



City Manager

ACTION CALENDAR

December 15, 2020

To: Honorable Mayor and Members of the City Council  
 From: D. Williams-Ridley, City Manager  
 Submitted by: A. R. Greenwood, Chief of Police  
 Subject: Amendments to Berkeley Police Department Policy 300, Use of Force

RECOMMENDATION

A) Adopt the proposed amendments to Policy 300 as proposed by the City Manager, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Department's recommendation for section 300.1.2;

-OR-

B) Adopt the proposed amendments to Policy 300 as proposed by the Police Review Commission, in order to comply with state law, and to provide additional definitions, and to clarify existing language within Policy 300, including the Police Review Commission's recommendation for Sections 300.1.2 and 300.1.3.

SUMMARY

On July 23, 2020, the City Council approved the Berkeley Police Department Policy 300 Use of Force. Effective January 1, 2021, California Senate Bill 230 (Government Code 7286) requires agencies to have certain additional elements in their use of force policies. Further, through the implementation process of Policy 300, a few additional needs for clarification of language and terms within Policy 300 became apparent. Amending language was prepared and provided to the Police Review Commission for their review. On November 18, 2020, the Police Review Commission met and provided input on BPD's proposed amendments. The Department is in agreement with the PRC on all but one of the amendments, and has incorporated fully the language recommended by the Commission into the amendments below.

We request Council approve the amended language, to either (a) approve the department's recommendation, to add "strive to" to existing language in Section 300.1.2, or (b) approve the Police Review Commission's recommendation, to delete "strive to" in Section 300.1.2 and 300.1.3. The department's rationale is below, and the PRC has provided a document, attached, with the rationale underlying their recommendation. There is agreement between the PRC and the department on all other amendments to the language.

FISCAL IMPACTS OF RECOMMENDATION

Staff costs associated with training of BPD officers on the policy changes.

CURRENT SITUATION AND ITS EFFECTS

Given impending state law requirements, and the need to clarify certain elements of the policy, the City Council is asked to review and approve amendments to Policy 300, prior to January 1, 2021.

**Recommendations for Amendments to Language and Rationale**

Below we provide recommendations for amending language, as well as the rationale for each recommendation. Within each rationale section, the Police Review Commission's November 18 actions are noted, with changes incorporated into the amendments. New text is underlined and deleted language is shown in strikethrough text.

**300.1.2 USE OF FORCE STANDARD**

Policy 300's Core Principle of De-Escalation and Minimization declares that "... in any encounters that do call for applying force, officers must always strive to use the minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective." Additionally, existing language under section 300.1.2 Use of Force Standard requires officers to "... strive to use alternatives to physical force whenever reasonably possible. Therefore, for clarity and consistency with this existing language, "strive to" is placed in two other sentences within section 300.1.2. The addition of these terms ensure consistency across section 300.1.2 and the Core Principle of De-escalation and Force Minimization, as follows:

**Section 300.1.2, Paragraph 1:** "In all cases where physical force is used, officer shall strive to use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

**Section 300.1.2, Paragraph 4:** "First, it imposes a higher duty upon officers to strive to use the minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective."

**Rationale:** These amendments ensure consistency across Use of Force Standard and Core Principles of De-escalation and Force Minimization. Including "strive to" indicates there is a range of force options which meet a "minimal" standard, and are objectively reasonable in a given situation.

Without these phrases, the policy would require officers use a specific minimum amount of force, *and* that there is only a single point on the force continuum that would be acceptable. Determining that exact minimum point on a continuum is problematic. Every situation is unique, and officers must be able to confidently make instantaneous

decisions while remaining in policy, in order to keep themselves and others safe. This issue arose during departmental training, when interpreting exactly what a specific minimal amount of force would be in a given situation resulted in differing responses from different officers, supervisors and trainers, when faced with the same scenario.

The proposed amendments are consistent with other agencies whose policies were noted during discussion with the PRC, including the Bay Area Rapid Transit (BART) Police Department, and the San Francisco Police Department. BART Police are required to “strive to” use the minimal amount of force necessary:

Bay Area Rapid Transit Police (BART) policy 300.1, para 3: Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. *Officers must strive to use the minimal amount of force necessary.* [Section 300.1, para. 3, *emphasis added.*]

The San Francisco Police Department explicitly states that within the minimal amount of force there is a range of objectively reasonable force options which are acceptable:

MINIMAL AMOUNT OF FORCE NECESSARY. The lowest level of force *within the range* of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others. [SFPD DGO 5.1, II (C), *emphasis added.*]

The Department seeks Council approval to add “strive to” in two locations within the policy.

