

AN EVALUATION OF THE BROOKHAVEN POLICE DEPARTMENT  
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Principal Evaluator: William Harmening, M.A.  
Washington University in St. Louis (Ret.)  
Department of Psychology/ Forensic Psychology

Reviewer: Francis D. Boateng, Ph.D.  
University of Mississippi  
Department of Criminal Justice

Reviewer: Charles Scheer, Ph.D.  
University of Southern Mississippi  
Department of Criminal Justice

## BIOGRAPHIES



**William Harmening** is a 37-year retired law enforcement officer from the state of Illinois. He served both as uniformed Deputy Sheriff in downstate Illinois and as a Special Agent and Chief Special Agent for the State of Illinois in Chicago. He retired in 2018 after twenty-five years with the State of Illinois. He is also a retired university professor, having taught criminal justice, criminology, and forensic psychology primarily at Roosevelt University in Chicago and Washington University in St. Louis. He is the author of multiple peer-reviewed textbooks in those subject areas. Since 2012, William has provided expert witness services in the areas of police practices, police use-of-force, and correctional practices, and has consulted in approximately 300 cases in 42 states. He served as the plaintiff's expert in the Michael Brown case in Ferguson MO, as well as the George Floyd case in Minneapolis MN. William holds an M.A. in Psychology from the University of Illinois at Springfield and resides near Nashville, TN.



**Dr. Francis D. Boateng** is an associate professor of criminal justice and legal studies at the University of Mississippi. Dr. Boateng has 12 years of experience in conducting research in policing, comparative criminology, victimology, terrorism, and immigration. He has previously done work for police departments and has been consulted for his advice on program implementation by other criminal justice agencies including Louisville Department of Correction. In 2019, Dr. Boateng was among nine police scholars from six countries invited for a global discussion on policing and security in Lisbon, Portuguese. Dr. Boateng has published several peer-review articles in top criminal justice, criminology, and social science journals. In addition, he has co-authored two books on terrorism, national security, and immigration, with the latest publication titled "National Security and Policy in America: Immigrants, Crime, and the Securitization of the Border". He has also presented several papers at professional conferences such as the American Society of Criminology (ASC), Academy of Criminal Justice Sciences (ACJS), Southern Criminal Justice Association (SCJA), Mississippi Academy of Science, and Western Association of Criminal Justice (WACJ). Dr. Boateng is a fellow at the Sarah Isom Center for Women and Gender Studies, Africa Institute for Crime, Policy & Governance Research, and a research fellow at the Mississippi Crime and Justice Research Unit.



**Dr. Charlie Scheer** is an Associate Professor of Criminal Justice at The University of Southern Mississippi. His research specializations are in police workforce management, police training, and police legitimacy. His research has been published in *Police Quarterly*, *Policing: An International Journal*, and *Justice Research and Policy*. He has provided briefings and testimony at academic and professional conferences such as the Presidential Commission on Law Enforcement & Administration of Justice, International Association of Chiefs of Police (IACP) Annual Conference, FBI National Academy Associates, and Police Executive Research Forum (PERF) Conference on Recruitment and Retention. He has been the author, with Dr. Michael Rossler, of *Police Retention and Career Perceptions*, *Interest in Patrol Careers*, and *Leadership Training for Police Sergeants and First-line Supervisors*, three technical reports based upon original data collection and analysis. He also is a sworn sheriff's deputy since 2001.

## SUMMARY

On July 10, 2023, a Lincoln County Grand Jury completed their term and issued their final report which included a scathing analysis of the Brookhaven Police Department (“BPD”). The report stated the following:

*“We, the Grand Jury, after hearing criminal cases presented by the Brookhaven Police Department and speaking with the Chief of Brookhaven find: Brookhaven poorly investigates their cases, there exist a lack of accountability within the Department, Department employees gave conflicting statements to the Grand Jury of facts, the Department does not complete investigations in a timely manner, there exist a lack of professionalism within the department, the Department has a habit of witness blaming, the Department is complacent, investigations are not completed after the original investigator leaves the department, there exist a lack of training and/or continuing education, the Department is arresting individuals without sufficient probable cause, and the Department does not utilize technology to their advantage.”*

In response to this report (previous Grand Juries have issued equally critical reports) Brookhaven Mayor Joe Cox and City Attorney Bobby Moak sought out the services of a police practices expert to complete an evaluation of the BPD. I was retained by the City Board of Aldermen to complete that task. My evaluation included a review of the department’s policies & procedures, discussions with D.A. Dee Bates and certain BPD officers, as well as with Chief Collins and most of his command staff. They were all cordial however, I was not allowed access to certain requested items, including personnel and investigative files.

What I learned is that the Brookhaven Police Department is a department in need of rebuilding. The department is going through what many departments of its size have experienced, and sometimes it becomes necessary to draw a line in the sand and basically start over. The Department’s effectiveness is being impeded by 1) a severe manpower shortage; 2) a confusing and inefficient command structure; 3) a lack of officer training; 4) competency issues in its Investigations unit; 5) and a lack of integration with the two prosecutors’ offices they work with. These are all problems that can be fixed with time, a new set of well-defined policies and protocols, and a new vision for the Department. The purpose of the evaluation to follow is to identify the major problems that exist and to provide recommendations for enhancing the Department’s effectiveness and professionalism.

While I was not charged with providing any evaluation of the City Board of Aldermen or its interactions with the BPD, there is one recommendation that I think is important, and that is the creation of a police committee within the Board of Aldermen composed of the Mayor and two Aldermen, with the City Attorney acting as a non-voting member. This is common throughout the

U.S. and makes the approval process more efficient and the Board of Aldermen, with this conduit in place, more integrated and involved in the activities of the BPD. Many of the recommendations contained herein are offered with the expectation that such a committee might be created. If not, the recommendations will remain the same but will require the involvement of the entire Board as opposed to a committee of its members.

Finally, the discussion is currently taking place in Brookhaven about transitioning from an elected chief of police to an appointed chief. There are very few elected chiefs left in the U.S., with only one other in Mississippi. Moving to an appointed chief would be a good and appropriate thing to do. The biggest problem with an elected chief is that it greatly restricts the pool of candidates to those living in the City of Brookhaven. It precludes the Board of Aldermen from conducting a search for the best and most qualified candidates living elsewhere, even in another state. It also provides a great deal more accountability for the Chief, which in turn increases the accountability for those below him/her in the organizational structure. Moving to an appointed chief would certainly facilitate many of the changes needed in the Brookhaven Police Department and would allow the Board of Aldermen or a police committee within that Board to become more actively engaged with the Department.

## I. DEPARTMENT STRUCTURE

A police department requires a well-defined organizational structure and chain of command in order to operate effectively and efficiently, and to ensure that every member of the department, regardless of rank, is accountable for carrying out their duties in a professional manner. While the BPD does have some semblance of a chain of command, it is not apparent that it is being used effectively, nor is it structured for efficient operation. The BPD policies do NOT clearly identify the department's organizational structure. During my meeting with Chief Collins, he was unable to provide a department org chart, but was able to describe it. I noted the following:

1. The BPD has an over-abundance of ranking officers, including 3 captains, 3 Lieutenants, 4 Master Sergeants, 6 sergeants, and 6 corporals. That is 22 officers of rank compared to just 6 patrolmen without rank.<sup>1</sup> This is just the opposite from how it should be unless policy allows for promotions based on longevity and job performance. In reviewing the BPD policies, this does not appear to be the case. Rather, it appears that promotions are given at the discretion of the Chief without any specific criteria.
2. Because of the many ranking officers, the BPD has at least one captain supervising another captain (patrol), and another captain who appears to have no other function but to supervise a single M. Sgt. who heads up the investigative staff. This amounts to a waste of at least two captain positions.
3. The captain who currently heads up the patrol division is also the school resource officer and spends the majority of his time in that capacity. This is a waste of yet another command position.
4. The current evidence custodian is a non-sworn individual who appears to be primarily the department's IT person. It is also unclear who this person reports to, if anyone at all except the Chief. Because of the sensitive and important nature of evidence, including the fact that the evidence custodian may be required to testify at trial to issues relating to evidence integrity, the evidence custodian should be a sworn police officer. They must have a full understanding of how evidence such as blood and digital storage components must be packaged and stored, as well as chain-of-custody issues.

