

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

USE OF FORCE
SUBJECT

DATE: March 10, 2017

NO: Q-1

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX USE OF FORCE

REPORTING USE OF FORCE

I. Policy

- A. The Stockton Police Department (SPD) is committed to protecting people, their property, and their rights. It is the policy of the SPD to de-escalate situations without using force when possible. At times, Department members are confronted with situations where control is required to make an arrest or protect public safety. Attempts will be made to achieve control through advice, warnings and persuasion. However, in situations where resistance or the threat of injury or death to an officer or another is encountered and advice, warnings or persuasion are or would be ineffective, force may have to be used. Force will not be used against any person except as necessary to protect human life and to effect other lawful objectives
- B. Force is defined as the exertion of power by any means, including physical or mechanical devices (to include deployments of the Spit Net or Wrap), to overcome or restrain an individual where such force causes him/her to act, move, or comply against his/her resistance. In cases where Department members are required to use force on-duty or in an off-duty enforcement action, it shall be reported in a memorandum, or appropriate police report. (This does not include routine handcuffing of arrested persons or basic control holds where no resistance occurs.)
- C. Department members shall abide by all penal and constitutional guidelines when force is used.

II. Law

- A. Under the Fourth Amendment to the U.S. Constitution, Department members are authorized to use reasonable force to effect an arrest, to prevent escape, to overcome resistance, in self-defense, or in defense of others while acting in the lawful performance of their duties.
- B. Department members shall become familiar with the following Penal Code Sections regarding the use of force:
 - 1. Section 69 P.C. - Resisting executive officers by force of violence.
 - 2. Section 147 P.C. - Inhumanity to prisoners.
 - 3. Section 148 P.C. - Resisting arrest.
 - 4. Section 149 P.C. - Assault by officers under color of authority.
 - 5. Section 196 P.C. - Justifiable homicide by public officers.
 - 6. Section 673 P.C. - Cruel and unusual punishment.
 - 7. Section 692 - 694 P.C. - Lawful arrest.

8. Section 835 P.C. - How an arrest is made and what restraint is allowed.
9. Section 835 (a) P.C. - The right of the arresting officer to use reasonable force.
10. Section 4550 P.C. – Rescue of prisoners.

III. DEFINITIONS OF RELEVANT TERMS

A. Active Resistance:

Resistance that poses a threat of harm to the officer or others such as when a subject attempts to attack an officer or does attack an officer; exhibits combative behavior (Examples include but are not limited to: lunging toward the officer, striking the officer with hands, fists, kicks, or any instrument that may be perceived as a weapon); or attempts to leave the scene, flee, hide from detection, in some instances, standing when the subject has been told to sit down, or pull away from the officer's grasp. Verbal statements alone do not constitute active resistance. Bracing or tensing alone ordinarily do not constitute active resistance, but may if they pose a threat of harm to the officer or others.

B. Constitutional Standard:

The United States Supreme Court case *Graham v. Connor*, 490 U.S. 386 (1989), and other subsequent cases have established that an officer's right to make an arrest or investigatory stop necessarily carries with it the right to use physical coercion or threat thereof to effect it. An officer's use of force is considered a seizure under the 4th Amendment and must therefore be objectively reasonable when analyzed under the "Objective Reasonableness" standard as defined below. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court held that under the 4th Amendment, a police officer may not use deadly force to prevent the escape of a fleeing suspect unless the officer has probable cause to believe the suspect poses a significant threat of death or serious physical injury to the officer or others.

C. Feasible:

Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or other persons.

D. Imminent Threat:

A dangerous or threatening situation which is likely to occur at any moment, or is about to occur or take place, and is perceived to be unfolding.

E. Intermediate Force:

A level of force used to compel compliance that, while less severe than lethal force, nonetheless presents a significant intrusion upon an individual's rights. Intermediate force has the potential to, but is neither intended to nor likely to, but may under certain circumstances, cause serious physical injury or death.