The PRC voted 8-1 to reject the suggested amendments to 300.1.2, and instead recommended the removal of existing language of “strive to” in the first paragraph of 300.1.2, “with the understanding that “objectively reasonable” and other discussions about the policy show that there is not one single right answer as to what constitutes “minimum” and that there can be a range of force options which satisfy the “minimum” requirement.” [PRC draft minutes, Nov. 18 meeting.] The PRC further voted 8-0, with one abstention, to remove “strive to” from Section 300.1.3, Core Principles, De-escalation and Force Minimization.

The Department appreciates the PRC’s acknowledgement and agrees that there is not one single right answer as to what constitutes “minimum” and that there can be a range of force options which satisfy the “minimum” requirement. The department nevertheless believes it is best to include the “strive to” wording as it currently appears, and amend the language with “strive to” in two additional paragraphs, within the policy itself.

### 300.1.4 DEFINITIONS

Adds definitions for the terms “feasible, “objectively reasonable,” and “totality of the circumstances”:

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Rationale:** This is the definition under Gov. Code 7286(a), and is referred to under 7286(b)(1), which requires that “... officers utilize de-escalation techniques... when feasible.” The PRC accepted this amendment, with the removal of a Government Code reference, by an 8-0 vote, with one abstention.

**Objectively Reasonable** – “Objectively reasonable” means an officer’s conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

**Rationale:** This phrase is used numerous times through the policy, and is a commonly accepted legal meaning of this phrase. The PRC accepted this amendment by a 9-0 vote.

**Totality of the circumstances** – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

**Rationale:** This is a defined phrase in Penal Code 835a(e), which was added as a result of AB 392. The PRC accepted this amendment by a 9-0 vote.

### 300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY AND PROPORTIONALITY OF FORCE

Amend (m) to add the word “bystanders.”

(m) Potential for injury to officers, suspects, bystanders, and others.

**Rationale:** This word is included to meet a requirement within Government Code 7286(b)(5). The PRC accepted this amendment by general consent.

### 300.3.5 DE-ESCALATION TACTICS

Amend the language of the 4<sup>th</sup> paragraph, last sentence to replace “shall” with “should,” to read:

Officers should ~~shall~~ move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

**Rationale:** This mandatory requirement to tactically reposition must be made discretionary because it is overly restrictive in directing officers’ actions, given the variety of circumstances they may face, and is in conflict with Section 300.3.1 above, which states there is “no duty to retreat.” The PRC proposed the word “should” instead of “may”, by a 9-0 vote, and the PRC’s recommendation is incorporated above.

### 300.4 USE OF DEADLY FORCE

Amend the language of the 4<sup>th</sup> paragraph, redrafting a double-negative sentence phrase for clarity:

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily unless it is objectively reasonable that using deadly force would not endanger innocent people.

**Rationale:** The amended sentence eliminates a double-negative sentence structure and provides greater clarity and direction. The PRC accepted this amendment by general consent.

### 300.4.1 DRAWING AND POINTING FIREARMS

Given that individuals may ~~might~~ perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines:

- a. If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- b. If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

**Rationale:** Government Code 7286(a)(4) requires an agency's use of force policy must contain "...clear and specific guidelines regarding situations in which officer may or may not draw a firearm or point a firearm at a person." This section is new. Staff used Lexipol's recommendations to meet the new requirements under GC 7286(a)(4). The PRC accepted this amendment with a 9-0 vote, replacing "might" with "may" in the first sentence, and removing a citation to the government code. The PRC's recommendation is incorporated above.

### 300.6.2 USE OF FORCE REPORTING LEVELS

#### Level 1

Delete section (a), which is in direct conflict with Section 300.1.4.

