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2015 DEC 10 PM 4:56

# AGENDA REPORT

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**TO:** Sabrina Landreth  
City Administrator

**FROM:** Sean Whent

**SUBJECT:** Use of Force – Supplemental Report

**DATE:** December 4, 2015

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City Administrator Approval  Date 12/10/15

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## RECOMMENDATION

**Staff Recommends That The Public Safety Committee Receive An Informational Report And Possible Action Adopting 1) Officer Reporting And Disclosure Requirements For Both Responding And On-Scene Officers In All Use Of Force Cases; Mandatory Firing And Criminal Prosecution For Failure To Report And/Or Disclose Officer Misconduct And For Providing False Information And 2) Policies and Procedures Which Require The Oakland Police Department (OPD) To Train Officers More Effectively In The Use Of Force (UOF), Especially Lethal Force. Such Training Should Not Only Define Conditions In Which Officers May Use Lethal Force But Also, More Broadly, Show Them How To Avoid It.**

## REASON FOR SUPPLEMENTAL

At the September 15, 2015 Public Safety Committee meeting and at the December 1, 2015 Public Safety Committee meeting, staff was asked to provide additional information concerning the OPD Use of Force (UOF) review processes – specifically:

- Whether there was anything else that OPD could have done following a UOF incident; and
- Even if the force used was in policy, whether it was necessary to use such force.

Staff was also asked if there been increases or decreases in in UOF incidents, particularly since the deployment of body worn cameras.

This supplemental report is in response the above requests and provides additional information and analysis concerning OPD UOF reporting, training, and policy.

### *Use of Force Reporting: Mandatory and Comprehensive*

The initial agenda report provided information on policies and practices that mandate or otherwise encourage personnel to report use of force that they have witnessed being used by or other officers. Additional information and analysis is provided concerning these policies and practices, directly below.

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December 15, 2015

OPD has policy and procedures in place to address all UOF administered by its members. Departmental General Order (DGO) K-4 (enacted 2014) provides guidelines and procedures for reporting UOF. Per DGO K-4, every member of OPD is required to notify his/her supervisor immediately or as soon as practical of any UOF, allegation of UOF, or allegation of unreasonable force. After UOF notification for Level 1, 2, or 3 has been made, the supervisor or commander is required to respond to the scene and conduct the appropriate force investigation. When supervisory staff is notified of a UOF allegation and the member denies using force, the supervisor or commander is required to respond to the scene and conduct a preliminary investigation into the UOF allegation. This policy also addresses members who witness UOF or are aware of any misconduct allegations involving unreasonable or unreported UOF.

When a subject has incurred an injury requiring more than basic first-aid and:

- The injury did not occur as a result of a member's UOF (e.g., suspect attempts to flee and injures themselves during a fall or suspect intentionally bangs their head while in the back seat of a police vehicle); and
- There is no allegation of force by the subject;

The involved member is required to notify his or her immediate supervisor immediately or as soon as practical.

If any force investigation indicates misconduct, the supervisor or commander is required to conduct, at a minimum, a Level 2 force investigation and initiate an Internal Affairs investigation in accordance with DGO M-3 (Complaints against Department Personnel, enacted 2013).

If any force investigation indicates criminal misconduct, the supervisor or commander is required to conduct a Level 2 force investigation and make notifications in accordance with DGO M-4.1 (Criminal Investigations Involving Law Enforcement or Personnel, enacted 2008). Per DGO M-4.1, when there is reasonable suspicion that active law enforcement personnel, or members of OPD, are involved in criminal conduct, (felony or serious misdemeanor), he/she shall make appropriate notification as soon as practical, but no later than two hours after becoming aware to the appropriate chain of command or designated bureau.

