Response to Civil Unrest
December 6th and 7th, 2014

A Review of the
Berkeley Police Department’s
Actions and Events of
December 6 and 7, 2014
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**Acknowledgment**

During the month of December 2014, the Berkeley Police Department experienced unprecedented civil unrest, the likes of which have not come to our city in the last 20 years. It is important for all to know, that the men and women of this department responded to those events to protect our citizens and preserve public safety with courage and dedication.

On behalf of the Post Incident Review Team, we also want to express our sincere appreciation to the following groups:

Officers, Dispatchers, and Community Service Officers, your willingness and ability to work 12-18 hour days for 6 to 7 days straight, while exercising restraint, patience and professionalism did not go unnoticed. Many residents of this community expressed their appreciation for your efforts.

We also wish to acknowledge and thank our mutual aid partners that responded to our call for assistance. Without their collective support, this department would not have been able to manage events of this scale. In the aftermath, outside agencies provided invaluable advice and expertise to our investigation.

To our residents, thank you for all the instances where you approached officers and expressed your support.

To our neighbors, we appreciate your patience, understanding and support.

To our city leaders, thank you for your feedback, ongoing support and commitment to our department and community during these difficult times.

The Post Incident Review Team,

Lieutenant Dave Frankel  
Sergeant Dan Montgomery  
Officer Ryan Andersen  
Officer Darrin Rafferty
1. **Executive Summary**

In January 2015, Berkeley Police Chief Meehan convened a team of officers to review the Department’s response to the events of December 6th and 7th, 2014. The Post Incident Review Team was directed to produce a candid, accurate, detailed, and professional public assessment of the Berkeley Police Department’s response. The team reviewed video, computer aided dispatch (CAD) records, 911 calls, case law, BPD and other police departments’ policies, documents pertaining to BPD’s response as well as conducted interviews with staff, members of the media, affected neighbors, outside agency experts and the community. The Chief directed the Review Team to address command, policy, training, equipment, situational awareness, communications, media relations and tactics that may have increased friction with the crowd.

On 12/01/14, the Berkeley Police Department received information from various sources that a march was scheduled to take place on 12/6/14 in Berkeley. The march was advertised as a “From Ferguson to Ayotzinapa March - March Against State Violence-Remember the Dead.” Organizers urged attendees to “Fight like hell,” “Bring masks” and reminded the public of previous mass uprisings that had taken place. Online flyers for the event showed a picture of a man sitting on an overturned police car.

Oakland and San Francisco had just experienced “Fuck the Police” (FTP) marches which resulted in mob violence, damage to businesses, looting, vandalism to vehicles, and attacks on officers.

The Berkeley Police Department is committed to protecting and facilitating peaceful First Amendment activity. When a protest or demonstration is peaceful, both missions balance well. However, when elements of the protest resort to violence, looting and vandalism, the police department is expected to take action to protect the community. This burden rests with law enforcement leaders who are forced to make complex decisions in a very short amount of time, the ramifications of which can have negative impacts.

The December 2014 Berkeley protests started on 12/6/14 and subsided on 12/16/14. Both before and after the protests that took place in Berkeley on December 6th and 7th, law enforcement agencies all across the country struggled with these very issues. Civil unrest is becoming more and more frequent as people gather to redress grievances nationally.

Crowd Management and Crowd Control are some of the most challenging areas of law enforcement. On the 6th, in light of the recent local and national violent protests, the
Berkeley Police Department deployed its resources and mutual aid in a crowd control posture rather than dedicating substantial resources on crowd management techniques intended to maintain the events' lawful activities.

The event turned to violence and looting once police blocked the roadway at MLK and Addison St. Police Command faced challenges in the areas of communication, situational awareness, maneuver and mission clarity, all of which impacted tactical decision making. While attempting to disperse the moving crowd, the police successfully inhibited additional vandalism and violence. However, crowd confrontations with officers and rampant destruction of property, including police vehicles, eventually led to large crowds being ordered to disperse which included the use of CS gas and police batons when repeated dispersal orders were not followed.

On the 7th, the department sought to avoid the kind of conflicts with the crowd it had seen on the 6th. With fewer officers than the night before, the department deployed again for crowd control but in a mobile field force configuration to support targeted arrests. On the 7th, violence, vandalism, and looting broke out as large crowds moved through Berkeley and North Oakland. Mobile field force tactics were not successful at keeping rioters from vandalizing and looting numerous businesses on both Telegraph Ave. and Shattuck Ave. Several masked individuals attacked and injured other protesters who had attempted to dissuade them from looting and rioting. As on the 6th, crowd management techniques were understaffed in favor of preparing to utilize resources for expected unrest.

The Berkeley Police Department continually strives to improve on its delivery of quality service to all. Balancing freedom of speech with protecting the public during challenging times will always be a difficult task. This report seeks to address command, policy, training, equipment, situational awareness, communications and tactical issues that impacted the police response. Numerous recommendations are proffered for consideration to assist the department in achieving a more positive outcome for future similar events.

**KEY FINDINGS**

Crowd control situations are complex and dynamic. Commanders are challenged to implement tactics appropriately in an attempt to control volatile situations. The crowd is sometimes composed of adversarial people who may be working to defeat strategies and undermine their effectiveness. It would be a mistake to conclude that the failure of
a strategy to achieve desired outcomes means the strategy itself should be abandoned or never used again. The strategy may in fact prove very effective in similar situations. The commanders and officers attempted to stem the violence and lawlessness and were not satisfied with the outcome.

The Department deployed the majority of personnel resources for the purpose of crowd control and too few resources for crowd management or tactics designed to maintain peaceful activities.

The Department placed an emphasis on crowd control, dispersal orders and mass arrest if crowd behavior constituted an unlawful assembly. The tactics used to support mass arrests for failing to disperse were not effective, caused repeated conflict with the crowd, and ultimately did not lead to the arrest of all lawbreakers.

Tactical decisions require a level of situational awareness that was not consistently available in the Department Operations Center (DOC). The command authority to make tactical decisions and maneuver resources should have been located in the field and not the Department Operations Center. In some instances, poor situational awareness led to repeated police interactions with the crowd and an escalation of force. The inability to gain situational awareness from police helicopters overhead hampered decision making.

Communication with the crowd was insufficient before and during the event. Although organizers may not wish to communicate with the police, the police can message participants and the community in an attempt to foster safe outcomes.

**RECOMMENDATIONS**

**Communication**

*Recommendation #1*

We recommend the Department get clarity on the availability of regional radio interoperability for common encrypted radio channels to improve communications with mutual aid partners during large scale events.

*Recommendation #2*

We recommend the Department use social media proactively before and during the event to communicate with participants. As dispersal orders are given over the loud
speaker social media could be used to communicate more detailed information to the crowd.

