

## SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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### MEMORANDUM

TO: BART Police Department, Chief of Police                      DATE: December 9, 2013

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – BPD Policy 300**

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. In accordance with this section of the Model, OIPA has developed a recommendation with regard to *BPD Policy 300 – Use of Force*.

More specifically, OIPA's recommendation focuses on Sections 300.4 and 300.5 within BPD's Use of Force Policy, which are titled, respectively, "Reporting the Use of Force" and "Supervisor Responsibility." OIPA has chosen to address these two sections in particular after reviewing a number of BPD investigations involving a use of force and arriving at the conclusion that the language in these two sections could be strengthened in a way that would help ensure that their mandates are always upheld.

OIPA recognizes that there may be instances in which a supervisor responds to a use of force incident and, by virtue of public safety necessity, assists subordinate personnel in taking a subject into custody. It is based upon that understanding that OIPA feels a supervisor who has become involved in a use of force should not also have a collateral responsibility for conducting an ensuing investigation into the use of force. That responsibility should be reserved solely for an uninvolved supervisor. Following this course of action will help to minimize the likelihood of any impropriety, and the appearance of any impropriety, surrounding the use of force investigation.

Additionally, when an uninvolved supervisor does conduct an investigation into the use of force, the interview of the subject upon whom force was used must take place outside the presence of the officers who used the force. Regardless of whether the force used in a given instance is ultimately deemed to have been reasonable and within policy or not, the potential for a subject upon whom force was used to feel intimidated while participating in an investigation of that force is simply too high if the officers who used force are allowed to be present. This intimidation factor must be eliminated in order to help minimize the likelihood of any impropriety, and the appearance of any impropriety, surrounding the use of force investigation.

Based on the above reasoning, OIPA feels that the language in Sections 300.4 and 300.5 of BPD's Use of Force policy could be strengthened by making these matters more explicitly clear. Following is an unmarked copy of Policy 300, as issued; an annotated copy of Policy 300, displaying the edits suggested by OIPA as well as explanations for those edits; and a copy of what Policy 300 would look like after incorporating the edits suggested by OIPA.

A handwritten signature in black ink, appearing to read 'M.P. Smith', written over a horizontal line.

Mark P. Smith  
BART Independent Police Auditor

## Use of Force

### 300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

#### 300.1.2 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

### 300.2 POLICY

It is the policy of this department that 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 effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the 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 of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Penal Code § 835a).

#### **300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized however, that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

#### **300.2.3 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force.

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Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public.

Non-deadly force applications may include but are not limited to pain compliance techniques, takedown techniques, and personal body weapons as described in this policy manual, and leg restraints, control devices (baton, chemical agents, OC spray and SIMS), ECD device, and K-9 bites described in Policy Manual §§ 306, 308, 309 and 318 respectively.

#### **300.2.4 PAIN COMPLIANCE AND TAKEDOWN TECHNIQUES**

Pain compliance and/or takedown techniques may be very effective in controlling an actively resisting individual. Officers should only apply those pain compliance and/or takedown techniques for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance and/or takedown technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance and/or takedown technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance and/or takedown technique shall be discontinued once the officer determines that compliance has been achieved.

#### **300.2.5 CAROTID RESTRAINT**

The carotid restraint is not authorized for use by this agency.

#### **300.2.6 PERSONAL BODY WEAPONS**

Personal body weapon strikes, punches, lifts or kicks for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such weapon appears necessary to further a legitimate law enforcement purpose, may be used.

As with the pain compliance and takedown techniques, officers utilizing personal body weapons should consider the totality of the circumstances prior to usage. Unless exigent circumstances exist, personal body weapon strikes, punches, lifts or kicks to the rear of the head, neck or spine are prohibited.

#### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances:

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- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

#### **300.3.1 TEMPORARY ASSIGNMENT OF EMPLOYEES WHO USE FORCE**

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor shall also be present.

When a BART Police employee applies a use of force under the above listed circumstances, the use of force must be reported and investigated per Policy 300.

