

Oakland Police Department
Controlled Equipment Impact Report

Item(s): LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions

Applicable Use Policy: [K-03](#), *Use of Force*, [TB-III-H](#), *Specialty Impact Munitions*



Description and Purpose

40mm Launcher LMT 40mm	
Description	Single Shot, breech fed, rifled barrel, chambered for 40mm, with double action trigger
Manufacturer's Product Description	Manufactured exclusively for Defense Technology®, the 40LMTS is a tactical single shot launcher that features an expandable ROGERS Super Stoc and an adjustable Integrated Front Grip (IFG) with light rail. The ambidextrous Lateral Sling Mount (LSM) and QD mounting systems allow both a single and two point sling attachment. The 40LMTS will fire standard 40mm less lethal ammunition, up to 4.8 inches in cartridge length. The Picatinny Rail Mounting System will accept a wide array of enhanced optics/sighting systems.
Capabilities / How the item works	With breech open, a 40mm cartridge/round can be manually loaded. Once breech is closed, launcher is fired by pulling the trigger. Once cartridge fires, the projectile travels down and out of the front of the barrel. Operator then opens breech to manually extract/eject spent casing of cartridge. The launcher is then ready to be reloaded. Capable of firing multiple different types of 40mm launched munitions.
Expected lifespan	No lifespan indicated by the manufacturer
Quantity	10
Purpose and intended uses and/or effects	The 40mm launcher is a delivery device for 40mm munitions. 40mm Specialty Impact Munitions are designed to be used as an intermediate force option at distance.

40mm Penn Arms PGL 65-40

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Description	Six Shot capacity cylinder, pump action, rifled barrel, chambered for 40mm, with double action trigger
Manufacturer's Product Description	A 40mm pump-action advance magazine drum launcher with a fixed stock and combo rail. It has a six-shot capacity and rifled barrel. Previously labeled the PGL-65, the features include: Double-action trigger, trigger lock push button and hammer lock safeties.
Capabilities / How the item works	With cylinder opened, six 40mm cartridge/rounds can be manually loaded. Once cylinder is closed, launcher is fired by pulling the trigger. Once single cartridge fires, the projectile travels down and out of the front of the barrel. Operator, then pumps fore-end to advance cylinder to next cartridge/round. We do not use/deploy this launcher due to function unreliability.
Expected lifespan	No lifespan indicated by the manufacturer
Quantity	9
Purpose and intended uses and/or effects	The 40mm launcher is a delivery device for 40mm munitions. 40mm Specialty Impact Munitions are designed to be used as an intermediate force option at distance.

Orange Stock 12 Gauge Wilson Combat/Remington 870 Shotgun	
Description	12 Gauge, pump action shotgun with 18" smooth bore, and four shell capacity magazine tube.
Manufacturer's Product Description	The Remington 870 Police pump-action shotgun is a rugged 12-gauge with a short, tactical 18" barrel backed by a stout 3" chamber. The all-matte black gun is Parkerized for generalized durability and rust-resistance. Both the pump action forend and stock are robust and tough synthetic.
Capabilities / How the item works	See Description and Manufacturer's Product Description. Capable of firing both lethal and less-lethal shotgun munitions, but marked specifically for firing less-lethal rounds.
Expected lifespan	No lifespan indicated by the manufacturer
Quantity	Approximately 20 owned by Department
Purpose and intended uses and/or effects	The orange stocked 12 Gauge Shotguns are designated to be less lethal shotguns only. They are to be loaded only with 12 Gauge less lethal drag stabilized flexible baton rounds, which are Specialty Impact Munitions designed to be used as an intermediate

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force option at distance. These are no longer issued or allowed in the field by the Department.

