



Oversight Investigation into RPD juvenile pepper spray and use of force policies.

Scope of the investigation

The scope of this oversight investigation is:

to examine the actions of RPD officers on Jan. 29, 2021, and then analyze the new general order 338 (adopted on Sept. 1, 2021, and then implemented on Dec. 6, 2021). We will review other related general orders and training policies. We will evaluate the policies for: (a) whether they are effective and implementable; and (b) to make recommendations to strengthen these policies.

Investigative Plan

Narrative Summary: A mother called 911 on Jan. 29, 2021, with her 9-year-old daughter in the throes of a mental health crisis during a reported “family trouble” call, police initially said. RPD Officer Alexander Lombard was “required ... to use an irritant” because “[t]he minor refused to listen to officers as they gave her multiple commands to place her feet in the patrol car,” the initial RPD press release stated. RPD suspended Lombard with pay and placed three more officers on administrative leave pending the outcome of an internal investigation. It is unclear what resulted from this investigation. Former Interim Police Chief Cynthia Herriott-Sullivan, in various public statements and interviews, said officers were not “required” to pepper-spray the girl. She added it was a “bad choice of words.” Herriott-Sullivan said she did not agree with the decision to pepper-spray the girl. She vowed to amend departmental policies and said changes would be announced publicly. Changes in policy and general orders were not publicized (in either a release or press conference). RPD did quietly publish new and updated general orders regarding the treatment of minors.

Involved RPD divisions:

1. Patrol division
2. Professional Standards Section

Relevant policy-making/training RPD staff:

1. Chief David M. Smith
2. Lt. Michael Ciulla, training coordinator
3. Lt. Laszlo Tordai, PSS commander

Policies, practices, procedures & laws:

1. RPD general order 335: Subject resistance report
2. RPD general order 338: Juvenile use of force
3. RPD general order 337: Use of force
4. RPD general order 435: Juvenile procedures
5. Other documents to review from the city’s open data portal: general orders 421, 520, 560, 561 and 575; and training bulletins C-07-05, P-13-97, P-62-10, P-67-11, C-01-97, and P-72-17.

Investigation questions:

1. When there is a high visibility event like this, how does RPD react? i.e. How information is disseminated to the public and media and what is that process timeline?
2. How does RPD draft and approve new general orders and training bulletins? What does that process entail?
3. Number of RPD officers trained on general order 338 and what did the training entail?
4. What are the budgetary considerations for purchasing and maintaining pepper spray?
5. Are there separate, explicit, protocols for the usage of pepper spray in calls involving mental health crises?
6. Since the Harris Street incident in early 2021, are there other documented cases where officers have used pepper spray on minors?
7. Since the implementation of general order 338, has pepper spray been used on minors at all?
8. Over the course of a year (or some other period of time), can we collect every instance where officers have some interactions with children? How are these encounters classified?
9. Are there alternative (e.g. co-response) models for responding to incidences involving a minor? What other agencies would be available to assist RPD here?

Initial investigative steps

Potential interviews:

1. Relevant RPD policy-making staff.

Suggested reading materials/sources:

Links to some RPD-provided resources below:

- a. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::go-338-juvenile-use-of-force-handcuffing-transportation-and-medical/explore>
- b. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::go-335-subject-resistance-report-1/explore>
- c. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::go-337-use-of-force/explore>
- d. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::go-435-juvenile-procedures/explore>
- e. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::p-62-10-mental-hygiene-law/explore>
- f. <https://data-rpdny.opendata.arcgis.com/documents/rpdny::go-575-de-escalation/explore>

Anticipated difficulties:

1. Access to RPD databases and information remains the greatest impediment to thorough PAB investigations.

For more information about this press release, please contact PAB Chief of Community Affairs Natalie Banks at natalie.wilson@cityofrochester.gov.