#### **300.4 REPORTING THE USE OF FORCE**

Any use of force by a member of this Department which utilizes any method of pain compliance, personal body weapons, a "take down", impact weapons, alternate weapons, chemical agents, K-9 bite, electronic control devices, SIMS deployment, lethal force, or any other physical force that either results in injury or non-injury to the subject shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons may require the completion of additional report forms as specified in Departmental policy and/or law. In addition to thorough documentation of the use of force in the narrative of the police report, the tab in the MO data entry section of the report writing program shall be utilized to document the type of force used.

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the aforementioned circumstances.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them.

The application of an arm or wrist hold by an officer for the sole purpose of conducting a search of and/or placing handcuffs on a person is not considered a use of force.

The report must then be reviewed by a supervisor. The reviewing supervisor must review the use of force, and make a recommendation on whether the use of force was justified or not. In cases involving the use of force by a supervisor, the next rank shall conduct the review and recommendation. This recommendation will be documented on the Supervisors' Use of Force Report, and forwarded to the Chief of Police, via the chain of command. The appropriate Lieutenant and Deputy Chief will review the report and Use of Force Report, and comment on the use of the arrest control device (s) or technique. The report and Use of Force Report will be forwarded to the Chief of Police for information. The chief will forward the report to the Professional Standards Section for logging. The Professional Standards Section will forward the report to the Use of Force Review Board.

Whenever an officer draws a firearm during the performance of his/her duties to defend, detain or take any person into custody, it is considered a use of force and an account of the incident shall be made in a police report. The officer should include in the narrative

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of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. Examples of such documentation include, but are not limited to; the firearm was concealed against the officer's thigh or held at a low-ready position or pointed directly at a person. As soon as practical, a supervisor shall be notified and a Supervisor's Use of Force Report completed as required by §300.5

Incidents involving the drawing of a firearm that do not involve defending, detaining or taking a person into custody, and not in the presence of bystanders, do not require documentation in a police report. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search. Any situations where a firearm is pointed at a person or could in any way be perceived as being used to detain, or attempt to detain, a person shall be fully documented in a police report and Supervisor's Use of Force Report. Situations where an officer deploys a firearm in the presence of bystanders, but does not point the firearm at any person or use it to defend, detain or take any person into custody, is not considered to be a use of force, but must be fully documented in the narrative of a police report.

Once approved, the supervisor will attach a copy of the report in Blue Team and document on the Supervisor's Use of Force Report whether the drawing of the firearm was within departmental policy. The supervisor will forward the report with comments, via the chain of command, to the Chief of Police as described above. The Chief of Police will forward the Use of Force Report to the Internal Affairs Section for logging. The Internal Affairs Section will forward the report to the Use of Force Review Board. The Internal Affairs Section will notify the officer(s) of the finding.

Once the review board completes its review, the Supervisor's Use of Force Report will be forwarded to the affected officer(s) and the report and findings will be forwarded to the Internal Affairs Section. A record of all reported incidents, whether on or off-duty, will be maintained in the Internal Affairs Section Office.

Members of the Department's S.W.A.T. Team will document the use of S.W.A.T. weapon systems deployed during a team activation at the direction of the S.W.A.T. Commander.

#### **300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of physical force, as defined in section 300.4.

#### **300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Prior to booking or release, immediate medical assistance shall be obtained for any person who has sustained visible injury, expressed a complaint of injury or continuing pain, or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

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

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death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

#### **300.5 SUPERVISOR RESPONSIBILITY**

A supervisor should respond to an incident in which there has been a report of an application of force. The supervisor is expected to:

- (a) Obtain the basic facts from the involved officer(s)
- (b) Ensure that any injured parties are examined and treated
- (c) Separately interview the subject(s) upon whom force was applied
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
- (e) Identify any witnesses not already included in related reports
- (f) Review and approve all related reports
- (g) Complete a Supervisors' Use of Force Report in Blue Team and forward to the on duty Watch Commander.

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.