Through policy, OPD mandates the UOF reporting by all officers who engage in UOF or witness other officers using force. OPD mandates termination for a lack of truthfulness upon the first offense. Officers may be terminated for failure to report misconduct the first or second time and are terminated upon the third failure. As provided in an accompanying report, OPD provides harsh penalties for failing to report misconduct. Similar penalties are in place for failing to report UOF. Failure to report UOF is not acceptable within OPD and may result in severe disciplinary action including termination.

*Force Review Boards: Was the Force Necessary or Appropriate?*

To determine whether the force used was necessary or appropriate, OPD uses two types of force review boards, as provided in DGO K-4.1 (Force Review and Executive Review Boards, enacted 2014). A Force Review Board (FRB) is convened to analyze and assess factual circumstances during and proximate to all Level 2 UOF incidents. An Executive Force Review Board (EFRB) is convened to analyze and assess factual circumstances during and proximate to all:

- Level 1 UOF incidents and investigations;
- In Custody Death (ICD) incidents and investigations;
- Vehicle Pursuit Related Death (VPRD) incidents and investigations;
- UOF incidents investigated administratively and/or criminally by OPD, at the direction of the Chief of Police;
- UOF incidents investigated administratively and/or criminally by an outside law enforcement agency, at the direction of the Chief of Police.

The FRB and EFRB were created to examine and evaluate performance of OPD members and to direct further actions and investigations. The review boards evaluate the use of body worn cameras (PDRD), the initial preliminary investigation at the scene, witness statements (citizens, departmental staff, additional officers) and whether the force used was compliant with OPD policies, procedures and training when considering objectively reasonable standards and the law. The review boards examine force options and discretionary decision making to determine if they met the needs the situation in which the force is used. The review boards may make recommendations concerning:

1. Department policy or procedure revision;
2. Department policy or procedure origination;
3. Justification for the original encounter, detention or arrest, as applicable;
4. Training revision or origination, to include:
  - a. Sphere in which training shall be provided;
  - b. Fundamental curricula;
  - c. Method of training presentation;
  - d. Requirements for testing or demonstrated performance;
  - e. Timelines for implementation and conclusion of training; and
  - f. Process for monitoring department member performance subsequent to policy and/or training revision or origination.
5. Supervision, Management, and Leadership;
6. Investigative deficiencies, to include objective evidence analysis, related to:
  - a. On-Scene and preliminary investigation; and
  - b. Follow-up investigation.
7. Assignment to the Criminal Investigative Division (CID), Internal Affairs Division (IAD), or other investigative entity;
8. Equipment:
  - a. Functionality;
  - b. Procurement; and
  - c. Elimination.
9. Consideration of exemplary, commendable, or otherwise notable performance by Departmental members.

When an EFRB or FRB report includes a recommendation for non-disciplinary corrective measures for specific personnel (such as training or referral to counseling), the recommendation is reviewed by the Chief of Police. Upon approval or modification, the responsibility for implementation is assigned to the appropriate Deputy Chief of Police. The assigned Deputy Chief of Police ensures the approved recommendations are implemented and prepares a memorandum documenting the completion of the recommendations to the Board Chairperson, the Chief of Police, the Bureau of Field Operation Administrator and the Training Section Commander within 60 calendar days of receipt, unless extended by the Chief of Police.

Through the FRB and EFRB processes, if the force used was found to be in compliance and there are no issues of misconduct or unauthorized UOF, the incident is evaluated for positive or negative training needs, which are documented in a quarterly OPD Information Bulletin (**Attachment A**). OPD Information Bulletins (IBs) provide updates and findings that are identified during the force review boards. IBs are valuable in providing OPD staff with positive, constructive, and negative data highlighting prior cases involving use of force. IBs are used to set forth information, notices, and announcements regarding topics of general interest.

In order to evaluate whether the force used is necessary or appropriate as well as determine what other actions could have been taken to avoid using such force, OPD is revising EFRB protocols to memorialize existing practice. The revised protocols will formally recognize and record any action that created or contributed to any exigency that led to force being used. This revision will assist OPD's mission of force de-escalation. In keeping with national best practices, OPD is already paying considerable attention to whether or not an officer created or contributed to the circumstances that led up to the UOF. OPD is adding such language to its policy to ensure compliance amongst officers and supervisory staff.