Recommendation #3
Explore the use of BPD Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event.

Recommendation #4
BPD should acquire a high quality mobile mounted public address system. This equipment would also be an asset during natural disasters.

Tactical Command

Recommendation #5
Tactical command decision making and responsibility should be relocated from the Department Operations Center to the field. We recommend coordination of squad movements happen in the field.

Recommendation #6
Command should make efforts to ensure as much mission clarity as possible when resources are dispatched.

Recommendation #7
We recommend commanders in the field make redeployment decisions proactively based on known situational awareness.

Recommendation #8
Opportunities for the police to deescalate from crowd control to crowd management tactics need to be recognized and seized.

Deployment

Recommendation #9
Deploy resources flexibly in crowd management roles designed to keep events peaceful.


*Recommendation #10*
Increase staffing of bicycle officers, motorcycle officers and parking enforcement officers for large scale crowd management events.

*Recommendation #11*
Deploy joint police and fire scout teams to manage small fires and scout medical calls.

**Maneuver**

*Recommendation #12*
Have a contingent of officers to move with the crowd, so that violent elements in the crowd will see a continuous police presence.

*Recommendation #13*
Deploy squads with dedicated drivers who remain with the vehicles to facilitate maneuvers and vehicle security

**Situational Awareness**

*Recommendation #14*
Explore technology that can improve the quality and timeliness of information available to decision makers.

*Recommendation #15*
Consider proposing changes to the City Council Resolution 51,408 – N.S., to permit the use of helicopters in instances of significant civil unrest.

**Dispersal Orders**

*Recommendation #16*
Issue fewer dispersal orders and record evidence that the crowd was able to hear the orders.

*Recommendation #17*
Revise the dispersal order script to include specific types of force that may be used to disperse the crowd including the use of CS gas.
Use of Force

Recommendation # 18
We recommend that BPD review its policy regarding the use of CS gas and batons in crowd control situations.

Recommendation # 19
Less Lethal operators should be briefed regarding the rules of engagement prior to deployment. Command should review the use of force as it relates to accomplishing mission objectives with less lethal operators, prior to deployment.

Recommendation #20
Skirmish lines should be deployed only in situations where the use of force that may be necessary to enforce the line is warranted by the objective of deploying the line.

Recommendation #21
We recommend that the Department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking people in no strike zones.

Recommendation #22
Preparatory orders warning officers of the impending use of chemical agents should be announced over the radio.

Recommendation #23
Prior to the planned deployment of CS Gas, medical aid should be on scene and available to respond to treat people who might be affected by CS Gas.

Accountability

Recommendation #24
To comply with our existing policies an After Action Report (AAR) should be written after each incident even if only in summary form.

Recommendation #25
Improve accountability for the deployment and use of less lethal munitions and CS gas. Use of less lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement.
Training

Recommendation #26
All officers should continue to receive crowd management training every two years. We recommend the following trainings be developed:

- Commanders should conduct crowd management table top exercises, in addition to departmental training, to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.
- All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.
- Mobile Field Force training with regards to conducting targeted arrests. Including a tactical review of how to deploy in order to better support a mission of targeted arrests while maintaining the ability to transition into crowd control formations.
- Train sufficient personnel to use higher quality camera systems to gather better video evidence at protests.

Recommendation #27
Commanders should attend training to improve their understanding of BPD’s current capabilities and limitations in crowd management and control which should enhance planning and tactics.

Recommendation #28
We recommend the creation of a document on the BPD website which will provide information on how to conduct or participate in a protest in a safe and legal manner.

Media

Recommendation #29
We recommend the BPD Public Information Officer investigate the viability of establishing a regional media credentialing system.

Recommendation #30
We recommend the Department develop a collaborative training for press to enhance their safety and safeguard the First Amendment right of a free press.
设备

**Recommendation #31**
我们建议该部门投资于高质量的视频摄像机、直播能力以及视频捕捉软件，以提高情况意识。

**Recommendation #32**
该部门应该调查在制服下面佩戴防弹衣的可能性，以保护执法者免受弹丸的伤害，同时尽量减少对抗议者的伤害。

伯克利警察局仍然致力于保护言论自由和促进抗议，无论其诉求是什么。该局也致力于保护社区免受动乱和无序之害。正如全国许多地区所经历的那样，这些目标在面对暴乱暴力和机会主义时，在平衡有效地和安全地执行这些目标方面是困难的。

通过这次审查，我们识别了许多改进的机会。局领导在这个过程中提供了坦诚的批评、反馈和建议。我们希望这些建议能够对未来的类似行动产生积极的影响。
2. **Introduction**

In January 2015, Chief Meehan convened a team of officers to review the Berkeley Police response to the events of December 6th and 7th. The Post-Incident Review (PIR) Team was directed to produce a candid, accurate, detailed, and professional public assessment of the Berkeley Police Department’s response. The team reviewed video, computer aided dispatch (CAD) records, 911 calls, case law, BPD and other police departments’ policies, documents pertaining to BPD’s response and conducted interviews with staff, members of the media, affected neighbors, outside agency experts and the community. The Chief directed the Review Team to address command, policy, training, equipment, situational awareness, communications, media relations and tactics including those that may have increased friction or conflict with demonstrators.

3. **Report Investigation Methodology**

In preparation for this report the Post Incident Review Team was first required to assemble relevant information to make informed recommendations based on law and best practices. The team also conducted community outreach to assess the impacts on the community and gather their perspective. The following is a detail of the methodology of this investigation.

**Official Information Gathering** – Reviewed any official documents created in response to the events including but not limited to:

- Incident Action Plans
- CAD narrative
- Police Reports, Criminal Case Reports, Damage Reports, etc.
- Pre-Event Intelligence
- Injury Reports
- Expense Reports

**Industry Standards and Legal Review** – Evaluated and compared the tactics and techniques BPD used against industry and legal standards.

- Reviewed industry standard best practices related to Protest and Crowd Management.
- Reviewed current case law regarding free speech and the right to peacefully assemble.
- Reviewed relevant CA Penal Codes.
• Reviewed legal definitions related to crowd behavior including protest, unlawful assembly, riot, etc.
• Reviewed industry standards regarding the use of CS gas to disperse a crowd. Reviewed appropriate conditions and triggers for use.
• Reviewed industry standards regarding the use of less lethal munitions to disperse a crowd. Review appropriate conditions and triggers for deployment.
• Reviewed relevant department policies on Crowd Management (C-64), Use of Force (U-02), Less than Lethal weapons (Covered in both (C-64) and (U-02)).
• Reviewed neighboring agencies’ policies and MOUs as these agencies participated in mutual aid.