40mm Direct Impact Marking 6326	
Description	Defense Technology Impact Munition, 40mm, crushable foam tip, green marking powder
Manufacturer's Product Description	The 40mm Direct Impact® munition is a point-of-aim, point-of-impact direct-fire round. An excellent solution whether you need to incapacitate a single subject or control a crowd. When loaded with a green marking agent, the Direct Impact can be used to indicate the aggressor in a crowd or riot situation to the team on the ground.
Capabilities / How the item works	Launched from a 40mm Launcher. The crushable foam breaks on impact dispersing a green marking powder. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
Expected lifespan	5 Years- Per manufacturer
Quantity	200
Purpose and intended uses and/or effects	40mm Direct Impact Marking 6326: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

CTS 40mm Frangible Impact 4550 Orange Marking Powder	
Description	Combined Tactical Systems, 40mm, crushable foam tip, orange marking powder
Manufacturer's Product Description	The 40mm Direct Impact® munition is a point-of-aim, point-of-impact direct-fire round. An excellent solution whether you need to incapacitate a single subject or control a crowd. When loaded with a green marking agent, the Direct Impact can be used to indicate the aggressor in a crowd or riot situation to the team on the ground.

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Capabilities / How the item works	Launched from a 40mm Launcher. The crushable foam breaks on impact dispersing a orange marking powder. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
Expected lifespan	5 years per manufacturer
Quantity	50
Purpose and intended uses and/or effects	40mm Frangible Impact 4550: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

40mmFoam Baton 6099	
Description	Defense Technology Impact Munition, 40mm, three foam projectiles
Manufacturer's Product Description	The 40 mm Multiple Foam Baton Round is most widely used as a crowd management tool where stand-off distances are limited. It may also prove valuable in riot situations where police lines and protestors are in close proximity. The round contains three foam projectiles. It utilizes smokeless powder and has more consistent velocities and tighter patterns compared to its 37 mm counterpart. The foam projectile allows for closer deployment, while minimizing injury.
Capabilities / How the item works	Launched from a 40mm Launcher. The three foam projectiles will spread over distance. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
Expected lifespan	5 years- per manufacturer
Quantity	60
Purpose and intended uses and/or effects	40mm Foam Baton round is intended as a distance intermediate force option. <i>We do not use/deploy this round because of the higher potential for portions of the round to strike unintended targets.</i>

12Ga 2581 Super Sock	
Description	Combined Tactical Systems, 12 gauge drag stabilized flexible baton round, "bean bag" round

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Manufacturer's Product Description	The Model 2581 Super-Sock® is in its deployed state immediately upon exiting the barrel. It does not require a minimum range to “unfold” or “stabilize.” The Super-Sock® is an aerodynamic projectile and it’s accuracy is relative to the shotgun, barrel length, environmental conditions, and the operator. The Super-Sock® is first in its class providing the point control accuracy and consistent energy to momentarily incapacitate violent, non-compliant subjects. Effective range is 75ft.
Capabilities / How the item works	Launched from a 12 gauge shotgun. Capable of causing blunt-trauma injuries similar to a hand-held impact weapon such as a police baton.
Expected lifespan	5 years- per manufacturer
Quantity	2000 in reserve- Every certified officer is issued 5
Purpose and intended uses and/or effects	12Ga 2581 Super Sock: Intended use is as a distance intermediate force option. It creates blunt force trauma. It is also used to strike objects in order to gain attention/compliance of subjects and break windows in order to improve visibility

Fiscal Costs

Initial Costs

The Oakland Police Department (OPD) currently owns/possesses/uses the equipment. Initial costs (if known) to obtain the equipment were:

The LMT 40mm launchers are approximately \$500 per launcher.

The Penn Arms 40mm multi-launchers are approximately \$1600 per launcher and were acquired through a grant.

The 12 Gauge Wilson Combat/Remington 870 shotguns are approximately \$1200 per.

The 40mm impact munition rounds are typically approximately \$25 per round. The 12Ga impact munitions are typically approximately \$5 per round.