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<sup>1</sup> These numbers were taken from a May 2023 department listing and may not be current. There has been so much turnover in the department that no one seemed to know with certainty how many personnel the department currently has.

5. The BPD currently has four patrol squads that are supervised by four squad leaders all with different ranks (Capt., M. Sgt., Lt., and Cpl.). There is no consistency.

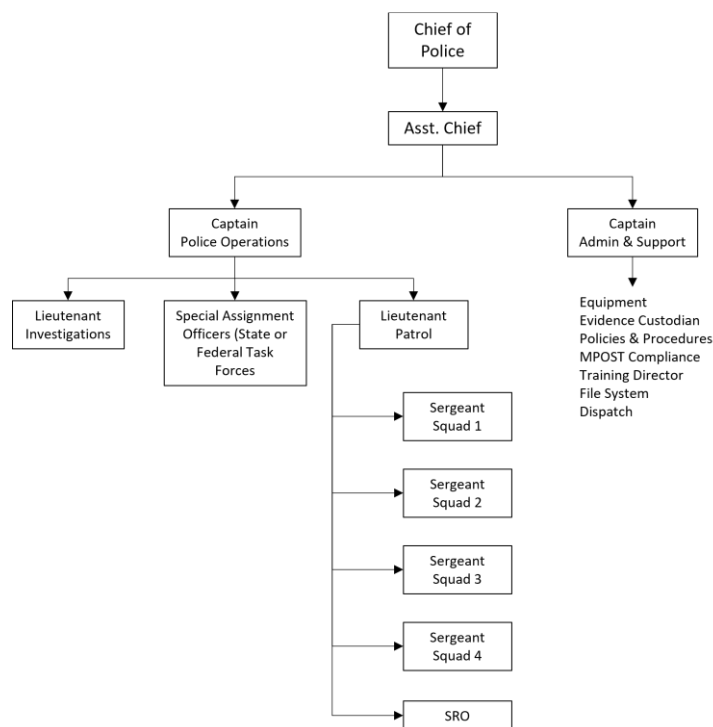
The issue of rank, including criteria for advancement, does not appear in the BPD policies. Whether it appears there or in the city's personnel code, it must be codified. Officers must have a clear indication of their advancement opportunities to avoid subduing their aspirations. Promotions cannot all be simply based on the whims of the Chief. There should be two types of promotions. "Command" promotions should those promotions into supervisory positions (captain and lieutenant). Those promotions should be made by the Chief and approved by the Police Committee of the Board of Aldermen. They should obviously be based on past performance and supervisory ability. The second type of promotion. "time-in-service" promotions, should be automatic and based on longevity and job performance. For illustrative purposes, a possible schedule would be as follows:

1. Police Officer I (no stripes) – A new police officer should in this grade for a period of one year. At the end of this year, a performance evaluation is completed by the Lt. of Patrol. If the evaluation meets a minimum score, then the officer is promoted to Police Officer II.
2. Police Officer II (one stripe) – Assuming the officer has met their performance goals and has had acceptable annual evaluations, then at the three-year mark, they are promoted to P.O. II, which can alternatively be called "Police Officer First Class."
3. Police Officer III (two stripes) – Assuming the officer has met their performance goals and has had acceptable annual evaluations, then at the seven-year mark, they are promoted to P.O. III, which can alternatively be called "Corporal."
4. Police Officer IV (three stripes) - Assuming the officer has met their performance goals and has had acceptable annual evaluations, then at the ten-year mark, they are promoted to P.O. IV, which can alternatively be called "Sergeant."

While these promotions would be automatic, they would still be reviewed and approved by the Police Committee to ensure that they have had acceptable performance evaluations. It is expected that command promotions would be made from the cadre of sergeants, however this should not be a requirement. If a command level officer is removed from their position, then unless their conduct demands otherwise, they would return to their time-in-service grade.

The benefit of a system like this is that it provides officers two different types of promotional opportunities to aspire to, one of which is predictable. It will increase officer retention and lead to a more motivated officer corps. Also, the above 10-year promotional schedule is flexible. It can be structured for any number of years the city agrees to. Likewise, the four levels can be expanded to five if there is a desire to include the current rank of M. Sergeant.

As for the command structure of the department, given its size, I would suggest two captains. The first would command all police operations, while the second would be responsible for all admin and support functions. This structure would look as follows:



This structure provides a clear chain of command and integrates the patrol and investigative units under a single commander. Also, functions that are currently being carried out by civilians (i.e., MPOST compliance, accreditation, dispatch) will be supervised by a ranking officer. This officer will also oversee issues such as the future implementation of a 911 system, in-car terminals, and conduct basic research into new weapons and technologies. The above structure relates to sworn personnel primarily. Civilian personnel currently in place should remain, especially an administrative assistant to the Chief.

Finally, one important task that must be incorporated into the department's policies and practices is an annual performance evaluation of each officer up to and including the Asst. Chief of Police. A standardized evaluation should be used that provides a numerical rating and allows for officer comments. Currently, the department does not do evaluations, and this creates significant liability for the city related to officer discipline and termination.

**Recommendation I.1 – The BPD and the Police Committee should develop a promotion and pay schedule to present to the full Board for approval. This would cover Police Officer I-IV. The pay schedule could automatically be adjusted for annual cost of living increases if desired. A pre-determined stipend should also be codified for any officer put in the position of squad leader. Pay for command level officers should be determined in each specific case by the Chief and the Police Committee and not pre-determined. Promotion should be based on performance and the performance indicators should be clearly communicated to officers.**

**Recommendation I.2 – Designate each officer in the department a “P.O. I-IV (or alternatively, I-V)” based on their time-in-service in advance of developing a new pay schedule based on those classifications. The Chief should then provide the Police Committee with a list of desired command promotions (Asst. Chief, 2 Captains, 2 Lieutenants). Squad leaders should be designated at the Chief's discretion. Once a command cadre is in place, then evaluate the current positions of Captain and Lieutenant who are not in those positions to determine their continued need. Anyone losing rank due to this evaluation should be grandfathered in terms of pay unless there are compelling reasons related to performance that should impact that.**

**Recommendation I.3 – Implement an annual performance evaluation of each officer. The evaluations should be completed by a Lieutenant or Captain and be signed off on by the officer being evaluated as well as each person in the chain of command up to and including the Chief. There should be a grievance process codified in cases where the officer disagrees with the evaluation. If the grievance cannot be resolved by the Chief, then the Police Committee should make the final decision.**

**Recommendation 1.4 – The position of the head of the patrol division and the school resource officer should be separated so that the latter will perform duties related to being a school resource officer and the former will have enough time to supervise the patrol squads.**



## II. PERSONNEL MANAGEMENT

### A. HIRING PRACTICES

The BPD does not currently utilize a comprehensive and standardized hiring methodology. They appear only to check the applicant's criminal history through NCIC and then run a Transunion TLO report. There is no background investigation and contrary to their own policies<sup>2</sup>, there is no polygraph exam or psychological assessment. I discovered that officers have in the past been hired with a criminal background and subsequent name change; with a known addiction to prescription drugs; and even with a DUI in their past. This is unacceptable in law enforcement. Less than quality hires will inevitably result in short- term employment and constant turnover.