Interviews
• Conducted command interviews.
• Conducted a facilitated debrief with BPD command staff.
• Conducted interviews with command officers from mutual aid agencies.
• Conducted interview with the mutual aid coordinator for the county.
• Conducted interviews with Berkeley Fire Department senior staff.
• Conducted interviews with internal and external subject matter experts.
• Conducted interviews with affected members of the media.
• Met with members of the Chamber Of Commerce.
• Met with members of the Black Student Union and ASUC.
• Met with religious leaders, civil rights leaders from the ACLU and NAACP.

Video Review
• Collected and reviewed public and department videos.
• Sought additional video from media partners.

Press
• Examined the manner in which the department interacted with the press during the protests.
• Identified opportunities for improvement.
• Identified training opportunities for officers in identifying press as well as training for the press on how to improve their safety during protests.

Assessment of Impact
• Reviewed impact on protesters.
• Reviewed impact on neighbors.
• Reviewed impact on the local businesses.
• Reviewed impact on the Department and staff.
• Reviewed impact on the community.

Recommendations
The PIR Team was tasked with the following:
• Formalize recommendations and suggestions for implementation in the written report.
• Make any appropriate recommendations to change BPD policy or practice if not in line with industry standard best practices.
• Create guidelines for external sources on how to conduct a peaceful protest.

4. Background

The City of Berkeley is located in the San Francisco Bay area just north of Oakland, CA and the San Francisco Bay Bridge. The City is home to the University of California, Berkeley, one of the premier public institutions of higher education. Berkeley has long been a home to the free speech movement and was an epicenter of the civil rights movement on the west coast. As of December 6th, the Berkeley Police Department was comprised of 167 sworn officers and 90 professional staff.

5. Hindsight

The Post Incident Review Team had the opportunity to study the events of December 6th and December 7th 2015 for several months. The Review Team was assigned to search for opportunities for improvement because both the Department and the Community would have preferred different outcomes. Crowd management and control are among the most complex areas of police work. Significant civil unrest is rare. This provides leaders, and line personnel, limited opportunities for practical experience. The police have the goal of balancing two important missions: protecting free speech and protecting the community. When a protest or demonstration is peaceful, both missions balance well and can coexist. However, when elements of the protest resort to violence, looting and vandalism, the police are expected to take action to protect the community. This burden rests with law enforcement leaders who are forced to make complex decisions in a very short amount of time, the ramifications of which can have a negative impact. Recommendations made in this report are made with the benefit of hindsight. We cannot say with certainty that a different police response, even in a
similar situation, will guarantee a better outcome. However, the recommendations are offered as positive steps to create a greater likelihood of improved outcomes.

6. **Video**

The PIR Team reviewed over 400 videos of the events of December 6th and 7th, many of which were collected from open sources. Because of the inherent limitations of quality, editing and perspective, we cannot claim to have a complete video picture of the events of December 6 and 7. We have interviewed officers and participants and reviewed any relevant documents to paint as complete a picture as possible. Video is linked throughout this report to add substance to the narrative. In order to manage an abundance of footage, clips have been selected and shortened to quickly provide perspective relevant to the narrative facts. Because this report’s focus is on how the police department can make improvements towards better outcomes, the video clips focus on police-protester interaction and unlawful behavior. There are significant intermittent periods of peaceful assembly in the collection of videos. All 400 videos are available for viewing, unedited, in their entirety on the web page.

7. **Events Leading Up to December 6th**

In July and August, demonstrations and riots erupted across the country after two African Americans died during interactions with police in New York and Missouri.

On December 1st, 2014, the Berkeley Police Department was made aware of a planned, unpermitted march scheduled for Saturday December 6th. The December 6, 2014 march in Berkeley was billed as going from Bancroft Way and Telegraph Ave. in Berkeley to Oakland. According to social media there were 3100 people invited to attend with 688 confirmed to attend.

On December 1st, 2014, planning for the protest began. San Francisco and Oakland had already experienced several protests that started peacefully and devolved into rioting, property destruction and looting. Specifically, the Berkeley Police Department believed protests in the region had a higher than normal potential for criminal behavior.

On Wednesday December 3rd, 2014, the Grand Jury in the Garner case announced that the NYPD officers involved would not face indictment. Demonstrations and riots broke out across the country in response to that decision.
The Berkeley Event scheduled for December 6th was the first weekend event following the Grand Jury announcement not to indict NYPD officers. There were no other demonstrations planned in the region for December 6th, which led the Department to believe it had the potential to draw significant attendance. Imagery and words on flyers promoting the event suggested violent action would occur.

Information regarding this protest suggested that the police were going to be the focus of the demonstration. Staffing was increased as a precautionary measure and mutual aid resources from the county were requested in advance. BPD bicycle officers attempted to reach out to event organizers the day of the protest but were not successful. BPD did not try to make contact prior to 12/6/15.
8. **December 6th**

An incident action plan was prepared to define the mission, tactics, contingency plans and staffing.

**Mission**
The mission of the Berkeley Police Department is to provide for the safety and security of the general public, while both monitoring and facilitating any peaceful demonstration. We will allow for the peaceful expression of First Amendment Rights, including but not limited to assembling, marching, carrying signs, making speeches, or other lawful activity designed to express or advocate political, religious, or social opinions. While recognizing the above rights, the Berkeley Police Department will make every attempt to quickly identify and arrest only those specifically involved in criminal activity or violence. Citizens’ rights are of the utmost importance and our goal is to ensure a safe environment for everyone involved. Should the crowd reach a point where its focus becomes criminal or violent; the Department will provide and document dispersal orders. Once the dispersal orders have been given, the crowd will be allowed to leave. Those failing to disperse will be arrested. Unless exigent circumstances exist, or doing so would place officers or the public at risk, a dispersal order shall be given prior to using force to disperse the crowd. Use of force will be controlled by departmental policy.

**Incident Objectives**
- Monitor the protest from its origin
- When needed, initiate traffic control to facilitate a safe march
- When needed, address law enforcement and order maintenance issues within past practice and policy
- Return involved units to service as soon as practical

**Priorities**
- *Life Safety*
- *Incident Stabilization*
- *Property Protection*
Intent
Prepare and implement a plan to monitor this event and respond to any contingencies that may occur. Allow for First Amendment activities and provide for the safety and security of the general public.

Facts
When an unusual occurrence may become, or is already, beyond the control of local law enforcement resources, the chief of police or designee may request assistance from the Operational Area Mutual Aid Coordinator. (California Office of Emergency Services Law Enforcement Guide for Emergency Operations)

The Department determined that because of the potential for unrest and likely high attendance, staffing resources above and beyond what BPD could field would be needed. BPD requested additional police resources from the Alameda County Office of Emergency Services. The County arranged for most mutual aid responders to arrive in Berkeley prior to the start of the event.