NOTE: OPD does utilize standard-issue patrol shotguns (also Remington 870 shotguns) for firing of specific 12 gauge SIM. While these shotguns are not specifically listed in this report as they are standard issue and have the primary purpose of providing a lethal force shotgun

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option, the alternative use for specific 12 gauge SIM is specifically addressed by the controlling policy.

OPD proposes to obtain the equipment. Initial costs are anticipated to be:

Estimated or anticipated costs for each proposed use

Delivery devices (launchers and shotguns) require no recurring cost for use beyond normal wear and tear.

Impact munitions will need to be replenished as they are used during incidents or during training at a cost of \$25 per 40mm round and \$5 per 12ga round. Incidents involving the use of specialty impact munitions vary and trainings are annual per certified officer.

Like other less-lethal or lethal weapons that are used as force options, there may be serious costs such as injury or loss of life even when these weapons are used exactly as specified in law and policy. Even justified uses of less-lethal force may result in costly litigation or other costs.

Estimated or anticipated costs of potential adverse impacts

There is no way of anticipating every possible adverse impact, and there may be some impacts that occur which are extremely unlikely or unforeseeable. Additionally, even some known possible adverse effects may be so remote that they were not assessed for the purposes of this report. Furthermore, injuries may result as a consequence (unintended or not) of the use of controlled equipment. If the controlled equipment is a weapon, then the cost of injuries resulting from use of that weapon can vary considerably. Since persons in OPD's custody are typically treated at Alameda County Hospital, Highland Campus, the costs for this treatment, if not covered by insurance or other means, may be paid with public funds. Recovery from injuries and/or trauma relating from situations in which controlled equipment is used could include ongoing costs such as medications or counseling. Finally, costs of even likely adverse effects may vary wildly based on other circumstances which are difficult to predict and can vary from incident to incident. Keeping this in mind, some potential adverse effects and their possible costs are:

Deliberate misuse might cause the Department to be exposed to liability, which could include monetary judgments against the City. In the past, victims of misuse of military equipment

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have successfully litigated settlements from the City of Oakland. The aim of this policy to prevent uses of these weapons that result in litigation and settlements.

Unintentional misuse might cause the Department to be exposed to liability, which could include monetary judgments against the City.

Failures of the equipment might cause the Department to have to purchase additional items, at a cost per item as indicated.

Potential negative impacts include injuries, both anticipated and beyond anticipated, from deployment of these weapons. The costs of these injuries could include psychological effects, monetary costs, and opportunity costs from litigation.

Estimated or anticipated ongoing costs

The 40mm impact munitions are used only by certified members of the tactical team and Patrol Rifle program, and are not as widely used as the 12 gauge drag stabilized flexible baton rounds. Those that certify/recertify, do so once a year. That process includes the use of 40mm training rounds, which are reloadable/reusable.

The 12 Gauge Drag stabilized flexible baton rounds also vary in use depending on the incident. Every officer coming out of Academy is certified in the use of these rounds and are recertified annually. Expired rounds are used during recertification training.

Impacts

Reasonably anticipated impacts

Deliberate misuse.

Though unlikely, it is possible that LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may be deliberately misused by employees. Some of the ways that the Department attempts to prevent deliberate misuse is through background checks of prospective employees, supervision and training, strict policy guidelines, robust reporting and accountability practices, and discipline for deliberate

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misconduct up to and including termination. Suspected criminal misuse of equipment may also be forwarded to the District Attorney's office or other appropriate prosecuting agency for charging consideration.

Unintentional misuse.

Unintentional misuse of LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may come in many forms, from unfamiliarity or lack of training to the encountering of a scenario that was not anticipated in training or policy. The Department attempts to prevent unintentional misuse through thorough training, clear policy prescriptions, and robust review processes such as force reports, force review boards, and pursuit review boards.

Perception of militarization or exacerbation of a police/community divide.