*Use of Force Training: Focus on De-escalation*

All OPD commanders, investigators, and supervisors complete training on the OPD UOF policy and the reporting and investigating of UOF incidents prior to conducting any such investigation. The training includes provisions of the Public Safety Officers' Procedural Bill of Rights (POBR), policy on receiving and processing complaints against department personnel, and policy on criminal investigations involving active law enforcement or a member of OPD.

Beginning in 2010, OPD's Training Section improved the structure of its UOF training. Not only has the Training Section instilled the value of annual UOF instruction and training, all instructors now collaborate on lessons to ensure that the message is aligned with Constitutional law and OPD mission and values. A focus on force options, continuous reassessment, and, most importantly, de-escalation, is provided in all force-related training. Table 1 below, provides a list of mandated annual training for all OPD officers.

*Table 1: Mandated OPD Annual UOF Training*

<b>Training Description</b>	<b>Content</b>	<b>Length</b>
Firearms Qualification	Range Qualification	4 Hours
Firearms Qualification	Range/Force Options	10 Hours
Continuous Professional Training (CPT) Firearms	Range/Force Options	10 Hours
CPT Defensive Tactics Techniques	Defensive Tactics	6 Hours
CPT Use of Force Lecture	Case Law/Policy	3 Hours
CPT TASER	TASER	2 Hours
CPT Less Lethal Force Options	Less Lethal	2 Hours
CPT OC (Pepper Spray)	OC (Pepper Spray)	2 Hours
CPT Crisis Intervention	Lecture/Legal Update	2 Hours

As provided above, OPD is examining those circumstances in which officers may create or contribute to a sense of exigency during UOF incidents. According to a 2015 Police Executive Research Forum report on best practices nationwide, many police departments are examining their officer involved shootings and other UOF incidents with a focus on de-escalation strategies and other tactics to slow situations down. This should continue to reduce how often force is used, as OPD trains officers on how to de-escalate different situations.

Based on lessons learned from recent national incidents, OPD continues to evaluate available training options to improve tactics related to UOF. OPD is training officers to slow down situations, continuously evaluate, request additional officers, and attempt communication. All of these measures make it more likely that less – and hopefully no – force will need to be used.

The below is a list of content covered in OPD UOF training:

- Graham v. Connor (an officer must apply constitutionally appropriate levels of force, based on the unique circumstances of each case) and the need to use reasonable force.
- Fourth Amendment (prohibition against unreasonable searches and seizures and requirement that any warrant to be judicially sanctioned and supported by probable cause) considerations when using force.
- Promotion of the legitimacy of police encounters, even when force is used.
- Importance of not rushing into a situation and allowing the availability of force options before committing to a circumstance where force is imminent.
- Use of Crisis Intervention Training (CIT) to train officers and the Mobile Evaluation Team (MET) to effectively recognize and handle encounters with person with a mental illness.
- Understanding that there should be no over-dependency of a particular force option; all options should be considered to include verbal de-escalation. Officers are instructed to provide warnings, when feasible, before using a force option, which promotes de-escalation and allows a person to comply with directives so force can be avoided.
- Force option training allows officers to deal with fear and anxiety, and enables them to consider the most reasonable force option and escalate/de-escalate when reasonable.
- Considering 9th Circuit rulings on force, officers must allow a subject to recover from the “extreme pain experienced” and comply with officer directives. This is continually stressed to promote the importance of valuing force de-escalation and an understanding of why law enforcement uses force: to overcome resistance and affect arrest.

OPD uses a Multiple Interactive Learning Objective (MILO) training simulation system for interactive UOF and firearms training. The system has an extensive number of scenarios to prepare officers on firearms drills and exercises. There are many different benefits to using this method of UOF training:

- Cost effectiveness (no ammunition or range rental; not staff intensive).
- Hundreds of scenarios to choose from.
- Safe for OPD personnel and the public.
- Accessible anytime.