~~(a) Subject allowed themselves to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.~~

And amend language under Level 3:

#### Level 3

~~(a) Would have otherwise been classified as a Level 2, except one or more of the following apply:~~

- ~~1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.~~
- ~~2. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~

(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

~~(c)~~(b) The officer used any of the following force options:

1. Chemical Agents/Munitions
2. Impact Weapon Strikes
3. Personal Body Weapons

**Rationale:** Removal of the Level 1 language resolves a direct contradiction within Policy 300, where the definition of "Force" (in Section, 300.1.4 Definitions), specifically states: "It is *not* a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained." [*Emphasis added.*] This edit leaves intact the list of types of force which are to be reported as Level 1 uses of force. The PRC accepted this amendment and in the same motion requested a further modification of language under Level 3, all by a 9-0 vote. These amendments are incorporated above.

**Level 1, Level 2, and Level 3**

Amend language in Levels 1, 2, and 3 respectively, to reflect functionality of the Blue Team software.

Under Level 1:

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template with a brief summary.

Under Level 2:

If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template with a brief summary.

Under Level 3:

If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team and ~~attach a completed Use of Force Investigation Checklist~~ template.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statement from the crime report will be attached to the use of force investigation.

**Rationale:** This amended language provides clarity to reflect functionality of the Blue Team software. The PRC accepted these amendments by a 9-0 vote.

**300.6.2 USE OF FORCE REPORTING LEVELS – LEVEL 2**

Amend the language in (b)(1) as follows:

(b) Officer's use of force was limited to the following:

1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual, and/or pointed at an individual.

For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

**Rationale:** Amending the language clarifies that BPD report a use of force when firearms are drawn and pointed at someone, in order to gain compliance. The PRC voted 8-0 to amend the department's language, and provided clarifying language, which is fully incorporated above.

### 300.6.3 EMPLOYEE USE OF FORCE

Amend this section by adding (a) and (b) below to the existing language, so that the section reads, in whole:

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

**Rationale:** This addition of (a) and (b) ensures language in General Order U-2 which was specifically drafted and incorporated into the use of force policy as part of the settlement agreement in Law et al v. City of Berkeley et al 15-5343 JSC, is retained in the Use of Force policy. The PRC accepted this amendment by an 8-0 vote.

### 300.6.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Delete the last sentence referring to the Records Management Policy, to read:

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. ~~See the Records Management Policy.~~

**Rationale:** Reporting statistical data regarding all officer-involved shootings and incidents is required by California Government Code § 12525.2; a separate reference to a BPD policy is not needed. The PRC accepted this amendment by general consent.



### 300.6.5 PUBLIC RECORDS

Adds “(f),” to the existing language to specify the reference.

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and Department Policy R-23.

**Rationale:** This adds specifying language. The PRC accepted this amendment by general consent.

### 300.10 TRAINING

Amend the section by completely replacing existing language with expanded language to address training requirements as mandated by Gov. Code 7286(b)(15).

~~Officers shall receive periodic training on this policy and demonstrate their knowledge and understanding as per SB 230.~~

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

- a. Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- b. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

**Rationale:** Adopt the language in order to address the training requirements of Gov. Code 7286(b) (15). The PRC accepted this amendment, with the removal of government code citations, by an 8-0 vote.

### 300.12 CIVILIAN COMPLAINTS

Amend the language by inserting the word “respective” as follows

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police

Review Commission (PRC) or its successor entity. Complaints will be investigated in compliance with the respective applicable policies and procedures of the IAB and the PRC and its successor entities.

**Rationale:** This adds specifying language. The PRC accepted this amendment by general consent.

#### RATIONALE FOR RECOMMENDATIONS

Rationales are included for each suggested amendment above.

#### ALTERNATIVE ACTIONS CONSIDERED

None; Action is needed in order to ensure Policy 300 is in compliance with state law and provides clear direction to personnel.

#### CONTACT PERSON

A.R. Greenwood, Chief of Police (510) 981-5700

#### Attachments:

1. Policy 300, with Redline
2. Police Review Commission Draft Minutes, Nov. 18, 2020 Meeting

Amended Policy 300 – Redline Version  
BPD/PRC revisions 11-18-2020  
As contained in Council Item

Policy  
**300**

Berkeley Police Department  
Policy Manual

## Use of Force

### 300.1 SANCTITY OF LIFE

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force. Officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

#### 300.1.1 PURPOSE AND SCOPE

This policy sets forth criteria governing the use of force. All officers are responsible for knowing and complying with this policy and conducting themselves in a manner that reflects the Berkeley Police Department's Use of Force Core Principles. Violations of this policy may result in disciplinary action, including and up to termination, and may subject the officer to criminal prosecution. Supervisors shall ensure that all personnel in their command know the content of this policy and operate in compliance with it.