While it is not the intent of the Department that this occur, the Department does recognize the possibility that its use of LMT 40mm Launcher, Penn Arms PGL 65-40 40mm Launcher, Wilson Combat Remington 870 12 Gauge Shotgun, 40mm Direct Impact Marking 6326, CTS 40mm Frangible Impact 4550 Orange Marking Powder, 40mm Foam Baton 6099, CTS 12Ga 2581 Super Sock specialty impact munitions may lead to a perception of militarization of the Department, or an exacerbation of any existing divides between the Department and the community it serves and is a part of. The Department attempts to overcome challenges such as this by taking full advantage of community forums required by policy and law (see for instance the mandated community engagement meeting in DGO K-07 and CA Government Code § 7072(b)), by completing full and robust reports such as this one, and by collaborating with the Police Commission in the creation of use policies and procedural safeguards surrounding this equipment.

Injuries and Effects

Psychological (Mental) Effects

Impact munitions have a tremendous mental effect on an individual. In many cases, the mental effects far outweigh the physical effects and may be the determining factor in the engaged person's response to the munitions.

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Possible effects in engaged persons who have SIM deployed against them are fear, anxiety, and panic:

Fear: Impact munitions may cause a powerful mental distraction. If the engaged person has prior knowledge of the effects of impact munitions and realizes that he/she is about to be targeted, this realization may be enough to cause the engaged person to comply or, at least, be distracted long enough for a plan of action to be implemented. The engaged person must also mentally cope with the physical pain that he/she feels after being struck with impact munitions.

Anxiety: The action of pointing a firearm directly at an individual and/or firing a projectile at him or her arouses fear in the individual of being shot with a firearm. The pain and, sometimes, the appearance of the injury may reinforce this belief.

Panic: Because it may create the “fight or flight” response, panic may not be the most desired effect.

Members shall consider and prepare contingencies for a panic response. Should it induce a “fight” response, a reliable secondary plan for incapacitation is needed. Should it induce the “flight” response, a secure perimeter along with other available assets should overcome any eluding actions.

Physiological (Physical) Effects

There are two types of injuries caused by projectiles: penetrating and non-penetrating.

Penetrating injuries are caused from low mass, high velocity projectiles, such as bullets and some SIM if used at a close distance, or low velocity sharp objects such as knives.

Non-penetrating injuries are caused when blunt objects impact the surface of the body at moderate speeds causing blunt trauma but do not penetrate the body.

In simple terms, blunt trauma is the primary desired physical effect of less-lethal impact munitions.

The flexible baton inflicts enough pain to get most individuals to comply yet, when used properly, has a low probability of causing serious physical harm. Generally, the impact of the

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projectile along with the associated pain works to deter the individual from unwanted aggressive behavior.

The possibility of physical injury always exists whenever impact weapons are used. Inappropriate use of a SIM significantly increases the risk of injury or death to a suspect. Abrasions, lacerations, contusions, and fractures may result and need to be addressed by trained medical personnel (See DGO K-3, TB III- K, and DGO I-4 regarding first aid and emergency medical treatment.)

The human body can withstand high levels of force for very short durations of time if the force is distributed on the strong parts of the skeleton. The soft body tissues are responsible for absorbing and dissipating a great deal of force without producing a large amount of compression. However, if the amount and speed of blunt trauma is greater than can be absorbed, soft tissues can be damaged by tearing or rupturing, causing lacerations, cuts, and bruises.

Impacts to the abdomen can cause injury to the liver and spleen causing crushing deformation. Chest impacts can displace internal organs and possibly lacerate major vessels by crushing or stretching.

Although rare, penetration into the body has occurred and is always a possibility, especially when improperly used, as a result of a combination of kinetic energy (weight, size, shape, and velocity); target distance; the engaged person's weight, mass, clothing, or other material coverings; and the area of the body at which the engaged person is impacted. Members shall use SIM within training guidelines and Department policy.

