

COMMUNITY REVIEW BOARD ON POLICE PRACTICES

SPECIAL MEETING AGENDA

**Thursday, June 4, 2020
6p.m. – 7:30p.m.**

This meeting will be available live and online on YouTube. Click [here](#) to view this meeting at its scheduled time. Please see the rules/procedures at the bottom of the page for submitting public comment.

- I. CALL TO ORDER/WELCOME (Chair Joe Craver)
- II. PURPOSE OF THE COMMUNITY REVIEW BOARD ON POLICE PRACTICES (CRB)
- III. ROLL CALL (Chair Joe Craver)
- IV. UNFINISHED BUSINESS (DISCUSSION/ACTION) (2nd Vice Chair Doug Case)
 - A) Community Feedback on SDPD De-escalation Policies (Public Comment)
 - B) CRB Recommendation to SDPD Chief Nisleit to adopt a de-escalation policy & use the Baltimore Police Department's De-escalation Policy as a model - dated 4/13/18
 - i. Baltimore Police Department Use of Force Policy 1115
 - ii. Baltimore Police Department De-escalation Policy 1107
 - iii. PERF Guiding Principles on Use of Force -De-escalation
 - C) SDPD Use of Force Policy -1.04 Administration (CRB received on 5/29/20)
 - D) Suggested Revisions to the SDPD Use of Force Policy

ACTION ITEM: Motion for the Board to approve suggested revisions to the SDPD Use of Force Policy, draft a revised letter to Chief Nisleit based on feedback, and forward the recommendation to Chief Nisleit for consideration.

- V. NEW BUSINESS (DISCUSSION/ACTION) (Chair Joe Craver)
 - A. Community Feedback on Protests (Public Comment)
 - B. CRB Discussion of Community Feedback on Protests

ACTION ITEM:

- VI. BOARD MEMBER ANNOUNCEMENTS/COMMENTS
- VII. CLOSING REMARKS & ADJOURNMENT

Materials Provided:

- CRB Recommendation to San Diego Police Department Chief Nisleit Re: De-escalation 4/3/18
- Baltimore Police Department Use of Force Policy 1115
- Baltimore Police Department De-escalation Policy 1107
- PERF Guiding Principles on Use of Force: De-escalation
- San Diego Police Department Use of Force Policy – 1.04 Administration
- Suggested Revisions to SDPD Use of Force Policy
- San Diego Police Department Procedures for Handling Incidents Involving Expressive Activity and First Amendment Rights

Comment on Agenda Items must be submitted using [webform](#), checking the appropriate comment type box, and indicating the agenda item number they wish to submit their comment for. Instructions for word limitations and deadlines are noted on the [webform](#). On the [webform](#), members of the public should select Community Review Board on Police Practices (even if the public comment is for a Community Review Board on Police Practices Committee meeting). Only comments submitted no later than 4:00 p.m. the day prior to the meeting using the public comment form will be eligible to be read into the record. If you submit more than one form per item, only one will be read into the record for that item. **Comments received after 4:00 p.m. the day prior and before 8:00 a.m. the day of the meeting** will be provided to the Board and posted online with the meeting materials. All comments are limited to 200 words. Comments received after 8:00 a.m. the day of the meeting but before the item is called will be submitted into the written record for the relevant item.

If you attach any documents to your comment, it will be distributed to the Board in accordance with the deadlines described above.



THE CITY OF SAN DIEGO

MEMORANDUM

Date: April 3, 2018

To: David Nisleit, Chief, San Diego Police Department

From: Douglas Case, Chair, Community Review Board on Police Practices

Via: Sharmaine Moseley, Executive Director, Community Review Board on Police Practices

Subject: Community Review Board Recommendations to the San Diego Police Department

At its Open Session Meetings on November 28, 2017 and March 27, 2018, the Community Review Board on Police Practices (CRB) voted to make the following policy recommendations to the San Diego Police Department (SDPD) for its consideration:

- 1) The CRB recommends that the SDPD establish a policy that would prohibit officers from viewing surveillance videos or Body Worn Camera (BWC) videos of other officers videos prior to being interviewed by Internal Affairs.
- 2) The CRB recommends that SDPD require that an officer writing a report in a use of force incident not be permitted to view his/her own BWC video prior to writing an initial report. The officer should have the option of writing a supplemental report after viewing the video. Officers should not be permitted to view their BWC video prior to being interviewed in in-custody death and officer-involved shooting cases.

By law, the reasonableness of use of force must be determined by an officer's perceptions at the time of the incident. Cognitive science research indicates that the introduction of post-event information, such as reviewing video footage, can permanently alter one's memories of events. Pre-report viewing of BWC video could cause an officer to conform the report to what the video appears to

show, rather than what the officer actually saw.

Allowing officers to submit a supplemental report after viewing video gives them an opportunity to document information that a video refreshes in their memory, as well as to include information that they may not have been aware of at the time because their attention was focused elsewhere.

- 3) The CRB recommends that SDPD adopt a de-escalation policy and use the Baltimore Police Department's policy as a model. The PERF Guiding Principles on the Use of Force (2016) recommend that departments adopt de-escalation as a formal agency policy. The CRB commends SDPD for its programs training officers on de-escalation techniques, but expectations need to be included in the Use of Force policy. Baltimore's policy is balanced and recognizes that de-escalation is not possible or appropriate in all circumstances.
- 4) The CRB recommends that SDPD change unlawful detention and unlawful search and seizure complaints to Category I. These violations of constitutional rights are significantly more serious than other procedural violations such as failure to complete required forms. The level of discipline per the SDPD Misconduct Related Discipline Matrix for these violations are comparable to Category I complaints.

Thank you for your consideration on the CRB's policy recommendations. If you have any questions please do not hesitate to contact me at 619-743-4996.

cc: Mayor Kevin L Faulconer
Kris Michell, Chief Operating Officer
Aimee Faucett, Chief of Staff
Todd Jarvis, Executive Assistant Chief
Wes Morris, Captain, Internal Affairs
Members of the Community Review Board on Police Practices



Policy 1115

Subject

USE OF FORCE

Date Published

1 July 2016

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By Order of the Police Commissioner

POLICY

1. **Sanctity of Human Life.** The policy of the Baltimore Police Department (BPD) is to value and preserve human life in all situations.
2. **Use of Force: Objectively Reasonable, Necessary, and Proportional.** Members shall use only the force objectively reasonable, necessary, and proportional to effectively and safely resolve an incident, while protecting the lives of the member or others. The BPD places restrictions on use of force that go beyond restrictions set forth by law.
3. **De-Escalation.** Members shall de-escalate as soon as possible and appropriate. Members may be justified in using force at one moment, but not justified in using force several seconds later due to the changing dynamics of a situation.
 - 3.1. Members shall continually assess the situation and changing circumstances, and modulate their use of force appropriately.
 - 3.2. When possible, members should “slow down” the situation and re-assess how they can achieve the most peaceful outcome.
 - 3.3. Recognizing that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues can cause individuals to behave erratically, members must try to de-escalate situations and minimize or avoid using force altogether, when possible, to prevent injuries to the subject, the public and the member.
4. **Reporting and Review.** Members are responsible for explaining and articulating the specific facts, and reasonable inferences from those facts, which justify the member’s use of force. When members do use force, the BPD is committed to thoroughly reviewing, investigating, and documenting the actions taken to determine if the use of force was consistent with BPD policy and training.
5. **Duty to Intercede.** Members have a duty to intercede to prevent the use of excessive force by another member toward any person.
6. **Duty to Provide Medical Assistance.** After any use of force incident, members shall immediately render aid to the injured person consistent with his/her training and experience and request medical assistance.

GENERAL

Sworn members are granted the authority to use force when necessary to accomplish lawful ends. This authority is grounded in the laws of the State of Maryland, the United States Constitution, and the provisions of this policy. Where members are justified in the use of force, the utmost restraint should be exercised. When practical, members should announce that force will be utilized prior to the application of such force.

This policy reinforces the responsibility of members to take those steps possible to prevent or stop the illegal or inappropriate use of force by other members. Every member is expected and required to take appropriate action, and to report to a supervisor any situation where that member is aware that another member is using force in violation of the law or BPD policy.

The decision to use force may be irrevocable. Many times the decision to use force is made in rapidly unfolding and highly stressful situations. Sound judgment and the appropriate exercise of discretion will be the foundation of decision making in the broad range of possible use of force situations.

Every use of force by a member of the BPD must be reported to a supervisor. Any member with knowledge that another member used force must also report that use of force to a supervisor. The supervisor will conduct a thorough review of the use of force, and document this review by completing a Blue Team entry before the conclusion of the supervisor's tour of duty.

DEFINITIONS

Passive Resistance — Subject is not physically cooperating with officer's attempts to restrain him/her, but he/she is not assaulting the officer or trying to escape (e.g., going limp).