#### 300.1.2 USE OF FORCE STANDARD

In dealing with suspects, officers shall strive to use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall **strive to** use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional to effectively and safely resolve a conflict.

The United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), held that, in order to comply with the U.S. Constitution, an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force. But these standards merely set the minimum standard for police conduct, below which an officer's conduct would be regarded as unlawful.

In fulfilling this Department's mission to safeguard the life, dignity, and liberty of officers themselves and all members of the community they are sworn to protect and serve, this policy requires more of our officers than simply not violating the law. As a result, this policy is more restrictive than the minimum constitutional standard and state law in two important respects.

First, it imposes a higher duty upon officers to strive to use the minimal amount of force objectively necessary to safely achieve their legitimate law enforcement objective. And, second, this policy imposes a stricter obligation on officers to exert only such force that is objectively proportionate to the circumstances, requiring a consideration of the seriousness of the suspected offense, the availability of de-escalation and other less aggressive techniques, and the risks of harm presented to members of the public and to the officers involved.

Additionally, Penal Code section 835(a) imposes further restrictions on an officer's use of force.

### **300.1.3 CORE PRINCIPLES**

**A. DE-ESCALATION AND FORCE MINIMIZATION.** Every officer's goal, throughout an encounter with a member of the public, shall be to de-escalate wherever possible and resolve the encounter without resorting to the use of force. Wherever possible, officers shall employ de-escalation techniques to increase the likelihood of voluntary compliance with law enforcement requests or directives and, thereby, decrease the likelihood that a use of force will become necessary during an incident. Further, in any encounters that do call for applying force, officers must always strive to use the minimal amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

**B. PROPORTIONALITY.** When determining the appropriate level of force, at all times officers shall balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is unarmed or armed with a weapon other than a firearm.

**C. MINIMIZING THE USE OF DEADLY FORCE.** Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

**D. DUTY TO INTERCEDE.** Whenever possible, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

**E. VULNERABLE POPULATIONS.** Officers should be particularly sensitive when considering the use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities, and people with limited English proficiency.

**F. FOSTER STRONG COMMUNITY RELATIONSHIPS.** The Berkeley Police Department understands that uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. The Department is committed to fostering strong community relations by building on its historic tradition of progressive policing, ensuring accountability and transparency, and striving to increase trust with our community.

**G. FAIR AND UNBIASED POLICING.** Members of the Berkeley Police Department shall carry out their duties, including the use of force, in a manner that is fair and unbiased, in accordance with Policy 401, Fair and Impartial Policing.

### 300.1.4 DEFINITIONS

Definitions related to this policy include:

**Minimal amount necessary** – The least amount of force that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm).

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code 7286(a)).

**Force** - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed or restrained.

**Less-Than-Lethal Force** – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

**Non-Lethal Force** – Any use of force other than lethal force or less-than lethal force.

**Compliant Suspect** – Cooperative and/or responsive to lawful commands.

**Passive Resistance** - When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way.

Examples: A person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.

**Active Resistance** - An individual who is uncooperative and fails to comply with the lawful verbal commands of a police officer, and attempts to avoid physical control and/or arrest by physically struggling to free oneself from being restrained. The individual may also use verbal non-compliance (refusing a lawful order or direction).

Examples: A person who attempts to avoid physical control and/or arrest by pulling or pushing away from the officer, tensing arm or muscles, hiding from the officer, and/or fleeing.

**Combative Resistance** - An individual not only resists the officer, but poses a threat of harm to the officer or others, in an aggressive manner that may cause physical injury.

Examples: A person who violently attempts to or attacks an officer. This action is sometimes preceded by “pre-assault” cues such as taking a threatening stance (clenching fists, facial expressions, threats, etc.) and verbal non-compliance.

**Control Hold** - Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.). A control hold can be applied without implementing pain.

**Pain Compliance Technique** - Involves either the manipulation of a person’s joints or activating certain pressure points intended to create sufficient pain for the purpose of motivating a person to comply with verbal commands (examples of pressure points include buccal nerve, gum nerve, sternum rub).