In response to a request for mutual aid by a chief of police, the sheriff will coordinate law enforcement resources from within the Operational Area. This includes the response of law enforcement resources from unaffected municipalities, local CHP and other state agencies, as well as his/her own resources, to assist the affected chief of police. “The responsible local law enforcement official of the jurisdiction requesting mutual aid shall remain in charge.” The mutual aid program requires that “the integrity of responding forces and the policies and procedures of their departments must be maintained.” (California Office of Emergency Services Law Enforcement Guide for Emergency Operations)

The Berkeley Police Department uses the Standardized Emergency Management System (SEMS) to manage mutual aid. SEMS is a scalable incident management protocol that is utilized statewide to manage large scale incidents that require mutual aid. The use of SEMS is required by California Government Code for managing response to multi-agency and multi jurisdictional emergencies. SEMS provides a common understanding of management protocols that would allow a jurisdiction to set up a temporary and organized response to a major event using outside agency mutual aid responders. Agencies responding to mutual aid requests are deployed into the field and managed based on these standardized practices. (Click here for more information on SEMS)
The 2100 block of McKinley Ave. was utilized as a staging area for responding mutual aid. The Department realized that normal parking area inside the PSB would be inadequate to accommodate the equipment and vehicles of mutual aid resources. Mutual aid would need to arrive, check in, deploy into the field and return to the station for breaks and supplies. Securing the staging area without impacting the neighbors was a significant challenge. Throughout the evening, protesters snuck into the block and tweeted information about mutual aid staff arriving at the staging area.

On December 6th, officers responded to BPD’s mutual aid request for assistance from agencies throughout the region. At approximately 3:00 pm, mutual aid resources began to arrive in Berkeley. A briefing was conducted at 3:30 pm for all Berkeley police personnel and all mutual aid personnel already on scene. A BPD commander assigned to coordinate mutual aid resources gave a briefing to each team of outside agency officers that arrived after this main briefing.

At approximately 4:45 pm, over 150 police personnel were on scene in Berkeley and deployed into the field.

At 4:54 pm, a group of protesters gathered at Sproul Plaza on the UC Berkeley campus and quickly swelled in numbers as they marched through the South Campus area and into downtown. Demonstrators rerouted and made their way to the Berkeley Public Safety Building (PSB). At the intersection of Shattuck Ave. and Allston Way the crowd stopped and held a “die in” where members lay down in the street symbolic of death caused by police. Bicycle officers monitored the crowd while motorcycle officers blocked traffic to facilitate the march.

When the crowd reached Milvia St., one block east of the Public Safety Building, bicycle officers observed and reported via radio, that some crowd members had put scarves, bandanas or other masks over their faces. This can signify that these crowd members intended to commit illegal acts and avoid being identified. According to California Penal Code section 185, wearing masks or personal disguises for the purpose of evading or escaping discovery, recognition, or identification in the commission of any public offense is a misdemeanor.

When the crowd arrived at the PSB, they gathered in a group of approximately 800 in front of the main entrance at Center Street. Officers had prepared a row of low metal barricades on Martin Luther King (MLK) to prevent access to the west sidewalk and the building. The Public Safety Building is critical infrastructure for the City of Berkeley. It houses the City’s Emergency Operations Center, the Berkeley Police and Fire 911 Emergency Call Center, the City Jail and Fire Department Administration as well as...
Police Operations. Protecting the building is vital to maintaining critical City of Berkeley emergency services. Generally, this means closing the public lobby and stationing officers behind barricades. Officers were positioned between the barriers and the building. The crowd took over the intersection of Center St. and MLK and expressed themselves peacefully while sitting down.

Officers assigned to building security assessed the crowd size. Believing security at the north end of the PSB was insufficient; they requested additional officers to support security. Additional units, staged two blocks away, moved to the north end of the block and took up a position blocking MLK at Addison St. Two squads were deployed in skirmish line formation and stood at the ready with helmets on and batons drawn.
Eventually the crowd began to move northbound on MLK towards the skirmish line. A
skirmish line is used to deny access or reroute a crowd. In order to maintain a skirmish
line, officers use several techniques. Officers are required by policy to avoid getting
involved in unnecessary dialog or debates with crowd members. Officers give verbal
commands for the front of the crowd to stay back, if that is ignored, they may use an
open handed push or a two handed push with a baton or other techniques as
reasonably necessary. Use of force decisions are made individually by each officer,
based on this policy, to keep the crowd at a safe distance from the line.

Officers create and maintain a safety space between themselves and protesters. This
space allows time for the officer to perceive and react to potential threats from the
crowd. This perception time allows for the officer to protect themselves from assault
and to see a deliberate attack coming. Maintaining a reasonable distance is intended to
reduce the use of force and to help to prevent officers from using force unnecessarily or
on the wrong person. Officers maintain a safety space in routine police work when they
are interacting with agitated subjects. An officer should never allow a person to get into
his or her personal space without asking the person to move back or physically moving the person back. Failing to maintain a safety space in crowd control can result in assaults on officers and the line being overrun.

People confront police at MLK @ Addison

This report discusses use of force in several situations and from several perspectives. We were not tasked with evaluating the reasonableness of individual uses of force. This report is focused on making recommendations that may reduce the potential for violent conflict and use of force in similar circumstances in the future.

At MLK and Addison St., some members of the crowd encroached on the police line and failed to back away when directed. Officers used their hands and batons to push those who did not comply with verbal orders out of safety zones. After several minutes, a Commander on the northern perimeter determined that the roadblock was causing conflict with the crowd and was unnecessary. The Commander had officers release most of the north bound lanes of MLK to allow the crowd to flow northbound. Those officers who opened the line created a protective bubble on the west side of MLK, so as to not be pushed against the barriers by the passing crowd.
As people filed by, officers directed people to stay back. When some crowd members disregarded these directives and walked into the officers’ safety zones, officers responded by pushing them with their hands or batons. During this time, officers were being hit with rocks and other objects. It was not always possible for officers to identify press. Some members of the press were more identifiable by their specialized equipment, such as television lights and cameras. Others were less obvious, using camera phones and not displaying press passes of any sort. As a consequence, a few members of the press who failed to follow directions were pushed away from officers and in a couple of instances hit with batons.

Shortly after the crowd began to move north, a masked crowd member threw an object at an officer who was positioned on the eastern portion of the protective bubble. Several seconds later, a different protester intentionally walked into the same officer. The officer used his baton to push the protester, who then tripped over his dog and fell to the ground. This incident further agitated the crowd. Some crowd members stopped moving north and instead gathered around the officers. One protester was heard yelling, “Kettle up. Kettle up,” which was understood to mean, “surround them.”