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## Use of Force

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#### 300.1.1 PHILOSOPHY

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Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

#### 300.1.2 DUTY TO INTERCEDE

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### 300.2 POLICY

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Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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

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#### **300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized however, that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

#### **300.2.3 NON-DEADLY FORCE APPLICATIONS**

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#### **300.2.4 PAIN COMPLIANCE AND TAKEDOWN TECHNIQUES**

Pain compliance and/or takedown techniques may be very effective in controlling an actively resisting individual. Officers should only apply those pain compliance and/or takedown techniques for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance and/or takedown technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance and/or takedown technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance and/or takedown technique shall be discontinued once the officer determines that compliance has been achieved.

#### **300.2.5 CAROTID RESTRAINT**

The carotid restraint is not authorized for use by this agency.

#### **300.2.6 PERSONAL BODY WEAPONS**

Personal body weapon strikes, punches, lifts or kicks for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such weapon appears necessary to further a legitimate law enforcement purpose, may be used.

As with the pain compliance and takedown techniques, officers utilizing personal body weapons should consider the totality of the circumstances prior to usage. Unless exigent circumstances exist, personal body weapon strikes, punches, lifts or kicks to the rear of the head, neck or spine are prohibited.

#### **300.3 DEADLY FORCE APPLICATIONS**

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- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

#### 300.3.1 TEMPORARY ASSIGNMENT OF EMPLOYEES WHO USE FORCE

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor shall also be present.

When a BART Police employee applies a use of force under the above listed circumstances, the use of force must be reported and investigated per Policy 300.

#### 300.4 REPORTING THE USE OF FORCE

Any use of force by a member of this Department which utilizes any method of pain compliance, personal body weapons, a "take down", impact weapons, alternate weapons, chemical agents, K-9 bite, electronic control devices, SIMS deployment, lethal force, or any other physical force that either results in injury or non-injury to the subject shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons may require the completion of additional report forms as specified in Departmental policy and/or law. In addition to thorough documentation of the use of force in the narrative of the police report, the tab in the MO data entry section of the report writing program shall be utilized to document the type of force used.

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the aforementioned circumstances. Such notification must be made to an uninvolved supervisor meaning one who was not involved in the incident that resulted in the use of force and who was not present during the use of force.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them. However, involved officers, meaning those who use force in a given incident or those who witness the use of force by another officer in a given incident, shall not obtain statements from other officers as part of a report on the use of force, as such is the responsibility of an uninvolved supervisor (see Section 300.5 below). Furthermore, involved officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise conspire to thwart the integrity of a report on the use of force.

The application of an arm or wrist hold by an officer for the sole purpose of conducting a search of and/or placing handcuffs on a person is not considered a use of force.

The report must then be reviewed by a an uninvolved supervisor. The reviewing supervisor must review the use of force, and make a recommendation on whether the use of force was justified or not. In cases involving the use of force by a supervisor, the next rank shall conduct the review and recommendation. This recommendation will be documented on the Supervisors' Use of Force Report, and forwarded to the Chief of

**Comment [OIPA1]:** OIPA feels it is important to explicitly clarify that a supervisor who has no involvement in the use of force that occurred should be the one to receive notification. Ensuring that an uninvolved supervisor is called upon to initiate a response to a use of force upon being notified of one helps minimize not only the potential for actual impropriety, but also the appearance of any impropriety.

**Comment [OIPA2]:** With regard to the administrative examination into the propriety of a use of force, OIPA feels it is crucial that involved parties and witnesses refrain from influencing each other's accounts of what occurred as much as possible so that there is neither undue contamination from one party's account to the next nor the appearance of such contamination. Either of these things threaten to negate the ability of an administrative examination to objectively determine whether or not the use of force was appropriate.

**Comment [OIPA3]:** See Comment #OIPA1 above.

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Police, via the chain of command. The appropriate Lieutenant and Deputy Chief will review the report and Use of Force Report, and comment on the use of the arrest control device (s) or technique. The report and Use of Force Report will be forwarded to the Chief of Police for information. The chief will forward the report to the Professional Standards Section for logging. The Professional Standards Section will forward the report to the Use of Force Review Board.