**Control Techniques** – Personal Impact Weapons and Take Downs.

**Personal Body Weapons** - An officer's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.

**Blue Team (BT)** – Computer software that allows officers to enter use of force and other incidents from a Department computer.

**Concealment** - Anything which conceals a person from view.

**Cover** - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

**Blocking** - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

**Ramming** - The use of a vehicle to intentionally hit another vehicle

**Serious Bodily Injury** - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

**Officer (or) Police Officer** - Any sworn peace officer.

**Authorized Employee** - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

**Employee** – Any non-sworn employee of the Berkeley Police Department, including those deemed “authorized employees.”

**Objectively Reasonable** – “Objectively reasonable” means an officer's conduct will be evaluated through the eyes of the hypothetically reasonable officer standing in the shoes of the involved officer.

**Totality of the circumstances** – All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

### **300.2.1 DUTY TO INTERCEDE AND DUTY TO REPORT**

Any officer who observes another officer or member of the Berkeley Police Department using force that is clearly in violation of this policy shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, when in a position to do so, physical intervention. Further, any officer who learns of a potentially unauthorized use of force, even if the officer did not witness it personally, shall promptly report this information to an on-duty sergeant or a command officer at the first opportunity.

Any officer who observes an employee or member of a different law enforcement agency use force that exceeds the degree of force permitted by law shall promptly report these observations to an on-duty sergeant or a command officer at the first opportunity.

### **300.3.1 USE OF FORCE TO EFFECT AN ARREST**

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance

or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance. For purposes of this policy, “retreat” does not mean tactical repositioning or other de-escalation tactics.

### **300.3.2 USE OF FORCE TO SEIZE EVIDENCE**

In general, officers may use objectively reasonable, objectively necessary, and proportional force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used an officer shall not use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the department for the specific purpose of collecting evidence.

### **300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS, NECESSITY, AND PROPORTIONALITY OF FORCE**

When determining whether to apply force and evaluating whether an officer has used objectively reasonable, objectively necessary, and proportional force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer
- (e) The effects of drugs or alcohol.
- (f) The individual’s apparent mental state or capacity
- (g) The individual’s apparent ability to understand and comply with officer commands
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness).
- (k) Seriousness of the suspected offense or reason for contact with the individual.
- (l) Training and experience of the officer.
- (m) Potential for injury to officers, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (o) The risk and reasonably foreseeable consequences of escape.
- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.

- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is objectively reasonable, objectively necessary, and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- Compliant – In general, when dealing with a compliant person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- Passive resistance – In general, when dealing with a suspect involved in passive resistance, officers may rely on police presence, verbal control techniques, or control holds, but should not use greater force.
- Active resistance – In general, in dealing with a suspect involved in active resistance, in addition to the options available for passive resistance, officers may rely on pain compliance techniques or takedowns, but should not use greater force.
- Combative resistance – In general, in dealing with a suspect involved in combative resistance, officers have all use-of-force options available to them, but deadly force shall only be used in compliance with this policy as described in Section 300.4.

### **300.3.4 USE OF FORCE CONTINUUM**

The Department uses a “use of force continuum” that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate. All Uses of Force must be objectively reasonable, objectively necessary, and proportional, based on a totality of the circumstances. All progressions must rest on the premise that officers shall escalate and de-escalate their level of force in response to the subject's actions.

#### **Continuum of Force**

- **Officer Presence — No force is used. Considered the best way to resolve a situation.**
  - The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
  - Officers' attitudes are professional and nonthreatening.
- **Verbalization — Force is not physical.**



- Officers issue calm, nonthreatening commands, such as "Let me see your identification and registration."
- Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- **Weaponless defense — Officers use bodily force to gain control of a situation.**
  - *Pain compliance and control holds.* Officers use grabs, holds and joint locks to restrain an individual.
  - *Personal body weapons.* Officers may use punches and kicks to restrain an individual.
- **Less-Lethal Force Methods — Officers use less-lethal technologies to gain control of a situation.**
  - *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person.
  - *Chemical.* Officers may use chemical sprays or projectiles embedded with chemicals to restrain an individual (e.g., pepper spray).
- **Lethal Force — Officers may use lethal weapons only in compliance with Section 300.4.**

### 300.3.5 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and shall be used when it is safe to do so. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. Officers shall continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member shall be called upon as a resource.

