewee of his Miranda rights or obtain a waiver. When the FID detective joined the interview, he assumed, based on previous interviews for the case, that the warning had already been given. The transcript indicates that the interviewee frequently asked about the purpose of the interview and stated on multiple occasions that he did not want to say anything about the incident.

- An OIS occurred after officers heard a gunshot and saw two suspects, who were apparently engaged in a confrontation with another group, holding handguns. Area personnel conducted the investigation of the initial gunshot as a possible ADW. During an interview of one of the witnesses to the incident, conducted jointly by FID and an Area detective, the witness was apparently not being forthcoming with information. The Area detective then inappropriately stated to the witness, "Okay. That's how you want to play it? I'm asking you. If that's how you want to play it, I'll do my end, cause I can get you very good with this pen. You understand me? Once you get out of here we're done interviewing, and then I start writing, and you're not gonna go home."
- An officer fired at a suspect after reportedly observing the suspect pick up a previously discarded handgun and raise it in his direction. Prior to the arrival of FID to the scene, an Area detective began an interview with the suspect. The detective then left to contact two residents of a nearby house. He was subsequently informed that the suspect had spontaneously offered to another officer that he had put down his gun without firing because he had not wanted to be shot by the officers. The detective returned to the suspect, reminded him of his Miranda rights, and asked him about his statements. After confirming that he had

made them, the suspect said that he wanted to remain silent and requested an attorney. The interview was then terminated. Although FID had not yet arrived, command of the investigation, including interviews of any involved persons or suspects, should properly have been the purview of that division.

## **B. Conclusion and Next Steps**

The FID routinely performs to a high standard in conducting CUOF investigations. In order to maintain this standard, it is essential that it continue to maintain control over all aspects of the investigation of each CUOF. Where it becomes necessary to delegate aspects of the case to other investigators or to share responsibility, non-FID personnel should be expected to ensure that all established FID and Department protocols are observed.

In response to the OIG raising this issue, the Department has prepared a Chief of Police Notice that reminds all personnel of the responsibilities of FID with regard to CUOF incidents. The Notice, which incorporates exact language from the Department Manual to ensure consistency with established standards, is expected to be presented to the Chief of Police for his approval shortly. The Department will also develop a permanent reference tool, in the form of a notebook divider, which describes protocols for responding to a CUOF incident. Every officer in the field will have access to the reference electronically or in hard copy.