



# Policy 300 – Use of Force: Revision

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# Policy 300 Revision

- Product of a working group
  - Defensive Tactics Unit
  - Firearms and Tactics Unit
  - Field Training Officers
  - Management
  - Policy staff



# Policy 300 Revision

- Goals of Review/Revision
  - Required under the policy
  - Incorporate GC§7286
- Streamline the policy
  - Training Consideration
  - Ease of Reading and Understanding
- Implement best practices
- Adjust any changes to case law



# Policy 300 Revision

- Original Policy was created in 2021
  - BPD, BPA, PRC
- Updated in 2023
- Updated in 2024
- **Substantive Changes ---IN PROGRESS---**
- GC§7286 codified many of the items implemented in the original policy



# GC§7286 – LE Use of Force Policies

- Senate Bill 230 (Caballero, 2019)
- Linked to Assembly Bill 392
- Signed 2019 by Gov. Newsom
- Operationally implemented by 2021



# GC§7286 – LE Use of Force Policies

- (a) For the purposes of this section:
  - (1) “**Deadly force**” means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.
  - (2) “**Excessive force**” means a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.
  - (3) “**Feasible**” means 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.
  - (4) “**Intercede**” includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer’s excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer’s name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.
  - (5) “**Law enforcement agency**” means any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.
  - (6) “**Retaliation**” means demotion, failure to promote to a higher position when warranted by merit, denial of access to training and professional development opportunities, denial of access to resources necessary for an officer to properly perform their duties, or intimidation, harassment, or the threat of injury while on duty or off duty.



# GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a **minimum standard on the use of force**. Each agency's policy shall include all of the following:
  - (1) A requirement that officers utilize **deescalation** techniques, **crisis intervention tactics**, and other **alternatives to force** when feasible.
  - (2) A requirement that an officer may only use a level of force that they reasonably believe is **proportional** to the seriousness of the suspected offense or the **reasonably perceived level of actual or threatened resistance**.
  - (3) A requirement that officers **immediately report potential excessive force** to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
  - (4) A **prohibition on retaliation** against an officer who reports a suspected violation of a law or regulation by another officer to a supervisor or other person at the law enforcement agency who has the authority to investigate the violation.



# GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a **minimum standard on the use of force**. Each agency's policy shall include all of the following:
  - (5) Clear and specific guidelines regarding situations in which officers **may or may not draw a firearm or point a firearm** at a person.
  - (6) A requirement that officers **consider their surroundings and potential risks to bystanders**, to the extent reasonable under the circumstances, before discharging a firearm.
  - (7) Procedures for disclosing public records in accordance with Section 832.7.
  - (8) Procedures for the filing, investigation, and reporting of **citizen complaints** regarding use of force incidents.
  - (9) A requirement that an officer **intercede** when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an **objectively reasonable** officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
  - (10) Comprehensive and specific guidelines regarding **approved methods and devices** available for the application of force.



# GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:
- (11) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is **fair and unbiased**.
- (12) Comprehensive and specific guidelines for the **application of deadly force**.
- (13) Comprehensive and detailed requirements for prompt **internal reporting and notification regarding a use of force incident**, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- (14) The **role of supervisors** in the review of use of force applications.
- (15) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure **medical assistance** for persons injured in a use of force incident, when reasonable and safe to do so.
- (16) **Training standards and requirements** relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- (17) Training and guidelines regarding **vulnerable populations**, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.



# GC§7286 – LE Use of Force Policies

- (b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency’s policy shall include all of the following:
  - (18) Procedures to prohibit an officer from training other officers for a period of at least three years from the date that an abuse of force complaint against the officer is substantiated.
  - (19) A requirement that an officer that has received all required training on the requirement to intercede and fails to act pursuant to paragraph (9) be disciplined up to and including in the same manner as the officer that committed the excessive force.
  - (20) Comprehensive and specific guidelines under which the **discharge of a firearm** at or from a moving vehicle may or may not be permitted.
  - (21) Factors for **evaluating and reviewing** all use of force incidents.
  - (22) Minimum training and course titles required to meet the objectives in the use of force policy.
  - (23) A requirement for the **regular review and updating of the policy** to reflect developing practices and procedures.
- (c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section **accessible to the public**.
- (d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).