One of the most important steps management must take in the hiring process is a thorough background investigation. This should involve personal contact with previous employers. Unfortunately, it is common practice in law enforcement for departments to allow problem officers to resign rather than face discipline. When they do, the separation is invariably reported to the State POST organization as a "voluntary" separation rather than "for cause." These officers are typically rehired quickly by other departments because the department does not have to go to the time and expense of sending them through the police academy. A proper background investigation will uncover these potential problem officers. Background investigations can be conducted by the department's own investigators, or a paid service can be utilized. Obviously, a paid service will avoid bias in the investigation in favor of acquaintances and candidates recommended by people close to the department.

As for polygraph exams and psychological assessments, they are a must in modern policing. They should only be used for those candidates who have made it past the initial selection process and have been given a conditional offer of employment. The polygraph exam should be a standardized pre-employment exam that focuses on integrity issues, drug use, and past criminality, to include domestic violence. The psychological exam should be conducted by a licensed and APA accredited psychologist using measures and methods designed for this purpose. A candidate should not be disqualified based solely on the psychological or polygraph exams. If issues arise, depending on the severity of those issues, the candidate may still be approved, however in most cases, there will be other indicators that should cause the candidates disqualification.

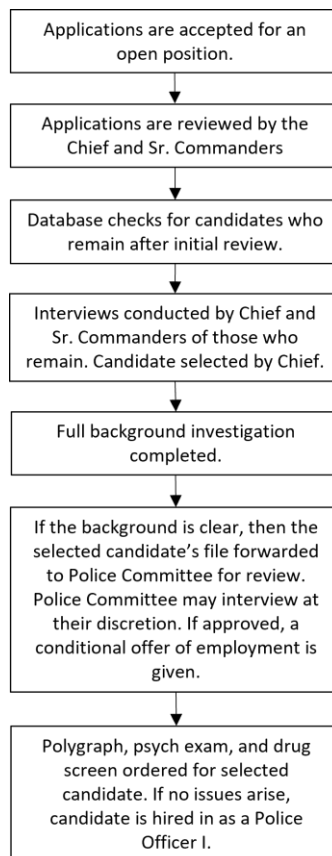
Once a candidate has been selected by the Chief, the Police Committee should be able to review all materials related to that individual before approving the conditional offer of employment and

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<sup>2</sup> Policy 2.09, Selection and Placement of Personnel

greenlighting the polygraph and psychological exams. Assuming no issues arise from these exams, then the candidate will be hired in as a Police Officer I.

It is critical that the hiring process be properly codified in the BPD procedures. The BPD policy as currently written is problematic and not being followed (see “V. POLICIES & PROCEDURES” for a detailed discussion of the problems with the current BPD policies). The process should be standardized and involve the full participation of the Police Committee. A suggested hiring methodology is as follows:



One issue that should also be addressed is what to do when experienced officers are hired. Certainly, the same background investigation should be conducted, however, it may be advantageous to the department to bring them in at a higher than entry pay level. One possibility is to bring them in at whatever level they would be if their years of service were all spent at the BPD. Another option is to bring them in at that level minus one step. Regardless of how it is done, there should be nothing preventing an experienced and qualified officer from being hired to be placed in a command position. For example, the Chief may wish to bring in a new Asst. Chief who has enough experience in their previous department to be a P.O. III (Sergeant). Assuming the

“minus 1” option, then they would actually be brought in as a P.O. II (Corporal), however they would immediately be promoted to the position of Asst. Chief and be paid accordingly. If for some reason they are removed from that position for other than bad conduct, then they would be returned to the grade of P.O. II (Corporal) but would be given credit for their time in-service as the Asst. Chief to qualify for a promotion to P.O. III (Sergeant).

The BPD has had a significant problem with officer turnover, to the point of the department being so understaffed that it has created a dangerous situation for the patrol officers on the street. Officer retention begins with hiring quality long-term oriented officers. Proper hiring practices coupled with a well-defined promotional system based in part on longevity, will greatly impact in a positive way this critical issue. Also, an attractive benefit package can reduce officer turnover and increase the retention rate. The BPD should make sure that benefits available to officers are comparable to what other departments provide.

**Recommendation II.A.1 – The BPD should codify in policy a hiring methodology that includes a background investigation and mandatory polygraph and psychological exams, as well as a drug screen. This hiring methodology should include the participation of the Police Committee of the Board of Aldermen.**

**Recommendation II.A.2 – The Department is currently grossly understaffed due to high turnover. This, along with information that is known about certain past employees, indicates a significant problem in the current hiring practices. The Board of Aldermen should immediately impose a moratorium on any further hiring under the existing system. The significant number of officers who need to be hired presents an opportunity, if done correctly, to greatly enhance the effectiveness and professionalism of the Department. Only to get fully staffed as expeditiously as possible, a committee should be formed consisting of the Chief of Police, the Mayor, and a representative from the Board of Aldermen. If desired, the city could also add an independent evaluator to the committee. The city should then advertise the multiple job openings in various outlets, to include newspapers, radio stations, and all colleges and universities within a reasonable distance. Once all applications are received (including waivers, releases, and authorizations) by a posted closing date, then the Committee should select all applicants who meet the minimum criteria (criminal history, driving record, credit report, education) and set up a multi-day hiring board. Candidates will be interviewed by the committee and should be prepared to pass the requisite physical test. From those who are then selected by the Committee, background investigations will be completed. Once the backgrounds are finished, a final list of candidates will be available for the Chief to select from for the proposed Police Committee of the Board of Aldermen to approve. Those selected will**

be given a conditional offer of employment and will be scheduled for polygraph and psych exams, as well as a drug screen. As part of this recommendation, I would add the following:

1. Prior police experience should not be a requirement for employment, nor should it be given special consideration. In fact, prior experience many times serves as a red flag that perhaps the individual has experienced problems in the past.
2. Military experience should be given preference, however, the issue of PTSD should be explored with the individual if they have previously been deployed to a war zone. Their training would be no different from non-military trainees.
3. Obviously, an adult criminal record should be automatically disqualifying. A juvenile record of minor offenses should not be automatically disqualifying, but must be explored further.

## B. DISCIPLINE

Officer discipline is a necessary task that must be structured and clearly described in policy. Surprisingly, the BPD policy has two separate disciplinary chapters that are substantially different from each other. This problem, which occurs elsewhere in the BPD policy, is the result of the problem discussed in section V. (“POLICIES AND PROCEDURES”). Both policy chapters, as written, are problematic. Furthermore, it would appear that the BPD is not following either policy. In my discussion with Chief Collins and his command staff, I was surprised to learn that officers are being disciplined “in house.” It was stated to me that because the Board of Aldermen refuses to approve recommended discipline, officers are being suspended with pay without the involvement of the Board of Aldermen. This is inappropriate and exposes the City of Brookhaven to potential litigation involving violations of State and Federal labor law.

The final arbiter of employee discipline should be the Police Committee of the Board of Aldermen, with oversight by the City Attorney. The job of the Chief of Police should be to investigate allegations of misconduct and make disciplinary recommendations to the Police Committee. There is no provision in either disciplinary chapter that allows the Chief to unilaterally discipline officers. As written, the two chapters have the following problems:

1. Policy 2.08 – Internal Compliance Enforcement (ICE)
  - a. Provides no defined process for investigating allegations of misconduct.
  - b. There is a section titled “Due Process” but it describes no due process available to officers.
  - c. The policy improperly states that when an officer invokes their *Garrity* rights, then the Chief will consider referring the matter to a criminal prosecutor for consideration. The

policy creates no wall between an internal affairs and criminal investigation. Furthermore, the policy makes no sense. It is written as if invoking *Garrity* is similar to *Miranda* in that the officer can then refrain from answering questions. That is not the case. An officer cannot refuse to answer internal affairs questions without exposing themselves to disciplinary action, up to and including termination.