Note that case law decisions have specifically established that certain force options such as chemical agents (pepper spray, etc.), probe deployment with a TASER, impact projectiles, canine bites and baton strikes are classified as intermediate force.

Intermediate force will generally be deemed reasonable only when an officer is confronted with **active resistance** and an **imminent threat** to the safety of officers or others.

F. Involved Officer:

Any Department member who participated in the use of force.

G. Deadly Force:

Force which poses a substantial risk of causing serious bodily injury or death.

H. Low-Level (non-deadly) Force:

Force that poses a minimal risk of injury or harm.

I. Objectively Reasonable Force:

The test by which courts will evaluate force used to effect an arrest or protect the officer or other persons. This standard that courts will use to examine whether a use of force is constitutional/justifiable was first set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and expanded by subsequent court cases. This is based on a totality of the circumstances and the facts known to the officer at the time of the incident. Courts will evaluate the reasonableness of an officer's use of force from the perspective of the reasonable officer on-scene at the time of the action rather than with 20/20 hindsight. The United States Supreme Court recognized that courts must make some allowance for the fact police officers are often forced to make split second decisions with limited information in situations which are tense, uncertain, and rapidly evolving.

J. Passive Resistance:

Non-compliance with officer commands that is non-violent and does not pose an imminent threat to the officer or the public. Bracing, tensing, linking arms, or verbally signaling an intention to avoid or prevent being taken into custody constitute passive resistance.

K. Serious Physical Injury:

A physical injury that creates a substantial risk of death, or that causes death or serious and protracted disfigurement or impairment of the function of any bodily organ or limb.

IV. PROCEDURES

A. General responsibility when force is used:

1. Policing at times requires that an officer exercise control of a violent or resisting subject to make an arrest, to overcome resistance, to prevent an escape, or to protect the officer, other officers, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ. Department members shall consider and use, where appropriate, de-escalation techniques.
2. Department members may use that force which is reasonable and necessary to make an arrest, prevent an escape, overcome resistance, or in self-defense or the defense of another. The type and degree of force used must be reasonable, based upon the facts and circumstances of the situation which were known by the officer at the time the decision to use force is made.

The use of unreasonable force will subject the involved officer to Departmental corrective action, including, but not limited to, remedial training and/or disciplinary action, as well as to possible criminal prosecution and/or civil liability.

3. The reasonableness of force used is determined by consideration of three main factors: 1) the seriousness of the crime at issue; 2) whether the suspect poses an immediate threat to the officer or others; and, 3) whether the suspect is actively engaged in resisting arrest or attempting to flee.

Other factors affecting the reasonableness determination include:

- a. The knowledge or belief the subject is under the influence of alcohol and/or drugs;

- b. The subject's medical or mental history or condition known to the officer at the time;
 - c. Known history of the subject to include violent tendencies or previous encounters with law enforcement which were combative;
 - d. The relative size, age, and condition of the subject as compared to the officer;
 - e. The number of subjects compared to the number of officers;
 - f. Where it is apparent to the officer a subject is in a state of crisis, this must be taken into account in the officer's approach to the situation;
 - g. Special knowledge possessed by the subject (i.e. known experience in martial arts or hand-to-hand combat);
 - h. Physical confrontations with the subject in which the officer is on the ground;
 - i. If feasible, whether warning and sufficient time to respond were given to the subject prior to the use of force; and,
 - j. If feasible, opportunities to deescalate or limit the amount of force used.
4. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly evolving.
 5. Department members need not retreat or desist in the reasonable use of force in order to avoid confrontation.
 6. Department members should be prepared to employ various force options to control the person in the event that an option which has been selected is not effective, or that the circumstances of the encounter change such that the originally selected option is no longer reasonable.
 7. Officers need not start at the lowest level of force in every situation. Where feasible, before deploying a particular force option, officers should evaluate the array of objectively reasonable options which are available at the moment to select an option anticipated to cause the least injury to the subject while achieving the arrest or other lawful objectives.
 8. When a confrontation escalates suddenly, a Department member may use that degree of force necessary to defend the Department member or others as long as the force is objectively reasonable.
 9. Were feasible while deploying a particular force option, Department members should continually evaluate whether the force option may be discontinued while still achieving the arrest or other lawful objective.
 10. Firearms may be discharged in the performance of a police duty only under the following circumstances:
 - a. When necessary in the defense of another person's life, when all other reasonable means have failed, or are impractical.
 - b. When necessary in the defense of an officer's life, when all other reasonable means have failed, or are impractical.
 - c. When necessary to effect the capture of, or prevent the escape or the rescue of a person whom the officer has reasonable cause to believe has committed a felony involving the use of, or threat to use deadly force when all other reasonable means