Active Resistance — Resistance exhibited by a suspect that is between Passive Resistance and Active Aggression (e.g., attempts to leave the scene, flee, hide from detection, or pull away from the officer's grasp). Verbal statements, bracing, or tensing alone do not constitute Active Resistance.

Active Aggression — A subject's attempt to attack or an actual attack on an officer or another person. Exhibiting aggressive behavior (e.g., lunging toward the officer, taking a fighting stance, striking the officer with hands, fists, kicks) are examples of Active Aggression. Neither passive nor Active Resistance, including fleeing, pulling away, bracing, or tensing, constitute Active Aggression.

Aggravated Aggression — When a subject's actions create an objectively reasonable perception on the part of the officer that the officer or another person is subject to imminent death or serious physical injury as a result of the circumstances and/or nature of an attack. Aggravated Aggression represents the least encountered but most serious threat to the safety of law enforcement personnel or another person.

Conducted Electrical Weapon (CEW) — A weapon designed primarily to discharge electrical impulses into a subject that will cause involuntary muscle contractions and override the subject's voluntary motor responses.

Deadly Force/Lethal Force — Any force likely to cause death or serious physical injury. The discharge of a firearm at an individual is considered a use of deadly force. The intentional use of an impact weapon such as a baton to the subject's head, neck, sternum, spine, groin, or kidneys.

Force Transition — Force transition is the movement from the application of one force type to another consistent with the “objectively reasonable” standard (e.g., escalation/de-escalation).

In-Custody Death — An incident in which an arrestee/detainee died while in, or as an apparent result of being in, BPD custody.

Imminent Danger — Actions or outcomes that may occur during an encounter which places the member in immediate fear for his/her safety or the safety of others. Imminent danger may be present even if a subject is not actively pointing a weapon at the law enforcement officer, but is carrying a weapon and running for cover to gain a tactical advantage over the officer. The period of time which is considered imminent and/or immediate may change as the circumstances and facts evident in each situation change. It is not the same in all situations.

Less-Lethal Force — Force employed that is neither likely nor intended to cause death or serious physical injury (e.g., DS-3027 bean bag, FN-303, PepperBall rounds, CEW, etc).

Less-Lethal Launcher — An apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious physical injury than a conventional lethal weapon such as a firearm. Less-lethal launchers are only approved for use by Mobile Field Force (MFF) and SWAT members.

Mechanical Force — The use of a device or object, other than a firearm, to overcome a subject’s resistance to the exertion of the member’s authority (e.g., use of a baton, canine, CEW or chemical agent).

Physical Force — Any physical coercion by an officer in performance of official duties.

Reasonable Force — Force that is objectively reasonable and necessary under the circumstances to effect an arrest or protect the officer or other person.

Reportable Force — A use of force by a member which requires notification to a permanent-rank supervisor, and other action consistent with this policy.

Serious Physical Injury — Bodily injury that involves a substantial risk of death, unconsciousness, disfigurement, broken bones, protracted loss or impairment of an organ or mental faculty.

Totality of Circumstances — Those circumstances that would lead an objectively reasonable officer to believe that he/she is encountering a situation that may require the use of force on a subject. Circumstances to consider may include the nature of the offense, seriousness of the offense, size and strength of the subject, number of subjects, availability of weapons, mental instability of the subject, availability of other force options, training and experience of the member and subject, environmental factors, and availability of back up and specialized units. This list is not meant to be exhaustive.

Use of Force Model — An illustration that provides guidelines for officers to consider in making critical use of force decisions. (See Appendix B).

USE OF FORCE POLICY

BPD members will use only the degree of force that is objectively reasonable, necessary under the circumstances, and proportional to the threat or resistance of a subject.

1. **Objectively reasonable:** The reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force.
 - 1.1. Reasonableness must be judged from the perspective of a reasonable officer on the scene, rather than with the benefit of hindsight.
 - 1.2. The reasonableness standard is an objective one: whether the member's actions are objectively reasonable in light of the facts and circumstances confronting him or her, without regard to the member's underlying intent or motivation.
 - 1.3. Reasonableness is not capable of precise definition or mechanical application. The reasonableness standard must allow for the fact that members are often forced to make split-second decisions - in circumstances that are tense, uncertain, dynamic and rapidly evolving - about the amount of force that is necessary in a particular situation.
2. **Necessary:** Officers will use physical force only when no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.
3. **Proportional:** The level of force applied must reflect the totality of circumstances surrounding the situation, including the presence of imminent danger to officer or others. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.
 - 3.1. The use of excessive and unwarranted force or brutality will not be tolerated under any circumstances.

DE-ESCALATION

Members shall use de-escalation techniques whenever possible and appropriate, before resorting to force and to reduce the need for force. De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as slowing down the pace of an incident, waiting out subjects, creating distance (and thus the reactionary gap) between the member and the threat, and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.

1. When reasonable under the totality of circumstances, members should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force.
2. Members should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance in order to de-escalate a situation or consider or deploy a greater variety of force options, including lesser force or no force at all.
3. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

4. Members shall not use tactics designed to intentionally escalate the level of force.

USE OF DEADLY FORCE

1. A member may use deadly force when he/she reasonably believes such action is immediately necessary to protect a member or another person from imminent danger of death or serious physical injury.
2. A member may use deadly force to prevent the escape of a fleeing suspect if an objectively reasonable officer would believe that it is necessary and that there is probable cause to believe that:
 - 2.1. The suspect has committed or is in the process of committing a felony involving the infliction or threatened infliction of serious physical injury or death, and
 - 2.2. The escape of the suspect would pose an imminent danger of death or serious physical injury to the officer or another person unless the suspect is apprehended without delay, and
 - 2.3. The officer has given a verbal warning to the suspect, if time, safety, and circumstances permit.
3. When practical, a member should identify himself/herself as a law enforcement officer and state his/her intention to use deadly force before using a firearm or employing deadly force.

Restrictions on the Use of Deadly Force

1. A member shall not use deadly force to subdue persons whose actions are a threat only to property.
2. Deadly force shall not be used against persons whose conduct is a threat only to themselves.
3. Choke holds are prohibited unless deadly force is authorized and no reasonable alternative exists.
4. Members shall not fire any weapon from or at a moving vehicle, except:
 - 4.1. To counter an imminent threat of death or serious physical injury to the member or another person, by a person in the vehicle using means other than the vehicle.
 - 4.2. To counter a situation where the officer is unavoidably in the path of the vehicle and cannot move to safety. **Officers should avoid positioning themselves in the path of a moving vehicle where they have no option but to use deadly force.**
5. Warning shots are prohibited.

DUTY TO INTERCEDE

Members have a duty to intercede to prevent the use of excessive force by another member toward any person. Intervention may be verbal and/or physical. Failure to intercede may subject a member to disciplinary action. Members must immediately notify a supervisor after such an intervention, when safe to do so.

DUTY TO PROVIDE MEDICAL ASSISTANCE

1. Whenever there is an obvious injury, complaint of injury, or medical attention is requested by any individual, members shall immediately render aid consistent with his/her training and experience and notify the Communications Unit. Members shall request that a medic respond to the scene or transport the individual directly to the nearest hospital emergency room.
2. If an individual has been subjected to impact by a less-lethal impact projectile, he/she will be provided with medical treatment. If the individual refuses medical treatment or leaves the location, members must document the actions taken to identify and render aid to the individual in the Use of Force review.
3. If an individual has been subjected to the use of a CEW, the individual shall be provided with medical treatment.
4. Additional care and caution should be exercised when encountering individuals who are pregnant, suffering from pre-existing injuries, elderly, children, frail, have a low body mass, are experiencing a medical or mental health crisis, or are otherwise apparently vulnerable or in distress.

DANGEROUS ANIMALS

1. Members are permitted to use force to stop a dangerous animal in circumstances where the animal reasonably appears to pose an imminent threat to human or animal safety and alternative options are not available or would likely be ineffective.
2. Members shall conduct pre-raid surveillance prior to executing a Search and Seizure Warrant, in an effort to determine if a dangerous animal may be present at the location to be searched.
3. Members shall develop a reasonable contingency plan to control/avoid a dangerous animal prior to confronting the animal when given advance notice that a dangerous animal may be encountered (e.g., dog pole, fire extinguisher, etc.).

TRAINING REQUIREMENTS

1. The Professional Development and Training Academy (PDTA) shall conduct and document annual training for all members on the lawful and appropriate use of force and deadly force. This training shall:
 - 1.1. Reflect current Maryland Police and Correctional Training Commissions (MPCTC) training standards.

- 1.2. Include, but not be limited to, the use of force in general, de-escalation and tactical alternatives to the use of force, the use of physical and mechanical force, the use of deadly force, and the limitations that govern the use of force and deadly force.
2. Training records shall include at a minimum the name of the member who received the training, type of training conducted and date the training was completed. These records shall be maintained/retained electronically, accessible for supervisory review.