- d. Officers may be relieved from duty during an investigation, but again, there is no provision that allows the Chief to relieve an officer for a determinant period as a final disposition. This section also states that the Chief will determine the officer's pay status during this period. The Chief should be able to recommend pay status, but the final decision should rest with the Police Committee.
- e. The policy does not clearly define who will conduct internal affairs investigations; who will conduct criminal investigations; and how those two functions will interact.

## 2. Policy 3.05 – Discipline & Accountability

- a. This policy includes progressive discipline that is “generally defined in the Collective Bargaining Agreements...” The BPD has no collective bargaining agreements.
- b. The policy outlines many things that an officer may be disciplined for. This is not necessary. They are disciplined simply for violating policy or law. If the policy is properly written, then that is all that needs to be said. The more specific a policy gets, the greater the chance of inadvertently creating legal loopholes for an officer to avoid disciplinary action.
- c. The section titled “Administrative Absence – Use of Force or Injury” seems to suggest that an officer who is placed on a mandatory furlough for reasons related to emotional trauma can return to work after receiving counseling from the Chief of Police or a licensed professional. Unless the Chief is him or herself a licensed professional, this makes little sense and again, could potentially expose the City to litigation.
- d. In describing the progressive disciplinary process, the policy states that the Asst. Chief has the ability to suspend an officer without pay. This absolutely should not be allowed. Only the Police Committee should have this ability after a recommendation by the Chief.
- e. The policy provides no due process for an officer.

These disciplinary policies, as written, and the fact that there are two opposing policies, creates a legal morass that is worse than having no policy at all. As discussed in Section V. below, there are two policies because a set of policies was adopted by the BPD that was neither meant for them nor properly tailored to their organizational needs and situation. The final policy is not meant to have two disciplinary sections, but for the department to select one and then delete the other.

Aside from the policy problem, the other major deficiency is a lack of any type of protocol for investigating BPD officers. While it is appropriate for the BPD to investigate its own officers for purposes of disciplinary action (Internal Affairs), no police department should investigate its own officers for potential criminal violations or serious use of force encounters. A police department must have an established protocol for engaging an outside agency for this purpose (e.g., MBI, MS. Attorney General, Lincoln County Sheriff). The BPD has no such protocol. This is necessary to avoid any real or perceived conflicts of interest.

**Recommendation II.B.1 – The BPD must draft a new disciplinary policy that is well defined, provides for due process, includes the active involvement of the Police Committee, and has been properly reviewed and approved by the City Attorney or his/her designee. This policy should clearly establish a wall between Internal Affairs *Garrity* investigations and those involving potential criminal conduct.**

**Recommendation II.B.2 – The BPD must establish a protocol that identifies the department, other than the BPD, that will investigate potential criminal violations and serious use of force encounters (as potential criminal matters) by BPD officers.**

### C. FITNESS FOR DUTY

A fitness for duty evaluation (FFDE) is a specialized evaluation carried out by a specially qualified psychologist or psychiatrist in response to complaints of an officer's inability to perform their official duties in a safe manner because of mental illness or significant deterioration in cognitive abilities. The goal is twofold. First to get an unsafe officer off the street, and second, to get that officer the help he or she may need. There are a number of requirements for this evaluation to be requested and carried out. The evaluation must be consistent with both APA standards (American Psychiatric Association) as well as the Americans with Disabilities Act ("ADA"). Additionally, there are very serious privacy concerns associated with this process.

The BPD has a "Fitness for Duty" policy (3.11) but it is poorly written, obfuscates this process with the hiring process, and is probably illegal in its application. Specifically:

1. The policy begins with a discussion of psychological testing in the pre-employment stage. Such testing should not be part of a fitness for duty policy. It is a completely different process using different psychological measures and carried out by differently qualified professionals. Also, the policy states that if issues are uncovered during the pre-employment testing, the candidate will be ineligible for employment. This is NOT the national standard, as previously stated. Pre-employment testing does not involve an in-depth clinical assessment designed to

uncover pathology. It involves minimal assessment using testing instruments that can easily be attacked in terms of their validity and reliability. At most, these tests will provide indicators that may signal the need for a follow-up and more targeted interview or background investigation.

2. The policy states that after employment, “the agency may reexamine employees at anytime to determine each individual’s continued fitness for duty...” This is simply not the case. There must be evidence that the officer’s job performance has been adversely impacted by suspected mental illness or cognitive decline for the agency to refer the officer to the appropriate professional for assessment.
3. The policy includes no right to services if job-related problems arise. For example, if the officer cannot perform their duties due to PTSD related to a traumatic event, services must be provided. The policy is silent on this issue.
4. The policy ends with a very confusing paragraph that states “Officers are required to use their best efforts to control medical conditions (such as diabetes, etc.) that can adversely affect duty fitness. Some examples of these conditions may include but are certainly not limited to *diabetes, substance or alcohol abuse, high or low blood pressure, excessive amounts of overtime or off-duty employment, etc.*” The problems are obvious. First, substance and alcohol abuse should not be *controlled*, but rather completely avoided. Second, requiring officers to control medical conditions gets into very complex and private medical issues. And third, overtime and off-duty employment, which are NOT medical conditions, are ultimately controlled by the Department rather than the employee.

**Recommendation II.C.1 – Like the two disciplinary policies previously discussed, the fitness for duty policy currently included in the BPD policies should be eliminated and replaced with a properly written policy that meets the many legal and ethical requirements of such a policy.**

### III. INVESTIGATIONS

There is probably not an issue in the BPD that needs more immediate attention than its Investigations Unit. While conducting this review, I was able to observe the trial of two local White individuals who were charged with shooting at a Black FedEx driver for no legitimate reason. Shortly after the trial began a mistrial was declared when it was disclosed in the testimony of a BPD detective that he had withheld important and potentially exculpatory evidence not only from the Defense, but also from the District Attorney. This is a circumstance that should NEVER happen in an important criminal matter and this, along with the previously discussed Grand Jury report, points to several problems with BPD's investigative function. They are summarized as follows:

1. Qualifications and abilities – There does not appear to be a process in place for identifying and appointing the most able officers to the position of detective. Chief Collins has pointed out that his detectives are all “certified,” meaning they have completed a 400-hour course of instruction through MS. P.O.S.T. While I applaud the Chief's willingness to send his detectives through this training, the fact is, no amount of training can instill in an officer the analytical skills and motivation needed to solve a difficult case and clear it with an arrest. The officer either has these characteristics or they don't, and the Chief's goal should be to identify those that do when filling a detective position. Some of the best investigators I had the privilege of working with never attended this type of training, nor did they need to.

The Department's lack of a qualified and competent Investigative unit was echoed in my discussions with D.A. Bates. He shared a number of examples of cases that were insufficiently investigated before being brought to him for prosecution; cases where he personally went to the crime scene at a later date and time only to find important evidence that had been missed or left behind by detectives; cases where obvious clues were missed; he even discussed the fact that at least one of the current BPD detectives is not allowed to bring him a case because of their inability to conduct a proper investigation.

2. Supervision – In the FedEx case, the supervisor of the detective who withheld evidence should be held just as accountable as the detective himself. No case should ever be delivered to a prosecutor until the supervisor has reviewed the case and signed off on it. Just as importantly, no investigation should be conducted without a periodic review of the detective's progress. Close supervision is an absolute must with any investigation, especially involving a serious crime. In discussing the unit with Chief Collins, it was not even clear who has supervisory responsibility for Investigations. There appears to be a Master Sergeant who is in charge of Investigations, and then a Captain who supervises that person. If this is the case, then it is a



waste of a Captain position to supervise only a single person. It is also not clear if the two supervisors actively supervise the actual investigative process.