A group of masked individuals made their way to the rear of the crowd facing the officers. Once in position, the masked individuals pelted officers with a traffic cone, bricks, rocks, metal pipes, a screwdriver and other objects, injuring five officers. One agitator emerged from the crowd and hurled a bag of gravel which hit an officer in the upper body dislocating his shoulder.

Officers fired one less lethal foam baton round. They also rolled four smoke canisters into the crowd following the assault and got the remaining crowd moving northbound. Given the nature and severity of the attacks, there was no time to issue a dispersal order. This attack on officers was executed in a coordinated fashion and was a preplanned attack as evidenced by the objects such as bricks thrown at officers that were brought to the scene by violent protesters to throw at the police.
BPD use of force is regulated by General Order U-2, Use of Force, which reads:

“In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to community members or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).” (Excerpted from General Order U-02, section 18)

Although not an irritant, smoke is considered a chemical agent for the purpose of this policy. During the assault on officers at Addison St. and MLK, a field commander acted, based on exigent circumstances, and ordered two officers to roll smoke canisters to disperse the crowd and minimize injury. That order was made face to face and not over the radio. Smoke is generally not thrown through the air because the canisters are heavy and can cause significant injury if a person is hit in the head. As soon as the first canister began emitting smoke, a masked individual ran through the crowd, grabbed it and hurled it through the air back at officers. Because the order to use smoke was not over the radio, another commander who was unaware that we used smoke and only witnessed the smoke canister flying back at the line, thought that protesters were using their own smoke grenades against the police. He then radioed for officers to prepare to use CS gas. To prepare for gas officers began to systematically put on their gas masks. The smoke, however, was effective in moving the remaining crowd northbound and away from officers. Consequently, CS gas was not used at MLK and Addison St.

The crowd then made its way north to University Ave. Officers were still near the PSB preparing for the use of CS gas. At Trader Joe’s, rioters broke out large windows causing thousands of dollars worth of property damage. Garbage and large plastic food delivery trays were strewn about in the street. A man confronted a masked crowd member and they started fighting. Some masked members of the crowd vandalized and looted the store through the broken windows and stole or smashed over $1,200 worth of alcohol.
While many crowd members looked towards the store and cheered the destruction, a group of masked men fanned out forming a loose perimeter and provided security for the vandals. They confronted people who appeared to be recording their actions. They prevented others from breaking up the fight. At the same time, protesters were trying to expel the violent elements from their protest. A woman with a camera confronted a masked man screaming expletives at him to leave. Our group later spoke to a protest leader who decided to leave the protest at this point because it had become too dangerous. One of the vandals who used a skateboard to smash the windows at Trader Joe’s was arrested the next day.

The bulk of the crowd began moving west on University Ave. As officers were still arriving at University Ave. and MLK, a group of rioters were looting Radio Shack at Jefferson St. and University Ave. Officers did not maneuver formations to either location quickly enough to mitigate the damage or arrest those responsible. VANDALS and looters smashed the store windows while employees were inside, entered the store, stole items and vandalized the west side of the building.

A riot is defined in the California Penal Code Section 404, which states:

“Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.”

The crowd continued west on University Ave. Once Trader Joe’s was secured and cleared, squads of officers returned to their vehicles and tried to stop the crowd from taking over the freeway. Disruptions of freeways and commerce are viewed by protesters as a way to get their message out to a wider audience. However, abruptly stopping traffic on a freeway is extremely dangerous for the protesters and motorists. The potential for causing a serious collision with protesters or between motorists is high.
At approximately 7:30 pm, BPD and CHP set up a skirmish line at University Ave. and Sixth St. overpass to block protesters access to the freeway. The skirmish line was successful. The protesters eventually turned back eastbound when they could not get onto the freeway.

Squads were unable to effectively maneuver into position to stop and disperse the crowd, due to the earlier damage and violence, as it moved through the west end of Berkeley. When officers arrived and attempted to set skirmish lines, the crowd was able to leave before all avenues of exit were blocked.

Command was challenged to maneuver mutual aid resources to the crowd in a timely manner because of a delay in communication with mutual aid commanders through BPD pathfinders (Berkeley officers assigned to ride with mutual aid commanders to assist with navigation and communication). Larger groups of officers had difficulty maneuvering in the area around the severe congestion caused by the march on University Ave.

At approximately 7:41 pm, the crowd had made its way to San Pablo Ave and Francisco St. There, crowd members threw bottles at officers. By approximately 8pm, the crowd had reached Berkeley Way just east of West St. Crowd members there hurled rocks at officers. At approximately 8:20 pm dispersal orders were given via a public address system.

One part of the crowd went through the rear yards of private homes, destroying a cyclone fence in order to evade officers attempting to stop them. No additional businesses were looted as officers followed the crowd. Officers monitored crowd activity as it continued to march through the city.

A dispersal order can be declared in the case of a riot, rout or unlawful assembly. The Incident Commander at any crowd situation shall make the determination as to when or if a crowd whose behavior poses a clear and present danger of imminent violence will be declared an unlawful assembly. (General Order C-64) The dispersal order must be audible and the crowd must be given reasonable time to comply with the order.

Tactical Command was physically located at the station in the Department Operations Center (DOC). Situational awareness in the DOC was hindered by several factors. First, because of the amount of communication on the primary radio channel, communication was bogged down by too much radio traffic. Second, there was a delay in live stream internet video coverage that command was following. This delay varied between two and five minutes due to bandwidth restrictions. (All live stream video coverage was from public open sources.) Command relied on news helicopter and
protester “live” feeds. Although there were CHP and Oakland Police helicopters in the air supporting mutual aid officers from Oakland PD, local regulations prohibit Berkeley Police from helicopter use in this situation. (A 1982 Berkeley City Council Resolution 51,408 – N.S. limits the use of helicopters by the police department, with the approval of the City Manager or Chief of Police for: disaster assistance, rescue efforts (excluding hostages) and locating missing persons.)

The lack of situational awareness, coupled with conditions that slowed maneuver, allowed the crowd to move on foot faster through Berkeley than the police could observe and coordinate resources to effectively stop them and issue additional dispersal orders. Eventually, the crowd made its way up University Ave., through downtown and up Bancroft Way to the south campus area.