REPORTING USE OF FORCE OR CERTAIN THREATS OF FORCE

Reportable Force includes any physical force required to overcome resistance by a subject to gain control or where there is an injury or allegation of injury, and certain threats of force as explained below.

All use of force or threats of force incidents shall be documented and reviewed by a permanent-rank supervisor not involved in the incident. In an effort to provide guidance for reporting/review requirements, incidents will be categorized as Level 1, Level 2, or Level 3 Reportable Force.

Level 1 Reportable Force and/or Threat of Force:

Types of Level 1 Reportable Force include:

1. Use of physical force to gain control of an individual exhibiting Active Resistance or more aggressive behavior that does not result in actual or alleged injury (See Level 2 and Level 3 Reporting requirements for instances where actual or alleged injury occurs).
2. Pointing a firearm or CEW at an individual.
3. "Cycling" a CEW as a form of warning ("Displaying the Arc").
4. Forcible takedowns without obvious injury or complaint of injury.

Member Requirement:

Members using Level 1 Reportable Force and/or Threat of Force shall immediately notify a permanent-rank supervisor. The involved officer shall document the circumstances surrounding the use of force and/or above referenced threat of force on an Administrative Report, Form 95. The name and sequence number of the notified supervisor shall be included in the report.

First-Line Permanent-Rank Supervisor Requirement:

The first-line permanent-rank supervisor not involved in the incident shall make an entry into Blue Team documenting the use of force and whether there is a body worn camera recording before the conclusion of the supervisor's tour of duty.

A supervisor not involved in the incident shall tag and download any data available from body worn cameras in accordance with Policy 824, *Body Worn Cameras*.

Level 2 Reportable Force:

Types of Level 2 Reportable Force include:

1. Any physical contact with a suspect and/or arrestee resulting in an injury or complaint of injury.
2. Application of three or fewer CEW cycles to an individual during a single encounter or application of a CEW on an individual in drive stun mode.
3. Any use of OC spray or other chemical weapons.
4. Any discharge of a less-lethal launcher/munition.
5. Any canine inflicted injury.
6. Any strike, other than any intentional strike to the head, neck, sternum, spine, groin, or kidney area with an impact weapon (See definition of “deadly force” and Level 3 Reporting requirements in this policy).
7. Any intentional striking of a vehicle or subject with a vehicle.

Member Requirement:

Members using Level 2 Reportable Force shall immediately notify a permanent-rank supervisor. The involved officer shall document the circumstances surrounding the use of force on an Administrative Report, Form 95. The name and sequence number of the notified supervisor shall be included in the report.

First-Line Permanent-Rank Supervisor Requirement:

The first-line permanent-rank supervisor not involved in the incident shall respond to the scene and conduct a complete Use of Force review, consistent with this policy (See Appendix A). The first-line permanent-rank supervisor shall make an entry into Blue Team documenting the use of force and whether there is a body worn camera recording before the conclusion of the supervisor’s tour of duty.

A supervisor not involved in the incident shall tag and download any data available from body worn cameras in accordance with Policy 824, *Body Worn Cameras*.

Level 3 Reportable Force:

Types of Level 3 Reportable Force include:

1. Any use of deadly force or incident involving the death of a person while in police custody.
2. Any firearm discharge by a member, including unintentional discharges.
3. Any use of force causing great or substantial bodily injury, including injury resulting in hospital admission, loss of consciousness, or a broken bone.
4. A strike to the head, neck, sternum, spine, groin, or kidneys with an impact weapon.

5. Application of greater than three CEW cycles to an individual during a single encounter.
6. Any incident involving significant misconduct by an officer in the use of force.

Member Requirement:

Members using Level 3 Reportable Force shall immediately notify a permanent-rank supervisor.

First-Line Permanent-Rank Supervisor Requirement:

The first-line permanent-rank supervisor shall immediately notify the Special Investigation Response Team (SIRT) to respond to the scene. SIRT will lead all investigative activity. The SIRT supervisor shall make an entry into Blue Team documenting the use of force and whether there is a body worn camera recording before the conclusion of the SIRT supervisor's tour of duty.

A SIRT supervisor not involved in the incident shall tag and download any data available from body worn cameras in accordance with Policy 824, *Body Worn Cameras*.

NOTE: Refer to Policy 710, *Serious Use of Force and in Custody Death Response* and Policy 824, *Body Worn Cameras* when handling a Level 3 Use of Force incident.

First-Line Permanent-Rank Supervisor Responsibilities

When notified of a reportable use of force by a member under your supervision:

1. Immediately respond to the scene and attend to the well-being of any injured member and/or person.
2. Conduct a Use of Force review in accordance with Guidelines for Supervisory Use of Force Reviews. (See Appendix A and Appendix C).
3. Use of Force reviews must be personally conducted by permanent-rank Sergeants or above not involved in the use of force incident. Officers in Charge (OIC) are not authorized to perform this function.
4. Ensure injuries and/or claims of injury to members and involved persons are documented.
5. A supervisor not involved in the incident shall tag and download any data available from body worn cameras in accordance with Policy 824, *Body Worn Cameras*.
6. Notify SIRT when a Level 3 Use of Force has occurred.
7. Enter the use of force incident into Blue Team before the end of your tour of duty.
8. Ensure all supporting documentation, including statements, photographs, videos, and reports are scanned and/or uploaded to Blue Team within 72 hours of the event.
9. Investigate any incident in which a member intercedes in another member's use of force. Take appropriate action and document in Blue Team before the end of your tour of duty.

If allegations of Excessive Force arise:

1. Provide any complainant/interested party with the contact information for the Office of Professional Responsibility (OPR) and the Civilian Review Board (CRB).
2. Take appropriate investigative measures and forward all reports to your Commanding Officer.

Commanding Officer Responsibilities

1. Critically review the first-line permanent-rank supervisor's Use of Force review within 10 days of completion. Determine if the involved member's actions were consistent with BPD policies and procedures and whether the actions were within the scope of the member's authority.
2. If the member's use of force does not appear consistent with BPD policy, the matter shall be referred to the Chief, Office of Professional Responsibility (OPR), for investigation.
3. If the Use of Force review indicates the need for supplementary or remedial training, the reviewing Commanding Officer should arrange for such training. When such training occurs, the Commanding Officer will ensure that documentation of training is uploaded to Blue Team.
4. Ensure that all materials such as witness statements, photographs, videos, and Form 95s have been uploaded to the Blue Team use of force event entry.
5. Notify Executive Command Staff and the Media Relations Section (MRS) of any incident the media may consider noteworthy and whether there is a body worn camera recording of the incident.

Chief, Office of Professional Responsibility (OPR), Responsibilities

1. Ensure proper and complete entry has been made in Blue Team.
2. Maintain statistical data of uses of force for inclusion in periodic reporting and the Early Intervention System (EIS).
3. Refer and present all Level 3 force investigations to the Performance Review Board (PRB) at the conclusion of the investigation. (Refer to Policy 724, *Performance Review Board* for the full PRB policy).

Chief, Compliance Accountability and External Affairs Division (CAEAD), Responsibilities

1. Ensure Use of Force reporting and review requirements under this policy are met.
2. Review all Level 2 Reportable Force reviews for strict conformity with BPD policy and training.
3. Conduct audits of all supervisory Use of Force reviews for compliance with any operative legal agreements.

Director, Professional Development and Training Academy (PDTA), Responsibilities

1. Provide training to all members in the proper use of force and reporting guidelines.

2. Maintain electronic training records to include the name of the member who received the training, type of training conducted and date the training was completed. These records shall be accessible for supervisory review.
3. Provide supplementary or remedial training to members when referred by supervisors, commanders, or the Performance Review Board.

APPENDICES

- A. Guidelines for Supervisory Use of Force Reviews
- B. Use of Force Model
- C. Use of Force Preliminary Review Checklist for Supervisors

ASSOCIATED POLICIES

Policy 302, *Rules and Regulations*
Policy 409, *Firearms Regulations*
Policy 414, *Less-Lethal Munitions and Chemical Agents*
Policy 703, *Death and Serious Assault Investigations*
Policy 710, *Serious Use of Force and In-Custody Death Response*
Policy 719, *Conducted Electrical Weapon*
Policy 724, *Performance Review Board*
Policy 824, *Body Worn Cameras*
Policy 1112, *Field Interviews, Investigative Stops, Weapons Pat-Downs and Searches*
Policy 1114, *Persons in Police Custody*
Policy 1118, *Oleoresin Capsicum Spray*
Policy 1503, *Emergency Vehicle Operation and Pursuit Policy*
Policy 1602, *Canine Procedures*

RESCISSION

Remove and destroy/recycle General Order K-15, Use of Force, dated 18 September 2003 and amendment dated 21 May 2007.

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Commanders are responsible for informing their subordinate of this policy and ensuring compliance.