Mitigations

Use of force and de-escalation policy - [DGO K-03](#)

Controlled and military equipment frequently takes the form of a force option, or else is often used during high risk situations where force may be used. OPD, in concert with the Police Commission, created a state-of-the-art use of force policy that centers the Department's

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mission, purpose, and core principles, provides clear guidance that force is only allowed when reasonable, necessary, and proportional, and makes clear the consequences of unreasonable force. Additionally, OPD's use of force policy incorporates a robust de-escalation policy (Section C), which mandates that officers use de-escalation tactics and techniques in order to reduce the need for force when safe and feasible.

The entirety of this policy – which encapsulates OPD's values surrounding force and commitment to de-escalation – is a clear general procedural mitigation to the possible adverse impacts of the use of this equipment.

Force reporting and review policy and practice – DGOs [K-04](#) and [K-04.1](#)

Though the Department expects that every use of this equipment will be within the boundaries of policy and law, the Department also has clear procedures regarding force reporting and review in place. DGO K-04 and its attendant special orders require that force by officers – including force where controlled equipment was used – be properly reported and reviewed, with the level of review commensurate to the severity of the force incident. Additionally, for severe uses of force or where a use of force had severe outcomes, the Department utilizes Force Review Boards, led by top Department command staff and often attended and observed by Community Police Review Agency staff or Police Commission Chairs, to review every part of a force incident. These boards not only determine whether the force was proper, but also have wide latitude to suggest changes in policy, training, or practice, including with controlled equipment.

OPD's force reporting and review policies and practices serve as important procedural mitigations to the possible adverse impacts of the use of this equipment.

Complaint receipt and investigation procedures – [DGO M-03](#)

The use of controlled equipment, as with any use of the police powers, is subject to the rules and laws that govern the Department and its employees. Complaints and allegations that the Department or its employees have violated these rules or laws are treated with the utmost seriousness, including proper intake at the Internal Affairs Division and investigation by the appropriate investigative individual. Where allegations are found to be substantiated, the Department uses a progressive discipline structure to serve both deterrent and rehabilitative functions. Finally, deliberate misconduct or actions contrary to the Department's values are not tolerated, and can lead to termination of employment.

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OPD's complaint receipt and investigation procedures serve as important procedural mitigations to the possible adverse impacts of the use of this equipment.

Community outreach and specific inquiry pathways - DGO K-07

Use of controlled equipment, especially equipment that may have analogues used by militaries or quasi-military federal law enforcement, can drive perceptions of a militarized police force that is pre-disposed to the use of force as opposed to thoughtful, deliberate resolutions to incidents using de-escalation and minimizing the use of force. An important procedural mitigation to this type of perception is regularly communicating with the community served, as a way for information to be shared in both directions. This serves to dispel common misconceptions as well as provide valuable perspective for the Department and its employees. OPD uses community outreach, such as social media, community events, and a specific, annual community forum as required by DGO K-07. Additionally, OPD's overarching controlled equipment policy sets forth processes for inquiries about the equipment.

Equipment-specific use policy and Police Commission oversight - OMC 9.65

While most every law enforcement agency is bound by state law (Government Code § 7070 et. seq.), the very nature of police oversight in Oakland provides one of the most powerful procedural mitigations of potentially adverse impacts. For instance, state law requires that most agencies have their controlled equipment use policies approved by their governing body (e.g., City Council, or Board of Supervisors). In the case of OPD, however, there is an additional layer of oversight in the Police Commission, which must review any controlled equipment use policy prior to it being approved by the City Council. This requirement, set forth in Oakland's municipal code section 9.65, is a procedural mitigation to the possible adverse impacts of the use of this equipment.

Technical safeguards

There are no specific technical safeguards other than their design to be used as less lethal impact munitions and if used properly lower the potential for adverse effects such as great bodily injury or death.