The most significant benefit of using the MILO system is the further engagement of officers in discussion concerning UOF coupled with simulated scenarios.

The following tables contain UOF data on a per officer basis (rather than per incident). That is, a number of three can indicate three officers using force in the same incident such as during a high-risk car stop. When viewing this table, consider the following factors: 1) the number of UOF incidents has declined significantly since implementing body-worn cameras in 2010, 2) the number of officers at OPD has steadily increased over the past few years, 3) Level 1, 2, and 3 UOF were at such a low point for the last few years that further decline is not possible and only fluctuations are visible in the data, and 4) Level 4 UOF is on a steady decline despite increases in staffing and arrests. The initial report on UOF Reporting provided detailed information on the levels of force. The information is provided here again in **Attachment A**.

Table 2: OPD Levels 1, 2, and 3 Uses of Force – July 2013 to September 2015

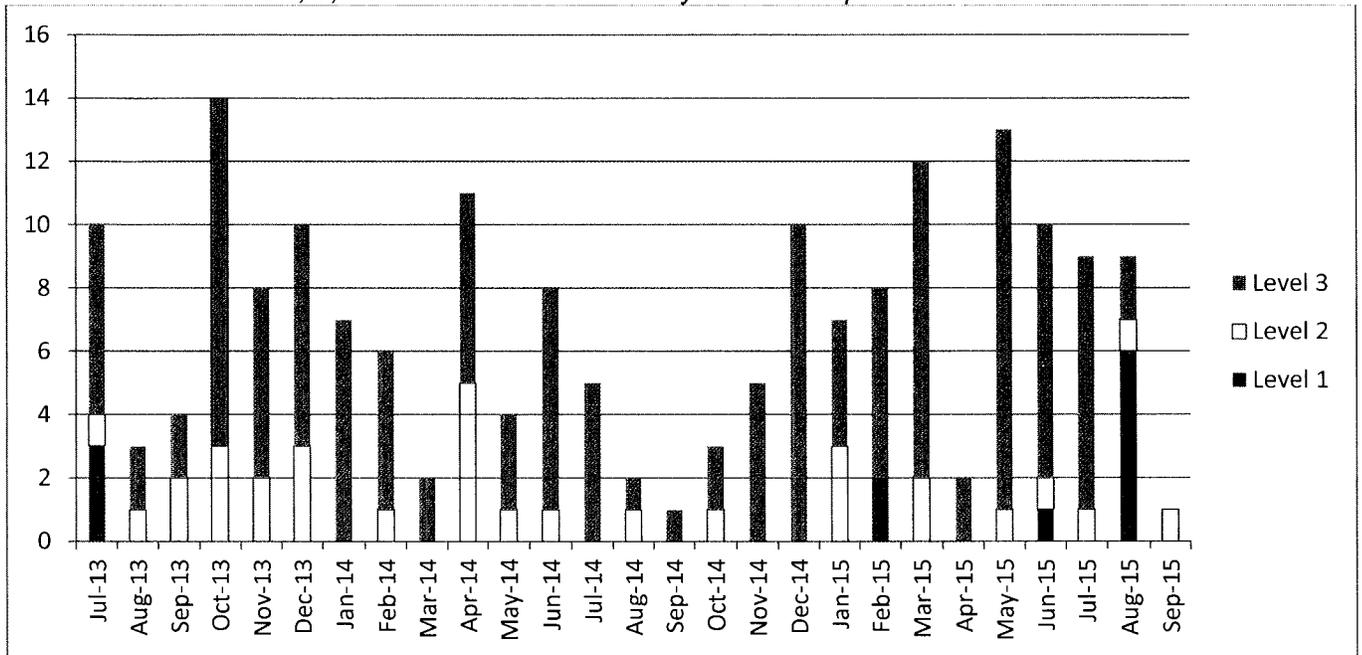
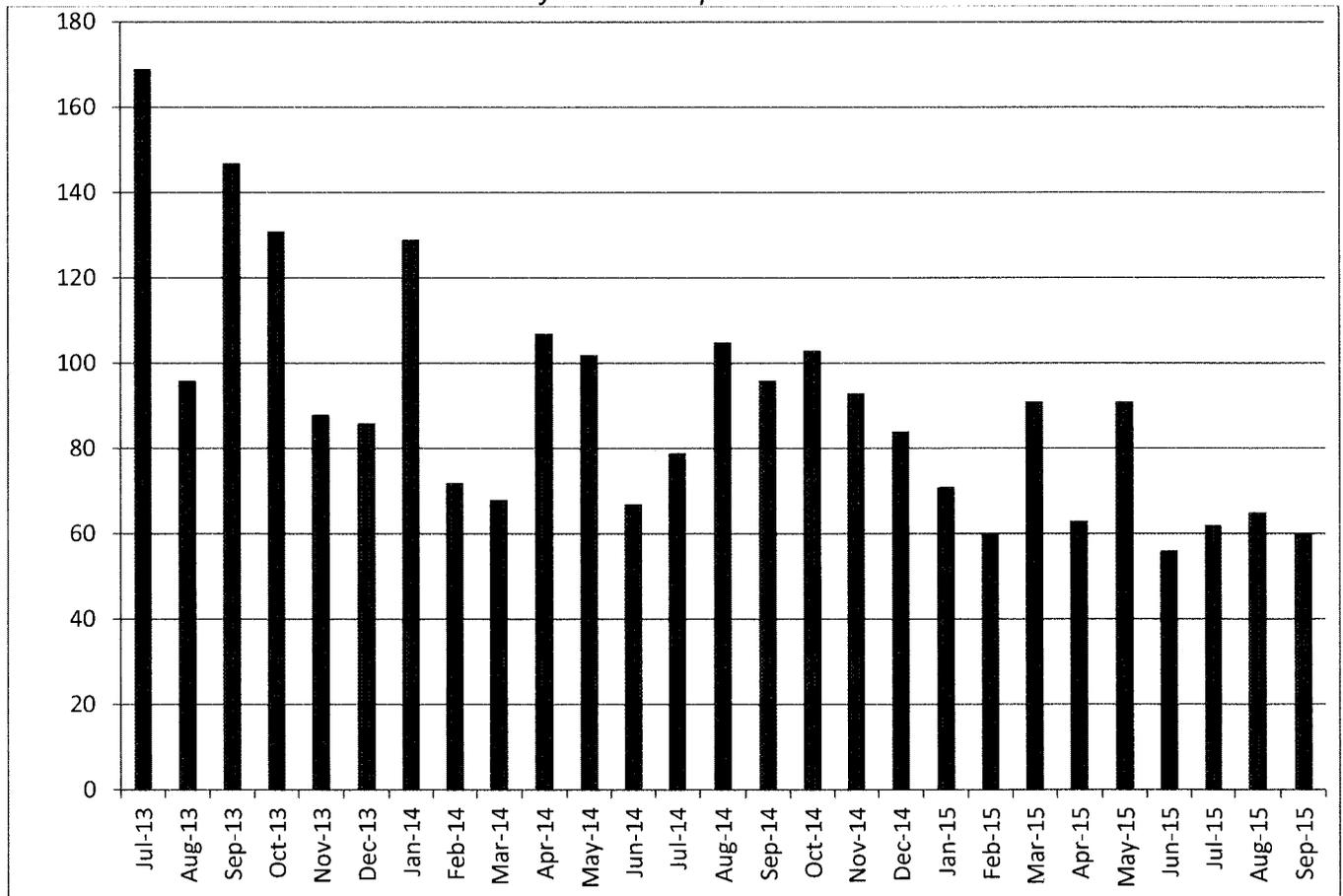