As the crowd moved towards the South Campus, Command had an increasing concern that there would be more looting, vandalism and violent riotous behavior in the Telegraph Ave. business district if the crowd was allowed access and ordered the officers to attempt to kettle the crowd in order to issue an effective dispersal order. When officers moved into position to stop the crowd at Telegraph Ave. and Bancroft Way, they left their vehicles a block away on Durant Ave. and further south on Telegraph Ave. At approximately 9 pm the decision was made to stop the crowd on Bancroft between Dana St. and Telegraph Ave. and again issue dispersal orders using a loudspeaker. Officers recorded video from both sides of the crowd to ensure that the dispersal orders were clear and audible to the entire crowd.

An arrest team was sent into the crowd in an attempt to arrest a suspect for inciting the crowd to riot and repeatedly refusing to back away when ordered. When officers caught the suspect, several protesters advanced on officers in an attempt to free the prisoner from their custody. This is a violation of California Penal Code section 405a as: “The taking by means of a riot of any person from the lawful custody of any peace officer.” The arrest team used force to overcome his resistance and to prevent the crowd from taking him from its custody. Another protester was arrested at that location for assaulting an officer. Once the dispersal orders were given, the crowd was allowed to disperse, as required, westbound on Bancroft Way.

At the same time, crowds had formed on all sides of the officers holding the intersection of Bancroft Way and Telegraph Ave. A second group of approximately 100 protesters were on Telegraph Ave. between Bancroft Way and Durant Ave. and refused to disperse.
While officers were attempting to disperse the crowds at Telegraph Ave. and Bancroft Way, a much larger crowd estimated between 1000 and 1500 strong had begun to form at Telegraph Ave. and Durant Ave. The crowd to the west of the Telegraph Ave. and Bancroft Way intersection had for the most part moved westbound then southbound through an alley to link up with the crowd forming on Telegraph Ave, south of the officers.

As officers ordered the crowd located south of the intersection of Telegraph Ave. and Bancroft Way to move south on Telegraph Ave. the crowd briefly stood their ground. Officers advanced southbound in a skirmish line while repeatedly ordering the crowd to move south, and used batons to move them south.

When some in the crowd attempted to comply with the order to move south, individuals could see another line of officers blocking their path at Durant Ave. When they approached the line, officers told them to stay back. They responded, “They just told us to go this way!” The southern line was ordered to allow the remaining crowd to pass. The west half of the line opened allowing the group to join the larger crowd at Telegraph Ave. and Durant Ave.
More than 23 dispersal orders were issued over 54 minutes using a loudspeaker beginning on Telegraph Ave. before officers took measures to disperse the crowd. The dispersal was read from a pre-prepared script:

“I am (rank) (name) with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (location) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other police action. Other police action may include the use of less lethal munitions, which may pose a risk of serious injury. The following routes of dispersal are available: (state options available). You have (state time expectation) to leave the area.”

The crowd must disperse to comply. They must leave the area and cease to assemble. They are not to remain together as a crowd or in the area. The dispersal order does not allow them to remain assembled and move as group to another location. Penal Code section 409 applies to any person remaining at an unlawful assembly following an order to disperse, whether or not that person is involved in the violent or illegal activity that precipitated the order. In order to arrest those who remain, officers need probable cause to believe they were present, could hear the admonition, and willfully remained after a reasonable time had been given to disperse. “The plain objective of section 409 is to enable law enforcement officers to defuse riotous situations by ordering persons to remove themselves from the area without need to distinguish between rioters and bystanders whose very presence aggravates the problem of restoring tranquility.” (People v. Cipriani, 1971) This has been further interpreted by the courts to apply to assemblies which are violent or pose a clear and present danger of imminent violence.

Rather than dispersing, the crowd size significantly increased at Telegraph Ave. and Durant Ave. Officers on Telegraph Ave. found themselves surrounded on all sides and cut off from their vehicles. When officers deployed a skirmish line, a crowd of protesters and onlookers quickly formed behind the officers. The crowd waited to see what officers would do. A motorist was trapped by the crowds in the middle of the crowd in the intersection at Telegraph Ave. and Durant Ave. and had to abandon the vehicle where it sat. Masked individuals smashed windows, flattened tires and spray painted marked police vehicles that had been left unattended at Durant Ave. and Telegraph Ave.
Rioter smashing police van at Durant/Telegraph

Damaged Pleasanton Police vehicle – FTP spray painted on hood
The crowd at Telegraph Ave. and Durant Ave. refused to comply with the dispersal orders. Rioters threw rocks and bottles, injuring four more officers.

Field commanders determined that ratios of protesters to officers were too high to safely make mass arrests. The number of potential arrests would by far have exceeded the capacity for custody and transport. Field Commanders ordered officers to disperse the crowd south on Telegraph Ave. Field Commanders sought approval to use CS gas to avoid forcibly dispersing the crowd with batons if the crowd would not disperse. After exploring and rejecting alternatives to its use, the Chief of Police approved the use of CS gas as a last resort. Prior to advancing towards the crowd, officers were told to prepare for the deployment of CS gas. Officers took several minutes to don their gas masks. Rather than dispersing, the crowd watched intently while rocks and bottles were thrown from the back of the crowd at officers. When officers advanced toward the crowd ordering people to move back, the front of the crowd refused to move. Once it became clear the crowd was going to stand its ground, CS gas was used.

CS gas is considered a preferable option to the use of batons as it is less likely to cause injury. CS gas is considered an intermediate use of force by the courts on par with batons, less lethal munitions, and pepper spray. Batons have drawbacks for dispersing large crowds. Batons can cause bruises, contusions, abrasions, break the skin, and break bones. Batons also are only effective for dispersing people within the officers reach.

CS gas in contrast causes irritation to the eyes, nose and throat. The remedy for CS gas is to leave the area in search of fresh air. CS fired from a less than lethal launcher has a short range of approximately 10-15 feet and allows officers to target smaller groups than CS gas canisters. CS gas canisters are hand deployable burning devices that emit CS gas. (For more information on CS gas, refer to attached General Order U-02 - Use of Force in Appendix).

All police officers trained in a State of California POST Basic Academy are required to undergo exposure to CS gas and OC Spray (Pepper Spray). This includes officers with asthma. This exposure gives officers an understanding of the physical effects on the body that this use of force entails. Once exposed to fresh air, a subject exposed to CS gas quickly recovers. A drawback to the deployment of CS gas is that it is less discriminate than batons and anyone exposed to it will feel its effects.

Everyone within earshot of the loudspeaker was given the warning about the potential use of force including less lethal munitions as part of over 23 recorded dispersal orders beginning at Bancroft Way and Telegraph Ave. They had over 54 minutes to comply.
CS gas was deployed within range of hearing repeated warnings. No CS gas exposure injuries or medical complications have been reported to BPD by local hospitals.

The use of CS gas was effective in getting the crowd to disperse from the area.