Whenever an officer draws a firearm during the performance of his/her duties to defend, detain or take any person into custody, it is considered a use of force and an account of the incident shall be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. Examples of such documentation include, but are not limited to; the firearm was concealed against the officer's thigh or held at a low-ready position or pointed directly at a person. As soon as practical, a supervisor shall be notified and a Supervisor's Use of Force Report completed as required by §300.5

Incidents involving the drawing of a firearm that do not involve defending, detaining or taking a person into custody, and not in the presence of bystanders, do not require documentation in a police report. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search. Any situations where a firearm is pointed at a person or could in any way be perceived as being used to detain, or attempt to detain, a person shall be fully documented in a police report and Supervisor's Use of Force Report. Situations where an officer deploys a firearm in the presence of bystanders, but does not point the firearm at any person or use it to defend, detain or take any person into custody, is not considered to be a use of force, but must be fully documented in the narrative of a police report.

Once approved, the supervisor will attach a copy of the report in Blue Team and document on the Supervisor's Use of Force Report whether the drawing of the firearm was within departmental policy. The supervisor will forward the report with comments, via the chain of command, to the Chief of Police as described above. The Chief of Police will forward the Use of Force Report to the Internal Affairs Section for logging. The Internal Affairs Section will forward the report to the Use of Force Review Board. The Internal Affairs Section will notify the officer(s) of the finding.

Once the review board completes its review, the Supervisor's Use of Force Report will be forwarded to the affected officer(s) and the report and findings will be forwarded to the Internal Affairs Section. A record of all reported incidents, whether on or off-duty, will be maintained in the Internal Affairs Section Office.

Members of the Department's S.W.A.T. Team will document the use of S.W.A.T. weapon systems deployed during a team activation at the direction of the S.W.A.T. Commander.

#### **300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of physical force, as defined in section 300.4.

#### **300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

Prior to booking or release, immediate medical assistance shall be obtained for any person who has sustained visible injury, expressed a complaint of injury or continuing pain, or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual

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refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

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 and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

### 300.5 SUPERVISOR RESPONSIBILITY

~~A~~ **An uninvolved** supervisor should respond to an incident in which there has been a report of an application of force. The **uninvolved** supervisor is expected to:

- (a) Obtain the basic facts from the involved officer(s)
- (b) Ensure that any injured parties are examined and treated
- (c) Separately interview the subject(s) upon whom force was applied; **such interviews shall be conducted outside the presence of any officers involved in the use of force or the incident that led to it**
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
- (e) Identify any witnesses not already included in related reports
- (f) Review and approve all related reports
- (g) Complete a Supervisors' Use of Force Report in Blue Team and forward to the on duty Watch Commander.

In the event that ~~a~~ **an uninvolved** 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.

**Comment [OIPA4]:** See Comment #OIPA1 above.

**Comment [OIPA5]:** To help minimize the chance that a subject upon whom force was applied feels intimidation, and decides to alter his/her account of the force that was used as a result, OIPA feels it should be explicitly clarified that the uninvolved supervisor's interview of the subject shall take place away from any officers who were involved in the use of force or the incident that led to it.

**Comment [OIPA6]:** See Comment #OIPA1 above.

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### 300.1 PURPOSE AND SCOPE

This policy recognizes that the use of force by law enforcement requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide officers of this department with guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

#### 300.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of all human interests.

#### 300.1.2 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

### 300.2 POLICY

It is the policy of this department that 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 effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of reasonableness must allow for the fact that police officers are often forced to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation.

Given that no policy can realistically predict every possible situation an officer might encounter in the field, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.

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

Any peace officer that has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the 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 of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance (Penal Code § 835a).