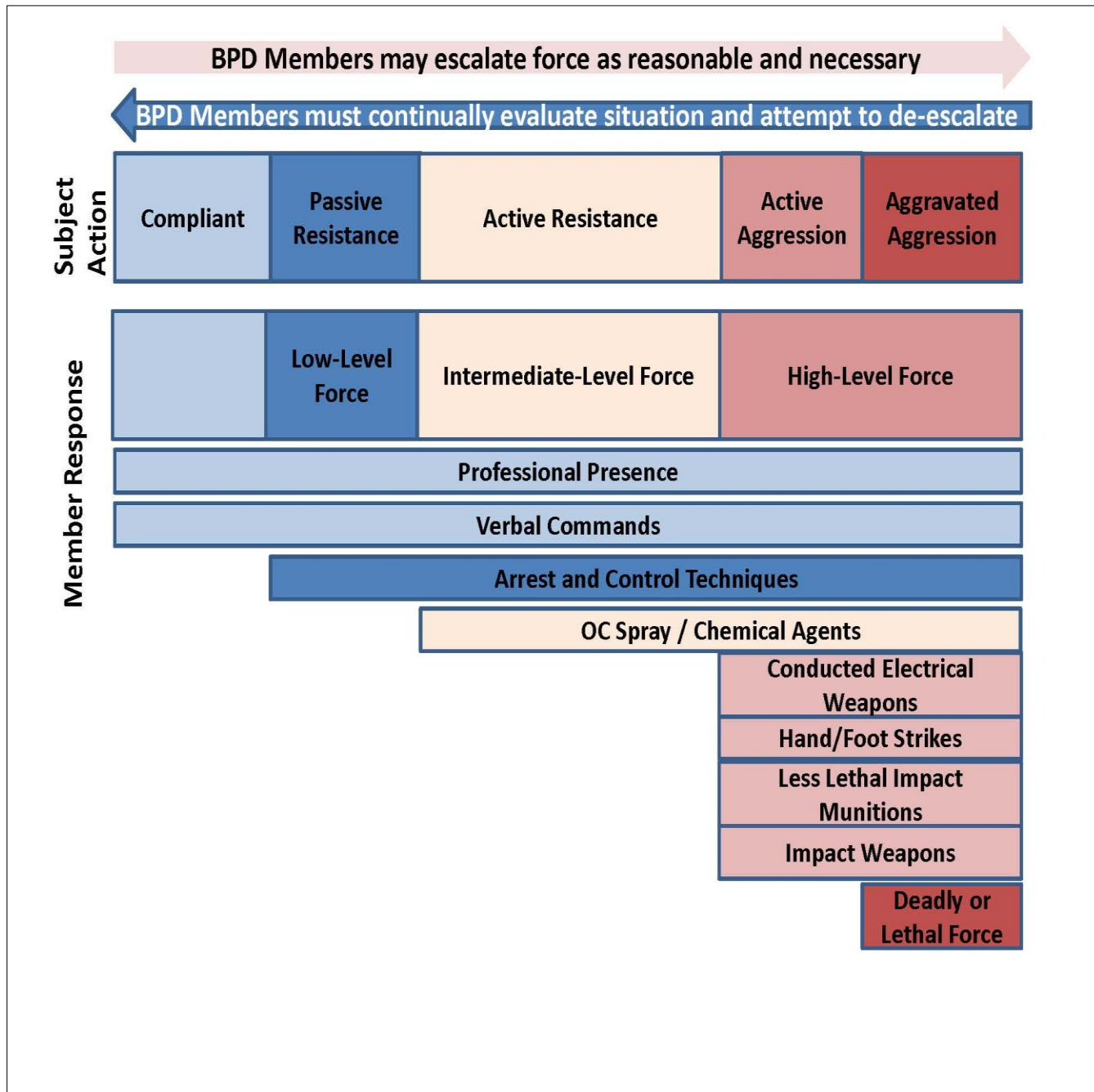
APPENDIX A

Guidelines for Supervisory Use of Force Reviews

1. Provide a fair, accurate, and impartial reporting of the facts. Assumptions, theories and editorial comments do not belong in use of force reports. The purpose of the supervisory review is to ensure compliance with policy and improve performance.
2. Do not compel involved members to submit to an interrogation about the use of force.
3. Review body worn camera (BWC) and CCTV video which may have recorded all or part of the incident. Document the content of such videos. A copy of such videos should be obtained and attached to the Blue Team use of force entry. BWC footage need not be uploaded.
4. Conduct and document a neighborhood canvass for witnesses. Attempt to locate privately-owned surveillance cameras that may have recorded all or part of the incident. If located, such videos must be recovered and included in the review prepared by the supervisor.
5. Include the full name, address, race, sex, date of birth and phone numbers of all subjects and witnesses.
6. Obtain written statements, Form 95s, from involved members and witness members.
7. Attempt to obtain written statements from other subjects or witnesses.
8. Document your on-scene actions and observations.
9. Photograph all injuries and/or claims of injury to anyone involved. Upload the photographs into Blue Team.
10. Provide a statement denoting the lack of injury to each participant.
11. Note any departmental or private property damaged as a result of a member's involvement.
12. Include a brief summary of the disposition of the subject after force was used, such as released, charges filed, or sent to hospital for evaluation.
13. Include drawings if they can help explain the facts in a complex incident.
14. Render an opinion as to whether or not the use of force was consistent with BPD policy and training.
15. Complete Blue Team entry prior to the conclusion of your tour of duty.
16. Each higher ranking member in the chain of command will review the reviewing supervisor's report. Concurring or non-concurring opinions must be entered into Blue Team. This duty may not be delegated. Members of the chain of command must personally conduct the review within 10 days of completion.

APPENDIX B

Use of Force Model



APPENDIX C

Use of Force Preliminary Review Checklist for Supervisors

Baltimore Police Department**Use of Force Preliminary Review Checklist for Supervisors**

#	Action Steps	Y	N	Comment
1.	Identify all involved members.			
2.	Collect Administrative Reports (Form 95s) from involved members in Level 1 and Level 2 Reportable Use of Force Incidents.			
3.	Identify all witnessing members.			
4.	Collect Administrative Reports (Form 95s) from witnessing members in ALL Reportable Use of Force Incidents.			
5.	Identify and interview all witnessing civilians.			
6.	Attempt to obtain written statements from civilian witnesses.			
7.	Obtain contact information for witnessing civilians.			
8.	Ensure Crime Lab recovers/submits any items of evidentiary value.			
9.	Take note of any CCTV or other surveillance cameras in area, document locations, and attempt to review and retrieve the footage; if unable to view or retrieve document reason why. If footage is retrieved, upload the footage into Blue Team.			
10.	Review and tag body-worn camera (BWC) footage.			
11.	Note any departmental or private property damaged as a result of a member's involvement and photograph the damage.			
12.	Photograph all injuries and/or claims of injury to anyone involved.			
13.	Photograph anyone involved to denote the lack of injury to each participant when applicable.			
14.	Photograph the exact location of the body where CEW probes, baton strikes, hand/foot strikes, etc. impacted the body of the suspect or officer.			
15.	Photograph the scene in an attempt to accurately depict lighting, weather, vehicle placement, points of cover, etc.			
16.	Include drawings if they can help explain the facts in a complex incident.			
17.	Document your on-scene actions.			
18.	Include a brief summary of the disposition of the subject after force was used, such as released, charges filed, or sent to the hospital for evaluation.			
19.	Render an opinion as to whether or not the use of force was consistent with departmental policy and training.			
20.	Complete Blue Team entry prior to the conclusion of your tour of duty.			



Policy 1107

Subject

DE-ESCALATION

Date Published

24 November 2019

Page

1 of 6

By Order of the Police Commissioner

POLICY

The purpose of this policy is to ensure that members use De-Escalation Techniques to reduce threats, gain the voluntary compliance of persons, and safely resolve a situation. When feasible, reducing the need for force allows members to secure their own safety as well as the safety of the public.

While members must at all times comply with the minimum legal requirements governing the use of force, they must also comply with even stricter standards set forth by Department policy.

CORE PRINCIPLES

1. **Sanctity of Human Life.** Members shall make every effort to preserve human life in all situations.
2. **Value and Worth of All Persons.** All human beings have equal value and worth and members shall respect and uphold the value and dignity of all persons at all times.
3. **Peaceful Resolutions.** Members shall avoid the use of force unless it is not possible to do so.
4. **De-Escalation.** Members shall use de-escalation techniques and tactics to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.
5. **Avoiding Escalation.** Members shall not do or say anything that escalates an encounter unless necessary to achieve a lawful purpose.
6. **Assessment.** Members shall continuously assess each situation and change the member's response as the circumstances change. Members may be justified in using force in one instance, but not justified in using force an instant later. This duty to assess includes the continuous assessment of circumstances before and after the member discharges a firearm.
7. **Use of Force: Reasonable, Necessary, and Proportional.** Members shall use only the force reasonable, necessary, and proportional to respond to the threat or resistance to effectively and safely resolve an incident, and will immediately reduce the level of force as the threat or resistance diminishes.
8. **Reporting Use of Force.** Each member who uses force, or observes another member or members use force, shall immediately notify their supervisor, and will accurately and completely report the use of force by the end of their tour of duty (See Policy 725, *Use of Force Reporting, Review, and Assessment*).