Procedural safeguards

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Every officer that is certified to use specialty impact munitions have to be certified by POST certified instructors and recertify every 18 months during the continued professional training (CPT) cycle. The certification process includes, but not limited to, training: in policy, de-escalation, use of force, practical application. There are also procedural safeguards trained, that include procedures for ensuring absence of lethal ammunition, non-target areas (head, neck, throat, groin, left armpit, kidney, spleen, upper chest) and preferred target areas (Areas of large muscle groups (shoulder, arms, buttocks, legs). In an attempt to minimize injury potential, the Department has a minimum safe distance of 21 feet for the deployment of SIM.

There have been incidents in American law enforcement use of SIM where the sound of a SIM deployment has induced “sympathetic fire” from other officers with lethal ammunition. OPD’s policy anticipates this and specifically requires both notification over the radio and/or in person as well as notification to personnel from other law enforcement agencies (if they are near) that SIM is being deployed prior to its use.

Alternatives

De-escalation and alternative strategies

As mentioned in the Mitigations section, above, OPD officers are mandated to use de-escalation strategies and tactics when safe and feasible. These strategies and tactics, which are predicated on de-escalation best practices around communication, containment, positioning, and time/distance/cover, reflect the Department’s commitment to de-escalation over the reliance on force to compel compliance.

However, even during de-escalation strategies and actions, controlled equipment may be used or ready to further a safe outcome to the event for the engaged person, the community, and the officers. Generally, a built-in alternative to the actual use of controlled equipment – especially as a force option – is its use as a tool to provide safety, information, or containment to an incident so that officers can bring the situation under control and hopefully encourage a peaceful outcome. This, in conjunction with other de-escalation or alternative strategies, provides a baseline for OPD officers in the conduct of their duties when using or contemplating the use of this controlled equipment.

It is also instructive to consider the possible adverse costs of not possessing this equipment. For instance, the unavailability of a particular tool may adversely impact the safety of police

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personnel and the community by limiting de-escalation strategies, exposing personnel to greater risk, or limiting the options available to safely resolve situations.

The closest reasonable alternative to Specialty Impact Munitions is the ECW specifically the Axon Taser 7 which we have and is now replacing our Taser X26. The ECW does provide an intermediate force option that can be used at distance but only to a max range of 25 ft. The specialty Impact munitions that we deploy are effective to 75ft.

Location

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Third Party Dependence

- This item does not require third-party actors for operation.
- This item does require third-part actors for operation:

Track Record

Less-lethal specialty impact munitions have a long track record, as they create a long-distance alternative to weapons that police officers have been carrying for as long as there were organized patrols: impact weapons. Just like handheld impact weapons, SIM are intermediate force options which allow for use of less-lethal force at distances that don't require officers to be close to a person. These can be especially useful for persons who are armed with edged or blunt weapons that can cause great bodily injuries or death (such as

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knives or clubs), as using the less-lethal SIM can lead to non-lethal outcomes that might otherwise turn into encounters where the officer fired their lethal firearm.

OPD has had many successful uses of SIM as a long distance less-lethal force option, especially for cases of persons who were armed with weapons that were not firearms. Other police agencies report that SIM, especially 40mm SIM, are effective; Berkeley police noted that “it has been our experience that a 40mm projectile impact will almost always resolve a violent confrontation with 1 or 2 applications. The larger projectile produces more kinetic energy than the FN 303, which may require several applications to gain compliance.” Santa Rosa PD reported that they deploy a 40mm SIM launcher in every marked patrol vehicle, and have different policies depending on the type of incident encountered.

With these weapons, there have been notable times when the weapons were either misused or otherwise resulted in poor outcomes. For instance, in the case of *Deorle v. Rutherford*, a seminal case on the use of less-lethal SIM, a resident of Butte Co. California was struck by a SIM which resulted in the loss of his eye. Closer to the Bay Area, a protestor was struck by a SIM during an “Occupy” protest in downtown Oakland leading to life-threatening brain injury. Just like any weapon, SIM can be dangerous and must be handled properly; OPD’s policy is similar to many other agencies in its delineation of prohibited areas and requirement for training prior to the use of these weapons.