# GC§7286.5 – LE Use of Force Policies

- (a) (1) A law enforcement agency shall not authorize the use of a **carotid restraint** or **choke hold** by any peace officer employed by that agency.
- (2) A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of **positional asphyxia**.
- (b) As used in this section, the following terms are defined as follows:
  - (1) “**Carotid restraint**” means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person.
  - (2) “**Choke hold**” means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe.
  - (3) “Law enforcement agency” means any agency, department, or other entity of the state or any political subdivision thereof, that employs any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.
  - (4) “Positional asphyxia” means situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.



# Substantive Changes to Policy 300

- Implement GC§7286 mandates
- Adds POLICY section
- Replacing USE OF FORCE STANDARD with USE OF FORCE
- Remove USE OF FORCE CONTINUUM
- Edit DE-ESCALATION TACTICS
- Verbatim USE OF DEADLY FORCE
  - In line with standards
  - Remove ambiguity in training and application
  - Clarity for situations where split seconds matter
- Clearer callouts for OFFICER and SUPERVISOR responsibilities
- Augment LEVEL 1 (remove: leverage, grab, bodyweight, lowering)
  - In line with CityGate report



# 300.1.2 Use of Force Standard

## CURRENT

In dealing with suspects, officers shall use alternatives to physical force whenever reasonably possible. In all cases where physical force is used, officers shall use a 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 use a **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.

PROPOSED: REMOVE & REPLACE with new **USE OF FORCE** section

## 300.3 USE OF FORCE

Officers **shall** use only that amount of force that **reasonably appears necessary given the facts and totality of the circumstances** known to or perceived by the officer at the time of the event to accomplish a **legitimate law enforcement purpose** (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a **reasonable officer** on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they **reasonably believe is proportional** to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that 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 that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.



# 300.1.3 Core Principles

## CURRENT

- A. De Escalation & Force Minimization
- B. Proportionality
- C. Minimizing the Use of Deadly Force
- D. Duty to Intercede
- E. Vulnerable Populations
- F. Foster Strong Community Relationships
- G. Fair and Unbiased Policing

## PROPOSED:

**Remove/Replace**

**MANY ITEMS ARE NOW INCORPORATED BY LAW**



# 300.1.3 Definitions

## CURRENT

Not alphabetized

Some outdated terms

## PROPOSED:

1. Reorder
2. Omit outdated terms
3. Incorporate new terms
4. Keep towards beginning of policy



# 300.2 Duty to Intercede and Report

CURRENT

DUTY TO INTERCEDE AND DUTY TO REPORT

PROPOSED:

REPLACE with 3 different headings:

**DUTY TO INTERCEDE**

**FAILURE TO INTERCEDE**

**DUTY TO REPORT EXCESSIVE FORCE**



# 300 Policy

## CURRENT

NO CURRENT “**POLICY**” section

## PROPOSED: **CREATE NEW SECTION**

### **POLICY**

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 interactions and, when warranted, may use reasonable force in carrying out their duties.

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

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.



# 300.3.1 Factors to Determine...of Force

## CURRENT

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

When determining whether to apply force and evaluating whether an officer has used 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.

## PROPOSED: Adjust to the following

### FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (**Government Code § 7286(b)**). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (**Penal Code § 835a**).
- (b) The conduct of the individual being confronted, as reasonably perceived by the Officer at the time (**Penal Code § 835a**).
- (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 **leading up to the use of force** (**Penal Code § 835a**).
- (e) The effects of **suspected** drugs or alcohol.
- (f) The individual's apparent mental state or capacity (**Penal Code § 835a**).
- (g) The individual's apparent ability to understand and comply with officer commands (**Penal Code § 835a**).
- (h) Proximity of weapons or dangerous improvised devices.

(differences in RED)



# 300.3.1 Factors to Determine...of Force

## CURRENT

- (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.

## PROPOSED: Adjust to the following

### FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

- (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 **(Penal Code § 835a)**.
- (k) Seriousness of the suspected offense or reason for contact with the individual **prior to and at the time force is used**.
- (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.

**(differences in RED)**



# 300.3.1 Factors to Determine...of Force

## **CURRENT**

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.

## **PROPOSED: Adjust to the following**

FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

**REMOVE THIS SECTION**

**This is a carryover from General Order U-2**

**Legally outdated; as objective reasonableness is what is evaluated**

**Flexible decision making is valued and taught instead of linear thinking**

**(differences in RED)**



# 300.3.2 Use of Force Continuum

## CURRENT

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.**

**PROPOSED: Adjust to the following**

**REMOVE THIS SECTION**

**This is a carryover from General Order U-2**

**Legally outdated; as objective reasonableness is what is evaluated**

**Flexible decision making is valued and taught instead of linear thinking**



# 300.3.4 De-Escalation Tactics

## CURRENT

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 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.