Officers shall gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to any levels of force. Officers ~~shall~~ **should** move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- a) 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 officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- b) Officers should recognize that they may withdraw to a position that is tactically

advantageous or allows them greater distance to de-escalate a situation.

- c) Officers should consider a variety of options, including lesser force or no force options.
- d) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- e) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use of force.
- g) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- h) Establishing communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- i) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers shall consider the following tactical principles:

- (a) Make a tactical approach to the scene.
- (b) Maintain a safe distance.
- (c) Use available cover or concealment and identify escape routes.
- (d) Stage Berkeley Fire Department.
- (e) Control vehicle and pedestrian traffic.
- (f) Establish communication, preferably with one officer.
- (g) Create an emergency plan and a deliberate plan with contingencies.
- (h) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

### **300.3.6 PAIN COMPLIANCE TECHNIQUES**

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance and threat posed by the person.
- (b) Whether the person can comply with the direction or orders of the officer.

- (c) Whether the person has been given sufficient opportunity to comply.

The purpose of pain compliance is to direct a person's actions. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

### **300.3.7 USE OF NON-LETHAL FORCE**

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional approved non-lethal force techniques and weapons in the following circumstances:

- a) To protect themselves or another person from physical injury;
- b) To restrain or subdue a resistant individual; or
- c) To bring an unlawful situation safely and effectively under control.

#### **300.3.7.1 RESTRAINT AND CONTROL DEVICES**

Restraint and control devices shall not be used to punish, to display authority or as a show of force. Handcuffs, body wraps and spit hoods shall only be used consistent with Policy 302. Batons, approved less-lethal projectiles, and approved chemical agents shall only be used consistent with Policy 303. As per City Council resolution (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited. Pepper spray or smoke for crowd control by employees of the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, is prohibited during the COVID-19 pandemic, or until such time as the City Council removes the prohibition.

### **300.3.8 CHOKEHOLD PROHIBITION**

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

The term bar-arm refers to a variety of techniques. The use of any chokehold is strictly prohibited. A chokehold is any hold or contact with the neck – including a carotid restraint -- that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

### **300.4 USE OF DEADLY FORCE**

An officer's use of deadly force is justified only when it is objectively reasonable, based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a

suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided that it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person if it reasonably appears that doing so would unnecessarily endanger innocent people unless it is objectively reasonable that using deadly force would not

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

#### **300.4.1 DRAWING AND POINTING FIREARMS**

Given that individuals may might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- a. If the officer does not initially perceive a threat but it is objectively reasonable that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- b. If it is objectively reasonable that a significant threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward said threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

#### **300.4.2 DIRECTED FIRE**

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect’s ability to return fire while a group or individual movement is conducted, such as in a rescue operation.

Officers may only employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances. Officers must consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

**300.4.3 SHOOTING AT OR FROM MOVING VEHICLES**

Absent exigent circumstances, officers shall not discharge firearms from a moving vehicle.

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

- (a) The availability and use of cover, distance and / or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers

**300.5 USE OF VEHICLES**

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

**300.6 REPORTING REQUIREMENTS**

All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray

Report.” Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a “Use of Restraint Device Report” and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation, documentation and review requirements.

### 300.6.1 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force as defined in 300.6.2 and the scene is secure, the supervisor should:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports
- (f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### 300.6.2 USE OF FORCE REPORTING LEVELS

#### Level 1

~~(a) Subject allowed themselves to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.~~

(b) (a) The officer used any of the following, and the circumstances of the application would lead an objectively reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/ pain compliance techniques
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or

completely supporting the person's bodyweight.

#### 6. Takedown

If the incident fits the parameters for a Level 1 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~ with a brief summary.

#### Level 2

(a) No suspect injury or complaint of continuing pain due to interaction with officer.

(b) Officer's use of force was limited to the following:

1. Firearm drawn from the holster or otherwise deployed during ~~in~~ an interaction with an individual and/or displayed, and/or pointed at an individual.

For the purposes of this section, "interaction" shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.

2. Control hold, pressure point, leverage, grab, takedown, and/or bodyweight, and the application would lead a reasonably objective officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor, when feasible, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of all involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~ with a brief summary.