3. Integration – Another huge obstacle to thorough and effective investigations is the lack of integration of the various investigative and prosecutorial entities in Lincoln County. This will be discussed in detail in the next section (IV. CASE MANAGEMENT).

Like essentially every other BPD policy, the Investigations policy (7.04) is poorly written, confusing, and wholly inadequate. I would note the following:

1. The policy provides a checklist of tasks for each major category of crime. This should NOT be part of the Investigations policy. The checklists are training materials. Furthermore, there's no set formula for conducting an investigation. By including the checklists, it may cause an inexperienced investigator to spend more time and energy on completing the checklist of activities than on pursuing investigative leads. It also opens up the possibility of disciplinary action for not following the checklist even when some of those activities are not necessary.
2. The policy includes NO mandatory and periodic review of the detective's progress on a case. Though confusing as written, the policy seems to require that investigative reports be signed off on by the Asst. Chief of Police. This is inappropriate. Signoff authority should be by the supervisory detective, which, under the proposed reorganization, would be the Lieutenant over investigations. It is assumed that this individual will be engaged in all investigations to varying degrees and will thus have sufficient case knowledge to properly review, approve, and sign off on investigative reports.
3. The policy does not adequately define the relationship and interaction between the BPD detectives, the Municipal Prosecutor, and the District Attorney (this will be discussed in more detail in the next section). The policy's list of preliminary investigative activities and follow-up investigative activities includes no requirement that detectives engage the prosecutor.
4. The policy includes a laundry list of preliminary activities that should be completed by patrol officers, apparently before calling out a detective. This is simply not the case. The list includes victim and witness interviews. These should be conducted only by a detective once a detective is engaged, and on major felonies, that engagement should happen immediately. The role of the patrol officers in that case is to safeguard the scene and render aid, not to conduct an investigation beyond preliminary efforts to identify victims/ witnesses and evidence or to apprehend suspects.

5. The policy includes a requirement that the prosecuting attorney report to the Chief reasons for any declinations to prosecute. No BPD policy should mandate the behavior of anyone not employed as part of the BPD. The Chief has no authority to do so.

One final issue regarding detectives is the practice of hiring people from outside the Department directly into a detective position. This should not be allowed except as a last resort. By doing this, it eliminates a very important motivator for young officers who may aspire to be a detective, as so many do. Only in cases where the pool of qualified officers inside the department has been exhausted should this be considered.

**Recommendation III.1 – Assuming a reorganization of the Department is pursued, the Chief of Police should submit to the Police Committee as part of his requested command cadre the officer’s name who will supervise the Investigations Unit (rank of Lieutenant). This position must be approved by the Police Committee, and should be based on prior performance, community reputation, practical knowledge of the law, years of service, and with input from the Municipal Prosecutor and District Attorney.**

**Recommendation III.2 – Once a supervisor of Investigations is selected, the Chief of Police should submit to the Police Committee a list of officers the Chief is recommending for the position of Detective. This list may or may not match the current cadre of BPD detectives. Completion of the 400-hour investigations course should not be the determining factor for selecting detectives. Selection should be based primarily on prior performance, community reputation, and with input from the Municipal Prosecutor and the District Attorney. Current detectives not selected should be returned to patrol positions.**

**Recommendation III.3 – Along with most other BPD policies, the investigations policy should be entirely rewritten. The policy should not be a “how to” of investigations, but rather dictate logistical requirements, such as how cases are assigned; when a detective must engage the prosecutor’s office; who must sign-off on affidavits for search and arrest warrants; how and when case reviews are completed; and similar issues. As stated, the policy should include NO investigative checklists. Simply put, a detective who needs a checklist should not be a detective.**

**Recommendation III.4 – Detectives should not be hired from outside the Department directly into a detective position unless the list of potential candidates inside the Department has been exhausted, and then only with the approval of the Police Committee.**

**See Section IV. for additional recommendations related to Investigations.**

#### IV. CASE MANAGEMENT

The criminal justice apparatus in Lincoln County is unique because there are two different prosecutorial agencies with only one of them having access to a Grand Jury. Making it more unique, and frankly confusing, the BPD is required to go through the former to get to the latter. The three agencies, which should be fully integrated, are effectively insulated from one another for the following reasons:

1. The Municipal Prosecutor has neither investigators nor access to a Grand Jury. Consequently, the BPD does not appear to actively engage this office until such time that they believe they have a case ready for charges. They have no ability to conduct a Grand Jury investigation with Grand Jury subpoenas since the Municipal Prosecutor does not have access to a grand jury.
2. Eventually, if necessary, a case is transferred from Municipal Court to Justice Court and the District Attorney. The D.A. does have an investigator, but that office is not engaged in a case until such time that a case is transferred there from Municipal Court. The end result is potentially wasted time on process and a District Attorney who is expected to prosecute a case they may have had no involvement in to that point. If there is a problematic investigation that has created negative evidentiary issues, The D.A. has had no opportunity to head that off by properly directing aspects of the investigation as all prosecutors do.
3. In my discussions with Chief Collins, he indicated that if his office is not happy with decisions made by the Municipal Prosecutor, then they will take the case to the District Attorney. This begs the question, why then do they take it to the Municipal Prosecutor in the first place if they have the discretion to bypass that office?

The end result is an inefficient system where 1) the BPD must take cases to a prosecutor with no Grand Jury; 2) where the Municipal Prosecutor has no investigators or a method of actively interfacing with the BPD to direct investigations; and 3) where the District Attorney must wait to get a case until it is transferred from Municipal Court, oftentimes after significant investigation has been completed without their active engagement. Having worked cases in 42 different states, I have never seen a system such as this, and in my discussions with various members of the criminal justice community in Lincoln County, it is obvious there is a lack of integration that has had a negative impact on the cause of justice.

There are actually a few simple steps that can be taken to greatly improve this problem:

**Recommendation IV.1 – The City of Brookhaven should consider funding an investigator’s position within the Municipal Prosecutor’s Office. If State Law includes no provision for doing this, then they should consider funding a detective’s position within the BPD to be permanently assigned to the Municipal Prosecutor’s office. This person, who should be selected based on experience, should have complete access to all BPD investigations and be actively engaged to varying degrees in each case to serve as a conduit between the BPD Investigations Unit and the Municipal Prosecutor. I would even consider selecting a retired detective with an impeccable record for this position and leave open the possibility of bringing them in on a contractual basis. Retired Federal Agents offer a perfect pool of candidates for such a position.**

**Recommendation IV.2 – Discussions should be had between the BPD Chief, the Municipal Prosecutor, the District Attorney, and the Lincoln County Sheriff regarding the formation of a major case squad. Lincoln County is ideal for this type of unit. With each major crime, the unit, consisting of the assigned BPD detective, the Municipal Prosecutor’s investigator, the D.A.’s investigator, and an assigned investigator from the Sheriff’s Department, would come together and immediately engage in the investigation to varying degrees. This system allows both prosecutors, through their investigators, to be actively engaged from the very beginning. Each of the investigators would have complete access to all investigative materials. The BPD detective would serve as the lead on cases within the City of Brookhaven, and the LCSO investigator would fill that capacity for cases in the County. In the event the LCSO does not participate, the BPD and both prosecutors’ offices should still fully integrate in this manner to ensure their interactions are seamless.**

## V. POLICIES & PROCEDURES

Policies and procedures are critical to the operation of a police department. They guide the activities of the department's officers and investigators, as well as those charged with supervising them. The policies and procedures must be consistent with officer training and state law, and they must be Constitutionally sound. In most cases, police departments in the U.S. now adopt model policies and procedures that have already been subjected to legal review. The International Association of Chiefs of Police is one entity that provides this service. There are also private companies like Lexipol LLC<sup>3</sup> that provide model policies and procedures as well as ongoing updates and legal review. The benefit to a police department, especially a smaller one, is that it relieves the department of the burden of authoring policies and procedures itself and risking the implementation of a policy that is not Constitutionally sound.