Table 3: OPD Level 4 Uses of Force – July 2013 to September 2015



**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The Public Safety Committee Receive An Informational Report And Possible Action Adopting 1) Officer Reporting And Disclosure Requirements For Both Responding And On-Scene Officers In All Use Of Force Cases; Mandatory Firing And Criminal Prosecution For Failure To Report And/Or Disclose Officer Misconduct And For Providing False Information And 2) Policies and Procedures Which Require The Oakland Police Department (OPD) To Train Officers More Effectively In The Use Of Force (UOF), Especially Lethal Force. Such Training Should Not Only Define Conditions In Which Officers May Use Lethal Force But Also, More Broadly, Show Them How To Avoid It.

For questions regarding this report, please contact Drennon Lindsey, Captain of Police, Personnel and Training Division, (510) 238-7182.

Respectfully submitted,



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Sean Whent  
Chief of Police, Oakland Police Department

Prepared by:  
Drennon Lindsey, Captain of Police  
Personnel and Training Division

*Attachments (1):*

*A: OPD Information Bulletin*



# INFORMATION BULLETIN

## OAKLAND POLICE DEPARTMENT

"Information Bulletins shall be used to set forth information, notices, or announcements regarding topics of general interest. Such bulletins shall not constitute official policy. Information Bulletins expire two years from the date of publication unless revised, canceled, or superseded sooner. Members shall retain them until expiration."

### RAISING OR LOWERING USE OF FORCE REPORTING LEVELS

The purpose of this bulletin is to remind members of the criteria for raising or lowering use of force reporting levels. This bulletin will also serve as a quick reference guide regarding the type of force used and its associated reporting level. When in doubt, refer to Department General Orders K-3, USE OF FORCE, and K-4, REPORTING AND INVESTIGATING THE USE OF FORCE, as well as associated Special Orders for exact language and requirements.

#### Raising a use of force reporting level

##### **DGO K-4 Part I, H (Special Order 8977)**

Supervisors and commanders have the discretion, except when any Level 3 use of force is used or applied to a restrained subject, to elevate any level of force investigation in order to conduct a more thorough investigation. The Watch Commander shall approve elevating a force investigation to a Level 1.

##### **DGO K-4 Part II, B, 7 (Special Order 8977)**

Any Level 3 use of force used or applied to a restrained subject is a Level 2 use of force.

**\*\*It is imperative, for members having a Level 3 use of force on a restrained subject, that they immediately bring this fact to the attention of their supervisor.\*\***

#### Report requirement

When raising a force level investigation to a higher level enter a "15" before the actual force type applied. The "15" indicates the force investigation is being raised to a higher level. Example: OC applied to a restrained subject should be written as 15-17

#### Lowering a Level 3 use of force to a Level 4 (supervisor or commander)

##### **DGO K-4 Part V, B**

- 1- Respond to the scene;
- 2- Separate and discuss the general circumstances of the incident with involved personnel and witnesses to assess the appropriate reporting level;
- 3- Conduct a personal interview with the subject;
- 4- Determine:
  - a. There is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance;
  - b. There is no allegation of misconduct;
  - c. There is no indication the use of force was out of policy; and
- 5- Sign the approval box on the Use of Force Report

**Types of Level 3 uses of force that may be considered for reduction to a Level 4**

- 1- A Taser® is fired at a person, but misses;
- 2- Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent applied to a person;
- 3- Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**;
- 4- A baton used for a non-striking purpose (e.g., prying limbs, moving or controlling a person); or
- 5- A Weaponless Defense Technique other than control holds, excluding strikes to the head, to include:

Hand/palm/elbow strikes;  
Kicks;  
Leg sweeps; and  
Takedowns

**Report requirement**

When lowering a Level 3 use of force to a Level 4 use of force, enter a “26” before the actual force type applied. The “26” indicates the force met the criteria and approval to be reported at a lower level.