#### Level 3

~~(a) Would have otherwise been classified as a Level 2, except one or more of the following apply:~~

- ~~1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.~~
- ~~2. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.~~

(a) Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.

(b) Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.

~~(c)(b)~~ The officer used any of the following force options:

1. Chemical Agents/Munitions
2. Impact Weapon Strikes
3. Personal Body Weapons

An uninvolved supervisor, when practical, will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into the Blue Team ~~template and attach a completed Use of Force Investigation Checklist~~.

The supervisor will also complete a Use of Force Investigation Report narrative in Blue Team for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

#### **Level 4**

Any incident involving deadly force or any force likely to cause death or serious bodily injury will be investigated under the protocols outlined in Policy P-12.

#### **300.6.3 EMPLOYEE USE OF FORCE**

When any Berkeley Police Department employee has engaged in a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy.

- (a) In the event a use of force as described as Level 1, Level 2, or Level 3 occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (b) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g. the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.

#### **300.6.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE**

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. ~~See the Records Management Policy.~~

#### **300.6.5 PUBLIC RECORDS**

Records related to use of force incidents shall be retained and disclosed in compliance with California Penal Code section 832.7, California Government Code section 6254(f), and Department Policy R-23.

#### **300.7 MEDICAL CONSIDERATION**

When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall promptly provide, if properly trained, or otherwise promptly procure medical assistance when reasonable and safe to do so in order to ensure that the subject receives appropriate medical care

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical evaluation as soon as practicable and have medical personnel stage away if appropriate.



**300.8 WATCH COMMANDER RESPONSIBILITY**

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

**300.9 USE OF FORCE ADMINISTRATIVE REVIEW**

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report or Use of Restraint Device Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police shall make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used shall be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

All Use of Force Reports shall be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; 3) require further investigation; and/or, 4) require revision or additional training.

Use of Force Reports shall be held in file for at least five (5) years

**300.10 TRAINING**

~~Officers shall receive periodic training on this policy and demonstrate their knowledge and understanding as per SB-230~~

Officers, investigators, and supervisors will receive periodic training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, the Personnel and Training Sergeant should ensure that officers receive periodic training on de-escalation tactics, including alternatives to force.

Training should also include:

- a. Guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities.
- b. Training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.

**300.11.1 USE OF FORCE ANALYSIS**

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.

- 
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2)
  - (c) The identification of any trends in the use of force by members.
  - (d) Training needs recommendations.
  - (e) Equipment needs recommendations.
  - (f) Policy revisions recommendations.

**300.11.2 REPORTING FREQUENCY**

- (a) On a quarterly basis via the City’s Open Data Portal website;
- (b) On a quarterly basis to the Police Review Commission; and
- (c) On a yearly basis as part of the Police Department’s Annual Crime Report to Council.

**300.12 CIVILIAN COMPLAINTS**

Complaints by members of the public related to this policy may be filed with the Berkeley Police Department Internal Affairs Bureau (IAB) and/or the Police Review Commission (PRC). Complaints will be investigated in compliance with the respective applicable policies and procedures of the IAB and the PRC.

**300.13 POLICY REVIEW AND UPDATES**

This policy shall be regularly reviewed and updated to reflect developing practices and procedures.

At least annually, the Berkeley Police Department and the Police Review Commission shall convene to review and update the Use of Force Policy to reflect developing practices and procedures per SB 230.

Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting

**10. NEW BUSINESS (discussion and action)**

- a. Review proposed amendments to Policy 300, Use of Force

**Motion to remove the words “strive to” from the first sentence of Section 300.1.2, Use of Force Standard, and reject the recommendation to add “strive to” in the first and fourth paragraphs of 300.1.2; with the understanding that the “objectively reasonable” and other discussions about the policy show that there is not one right answer and that a range of force options is available.**

Moved/Second (Sagino/Perezvelez) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mizell, Perezvelez, Ramsey, Sagino, and Wilson.

Noes: Mikiten

Abstain: None

Absent: Chang

**Motion to accept the proposed insertion of the definition of “Feasible” in Section 300.1.4, Definitions, without the reference to Government Code section 7286(a).**

Moved/Second (Calavita/Sagino) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Perezvelez, Ramsey, Sagino, and Wilson.