In reviewing the policies and procedures of the Brookhaven Police Department, it was not immediately apparent where they originated. There was however a red-letter author's note found embedded in the document—this note should have been deleted in the final draft—that identifies OSS Law Enforcement Advisors® (“OSS”) as the providing company. The OSS website<sup>4</sup> indicates that the document can be purchased off the shelf for \$1,250. It appears to be a generically written and exhaustive set of policies and procedures that is meant to be pared down and tailored to the individual department. There is evidence throughout that the BPD never completed that critical step. For example, there are places in the document where the department can select between two options and where both options still appear, indicating that the BPD never properly tailored the policies and procedures to their specific needs, statutes, and standards. The option not selected must be deleted because the two options may not be consistent in their intent (see “vehicle pursuits” below). In my discussions with Chief Collins, he indicated that he obtained the policies from the Macomb MS Police Department. This indicates that neither the MPD nor the BPD have properly written their policies.

The policies and procedures are also not dated with revisions indicated. This is an absolute must because the dates serve as a reference point for ensuring that the policies are consistent with the latest SCOTUS decisions and changes in State law. It is not even clear if the policies and procedures have ever been officially adopted and implemented. A department can never adopt a product off the shelf without significant changes and enhancements and proper legal review of those changes and enhancements. As written, even with some obvious changes that have been made, there are significant problems. While not intended to be an exhaustive review, some of the major policy issues that are problematic are discussed below:

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<sup>3</sup> I am not associated with Lexipol LLC and never have been, nor do I personally know anyone who works there.

<sup>4</sup> <https://www.ossrisk.com>

## A. Use of Force (Policy 4.22 and 5.01)

This is perhaps the most important written policy a police department has. It also is the policy that most critically demands constant review and updating as state and federal laws and circumstances change. The vast majority of civil cases in the U.S. relating to the actions of police officers result from their excessive use of force. The BPD use-of-force policy is very problematic and poorly written. It has the appearance of having been authored by individuals not highly experienced in the area of police practices. I would note that the aforementioned vendor does not appear to have a significant client base in the law enforcement community. The major problems with the policy include the following:

1. *Force continuum* – The BPD policy is based in large part on the force continuum—a model that directs officers to escalate their level of force through a series of steps ranging from verbal commands to lethal force as the situation demands. This model is outdated and is being eliminated from most police training and policy because it can dangerously cause an officer to believe they must always escalate their level of force in a linear manner through these steps. That is not the case. If deadly force is necessary to protect the officer or others from significant harm, they are not required to begin at a lower level of force and work their way up. The force continuum should be eliminated from the policy and replaced with the *reasonableness* standard that has guided the use of force since 1989 and the SCOTUS decision in *Graham v. Connor*<sup>5</sup>.
2. *Use of deadly force* – The BPD policy on using deadly force is incomplete and inadequate. Under the heading of “Use of Deadly Force,” there are seven prohibitions and nothing more. Even these prohibitions, as written, are problematic. For example, item no. 4 (*on a person who simply flees or evades arrest*), if that person poses an articulable threat of death or serious injury to someone if allowed to escape, then deadly force will be justified. Item no. 5 (*at or from a moving vehicle, except in exigent circumstances, and only in an attempt to save human life*) is problematic because “exigent circumstances” is not defined by the policy except in relation to search and arrest warrants. For other problems with this item, see “Shooting into Moving Vehicles” below. There is a myriad of other problems with the policy relating to a lack of foundation and/or definition. There are no definitions of “objective reasonableness” or “imminent threat,” two of the most important concepts guiding an officer’s use of force. And finally, there is no specific prohibition on choke holds, now a standard policy across the U.S. The policy does allow for the use of a Lateral Vascular Neck Restraint, however, many departments across the U.S., and even entire states, have now banned its use due to its

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<sup>5</sup> *Graham v. Connor* (1989), 490 U.S. 386.

potential for causing death or serious harm. If it is to remain in the BPD policy, the policy should be rewritten and expanded (currently only two sentences), and steps should be taken to ensure adequate and ongoing training in its use.

3. *Tasers* – A significant percentage of the civil cases brought against police officers and their employers relate to the officers’ excessive and inappropriate use of the Taser. Since 2011 the U.S. Dept. of Justice has provided standards for the use of this weapon<sup>6</sup>, and those standards are included in the training police officers receive. A department’s Taser policy must include these standards which direct 1) when a Taser can and cannot be used; 2) how many Tasers can be deployed against a single suspect; 3) how many Taser cycles (trigger pulls) can be deployed against a suspect; and 4) actions that must be taken following a Taser deployment. The BPD policy includes NO specific Taser policy. The policy states only that *Officers may use approved electronic weapons in accordance with this policy. An electronic weapon is only to be used to protect persons from assault or to subdue persons unlawfully resisting arrest* (policy no. 5.01). Not only is this wholly inadequate, but it is also legally in error. A Taser cannot be used in every case of someone resisting arrest. Due to its potential for harming or even causing a suspect’s death, the Taser is considered an intermediate level of force and cannot be used merely to gain a suspect’s compliance, nor can it be used against a suspect who is only passively resisting. A proper Taser policy is quite detailed and includes the above issues as well as items such as cartridge control, training, and data control/ preservation. The lack of such a policy may expose the City of Brookhaven to significant liability.
  
4. *De-escalation* – Very few issues in policing have garnered more attention in recent years, especially since the George Floyd case in Minneapolis MN, than the need for officers to attempt to de-escalate situations where some level of force is probable. Many departments now require their officers to attempt de-escalation to the extent possible before using force and to use deadly force as a last sort. For example, the Jackson MS Police Department requires the following:<sup>7</sup>
  - *That sworn officers with the Department de-escalate situations, where possible, by communicating with subjects, maintaining distance, and otherwise eliminating the need to use force.*
  - *That officers exhaust all other reasonable means before resorting to deadly force.*

This de-escalation requirement is now the standard in the U.S. The BPD policies are void of this requirement. In fact, the word “de-escalation” does not even appear in the BPD use-of-

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<sup>6</sup> Electronic Control Weapons (2011). U.S. Dept. of Justice and the Police Executive Research Forum. These same standards are endorsed by the International Association of Chiefs of Police and essentially every major police organization.

<sup>7</sup> These requirements were implemented pursuant to an executive order by Mayor Lumumba dated June 19, 2020.

force policy. Not only is it critical that de-escalation be made a foundational principle in any police department's policies, but de-escalation training for every officer in a department should be a major training goal (see "Officer Training" below).