As the crowd moved away from the CS gas, vandals damaged several police cars parked on Telegraph Ave., breaking windows and side view mirrors.
As the crowd dispersed south into Oakland, numbers diminished significantly. Many members of the original large crowd exited on side streets. At Telegraph Ave. and Parker St., one member repeatedly flicked lit cigarettes at an officer on the skirmish line, hitting an officer once in the face shield, once in the chest and once in the shoulder. An arrest team was sent into the crowd to arrest. He fought and punched officers, while members of the crowd unsuccessfully attempted to prevent the arrest and free him from police custody. As the crowd moved south, volleys of rocks and bottles continued to be thrown at officers. Additional CS gas was used in response to these ongoing attacks on officers.

Two squads of officers remained behind at Telegraph Ave. and Channing Way to secure seven police vehicles that were significantly damaged and not drivable. One police vehicle was burglarized with uniforms and equipment stolen. While officers coordinated tows for the damaged vehicles, a skirmish line was set to deny access to the police cars. Eventually, a crowd began to form at the skirmish line. Officers on scene requested additional units as the crowd to officer ratios became unmanageable. Officers walked back to the South Campus to support the squads left securing vehicles. Many crowd members who had been in the original crowd and had dispersed into the south campus neighborhood east and west of Telegraph Ave. had returned once the CS gas cleared from the air.
The crowd at Telegraph Ave. and Channing Way again grew to approximately 500-600. Dispersal orders were issued over the loudspeaker once again. Small crowds formed behind the lines of officers to the east and west of Telegraph Ave. These crowds hampered custody vans from maneuvering into the area. Due to the size of the crowd, mass arrests were not safe if the crowd became violent. When officers moved to disperse the crowd ordering them to move southbound for a second time, officers were met with resistance. Crowd members refused to comply with dispersal orders. Projectiles were also thrown at officers. To overcome that resistance, batons and CS gas were used to disperse the crowd. The crowd eventually diminished in size to fewer than 100. Despite a multitude of exit routes down side streets between Channing Way and Alcatraz Ave., the crowd stayed to engage the police. Members of the crowd threw rocks and bottles at officers from a distance as officers moved south. The crowd eventually dispersed and officers were able to return to the PSB at 1:38 am.

On the 6th, officers faced a significant challenge. Violent protesters in the crowd wearing masks first attacked officers then looted businesses, attacked other protesters and vandalized property. They would join the crowd and blend into it, making arrests difficult or impossible. They would launch assaults from the back of the crowd and splinter off from the main group to loot and vandalize. Police Command was unaware that these elements were not always welcomed by other members of the protest. Protest members and organizers tried to control or expel these elements from their midst without success.

In addition to these violent elements, much larger contingents of protesters refused to disperse and physically resisted lawful orders, choosing instead to stand their ground and confront officers. These protesters, by their sheer numbers, prevented the police from addressing the most violent offenders. Through refusing to disperse, large groups of protesters, who may have considered themselves peaceful, protected, facilitated and enabled violent elements as they launched assaults on officers and non-violent community members within the crowd.
9. **December 7th**

Facts
A national organization with a Berkeley chapter, By Any Means Necessary (BAMN), organized a second event for December 7th at 5:00 pm at Bancroft Way and Telegraph Ave. in response to the police actions on December 6th, billing the event as “BERKELEY MARCH FOR JUSTICE FOR MIKE BROWN, ERIC GARNER AND TO PROTEST THE POLICE RIOT IN BERKELEY.” Prior to the event, over 774 confirmed they would attend on social media.

On December 7th, the Berkeley Police Department again called in all available personnel. A mutual aid request was initiated with the County. It was determined that mutual aid resources would be arranged and placed on standby but would only be mobilized if event attendance was more than the department could manage safely. Intelligence on potential attendance was insufficient to activate mutual aid prior to the event. Mutual aid resources were not in attendance at the main personnel briefing at 3:30 pm. The Mutual Aid Coordinator from the Alameda County Sheriff’s Office was in the Department Operations Center (DOC) at the beginning of the event. He coordinated the mutual aid resources and placed them on standby to respond as needed in stages.

To reduce the potential for confrontations with the crowd members and officers, BPD altered tactics from the night prior. On December 7th, the Department, wanting to avoid unnecessary conflicts with the crowd, minimized static positions, kettling tactics,
dispersal orders and skirmish lines whenever possible and instead, placed emphasis on strategic arrests of law breakers.

Although no changes were made to the mission for the second day of protests, significant changes were made to attempt strategically to deal with the violent elements. Squads were deployed into the field in mobile field force patrols. Motorcycle officers and parking enforcement officers were again tasked with providing traffic control to facilitate the crowd’s movement throughout the city. Bicycle officers were to monitor the crowd.

Beginning on UC Berkeley campus at Telegraph Ave. and Bancroft Way at 5:00 pm, a group of approximately 100-150 began to gather. Some crowd members were observed wearing masks, goggles and covering their faces with scarves. BPD received information that the protesters in the crowd were armed with hammers and gasoline in their backpacks and that they intended to target Berkeley Police officers. At 6:00 PM, the crowd, now numbering approximately 300, took over the intersection of Telegraph Ave. and Bancroft Way. The crowd quickly grew and was estimated between 500 and 800.

The crowd began to march through the South Campus area and then proceeded downtown along Shattuck Ave.

At 6:39 pm BPD 911 dispatch received a call of a medical emergency at an address in the 2100 block of Kittredge east of Shattuck Ave. A 62 year old male had collapsed and was having difficulty breathing. The crowd of approximately 700 was at Shattuck Ave. and Kittredge St. and was slowly moving through the area. Incident Command and Fire Command determined that per standard operating procedure, responding fire units would require a police escort as the response route was not secure due to the protest group. The crowd was still in the area until 6:56 pm. A police escort was dispatched to the fire station to accompany the ambulance at 6:57 pm. Police and Fire arrived on Kittredge St. at 7:05. The patient was contacted at 7:07 pm and was transported to the hospital at 7:23 pm. The patient ultimately died.

At approximately 7:00 pm, the crowd marched towards the Public Safety Building. When the group was about a block away from the station on Milvia St., members of the crowd began putting on masks and covering their faces. Security barricades were reconfigured based on lessons learned from the prior night’s skirmish at MLK and Addison St. to deny access to the 2100 block of MLK. The barricades were set up in such a manner that they kept the crowd at a safe distance, required fewer officers to staff them and required less potential force to defend them.
The crowd arrived at the PSB and demonstrated for a period of time. Ultimately, the crowd moved away from the Public Safety Building and proceeded to the steps of City Hall, located a block away. Organizers made speeches and led chants before the crowd mobilized into the downtown Shattuck Ave. area. Police continued to facilitate the march by blocking traffic so the march could continue.