Example: A Taser® is fired at a person but misses should be written as 26-18

**Injury definition**

Any injury to a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance; evaluation by a medical professional to assess a complaint of injury is not emergency medical treatment.

*Note: Per Special Order 8999, when a subject incurred injuries during the attempt to take them into custody, while in custody or due to the suspect's own actions the member shall report the injury to their supervisor and the supervisor shall respond to the scene and begin a preliminary investigation following the requirements of DGO K-4 Part IX (Risk Management).*

**Notification of a Use of Force**

To ensure a proper investigation, members must notify their supervisor, or if their supervisor is unavailable another supervisor, as soon as possible after a use of force occurs. With rare exception, notification should occur within 30 minutes of a use of force. If a member is unable to contact a supervisor, members may call the Communications supervisor to contact a supervisor to respond to a use of force incident, if required.

*Use of Force Reference Chart on pages 3 and 4.*

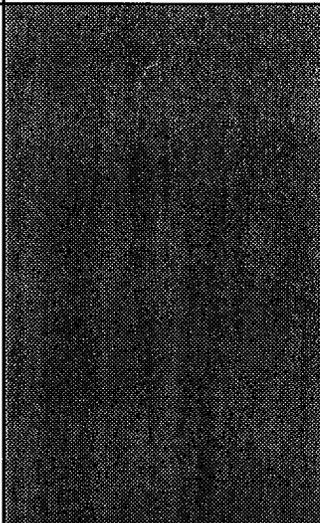
**USE OF FORCE REFERENCE CHART**

Use of force resulting in death	Any strike to the head (except for an intentional strike with an impact weapon).	Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent is applied to a person.	A firearm is intentionally pointed at a person
Intentional firearm discharge at a person, regardless of injury	Carotid restraint is applied that does not result in the loss of consciousness.	The use of a TASER involving any of the following circumstances:  1) When one or more probes impact or penetrate the subject's clothing or skin.  2) When the push stun arc touches the subject's clothing or skin; or  3) A TASER is fired at a person, but misses	A Weaponless Defense Technique is applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line; and shoulder muscle grab).
Serious bodily injuries, to include:  1) Any use of force including the loss of consciousness; and 2) Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis).	Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and contact is made, regardless of injury	Any impact weapon, including specialty impact munitions, or any other instrument is used in attempt to strike another person but no contact is made.	An on-duty firearm discharge to dispatch an injured animal;

Information Bulletin

Effective Date

18 Oct 13

<p>Unintentional firearms discharge:</p> <p>1) If a person is injured as a result of the discharge; or</p> <p>2) As directed by the BOI Deputy Chief</p>	<p>Any unintentional firearms discharge that does not result in injury.</p>	<p>The baton is used for a non-striking purpose (e.g., prying limbs, moving or controlling a person).</p>	<p>A Weaponless Defense Technique Control Hold is applied:</p> <ol style="list-style-type: none"> <li>1) Escort (elbow)</li> <li>2) Twist lock</li> <li>3) Arm-bar</li> <li>4) Bent wrist</li> </ol> <p>A Weaponless Defense Technique Control Hold applied for the purpose of handcuffing or escorts that do not result in injury or a complaint of injury are not reportable uses of force.</p>
<p>Any intentional impact weapon strike to the head.</p>	<p>A police canine bites the clothing or the skin of a subject, or otherwise injures a subject.</p>	<p>A Weaponless Defense Technique other than control holds, excluding strikes to the head. Examples include:</p> <ol style="list-style-type: none"> <li>1) Hand/palm/elbow strikes</li> <li>2) Kicks</li> <li>3) Leg sweeps</li> <li>4) Takedowns</li> </ol>	
<p>Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.</p>	<p>Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.</p>	<p>Any on-duty firearm discharge at an animal other than to dispatch an injured animal.</p>	

PUBLIC SAFETY CMTE.

DEC 15 2015