5. *Shooting into vehicles* – It is now the standard in policing that officers are generally prohibited from shooting into moving vehicles. This prohibition has come about as a result of so many innocent people, including many children, being shot and killed simply because they were passengers in a suspect vehicle. The standard policy throughout the U.S. now provides only two situations in which deadly force can be used in this manner; 1) if someone in the vehicle is shooting at the officers or others; and 2) if the vehicle itself is being used as a weapon of deadly force. Some departments even prohibit the latter if the officer is able to move out of the path of the vehicle. The BPD policy is insufficiently written and should include this requirement.
6. *Post-Incident Procedures* – The sections of the policy that detail post-incident policies and protocols is problematic from beginning to end, as follows:
  - a. The Use-of-Force policy refers to policy 4.22 for post-incident procedures. Neither policy clearly outlines who will investigate allegations of excessive force, especially deadly force. The BPD should NOT investigate its own officers for such allegations except as internal affairs matters.
  - b. When discussing actions to be taken with the involved officers, the policy fails to require that involved officers be immediately separated until initial interviews are completed.
  - c. The policy states that involved officers should be advised to refrain from speaking about the incident to anyone but personal or agency attorneys, union representatives, or agency investigators. This is a poorly written requirement that fails to take into account that the officer is never required to speak to agency lawyers or investigators unless they are first advised of their *Garrity* rights.
  - d. The policy states that soon after the incident the involved officer(s) will be referred to an agency-designated specialist for counseling and evaluation. The policy inappropriately states that this mental health professional will be the person responsible for recommending if the officer is to be placed on administrative leave or lite duty, and for how long. The policy also states that the mental health professional will be responsible for determining when the officer's duty weapon is returned. NO mental health professional can ethically make this determination on behalf of the department, nor



would they. Their job is to offer an opinion as to whether or not the officer is fit for duty. It is the Chief's responsibility, based on that opinion, whether the officer's duty weapon is returned, and the officer cleared to return to duty. As for administrative leave, this is determined by policy and is unrelated to the officer's mental health. It typically lasts for the duration of the investigation or until the officer is cleared of any wrongdoing. Once that point is reached, then the Chief must make a determination based on the evaluation of the mental health professional whether the officer will in fact be returned to duty.

Anytime a policy relates in any way to an officer's mental health, it is a legal quagmire. No policy that touches on this issue should ever be approved without significant legal review. It is clear that the BPD policy has not been subjected to that level of scrutiny.

**Recommendation V.A.1 – The BPD should adopt a model use-of-force policy that has been subjected to proper legal review. BPD use-of-force policy must follow the standards set by U.S. Supreme Court in *Graham v. Connor* (1989) and *Tennessee v. Garner* (1985). The policy must include a section on the Taser weapon that incorporates accepted National standards for its use. The policy must also include a clearly defined protocol for the investigation of use-of-force incidents, including identifying the agency or agencies charged with conducting such investigations.**

#### B. Mental Health Commitments (Policy 4.27)

Essentially all police officers in the U.S. have the authority to intervene in cases where a mentally ill individual creates a substantial risk of harm to themselves or others because of their impairment. In almost all jurisdictions, officers are allowed to take that person into protective custody without a warrant and transport them to a designated hospital ER or mental health center for a mandatory psychiatric evaluation. Jurisdictions will differ on who can legally carry out this task and be indemnified against a charge of unlawful arrest. They will also differ on the process that is used, and for how long such a hold can be maintained. Mississippi State law provides the following directive:

*If a CIT officer<sup>8</sup> determines that a person is with substantial likelihood of bodily harm, that officer may take the person into custody for the purpose of transporting the person to the designated single point of entry serving the catchment area in*

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<sup>8</sup> "CIT" is an acronym for crisis intervention team. While the concept began in the 1980s as a team concept that involved specially trained officers and mental health professionals, it has been redefined as crisis intervention training and suitable for all police officers. It is the national norm now, and has been for over a decade, that ALL officers in a department complete this 40-hour training that uses a National curriculum. It is viewed as among the most important training an officer can receive.

*which the officer works. The CIT officer shall certify in writing the reasons for taking the person into custody.*

*A CIT officer shall have no further legal responsibility or other obligations once the person taken into custody has been received at the single point of entry.*

*A CIT officer acting in good faith in connection with the detention of a person believed to be with substantial likelihood of bodily harm shall incur no liability, civil or criminal, for those acts.<sup>9</sup>*

The BPD does maintain a relevant policy (4.27 – Mentally Ill Persons), but the policy includes a number of items that are better left for training materials. More importantly, the policy is inconsistent with MS State law. The policy, as written, does not include the requirement that a CIT trained and certified officer carry out the emergency hold, nor does it include the requirement that individuals be transported only to a designated point of entry. In fact, the policy includes unnecessary and time-consuming steps that may actually hinder the immediate evaluation and treatment of a person in crisis:

1. The policy requires that officers obtain a warrant of commitment before handing the person over to the hospital or mental health center for a 72-hour period of evaluation. Under MS State law, this is not necessary and only delays a person's evaluation and needed treatment. In my discussions with Chief Collins, he indicated that if they cannot immediately obtain a commitment warrant, the person will be held at the Lincoln County Jail until such time that the warrant can be obtained. This is a recipe for disaster. If no charges are pending, such as a threatened suicide where no assault occurred, then to do so amounts to an unlawful arrest, not to mention the tremendous risk associated with incarcerating a mentally ill person. It is a violation of State law.
2. The policy states that if there is no time to obtain a commitment warrant, then they should arrest the individual for "any criminal conduct which he/she has committed, including disorderly conduct and threats. They are then to take the matter to a magistrate to seek a commitment warrant to present to the hospital or mental health center upon commitment of the individual for the 72-hour evaluation period. The policy does not state where the individual is held while awaiting the commitment warrant. Not only is this policy too inconsistent with MS State law, but it is also dangerous and open to many abuses, not the

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<sup>9</sup> MS Code § 41-21-139 (2020).

least of which is the practice of searching for or even creating a criminal act in order to carry out the emergency hold, knowing full well that the charge will be later dropped.

It is indeed shocking that the BPD currently has NO C.I.T. trained officers. The Chief thought perhaps one of the officers who came from another department received the training while at their previous department, but he could not say for certain. It is in fact the first department in the U.S I have come across that has not required this training of its officers. Because of this, they lack the ability to follow MS State Law regarding involuntary commitments. They are left with no choice but to find any reason to arrest the individual to hold them in jail until a commitment warrant can be obtained. The police, as clearly stated in the MS law, should not even be involved in obtaining a commitment warrant.

**Recommendation V.B.1 – The BPD Chief of Police should immediately begin the process of sending all officers through C.I.T. training, making sure to initially train at least one officer from each of the four shifts. The Chief or his designee should communicate with the established single point of entry that the department will follow State law and allow C.I.T. officers to transport persons in protective custody directly to that entity for a period of involuntary commitment.**

#### C. Vehicle Pursuits (Policy 4.18)

This is an area ripe for civil litigation due to the high number of deaths related to police pursuits. One study found that between 1994-2002 there were 2,650 fatal crashes in the U.S. related to police pursuits involving 3,965 vehicles and 3,146 fatalities.<sup>10</sup> Most departments in the U.S. have recognize this and have either prohibited or greatly restricted pursuits by their officers. The most noticeable problem in the BPD policy is that there are two separate policies that are mutually exclusive, a *discretionary* policy followed by a *restrictive* policy. Obviously, the intent of the authoring company was to provide a shelf product that allows the purchasing department to choose which option they prefer and then delete the other. This has not been done. Both policies, as written, are highly problematic in the following ways:

1. Both policies include the statement, “Reasonable officers know that most pursuits start when an officer observes a moving violation that if left unchecked will ultimately endanger other motorists at a later date or time.” This is a dangerous and unfounded statement. Taken to its extreme, the policy is saying that every moving violator, which may be nothing more than a

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<sup>10</sup> Rivara, F.P. & Mack, C.D. (2004). Motor vehicle crash deaths related to police pursuits in the U.S. *Injury Prevention*, 10, pgs 93-95.

person driving a few miles over the posted limit, creates a threat to the public, EVEN AT A LATER DATE, and must be stopped and pursued if necessary.

2. Both policies state the following:

“Officers are cautioned not to rely solely on a license plate number and vehicle descriptions when determining if the suspect *may be apprehended at a later date*. A license plate may identify the vehicle but does not identify a violator. Officers know that a license plate may be on the wrong vehicle or be on a stolen vehicle. What’s more, once the vehicle is no longer observed by the officer, the *chain-of-evidence* is broken.”