9. **Duty to Intervene.** Members shall intervene to prevent the abusive conduct or the use of excessive force by another member (See Policy 319, *Duty to Intervene*).
10. **Duty to Provide Medical Assistance.** After any use of force incident, members shall immediately render aid to any injured person consistent with the member's training and request medical assistance.
11. **Accountability.** Members who exhibit excellence in deploying De-Escalation Techniques will be recognized and commended for their efforts.
12. **Sound Tactics.** Members shall comply with Departmental policy, follow training, exhibit sound tactics, and will be held accountable for poor tactical decisions, including failure to de-escalate and uses of force that violate law or policy.
13. **Retaliatory Force.** Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason (See Policy 804, *First Amendment Protected Activity*).

DEFINITIONS

De-Escalation Techniques — Techniques used to minimize the need to use force and increase the likelihood of voluntary compliance. These techniques may include, but are not limited to, persuasion, warnings, creating space, use of physical barriers, slowing down the pace of an incident and requesting additional resources.

Totality of Circumstances — The Totality of the Circumstances consists of all facts and circumstances surrounding any event. The facts and circumstances shall include but are not limited to:

- Whether an offense has occurred;
- The nature of the offense;
- The seriousness of the offense;
- The size and strength of the subject;
- The number of subjects;
- The availability of weapons;
- Whether the subject is exhibiting signs of mental illness or is experiencing a behavioral health crisis;
- Whether a person suffers from a medical or behavioral health disability, physical or hearing impairment, is impaired by alcohol or drug use, or may be non-compliant due to a language barrier;
- Other force options;
- Availability of non-force options including tactical repositioning, going to cover, or other De-Escalation Techniques;
- Environmental factors such as backdrop;
- The availability of back up and specialized units.

GENERAL

1. De-Escalation Techniques seek to minimize the likelihood to use force during an incident, increase the likelihood of voluntary compliance, and/or lessen the amount of force that may be needed.
2. De-Escalation Techniques involve a range of tactics that can assist in slowing down or stabilizing an incident so that - when safe and feasible under the Totality of Circumstances - more time, options, and resources become available to safely resolve an incident.
3. The employment of De-Escalation Techniques is especially important to maintain member and individual safety during encounters with children, youth, and persons experiencing a behavioral health disorder or in crisis.

Examples of De-Escalation Techniques

De-Escalation Techniques may include, but are not limited to:

1. Communication techniques to calm an agitated subject and promote rational decision making such as:
 - 1.1. Ensuring that only one member addresses the person and that other members present remain detached as much as safety permits.

NOTE: The presence of multiple officers that are issuing commands to an agitated subject may escalate the incident by increasing the likelihood of miscommunication, and is less likely to result in a peaceful resolution. Whenever possible, only one member shall communicate with and address the person.

- 1.2. Regulating vocal tone and pitch (e.g., speaking slowly in a calm voice, rather than shouting commands),
- 1.3. Using calming gestures and facial expressions (e.g., arms extended with palms out; avoiding angry expressions),
- 1.4. Sharing the member's name, asking the person his/her name, and exhibiting a genuine willingness to listen,
- 1.5. Practicing procedural justice techniques, such as explaining the member's actions and responding to questions (e.g., directly answering questions about why the police are there or taking action),
- 1.6. Verbal persuasion (e.g., explaining, without threats, how the person would benefit from cooperation),
- 1.7. Verbal advisements (e.g., respectfully explaining the person's rights or what the police want the person to do),
- 1.8. Verbal warnings (e.g., when necessary, notifying the person of the consequences of continued non-cooperation and then offering the person a chance to cooperate), and

- 1.9. Avoiding the unnecessary display of weapons, including the CEW, a firearm, a baton, or OC Spray.
2. Decreasing the exposure to the potential threat by moving to a safer position. This may involve:
 - 2.1. Creating distance,
 - 2.2. Seeking cover,
 - 2.3. Tactical repositioning,
 - 2.4. Concealment, and/or
 - 2.5. Placing barriers between an uncooperative person and the member.
3. Slowing down the pace of the incident by slowing your speech, taking deep breaths, and/or applying the critical thinking framework, including:
 - 3.1. Waiting out the person,
 - 3.2. Avoiding physical confrontation,
 - 3.3. Calling for extra resources outside of the person's hearing, whenever possible such as:
 - 3.3.1. Additional members,
 - 3.3.2. Specially-trained members (e.g., BEST-trained members, CIT-trained members, behavioral health care providers, negotiators, Qualified Bilingual Members, etc.), and
 - 3.3.3. Members equipped with less-lethal tools.

REQUIRED ACTION

Member

1. As part of their tactical planning, members should begin to think through De-Escalation Techniques and the critical thinking framework (See Policy 1115, *Use of Force*) prior to arriving on the scene.
2. Members will use De-Escalation Techniques to reduce threats, gain the voluntary compliance of persons, and safely resolve a situation.
3. Members shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions including, but not limited to, immediately approaching a subject without proper evaluation of the situation, failing to leave sufficient space between the member and the subject, closing the reactionary gap, or escalating a situation.

4. When time and circumstances reasonably permit, members shall consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to:
 - 4.1. Medical conditions,
 - 4.2. Behavior health disability,
 - 4.3. Developmental disability,
 - 4.4. Physical limitation,
 - 4.5. Language barrier,
 - 4.6. Drug interaction, and/or
 - 4.7. Behavioral health crisis.

NOTE: A member's awareness of these possibilities, when time and circumstances reasonably permit, shall then be balanced against the facts of the incident facing the member when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

5. During encounters with children, youth, and/or persons experiencing behavioral health disorders or in crisis, members will employ developmentally-appropriate, trauma-informed tactics including, but not limited to, using a calm and natural demeanor, and avoiding threatening language.
 - 5.1. Members will account for any fear-based reactions that children, youth, and/or persons experiencing behavioral health disabilities or in crisis may experience during an encounter with law enforcement.
 - 5.2. If attempts to de-escalate an encounter with a child, youth, or person experiencing a behavioral health disability or in crisis are unsuccessful to resolve the incident, and a use of force is reasonable, necessary, and proportional, members shall consider personalized factors of the individual, including:
 - 5.2.1. Apparent age,
 - 5.2.2. Body size,
 - 5.2.3. Strength of the member relative to the individual, and
 - 5.2.4. The risk posed by the individual.
6. Any force used shall be de-escalated immediately as resistance decreases. If the individual stops resisting, the member must stop using force.

Supervisor

Supervisors shall:

1. Ensure appropriate number of officers respond promptly to an incident,
2. Assess member's tactical positioning and/or deployment of specialized equipment (e.g., bunker, CEW, less-lethal equipment),
3. Assess whether member successfully employed De-Escalation Techniques during a use of force review, and
4. Provide timely and constructive feedback directly to the member (see Policy 725, *Use of Force Reporting, Review, and Assessment*), and/or refer the member to further training if deficiencies are noted.

Education and Training (E&T) Academy

The Director, E&T shall:

1. Annually provide all patrol members with Integration of Communication, Assessment, and Tactics (ICAT) De-Escalation Program.
2. Provide updates and re-certification to all patrol members in De-Escalation Techniques during in-service training.

