

PAB Controlled Equipment Subcommittee

Notes of discussion at May 23, 2022 meeting

- Arrows indicate post-meeting Interim DPA notes

What must the Impact Statements contain?

PAB in April 6 memo and Mr. Lindsay-Poland said deficient because current authorized uses are not included.

BPD pointed out that the Impact Statement for each piece of equipment includes the 7 categories in the Police Equipment Ordinance (BMC sec. 2.100.020 (C).) Authorized uses are set out in the Use Policies appearing as Appendices to the Impact Statements.

It was noted that the equipment description is to include “intended uses and effects,” per subsection (1) of BMC sec. 2.100.020 (C).

Responding to lack of inclusion of AB 48 (Penal Code sec. 13652) prohibitions, BPD said AB 48 doesn’t have a reporting requirement. DPA noted that AB 48 governs use, and it is appropriate to expect that those prohibitions be reflected in use policies.

BPD said it updated Policy 428, First Amendment Assemblies, to incorporate PC 13652 requirements. Not practical to have authorized uses in so many places.

Noted that Policy 428 doesn’t incorporate all of PC 13652.

- Issue: should authorized uses (currently in Use Policies) be incorporated into the Impact Statements?

How does the PAB make a determination about alternatives?

[BMC sec. 2.100.020 (C)(6): “Alternatives: Alternative method or methods by which the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.”]

BPD: In the case of rifles, the Colt M4 is the most reliable rifle.

Mr. L-P: Consider alternatives to the possession of the weapon, or to deployment of the weapon.

- Do the Impact Statements adequately describe the alternatives? Seems like a difficult determination to make without more time to explore.

Is it possible to add more detail regarding the cost of potential adverse effects (impacts)? What about impacts to potential witnesses; the community?

[BMC sec. 2.100.020(C)(4): “Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.”]

Example: Impact Statement for M4 Rifle, under (4) Impact (p. 7) it is stated that the rifle and accompanying cartridge, “both inanimate objects, have zero impact on things such as civil rights or civil liberties of the public.” What about impact on the people who observe deployment of the rifle?

BPD: Don't know and can't guess. Misuse could lead to loss of life or serious injury. Can't put a number on it. Civil rights / civil liberties not impacted unless there is a violation of law. Very difficult to be more specific.

DPA: Per BMC sec 2.100.020 (4), "Impact" is an assessment identifying any "potential impacts that **the use of** Controlled Equipment" might have on the welfare, safety, civil rights, civil liberties of the public. I.e., not asking about the impact of the inanimate piece of equipment.

Example: Penn Arms launcher

BPD: Unsure what more is needed. Many shootings prevented by use of less-lethal weapons like the Penn Arms.

PAB: True, but that may not be relevant to the Impacts section.

- Impact Statements need some revising.

Proposal for adding language to rifle policies, from Mr. Lindsay Poland

Rifles. BPD Policy 349 (Tactical Rifle Operator Program) and 354 (Precision Rifle), and Policy 300 (UOF) have more detail on when the rifle can be fired v. when it can be displayed. Suggest policy revision to add language on uses (deployment; display) that aren't appropriate. See OPD policy – DGO K-6, Patrol Rifle Program.

- Suggested policy revision is substantial and PAB probably does not have time to review in time to include with recommendation to Council in June.

All 3 less-lethal (Penn Arms, Milkor, FN 303 Launcher and FN Pava Impact Projectiles)

Mr. L-P: Use is affected by AB 48 (PC 13652). Impact Statements for the less-lethals refer to Policies 300 (Use of Force) and 303 (Control Devices and Techniques). Current 303 authorizes use in crowd control, and 300 does not incorporate the prohibitions of PC 13652.

BPD: PC 13652 prohibits use in crowd control, not individual use. Policy 428 has been updated to reflect PC 13652.

Mr. L-P: Policy 428 should be referenced for all 3 less-lethal. Also, Policy 428, while updated, does not contain all the language in the PC 13652. And, Policy 303 should reference PC 13652.

PAB: At a minimum, references to the Penal Code should be included in the Impact Statements.

- Issue: Are the restrictions in PC 13652 adequately set forth in Policy 428? Need they be included in other policies?

Note: Following the 5-23 meeting, the BPD revised the Impact Statements to include Policy 428 as a Use Policy associated with the three less-lethal pieces of equipment.