This is a poorly written passage that seems to give an officer the greenlight to pursue a vehicle unless they can identify the driver to make the arrest later. No police department has such a policy. If charges are pursued later, then it simply requires an investigation, something that has been done every day in the U.S. It is also factually incorrect that the chain-of-evidence is broken if they fail to identify the violator because there is no chain-of-evidence in this scenario. A human being cannot be part of the chain of evidence. This is nonsensical and again, may cause an officer to dangerously continue a pursuit for this reason.

3. Neither policy adequately addresses the issue of pursuing motorcycles and off-road vehicles.
4. Even the restrictive policy does not properly restrict high-speed pursuits. For example, the policy allows a high-speed pursuit of a stolen vehicle.
5. Neither policy adequately restricts the use of a Pursuit Intervention Technique (P.I.T.) which can be highly unpredictable and dangerous in its outcome. Some departments completely prohibit such a tactic in residential areas.

It is absolutely critical that a police department have a clear and updated pursuit policy that meets accepted standards. Many departments have now adopted a “no chase” policy that prohibits all chases unless necessary to protect and save lives. Returning to the Jackson MS Police Department, its policy states (General Order no. 600-200).

“Officers shall initiate and continue vehicle pursuits only when the related offense is a violent felony and when the benefit of apprehension outweighs the risk of injury or death. In all incidents that involve high speed driving, the safety of officers and the public must be the primary consideration. In primary urban and suburban areas like the City of Jackson, the need to apprehend the offender does not usually outweigh the inherent risks of a pursuit in such a congested area.”

**Recommendation V.C.1 – The BPD, as part of a policy rewrite, should adopt a single model pursuit policy that has been subjected to legal review. The policy should follow current national trends and prohibit chases except in cases involving a violent felony and where there is a greater**

**risk to human life by terminating the pursuit rather than continuing it. The policy should also restrict the use of a P.I.T. maneuver according to national standards.**

D. Secondary Employment (Policy 4.25)

It is not uncommon for police officers to work second jobs, but it does create a legal morass if the officer carries out their secondary duties while wearing a BPD uniform or carrying a BPD issued weapon. Problems with the current policy are as follows:

1. The policy is silent on the issues of working a secondary job while in a BPD uniform or while carrying a department issued weapon. An example is working security at a retail establishment within the City of Brookhaven. While a contract with the establishment can deal with issues such as pay and workers compensation, it cannot satisfy Constitutional issues such as arrest and use of force. A BPD officer working within the City Limits cannot escape their jurisdiction and authority. They are a BPD officer 24/7 regardless of whether they are on duty or off. If there is no contract between the establishment and the City of Brookhaven, then issues such as worker's compensation may be found to be the responsibility of the City of Brookhaven.
2. In my discussions with Chief Collins and his command staff, I was informed that BPD officers are not allowed to carry a department issued weapon off-duty. This would be highly unusual in law enforcement, and I see no policy prohibiting this. The secondary employment policy does not prohibit the carrying of a department issued weapon while engaged in their secondary employment.
3. The policy mentions the issue of a contract between the establishment and the City of Brookhaven, but it says nothing about the issues that are covered in such a contract, only the types of employment where it may be used.

**Recommendation V.D.1 – Again, as part of an effort to completely rewrite the BPD policies, a more thorough secondary employment policy should be written/ adopted that has been subjected to proper legal review.**

The BPD policies are clearly an example of a shelf product that was never properly configured. Even then, it is not a properly written set of policies. It appears that the authors took policies from various sources, including the International Association of Chiefs of Police, and incorporated them without realizing that even those policies were meant to serve only as frameworks in need of proper configuration by individual departments. The policies are overwritten and include items

that are not even relevant to the BPD. They are not current and consistent with National standards, and in some instances even create a legal minefield. They are also deficient. The policies do not include items such as Taser cartridge control, ticket book audits, a listing of approved off-duty weapons, Child Advocacy Center protocols, and searching digital evidence, to name a few.

**Recommendation V.1 – The BPD should immediately begin the process of writing/ adopting a new set of policies and procedures. It is highly recommended that the Department contract with a known and respected subscription service that will provide a complete set of policies tailored to the needs and legal requirements of the BPD. These services will not only provide a complete set of procedures but will also provide updates on a regular basis as laws change. The policies provided will already have been subjected to legal and Constitutional review. Short of this option, the BPD should begin by securing the policies of a larger department (e.g., Jackson, Memphis, New Orleans) and tailoring them to their own needs and requirements. This of course carries with it the burden of ongoing legal review to ensure that any changes are legally and constitutionally acceptable. Also, with this option, care must be taken to avoid copyright or contractual issues.**

## VI. EQUIPMENT

During the evaluation, I became aware of certain equipment needs the BPD is currently experiencing. It is critical that a police department has the necessary equipment and technology to carry out its mission in the most efficient and effective manner possible. Currently, the BPD has multiple dash cameras that are not functioning, as well as outdated and problematic body cameras. These tools are important for ensuring the department's accountability to the citizens of Brookhaven. It is also important that the BPD's vehicles be equipped with computer terminals. This will not only make their jobs safer by having instant access to many different types of data but will also end the practice of officers having to leave their patrols to write reports at the station. With in-car terminals, they can write their reports while in the car and on patrol. In discussing this issue with Lincoln County Sheriff Steve Rushing, I learned that his department has already installed in-car terminals. The BPD should use the same setup as the Sheriff's Department, especially since both departments will be using a consolidated 911 dispatch center in the future. This also relieves the BPD of having to do research and testing since the LCSO has already completed that work.

**Recommendation VI.1 – The BPD Chief or his designee should prepare an inventory of needed equipment and technology to present to the Police Committee or full Board of Aldermen. If in-car terminals are approved, the BPD should work with the LCSO to implement a system comparable to their own. At the very least, the BPD should immediately be equipped with up-to-date dash and body cameras and the requisite software and technology to support them.**

## VII. IMPLEMENTATION

It is my opinion that the BPD needs significant changes to be made. To assist in this endeavor, I believe it is important that the Board of Aldermen begin by establishing the previously discussed Police Committee to work closely with the Chief of Police. This would be a much more efficient system and would result in the full Board of Aldermen being much more integrated in the activities and mission of the BPD by having this conduit between them.

This evaluation has identified five major areas that need to be addressed:

1. The organizational structure of the BPD
2. The management of BPD personnel
3. BPD Investigations
4. Case Management and the BPD's interaction with the Municipal prosecutor and D.A.
5. Policies and Procedures

I would recommend that once changes are approved, a 3, 6, and 12-month evaluation be completed to report the Department's progress to the Board of Aldermen. The most critical issue that needs to be addressed is the hiring of multiple officers for the Department to become fully staffed. Subsequent to and concurrent with that task, I would suggest the following sequence:

1. Reclassify officers based on their years of service with the BPD (P.O. I thru IV, or whatever classification scheme the Board of Aldermen chooses). This would not involve their pay or current command responsibilities.
2. Select a new command cadre and promote/demote where necessary.
3. Select a new cadre of detectives. Current detectives not selected and who will remain with the department will be returned to a patrol position.
4. Hire an investigator for the Municipal prosecutor's office and establish a working group with the City Board of Aldermen, the BPD, the Municipal prosecutor, the D.A. and the Sheriff to discuss protocols for a major case unit and ways to better integrate these entities.
5. Once a Captain of Admin & Support is selected, that person should be designated to take the lead in writing and/or adopting a new set of policies and procedures. That person



should be tasked with researching subscription services and for reporting their findings to the Board of Aldermen.