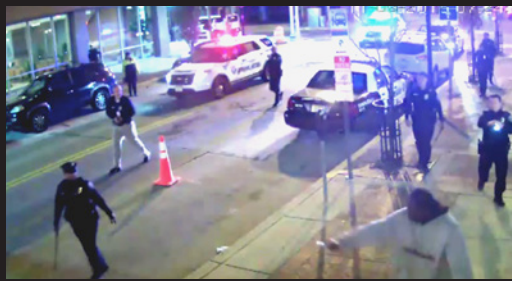
ASSOCIATED POLICIES

Policy 319, *Duty to Intervene*
Policy 712, *Crisis Intervention Team*
Policy 713, *Responding to Mental Health Emergencies and Petitions for Emergency Evaluations*
Policy 725, *Use of Force Reporting, Review, and Assessment*
Policy 804, *First Amendment Protected Activities*
Policy 1103, *Communicating with Individuals Who are Deaf or Hard of Hearing*
Policy 1115, *Use of Force*
Policy 1735, *Language Access Services for Limited English Proficient (LEP) Individuals*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

Guiding Principles On Use of Force



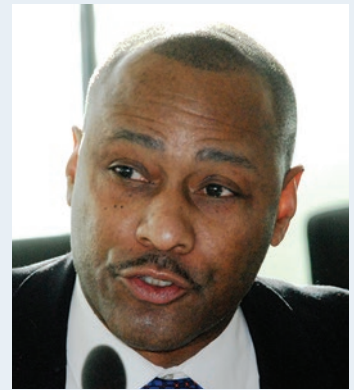
SANCTITY OF LIFE • PROPORTIONALITY • DUTY TO INTERVENE • DE-ESCALATION
• OFFICER SAFETY • DISTANCE + COVER = TIME • CRISIS INTERVENTION •
CRITICAL DECISION-MAKING MODEL • CONTAIN AND NEGOTIATE • TIME
IS ON OUR SIDE • TACTICAL COMMUNICATIONS • CHALLENGING CON-
VENTIONAL THINKING • TACTICS • SCENARIO-BASED TRAINING • LESS-LETHAL
OPTIONS • ETHICS • AGENCY VALUES • RENDER FIRST AID • OFFICER
WELLNESS • TRAINING AS TEAMS • PERSONAL PROTECTION SHIELDS •
SUPERVISORY RESPONSE • SLOWING THE SITUATION DOWN • TACTICAL
REPOSITIONING • COMMUNITY-POLICE TRUST • POLICE CULTURE • SAFE
ZONE • CALL-TAKERS AND DISPATCHERS • TRANSPARENCY • ACCOUNTABILITY



Noble Wray, Chief, COPS Office
Policing Practices and Accountability Initiative:

The First 3 Principles Are Questions of Humanity

As I look at the 30 Principles, I see that the first three, on the sanctity of life, professional standards, and proportionality, are issues of the heart, and where we are as a profession in terms of what we think about humanity. We need to start thinking more in our profession about practical wisdom. How do we develop our people to make decisions that reflect critical thinking? There are times you have to make the right decision for the right reason, and you're not going to have a bright line rule. The other 27 Principles are easier to grasp, because they are things we can just do, and we need to get working on them.



Police Scotland Sergeant Jim Young:

Why Use a Sledgehammer to Crack a Nut?

Proportionality can be thought of as, “Why use a sledgehammer to crack a nut?” The way we view it is, “Was there another force option that could have been used? Why was that force option not used?”

In the end, the question is, “Was the force used the minimum amount or least injurious to achieve that lawful aim?” And if that’s not the case, then we would judge that not to be proportionate.



POLICY

4 Adopt *de-escalation* as formal agency policy.

Agencies should adopt General Orders and/or policy statements making it clear that de-escalation is the preferred, tactically sound approach in many critical incidents. General Orders should require officers to receive training on key de-escalation principles. Many agencies already provide crisis intervention training as a key element of de-escalation, but *crisis intervention policies and training must be merged with a new focus on tactics that officers can use to de-escalate situations*. De-escalation policy should also include discussion of proportionality, using distance and cover, tactical repositioning, “slowing down” situations that do not pose an immediate threat, calling for supervisory and other resources, etc. Officers must be trained in these principles, and their supervisors should hold them accountable for adhering to them.

Example

- **Seattle Police Department**⁴⁹ — “When safe under the totality of the circumstances and time and circumstances permit, officers shall use de-escalation tactics in order to reduce the need for force.”

49. <http://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>

SAN DIEGO POLICE DEPARTMENT PROCEDURE

DATE: FEBRUARY 28, 2020

NUMBER: 1.04 - ADMINISTRATION

SUBJECT: USE OF FORCE

RELATED POLICY: 1.04, 1.05, 1.06

ORIGINATING DIVISION: INTERNAL AFFAIRS

NEW PROCEDURE: ☐

PROCEDURAL CHANGE: ☒ **EXTENSIVE CHANGES**

SUPERSEDES: DP 1.04 – 01/23/2019

I. **PURPOSE**

This Department procedure establishes guidelines on the use of force options available to Department personnel.

II. **SCOPE**

This procedure applies to all members of the Department.

III. **BACKGROUND**

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its officers to perform their duties to the highest standards. Our officers perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. However, in the performance of their duties, officers may encounter situations where the use of force is reasonable to effect a detention or arrest, to overcome resistance, or to protect themselves or others. This protection of human life recognizes that the innocent victim and uninvolved citizen are the least able to control a dangerous situation and thus must be our highest priority. Our next priority is to the officers protecting others as well as themselves.

NEW

The Department trains its officers in tactics, techniques, and strategies to control an incident using time, distance, communications, and available resources in an effort to de-escalate encounters and gain voluntary compliance. However, successful resolution of an

NEW

encounter requires the subject to provide officers with the opportunity to employ de-escalation techniques.

NEW

Penal Code 834a creates a duty to submit to an arrest by a peace officer. Penal Code 834a states, "If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he/she is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest."

NEW

Penal Code 148(a)(1) makes it illegal to resist, delay, or obstruct an officer's attempt to carry out his or her duties. Penal Code 148(a)(1) states, "Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge of attempt to discharge any duty of his or her officer or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

NEW

Penal Code 69(a) is a wobbler and may be charged as a felony or a misdemeanor, and says: "Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment."

NEW

Penal Code section 835a(b) authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested. The decision to use deadly force in response to a perceived imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make. Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a person meeting the requirements of Welfare and Institutions Code section 5150 into protective custody. Additionally, officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

NEW

Assembly Bill 392 amends Penal Code sections 196 and 835a. This bill states that an officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended.

AB392 also addresses an officer's decision making, leading up to their use of force, when given the time and opportunity to do so. When feasible, officers shall take reasonable steps in the pre-planning of responses to critical incidents, taking into consideration the need for additional officers, force options and other available resources.

The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

NEW The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer. When evaluating an officer's use of force, it must be understood that the officer's decision to use force is based on the totality of the circumstances known to or perceived by the officer at the time the force is used.

NEW The Department and the community expect officers to perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. The expectation that officers will use reasonable force also carries the responsibility for other officers to verbally and/or physically intervene if the force necessary to overcome resistance has been achieved.

IV. DEFINITIONS

- NEW
- A. Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
 - B. Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.
 - C. Compliant Behavior - behavior that complies with the officer's verbal commands.

- D. Crowd Control and Mobile Field Force Techniques - levels of force that include close range strikes with an impact weapon. These strikes are designed to redirect or move a subject who fails to follow verbal commands. The amount of force used in delivering the strike should be reasonable given the circumstances. The intent of the technique is to move a subject backwards or to the side.
- E. Deadly Force - force that creates a substantial risk of causing death or serious bodily injury.
- F. De-escalation - the use of strategies and/or techniques to gain voluntary compliance from a subject in order to maintain control of an incident while reducing physical coercion. These strategies and/or techniques are used to increase time and distance from the subject while attempting to establish effective communication.
- G. Defending Force - the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.
- H. Distraction Techniques - acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes, using a lower level of force. These lower level types of strikes are not intended, nor likely to cause serious injury. Personal body weapons may be used under these constraints, when lesser controlling force has not been effective, or the officer reasonably believes lesser controlling force will not be effective. If a distraction technique proves ineffective, a different distraction technique or force option should be considered.
- I. Force - the act of gaining and/or maintaining control of a subject or situation.
- J. Life-threatening Behavior - behavior likely to cause serious bodily injury or death.
- K. Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.

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- L. Verbal Control - a tactic used when encountering compliant behavior. Such control consists of the officer's mere presence, requests, explanations and orders.

V. PROCEDURES

- A. Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.
- B. Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.
- C. The use of canines, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.
- D. Officers should maintain control of enforcement situations. Officers who are not readily identifiable as police officers, whether on or off-duty, shall identify themselves as police officers, when it is safe to do so or if identification would not jeopardize the safety of the officer or others. Additionally, where feasible, when apprehending a fleeing person for a felony that threatened or resulted in death or serious bodily injury, where the Officer reasonably believes the person will cause death or serious bodily injury to another unless immediately apprehended, Officers shall make reasonable efforts to identify themselves as peace officers and warn that deadly force may be used, prior to the use of force. Subjects should not be allowed to gain the advantage in a physical confrontation. Officers may need to use a force option which is greater than the subject's force level and which is reasonable under the circumstances.
- E. The use of force by an officer can be viewed as a matrix of force options that can be used in response to a subject's actions and behavior. It is the totality of the circumstances that an officer considers when using force. The matrix is a guide designed to assist officers in understanding how force can fluctuate and can assist officers in documenting the subsequent force used. The force matrix illustrates the relationship between a subject's actions and the officer's response.
- F. An officer's decision to use force is based upon the totality of the circumstances and various factors that pertain to officers and/or subjects. These factors include, but are not limited to, the following:

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1. Age;
2. Availability of other options;
3. Confined spaces;
4. Ground fighting;
5. Distance between subject(s) and officer(s);
6. Influence of alcohol or drugs;
7. Injury/disability;
8. Location/terrain/lighting conditions;
9. Multiple subjects/officers;
10. Nature of offense;
11. Opportunity/Time, provided by subject, to allow for de-escalation;
12. Proximity to weapons;
13. Size;
14. Skill;
15. Special knowledge/imminent danger;
16. Strength/endurance;
17. Type of weapon subject is armed or perceived to be armed with; and,
18. Crowd control situations.