have failed, or are impractical.

d. At an approved firearms range.

11. Lethal firearms will not be discharged under the following circumstances:

- a. At a person suspected of committing a misdemeanor and the suspect is not posing an imminent threat to use deadly force or force likely to produce great bodily injury.
- b. As warning shots.
- c. When capturing or preventing the escape of a person believed to have committed a felony that did not involve use or threat to use deadly force.
- d. At moving or fleeing vehicles involved in violations of the Vehicle Code (including felony violations such as 20001, 10851, 23105, etc.) unless necessary to defend the life of the officer or another person. Two facts make this necessary:
 - i. Experience has proven that shooting at moving vehicles is one of the most uncertain and hazardous shooting conditions in police work, particularly when the officer is in a moving vehicle.
 - ii. Many vehicles involved in traffic violations are driven by persons whose age or reason for fleeing do not justify the use of firearms as means of apprehension.
- e. Officers shall make every effort to avoid putting themselves into a position where they could be struck by a fleeing vehicle, requiring them to use a firearm to protect themselves.

12. Deadly force will not be used in self-defense or the defense of another where there is no imminent threat by the suspect to use deadly force or force likely to produce great bodily injury.

13. Deadly force will not be used against persons whose actions are a threat only to themselves.

14. Deadly force will not be used to apprehend a fleeing felon unless there is reasonable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious physical harm and, where feasible, the Department member has given warning that deadly force is about to be used.

15. Department members shall take authorized and necessary action to intervene and prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.

16. A Department member's on-duty supervisor will personally respond for an evaluation where a Department member has used force on duty. The Department member who used force must therefore insure their supervisor is advised of the incident. The responding supervisor's name will be listed in the report detailing the use of force. The supervisor may also forward a memorandum through channels to the Chief of Police when additional comments are appropriate.

17. When reasonably safe to do so following a use of force, Department members and a supervisor, upon arrival, shall inspect and observe subjects on whom force has been used for injury or complaints of pain resulting from the use of force, and shall immediately obtain any reasonable medical care which is necessary. This may require a Department member to provide emergency first aid until professional medical care providers arrive on scene.

18. Department members shall report any use of force while on-duty in the appropriate

police report and any off-duty use of force in the course of enforcement activity in a memorandum.

The reporting requirements do not apply in officer involved shooting incidents as covered in General Order Q-6 "Officer Involved Shootings" and the San Joaquin County Officer-Involved Critical Incident Protocol Manual.

19. Responding supervisors will insure that photographs are taken of any alleged or visible injuries received by a department member or arrestee.

V. Supervisors Responsibilities

A. Response to scene in on-duty use of force incidents:

1. The department member's supervisor shall personally respond, with extreme priority, for an on-scene evaluation of each case where a department member has used force while on-duty.
2. The supervisor shall personally obtain or direct another department member to take photographs of any alleged or visible injuries and shall not assign the department member who used force to take the photographs.
3. The supervisor shall review all body-worn camera video of the incident to aid in determining whether the force used was appropriate. If no video is captured, the supervisor will address as appropriate.
4. The supervisor shall enter each use of force incident they evaluate into the Use of Force Database during the shift the force was used. This includes use of force levels from physical force, all the way to deadly force. They shall insure that all required information is entered, including their determination regarding whether the force used was appropriate (based on preliminary information obtained) except in protocol cases as noted below. To aid supervisors in gathering all required information for later entry into the Use of Force Database, the attached data form can be used. Once the data is transferred into the Database, the form is no longer needed and can be appropriately destroyed.
 - a. In use of force incidents resulting in a protocol investigation, the responding supervisor shall not make a determination as to whether or not the force used was appropriate. The supervisor shall instead check the option "Protocol" under the "Force Consistent with Policy" tab in the database.
5. The supervisor shall notify the on-duty Watch or Section Commander of a use of force incident the supervisor has entered into the Database.