#### **300.2.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE**

When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:

- (a) The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
- (b) Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
- (c) Influence of drugs/alcohol (mental capacity).
- (d) Proximity of weapons.
- (e) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (f) Time and circumstances permitting, the availability of other options (what resources are reasonably available to the officer under the circumstances).
- (g) Seriousness of the suspected offense or reason for contact with the individual.
- (h) Training and experience of the officer.
- (i) Potential for injury to citizens, officers and suspects.
- (j) Risk of escape.
- (k) Other exigent circumstances.

It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact his/her decision.

While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

It is recognized however, that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the standard tools, weapons or methods provided by the Department. Officers may find it more effective or practical to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree reasonably necessary to accomplish a legitimate law enforcement purpose.

#### **300.2.3 NON-DEADLY FORCE APPLICATIONS**

Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious injury shall be considered non-deadly force.

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Each officer is provided with equipment, training and skills to assist in the apprehension and control of suspects as well as protection of officers and the public.

Non-deadly force applications may include but are not limited to pain compliance techniques, takedown techniques, and personal body weapons as described in this policy manual, and leg restraints, control devices (baton, chemical agents, OC spray and SIMS), ECD device, and K-9 bites described in Policy Manual §§ 306, 308, 309 and 318 respectively.

#### **300.2.4 PAIN COMPLIANCE AND TAKEDOWN TECHNIQUES**

Pain compliance and/or takedown techniques may be very effective in controlling an actively resisting individual. Officers should only apply those pain compliance and/or takedown techniques for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such a technique appears necessary to further a legitimate law enforcement purpose. Officers utilizing any pain compliance and/or takedown technique should consider the totality of the circumstance including, but not limited to:

- (a) The potential for injury to the officer(s) or others if the technique is not used
- (b) The potential risk of serious injury to the individual being controlled
- (c) The degree to which the pain compliance and/or takedown technique may be controlled in application according to the level of resistance
- (d) The nature of the offense involved
- (e) The level of resistance of the individual(s) involved
- (f) The need for prompt resolution of the situation
- (g) If time permits (e.g., passive demonstrators), other reasonable alternatives

The application of any pain compliance and/or takedown technique shall be discontinued once the officer determines that compliance has been achieved.

#### **300.2.5 CAROTID RESTRAINT**

The carotid restraint is not authorized for use by this agency.

#### **300.2.6 PERSONAL BODY WEAPONS**

Personal body weapon strikes, punches, lifts or kicks for which the officer has received P.O.S.T. or other departmentally approved training, and only when the officer reasonably believes that the use of such weapon appears necessary to further a legitimate law enforcement purpose, may be used.

As with the pain compliance and takedown techniques, officers utilizing personal body weapons should consider the totality of the circumstances prior to usage. Unless exigent circumstances exist, personal body weapon strikes, punches, lifts or kicks to the rear of the head, neck or spine are prohibited.

### **300.3 DEADLY FORCE APPLICATIONS**

While the use of a firearm is expressly considered deadly force, other force might also be considered deadly force if the officer reasonably anticipates and intends that the force applied will create a substantial likelihood of causing death or very serious injury. Use of deadly force is justified in the following circumstances:

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- (a) An officer may use deadly force to protect himself/herself or others from what he/she reasonably believe would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing suspect when the officer has probable cause to believe that the suspect has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent or future potential risk of serious bodily injury or death to any other person if the suspect is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

#### **300.3.1 TEMPORARY ASSIGNMENT OF EMPLOYEES WHO USE FORCE**

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor shall also be present.

When a BART Police employee applies a use of force under the above listed circumstances, the use of force must be reported and investigated per Policy 300.

#### **300.4 REPORTING THE USE OF FORCE**

Any use of force by a member of this Department which utilizes any method of pain compliance, personal body weapons, a "take down", impact weapons, alternate weapons, chemical agents, K-9 bite, electronic control devices, SIMS deployment, lethal force, or any other physical force that either results in injury or non-injury to the subject shall be documented promptly, completely, and accurately in an appropriate report depending on the nature of the incident. The use of particular weapons may require the completion of additional report forms as specified in Departmental policy and/or law. In addition to thorough documentation of the use of force in the narrative of the police report, the tab in the MO data entry section of the report writing program shall be utilized to document the type of force used.