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G. Use of Firearms

1. Officers shall not discharge any firearm in the performance of their duties, except as authorized by this Department procedure.
2. No officer shall discharge a firearm in the performance of duty except:
 - a. During authorized training at a target range;
 - b. When the officer has a reasonable belief that a subject (or

animal) poses an imminent threat of death or serious bodily injury to the officer or another person;

- c. When necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others; or,
 - d. As permitted by Department Procedure 6.09, Handling of Injured Animals.
- 3. A verbal warning to submit to the authority of the officer shall be given prior to the use of a firearm, if feasible, and if doing so would not increase the danger to the officer or other persons.
- 4. Officers shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties and while exercising their option to carry a loaded and concealed weapon while off- duty. Factors that should be considered before an officer discharges a firearm include, but are not limited to, the following:
 - a. The life-threatening behavior perceived by the officer;
 - b. Immediacy of the threat;
 - c. Suspect(s) age, size, skill, injury, or disability;
 - d. Environment (field of fire);
 - e. The presence of and perceived capabilities of the suspect's weapon;
 - f. Officer's current level of training and capability with their weapon;
 - g. Type of crime.
- 5. Firearms are found to be generally ineffective in stopping vehicles. Firearms shall not be discharged at a vehicle solely in an attempt to disable the vehicle. Officers shall consider the ramifications when shooting at moving vehicles, such as:
 - a. Moving vehicles present a rapidly changing field of fire;
 - b. If the driver is incapacitated, the vehicle would be uncontrolled; or,

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- c. The action could create a danger to the public that outweighs the need to use deadly force.
 - d. Shooting through barriers such as auto glass consisting of several layers of laminated safety glass, can affect the trajectory and effectiveness of a projectile. The glass fragmentation created by the projectile travelling through auto glass exposes the officer, civilian bystanders and others inside the vehicle to the potential of serious eye, inhalation and laceration injuries.
- 6. Officers shall not discharge a firearm at an occupant of a vehicle unless:
 - a. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to the officer and there is no reasonable alternative for the officer to avoid the harm;** or,
 - b. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to other persons.**
- 7. Officers shall not knowingly position themselves in the path of a moving vehicle.
- 8. Warning shots present a danger to the officer and other persons. They are prohibited, except under exigent circumstances when:
 - a. The officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person; or
 - b. The warning shot is necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others.
- 9. Firearms are not designed or intended for use as impact weapons and shall not be used to strike another person, except when necessary to protect the officer or another person from death or serious bodily injury.

VI. REPORTING THE USE OF FORCE

- A. Officers who use force shall ensure that detailed, accurate reports (arrest, detention, or ARJIS-9) describing the force used and all the circumstances and facts surrounding the use of that force are prepared, including, but not limited to, factors listed in the Force Matrix section of this procedure. In addition, force effectiveness statistical data is also collected whenever force is used. To facilitate this, officers will complete a Use of Force, BlueTeam entry.

B. Reportable Force

For reporting purposes, the following are considered use of force incidents requiring a report:

1. Any force option, control hold, or weaponless defense technique applied to a person, or any force that causes injury or complaint of injury to either the officer or the subject being restrained;
2. Discharge of a firearm in an official capacity;
3. Discharge of a Taser;
4. Use of the baton, police nunchaku (OPN), or other impact weapons where the suspect has been struck;
5. Use of any type of chemical agent (mace, OC, etc.);
6. Use of carotid restraint;
7. Use of a police service dog, when a bite or other injury occurs;
8. Use of any restraint device, to include a cord cuff, WRAP restraint device, safety control chair or restraint car seats, as outlined in Department Procedure 6.01;
9. When the officer overcomes physical resistance to applying the handcuffs;
10. Use of "specialty munitions," as defined in Department Procedure 1.36, Use of Specialty Munitions; and,
11. The pointing of a firearm at a person to gain compliance.

- C. Officers who use a force option shall personally prepare the appropriate report (arrest, detention, ARJIS-9) documenting their use of force. An exception to an officer personally preparing a document (detailing force used) is if an SDPD investigator interviews the officer and his/her statements (regarding the force used) are documented in the investigator's report.

- D. In the event San Diego Police Department officers are involved in a situation with an outside agency, the SDPD officer responsible for writing the report shall request documentation describing the outside agency officers/deputies use of force options.
- E. Whenever physical force used by an officer results in an injury that necessitates medical treatment of any person, the officer shall immediately contact a field supervisor (Refer to Department Procedure 6.01, Handcuffing, Restraining, Searching, and Transporting Procedures).
1. The field supervisor shall evaluate the circumstances surrounding the incident.
 2. The field supervisor shall notify the Watch Commander and/or field lieutenant.
 3. If the Watch Commander or field lieutenant deems the incident to be of significant magnitude, including but not limited to, a use of force resulting in great bodily injury, Internal Affairs shall respond and conduct an on-scene investigation.
 4. If Internal Affairs responds to the scene, the Watch Commander shall immediately telephone the Police Officers' Association and report the general nature of the incident.
 5. All statements made by the subject regarding his/her alleged or apparent injury should be documented.
 6. Photographs shall be taken to document the existence or absence of injury to the subject, officers, or other persons. Photographs shall also be taken of any damage to the clothing or personal property of the subject, officers, or other persons at the scene. The photographs shall be impounded as evidence.

NEW

VII. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application will be available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

Use of Force Matrix

Suspect's Behavior

Compliant Behavior	Passive Resistance Behavior	Active Resistance Behavior	Assaultive Behavior	Life Threatening Behavior
<p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons may be used as defined in section V.C. of this procedure</p> <p>Impact Weapons –Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Firearms Hard Impact Weapons (Blows to the head, face, neck and throat are prohibited unless defending against life-threatening behavior as defined in this procedure.)</p> <p>Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>

Reasonable Force Under the Totality of the Circumstances

Officer's Response

Suggested Revisions to SDPD Use of Force Policy

Policy: When safe under the totality of the circumstances and time and circumstances permit, officers **shall be required** use de-escalation techniques and tactics in order to reduce any threat or gain compliance to lawful commands without the use of force or with the lowest level of force possible.

Definition: De-escalation techniques and tactics are actions taken by officers that are designed to eliminate the need to use force in order to resolve any event or situation. De-escalation techniques include but are not limited to: talking to a person using a tone of voice and language that is not aggressive or confrontational; creating space or placing barriers between the member and the person; waiting the person out when circumstances permit; permitting a person to move about when safe; permitting a person the opportunity to make statements or ask questions; slowing down the pace of an incident; tactical repositioning and requesting additional resources. The guiding principles for de-escalation are patience, flexibility, and the desire to resolve each situation peacefully.

Submitted by Doug Case

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: MARCH 7, 2017

NUMBER: 4.16 - LEGAL

SUBJECT: PROCEDURES FOR HANDLING INCIDENTS
INVOLVING EXPRESSIVE ACTIVITY AND FIRST
AMENDMENT RIGHTS

RELATED POLICY: N/A

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE: ☐

PROCEDURAL CHANGE: ☒

SUPERSEDES: DP 4.16 - 10/09/2012

I. PURPOSE

This Department procedure establishes guidelines for officers responding to calls for service related to the exercise of First Amendment rights. Collectively, the many forms of expression are referred to as “expressive activity.”

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

- A. The First Amendment of the United States Constitution guarantees the freedom of speech and the freedom of assembly. While the United States Constitution provides minimum protections that no state can infringe upon, a state may offer more protections than the United States Constitution.

California is one of the states whose constitution expands traditional First Amendment rights. As a result of this expansion of rights, the California Supreme Court (and later the United States Supreme Court) has ruled that the modern day shopping mall has assumed the function of the town square where people used to meet and discuss the issues of the day. These gatherings

sometimes disturb the orderly conduct of business at malls and other commercial properties. Property owners and managers often call for police assistance.