VI. Section/Watch Commander Responsibilities

- A. Upon being advised of an incident involving a use of force, the Section/Watch Commander shall take the following steps:
 1. The Section/Watch Commander shall review the use of force entry in the database to ensure completeness and appropriateness of the force that was used. The Section/Watch Commander will also review the body-worn camera video to aid in this determination. If properly completed, he/she shall then approve the entry. If corrections are needed he/she, in consultation with the supervisor, shall make the needed changes before the Section/Watch Commander makes the final approval.

2. If in the Section/Watch Commander's opinion there are questions regarding the appropriateness of the force used, additional follow-up (review of police reports, discussion with sergeant who responded, discussion with Division Commander, etc.) should occur.
3. If the use of force incident involves a Section/Division other than Field Operations, the Commander approving the entry will insure that details surrounding the incident are passed along to the on-duty Watch Commander.
4. The on-duty Watch Commander will ensure that the use of force incident is carried on the Watch Commander Daily, including the name of the supervisor who responded and assessed the incident.

VII. Use of Force While Off-Duty

- A. If a department member is required to use substantial force during enforcement activity while off-duty, the involved member shall immediately notify his/her Division Commander or the on-duty Watch Commander. Substantial force includes displaying a firearm, an impact weapon, and/or physically subduing a suspect, etc.
- B. The Division or Watch Commander shall initiate an investigation as follows:
 1. If the occurrence is serious in nature, the Division/Watch Commander or a patrol supervisor shall investigate the incident and complete the necessary reports, i.e., crime/arrest report, SIR, and memorandum. Off-duty use of force incidents are not entered into the use of force database.
 2. Normally, the Division/Watch Commander will require the off-duty department member to submit a written memorandum explaining details of the incident upon their return to work.
 3. In every case, the Division/Watch Commander shall submit a memorandum to his/her Commander. The memorandum shall explain details of the incident and any action taken.

VIII. Reporting Use of Force Other Than Deadly Force

- A. On-duty Department members who use low lethality weapons, chemical agents, batons, carotid restraint, WRAP System or any other force in those instances that threaten the safety of a Department member or other persons, or subdue and arrest combative or resisting individuals, shall report the details of such use of force in the appropriate ARS report. Detail will include the following:
 1. Type of force used.
 2. The reason and detailed circumstances of how the force was used.
 3. Detailed description of alleged or visible injuries to the arrestee and/or Department member.
 4. Photographs will be taken and the approximate number of photographs taken shall

be documented.

5. The supervisor's or commander's name who the Department member advised of the specific details when force was used on a person. This advisement will occur as soon as practical, but no longer than one hour after the force was used.
6. Other pertinent information the Department member wishes to include. The Department member who personally used force is required to make the appropriate ARS report.
7. If the Department member is unable, the investigating officer shall submit the required report.
8. If several Department members are involved in one incident, each officer shall report their use of force on a separate appropriate ARS report.

IX. Review of Use of Force incidents by the Professional Standards Section

- A. The Professional Standards Section shall conduct a quarterly review of use of force incidents. The review shall include the following information:
 1. Total number of use of force incidents that occurred.
 2. Breakdown of various types of force used.
 3. Statistical review of injuries, race, gender, age of suspects, etc.
 4. Insuring that all use of force incidents were appropriately logged in the Use of Force Database.
 5. Total number of incidents logged in the Use of Force Database that indicate no body-worn camera video was captured.
 6. Random case review for policy compliance.