**PROPOSED: Replace with the following (removes 1.5 pages of policy)**

## ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

(differences in RED)



# 300.3.4

## CURRENT

### DE-ESCALATION TACTICS

- 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.

### ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

(differences in RED)



# 300.3.4

## CURRENT

### DE-ESCALATION TACTICS

(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:

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

## ALTERNATIVE TACTICS – DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.



# 300.3.7 Restraint and Control Devices

## **CURRENT**

### 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.

This item points to 2 different policies:

1. Policy 302, Handcuffing and Restraints
2. Policy 303, Control Devices and Techniques

The portion on the COUNCIL RESOLUTION is moved to the **ADDITIONAL RESTRICTIONS** section of the policy.



# 300.3.8 Chokehold Prohibition

## CURRENT

### 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 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.

- **RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD**  
Officers of this department are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Government Code § 7286.5)

- **RESTRICTIONS ON THE USE OF A CHOKE HOLD**  
Officers of this department are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

\*GC is now in line with the 1985 Council Resolution.

\*\*"Bar-arm hold" is a challenging term, as it relates to a "*bar-arm takedown*" that has nothing to do with the neck and cannot be confused with a Choke Hold.

(REVISED TEXT)



# 300.3.9 Additional Restrictions

## CURRENT

### ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, officers should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

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.

\*from Restraint and Control Devices section

(REVISED TEXT)



# 300.4 Use of Deadly Force

## CURRENT

### 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 the officer has objectively reasonable grounds to believe the person is aware of those facts. (Penal Code § 835a).

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

### DEADLY FORCE APPLICATIONS

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 the officer has objectively reasonable grounds to believe the person is aware of those facts (Penal Code § 835a).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect themselves or others from what the officer reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

(REVISED TEXT, and LEXI Verbatim)



# 300.4 Use of Deadly Force

## CURRENT

### USE OF DEADLY FORCE - CONTINUED

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.

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would 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 (Penal Code § 835a).

Officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

**Additionally, an officer** shall not use deadly force against a person whose actions are a threat solely to **property** unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would 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 (Penal Code § 835a)

**(REVISED TEXT)**



# 300.5 Use of Vehicles

## **CURRENT**

### USE OF VEHICLES

Officers shall not use police vehicles to ram 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. See the VCT policy for more details on this tactic.

**\*This information is covered in POLICY 307, VEHICLE PURSUITS and the VCT POLICY.**

**\*If a vehicle is used when warranted as deadly force, it is covered by that section in this policy.**



# 300.6.3 Employee Use of Force

## CURRENT

### 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 such as widespread disaster or civil disturbance, 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.

(redundant with REPORTING REQUIREMENTS/REPORTING THE USE OF FORCE)

### NOTIFICATION TO SUPERVISORS

Any use of force by an officer shall be reported immediately to a supervisor, including but not limited to the following circumstances (Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The application of control holds or pain compliance techniques (but not as part of routine handcuffing)
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a conducted energy device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

\*Gives a clear expectation to officer of what/when they need to report to a Sgt.



# 300.6.1 Supervisor Responsibility

## CURRENT

### SUPERVISOR RESPONSIBILITY

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to:

- (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.

## PROPOSED: EDITS to Section

A supervisor should respond to any reported use of force, if reasonably available. The responding supervisor is expected to (Government Code § 7286(b)):

(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) For Level 3 uses of force or when otherwise appropriate, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:

1. The content of the interview should not be summarized or included in any related criminal charges.

2. The fact that a recorded interview was conducted should be documented in a property or other report.

3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) 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.

(e) Identify any witnesses not already included in related reports.

(f) Review and approve all related reports.

(g) Review body worn camera footage related to the incident.

(h) Determine if there is any indication that the subject may pursue civil litigation.

1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

(REVISED TEXT)



# 300.6.2 Use of Force Reporting Levels

## CURRENT

### USE OF FORCE REPORTING LEVELS

#### Level 1

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 with a brief summary.

#### Level 1

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 (but not as a part of routine handcuffing)
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 with a brief summary.

(REVISED TEXT)



Sgt. Rafferty  
Berkeley Police Department  
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