- B. The majority of these calls involve disputes that are civil in nature. Therefore, officers should keep in mind the following points when responding to calls for service involving expressive activity:
1. While private business owners may create reasonable time, place, and manner restrictions for the use of their property, these rules are not law. Therefore, police officers have no lawful authority to enforce them.
 2. Non-compliance with these restrictions, by itself, is not a crime. A person who is merely on the privately owned property of a business for the purpose of engaging in expressive activity, in violation of the business owner's rules, is therefore not committing a crime.
 3. A person who is merely on the privately owned property of a business for the purpose of engaging in expressive activity, in violation of the business owner's rules, does not become a trespasser by virtue of his continued presence, unless he engages in activity that genuinely obstructs the business or interferes with or intimidates the business' employees or customers.
 4. A business owner seeking to remove or restrict persons engaged in expressive activity must obtain a restraining order, or injunction, from a civil court. A person engaged in expressive activity who remains on the property in violation of such a court order would then be subject to arrest and removal.
 5. Labor activity is a form of expressive activity that is lawfully authorized by both Federal and State law. People engaged in lawful labor actions are specifically excluded from the trespassing statutes that pertain to certain types of property.
 6. Disputes between property owners and persons wishing to use the property for expressive activity are civil disputes. The sole purpose of police officers at these disputes is to preserve the peace.

IV. **DEFINITION**

Expressive Activity - any protest, proselytization, propagandizement, or other communication or conveyance of an idea or ideas, or message or messages, to a general audience, the effect, propensity, or intent of which is to express an idea or belief, or draw or attract a crowd or onlookers. These activities may be commercial, political, personal, or labor-related in nature.

V. EXPLANATION OF PROPERTY RIGHTS AND ISSUES

The courts recognize the right of property owners to control and use their own property. They also recognize the rights of citizens to exercise their constitutional rights. In their attempt to balance these sometimes-competing rights, the courts have ruled that “private property rights are not absolute and may be subordinated to the rights of society.”

The issue is not whether the property is privately owned, but whether, and to what extent, the owner has opened it up for public use. If the property is open for public use and that public use resembles the town hall function of a public meeting place, then the public’s right to engage in activities similar to a town hall outweighs the property owner’s right to the absolute control of the property.

A. Nature of the Property

1. One factor in determining the right of the public to enter property for purposes of expressive activity is the nature, purpose, and primary use of the property itself. As case law evolves in this area, it appears that a continuum has developed in terms of the types of property and the owner’s rights to control the property, versus the right of the public to engage in expressive activity there.
2. Shopping malls contain theaters, plazas, walkways, courtyards, food courts and, in some cases, even stages for public use. The extent and nature of the public’s invitation to use the property goes beyond merely making a purchase and leaving. Malls invite and encourage patrons to congregate and spend time together. These factors make them a modern “town center” and “town hall.” These are the properties where expressive activity has been upheld. Examples might include University Town Center and Fashion Valley malls.
3. Individual retail businesses, such as stand-alone businesses with their own parking facilities, separate from other businesses, do not possess the attributes of a “town hall” public forum. They do not offer the same inducements to congregate as the “town square.” Examples of these types of businesses might include convenience stores, grocery stores, gas stations, car dealers and even “big box” stores, if they are separated from surrounding businesses, where the invitation to the public is to come in and conduct business or purchase merchandise (as opposed to congregating for other purposes). It should be noted that these type of properties MAY be able to pursue a case for civil trespass followed up by a restraining order, however, rarely will these actions rise to the level of criminal trespass.

B. Reasonable Time, Place, and Manner Restrictions

While the courts have opened up some properties for expressive activity, they have also allowed property owners to adopt “reasonable” regulations to ensure that expressive activities do not interfere with normal business operations. Allowable regulations or restrictions fall into the following categories:

1. Time restrictions - property owners can restrict people wishing to use their property for expressive activity by limiting their activities to hours when the property is open for business.
2. Place restrictions - expressive activities can be limited to places generally open to the public. Those wishing to use the property for expressive activity may be excluded from areas used for deliveries (if they are not open to the public), office areas, or areas only open to employees of the mall or the stores in the malls.
3. Additionally, in stand-alone businesses, such as a “big box” store, further restrictions may be placed as to where expressive activity may take place on the property. To balance the rights of all, the business must still provide an area where those engaging in expressive activity are close enough to those using the store to have their message heard.
4. Manner restrictions - private ownership of property, and the sidewalks leading to it, does not operate to strip members of the public of their rights to exercise First Amendment privileges on the sidewalk at, or near, the place of entry to the establishment. In utilizing the sidewalk for such purposes, those seeking to exercise such rights may not do so in a manner that obstructs or unreasonably interferes with free ingress and egress to or from the business. Therefore, property owners may enact and enforce reasonable restrictions on the manner of the expressive activity to prevent obstructions or unreasonable interference with ingress or egress of the business.
5. Conduct that disrupts the business, such as excessively loud noise, particularly where it is not meant to communicate an idea or where it incites disruptive, intimidating or criminal activity, can be restricted.

C. Content Restrictions

While property owners may be able to impose reasonable time, place, and manner restrictions, they cannot restrict the content of the message being communicated, even if that message may harm the property or store owner’s business interests. For instance, they cannot prohibit the use of pickets or the passing out of leaflets, even when the pickets or leaflets urge a boycott of the shopping center or stores within the center.

D. Businesses Not Open to the Public

Most of the cases discussing expressive activity involve retail establishments. There are many other types of businesses, such as office buildings, and manufacturing and research facilities, which are not open to the public. They are not the equivalent of a public forum and expressive activity, with the exception of labor activity, could be prohibited on those properties. Incidents of trespassing that occur on these properties is generally described in Penal Code section 602(o).

VI. **PROCEDURES**

A. Initial Response

1. When responding to calls for service regarding expressive activity, officers should keep in mind that, depending on the nature of the expressive activity, emotions can be very inflamed. Upon arrival, it may be useful to stand back and observe the parties involved, taking note of whether those engaged in expressive activity are peaceful or not. If they are peaceful, they are not trespassing, even if they are in violation of the property owner's regulations.
2. Note any activity that might be considered obstructive or interfering with the business. If this occurs, those engaged in expressive activity lose the protection of their exemptions from the trespassing statutes and may be subject to arrest and removal.
3. When contacting the parties, officers shall remain fair and impartial.

B. Review of Documents

1. Property owners and those wishing to use the property for expressive activities are often sophisticated enough to arm themselves with legal advice about why their interests should prevail. Both parties may request that responding officers review their documents.
2. Business owners may ask officers to read and/or enforce their policies for expressive activity or legal opinions supplied by their counsel. While it would be appropriate for a police officer on the scene to attempt to mediate a resolution acceptable to both parties, it is **NOT** the place of the police officer to attempt to determine if the time, place, and manner restrictions are reasonable. Only a court can make those determinations. Therefore it is appropriate to decline to review these documents. The officer's sole determination for taking action is whether or not a crime has been committed; not whether the property owner's rules have been violated.

3. Likewise, those engaged in expressive activity may ask officers to read cases or opinions provided by their counsel purporting to authorize their presence. Again, declining to do so is appropriate.

C. Citizen's Arrest

1. In some instances, the property owner or their agent will insist that they have the authority to make a citizen's arrest based on a violation of their time, place, and manner restrictions. As discussed above, their restrictions are not law and therefore a violation of them cannot result in an arrest.
2. Making an arrest or accepting a citizen's arrest should be considered as a last resort. Absent extenuating circumstances, it is best to advise the parties to consult their legal counsel and to pursue civil remedies through the courts.
3. For a citizen's arrest to be appropriate the following elements should exist:
 - a. The activity of those engaged in expressive activity must have obstructed or interfered with the operation of the business, or interfered with or intimidated the employees or patrons of the property or the businesses on the property. It is not enough that an employee or patron was annoyed by having to pass those engaged in the expressive activity or that the patron did not agree with their message. There must have been some conduct that made them afraid to or discouraged their use of the property. This information must be obtained from the patron, not the property manager.
 - b. The crime must have occurred in the presence of the person making the arrest. It is not enough that the property owner or agent is aware of and has cause to believe that a crime has occurred. The statutory requirement is that the crime occurred in their presence. If it did not, they cannot make an arrest.
 - c. There must have been an actual criminal violation of any statute. If a crime has been committed, and the person(s) committing the crime refuses to leave after being requested to do so and the property owner or agent makes a citizen's arrest, an officer may accept the arrestee from the citizen making the arrest. After accepting the arrest, the officer can issue a misdemeanor citation to the person(s) arrested. If one or more of the exceptions to the misdemeanor citation release requirement is present, the officer can book the arrestee into county jail. As an alternative, the officer may complete a request for a notify warrant.

D. Court Orders

1. Disputes between property owners and those engaging in expressive activity are civil in nature. Therefore, relief sought by any party against the other must come from a civil court in the form of a restraining order or injunction.
2. When presented with a court order by either party, officers should handle them as they would any other court order. The officer should verify the validity of the order and whether or not it has been properly served. Officers can verify the order by calling the Sheriff's warrant division. Refer to Department Procedure 4.05, Protective Orders, for details.
3. In the event that a party named in the court order is present, in violation of the order, the officer should review the requirements of the order with the person and offer an opportunity to comply with the order.
4. If the person refuses to comply with the order, he/she is in violation of Penal Code section 166(4) which is a misdemeanor. Officers may then proceed in accordance with the procedures for making a misdemeanor arrest.