Noes: None

Abstain: Mizell

Absent: Chang

**Motion to delete “strive to” in Section 300.1.3, Core Principles, Subsection A, De-escalation and Force Minimization.**

Moved/Second (Perezvelez/Sagino) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mizell, Perezvelez, Ramsey, Sagino, and Wilson.

Noes: None

Abstain: Mikiten

Absent: Chang

**Motion to accept the definitions of “Objectively Reasonable” and “Totality of the Circumstances” in Section 300.1.4, Definitions.**

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Sagino, and Wilson.

Noes: None

Abstain: None

Absent: Chang

**Motion to accept the addition of “bystanders” in Section 300.3.3, Factors Use to Determine the Reasonableness, Necessity, and Proportionality of Force, item (m).**

Moved/Second (Perezvelez/Calavita) **Motion carried by general consent.**

**Motion to reject “may” and instead use “should” in place of “shall” in the fourth paragraph of Section 300.3.5, De-escalation Tactics.**

Moved/Second (Perezvelez/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Sagino, and Wilson.

Noes: None

Abstain: None

Absent: Chang

Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting

**Motion to accept the rewording in the third paragraph of Section 300.4, Use of Deadly Force.**

Moved/Second (Saginer/Allamby) **Motion Carried by general consent.**

**Motion to accept the addition of Section 300.4.1, Drawing and Pointing Firearms, with the replacement of “might” with “may” in the first sentence.**

Moved/Second (Saginer/Perezvelez)

**Friendly amendment: and to delete reference to the Government Code.**

Moved by Calavita, accepted by Saginer and Perezvelez

**Motion, as amended, Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

**Motion to approve, in Section 300.6.2, Use of Force Reporting Levels, the deletion of subsection (a) under Level 1, and the modification of Level 3 to read:**

- (a) **Suspect has sustained an injury or complains of injury or continuing pain due to interaction with the officer.**
- (b) **Would have otherwise been classified as a Level 2, except officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.**
- (c) **The officer used any of the following force options:**
  - 1. Chemical Agents/Munitions**
  - 2. Impact Weapon Strikes**
  - 3. Personal Body Weapons**

Moved/Second (Calavita/Saginer) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

**Motion to accept the deletion of references to attaching a completed a Use of Force Investigation checklist and specifying “template” in reference to the Blue Team, under Levels 1, 2, and 3 of Section 300.6.2, Use of Force Reporting Levels.**

Moved/Second (Perezvelez/Calavita) **Motion Carried**

Ayes: Allamby, Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang

*(Recess 10:02 – 10:15 p.m.)*

**Motion to amend the language in 300.6.2, Use of Force Reporting Levels, Level 2, subsection (b) to read:**

- 1. Firearm drawn from the holster or otherwise deployed during an interaction with an individual and/or pointed at an individual.**

*Excerpt of draft minutes of the Nov. 18, 2020 Police Review Commission meeting*

**For the purposes of this section, “interaction” shall be defined as a situation in which an individual could reasonably believe the deployment and/or pointing of a firearm could be an attempt to gain compliance.**

**An individual complaining of an attempt to compel an action with a firearm, shall be reportable for this purpose.**

Moved/Second (Mizell/Saginer)

**Friendly amendment: to drop the last sentence.**

Moved by Calavita, accepted by Mizell and Saginer.

**Motion, as amended, Carried**

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang, Allamby

**Motion to accept added subsections (a) and (b) in Section 300.6.3, Employee Use of Force.**

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang, Allamby

**Motion to accept deletion in Section 300.6.4, Reporting to California Department of Justice, and the addition of “(f)” to Government Code section 6254 in Section 300.6.5, Public Records.**

Moved/Second (Calavita/Mizell) **Motion Carried by general consent.**

**Motion to accept revised Section 300.10, Training, but omitting the two references to Government Code section 7286(b).**

Moved/Second (Calavita/Leftwich) **Motion Carried**

Ayes: Calavita, Leftwich, Mikiten, Mizell, Perezvelez, Ramsey, Saginer, and Wilson.

Noes: None

Abstain: None

Absent: Chang, Allamby

**Motion to accept the revision to Section 300.12, Civilian Complaints.**

Moved/Second (Calavita/Leftwich) **Motion Carried by general consent.**