Supervisory notification shall be made as soon as practical following the application of physical force, under any of the aforementioned circumstances. **Such notification must be made to an uninvolved supervisor, meaning one who was not involved in the incident that resulted in the use of force and who was not present during the use of force.**

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them. **However, involved officers, meaning those who use force in a given incident or those who witness the use of force by another officer in a given incident, shall not obtain statements from other officers as a part of a report on the use of force, as such is the responsibility of an uninvolved supervisor (see Section 300.5 below). Furthermore, involved officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise conspire to thwart the integrity of a report on the use of force.**

The application of an arm or wrist hold by an officer for the sole purpose of conducting a search of and/or placing handcuffs on a person is not considered a use of force.

The report must then be reviewed by **an uninvolved** supervisor. The reviewing supervisor must review the use of force, and make a recommendation on whether the use of force was justified or not. In cases involving the use of force by a supervisor, the next rank shall conduct the review and recommendation. This recommendation will be documented on the Supervisors' Use of Force Report, and forwarded to the Chief of Police, via the

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chain of command. The appropriate Lieutenant and Deputy Chief will review the report and Use of Force Report, and comment on the use of the arrest control device (s) or technique. The report and Use of Force Report will be forwarded to the Chief of Police for information. The chief will forward the report to the Professional Standards Section for logging. The Professional Standards Section will forward the report to the Use of Force Review Board.

Whenever an officer draws a firearm during the performance of his/her duties to defend, detain or take any person into custody, it is considered a use of force and an account of the incident shall be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. Examples of such documentation include, but are not limited to; the firearm was concealed against the officer's thigh or held at a low-ready position or pointed directly at a person. As soon as practical, a supervisor shall be notified and a Supervisor's Use of Force Report completed as required by §300.5

Incidents involving the drawing of a firearm that do not involve defending, detaining or taking a person into custody, and not in the presence of bystanders, do not require documentation in a police report. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search. Any situations where a firearm is pointed at a person or could in any way be perceived as being used to detain, or attempt to detain, a person shall be fully documented in a police report and Supervisor's Use of Force Report. Situations where an officer deploys a firearm in the presence of bystanders, but does not point the firearm at any person or use it to defend, detain or take any person into custody, is not considered to be a use of force, but must be fully documented in the narrative of a police report.

Once approved, the supervisor will attach a copy of the report in Blue Team and document on the Supervisor's Use of Force Report whether the drawing of the firearm was within departmental policy. The supervisor will forward the report with comments, via the chain of command, to the Chief of Police as described above. The Chief of Police will forward the Use of Force Report to the Internal Affairs Section for logging. The Internal Affairs Section will forward the report to the Use of Force Review Board. The Internal Affairs Section will notify the officer(s) of the finding.

Once the review board completes its review, the Supervisor's Use of Force Report will be forwarded to the affected officer(s) and the report and findings will be forwarded to the Internal Affairs Section. A record of all reported incidents, whether on or off-duty, will be maintained in the Internal Affairs Section Office.

Members of the Department's S.W.A.T. Team will document the use of S.W.A.T. weapon systems deployed during a team activation at the direction of the S.W.A.T. Commander.

#### **300.4.1 NOTIFICATION TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of physical force, as defined in section 300.4.

#### **300.4.2 MEDICAL ATTENTION FOR INJURIES SUSTAINED USING FORCE**

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### 300.5 SUPERVISOR RESPONSIBILITY

An **uninvolved** supervisor should respond to an incident in which there has been a report of an application of force. The **uninvolved** supervisor is expected to:

- (a) Obtain the basic facts from the involved officer(s)
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- (c) Separately interview the subject(s) upon whom force was applied; **such interviews shall be conducted outside the presence of any officers involved in the use of force or the incident that led to it**
- (d) Ensure that photographs have been taken of any areas involving visible injury or complaint of pain as well as overall photographs of uninjured areas
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