At approximately 7:40 pm the crowd reached Shattuck Ave. and Dwight Way. A group of protesters dressed all in black with their faces covered smashed the windows and made entry into Radio Shack on the southwest corner. One protester tried to intervene and prevent looters from entering the store. A shoving match ensued between the man and a group of masked men. One of the masked men walked away briefly then lunged at the protester in a surprise attack, hitting him in the head with a hammer. The protester was knocked to the ground and the looting continued. Several looters entered the store and stole electronics, phones and headphones. Several people called the police to report the looting and the attack on the protester. A squad of officers
responded and secured the scene for BFD while protest medics provided first aid, Berkeley Fire Department EMTs responded and the injured protester was transported to the hospital. The suspects fled the scene prior to police arrival.

When the looting began at Radio Shack, a large part of the crowd began to break away. Chants of “Freeway” can be heard on the video. The crowd moved south on Shattuck Ave. towards Highway 24. CHP was notified and responded to the series of on-ramps and off-ramps for Highway 24 at Shattuck Ave. and 52nd Street in Oakland. The crowd attempted to stop freeway traffic but was blocked by a CHP skirmish line and was removed from the freeway. While CHP officers were committed on the freeway, protesters surrounded unoccupied CHP cruisers and began to destroy them. Protesters damaged four CHP cars and attempted to light one on fire. A group of masked protesters attempted to roll a CHP car over. Onlookers filmed and cheered.
At approximately 10:00 pm, CHP personnel cleared the eastbound 24 freeway of protesters by moving them east along the freeway to the Claremont Ave. exit, which returned the protestors to the streets in Oakland. The crowd moved south on Claremont Ave., to Telegraph Ave., where they turned north on Telegraph Ave. Crowd size was estimated at 800 members. The crowd stretched several blocks.

The crowd walked back into Berkeley, and continued north on Telegraph Ave. As the crowd continued north on Telegraph Ave., some members confronted or attacked uninvolved pedestrians in the area. At Telegraph Ave. and Channing Way, helicopter footage showed apparent confrontations between the crowd and patrons of the business at the intersection.

The crowd continued north on Telegraph Ave., and then west on Bancroft Way. Vandals destroyed cash dispensing machines and broke windows at the Wells Fargo branch on Bancroft Way. Moving west, vandals broke out windows at Mechanics Bank on Shattuck, then moved north, vandalizing and/or looting several businesses in downtown Berkeley.

Some crowd members pulled refuse and recycling bins from the sidewalks and scattered them across the roadways, lighting some on fire.

Damaged businesses included Bank of America, Mechanics Bank, Chase Bank, Wells Fargo Bank (on Shattuck and on Bancroft Way), T-Mobile, AT&T, and Sprint retail stores, McDonalds, and the Missing Link bicycle store.
Helicopter video feed showed the Sprint store being looted, and Incident Command requested units in the field attempt to arrest suspects who appeared to be in the store. Units in the field reported they were not able to approach the store. A commander later reported that the crowd’s actions made intervention unsafe, as crowd members would turn towards any visible police units, and head towards them, rather than away. Concerned about placing officers into a situation potentially requiring a significant use of force to protect officers and keep the crowd members back, the commander refrained from inserting teams onto the affected block.

Given a description of one particular looter, officers began to follow the crowd. Protester to officer ratios were insufficient to exercise crowd control tactics. The crowd was followed north to Berkeley Way, returned to University Ave., then turned south on Milvia St. Vandals in the crowd broke out windows in City Hall at 2180 Milvia St. Officers were able to target a vandal whose description and activities had been broadcast earlier. Officers were able to take that person into custody in the area of Harold Way and Allston Way. That suspect, who’d been seen repeatedly on the helicopter video feed as he looted and vandalized businesses, was arrested for possession of stolen property, burglary, assault on offices, assault with a deadly weapons and resisting arrest.

The crowd continued south on Shattuck. As they moved south, at about 11:08 pm, a person was robbed at gunpoint by a group of four juveniles at Fulton St and Ward St. As they fled on their bicycles, they yelled, “no justice, no peace!”

As the crowd moved south from the downtown area, looters again looted the Radio Shack at Dwight Way and Shattuck Ave. Several businesses were vandalized, either through window smashes or graffiti, including Walgreens, Any Mountain, Berkeley Bowl, Chevron, and True Value Hardware. Rioters pulled newspaper racks into the roadway to block police vehicles. Dumpsters were lit on fire and continued to blockade the roadway with debris as they moved on Shattuck Ave.

At about 12:12 am, a group of 4 or 5 juveniles on bikes were observed in a yard near Carleton St. and Grant St. examining what, according to witnesses, appeared to be stolen electronics. When the property owner came outside to investigate, he told them to get off of his property. One of the suspects pulled a gun and fired a shot at the homeowner, then fled on foot. A bullet hole was found in the front door of the victim’s house. Patrol units responded but were unable to locate the suspects.

At 12:28 am, looters struck at the Whole Foods Market, and vandalized a nearby bike store.
Two violent crowd members were arrested after they threw glass bottles at police vans. Throughout the night officers were able to make several other targeted arrests. Officers located and arrested a rioter responsible for smashing $14,000 worth of windows from the December 6th incident. In total, 6 targeted arrests were made.

Police responded to the area but were unable to make arrests. Police Commanders began to implement a plan to stop the crowd and effect mass arrests of rioters at Telegraph Ave. and Dowling St. At 1:48 am, dispersal orders were given continuously over a loud speaker. Arrests were made for refusing to disperse after receiving the dispersal order per California Penal Code Section 409.

Berkeley Police Officers returned to the city in attempt to address several fires burning in the streets. When officers tried to put them out, they were pelted with rocks.

At approximately 2:38 am, the riots had subsided and officers returned to the station.
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10. Lessons Learned

Of the lessons learned from this review, many were identified by BPD commanders, mutual aid partners, and by line level personnel over the course of the protests. The Command Staff team met daily to debrief and discuss the previous night’s events and agree upon strategy and tactics for the next operational period. Many lessons were learned and implemented immediately, which speaks to the flexibility of command and officers in an extremely challenging environment.

A. Tactical Negotiations

In the Oakland Police Department, Tactical Negotiators are responsible for contacting the event leadership prior to and during protests. They use social media contacts and try to establish communication. They report some success with these tactics but also report that FTP groups are generally unresponsive. This is what BPD experienced when officers reached out to organizers. In Oakland, Tactical Negotiators are available to contact obvious leaders during an event. They also use a Public Address System (PA) to ask leaders to meet with police and negotiate on the scene. Tactical Negotiators are also responsible for issuing dispersal orders, if necessary over the PA system. We recommend exploring the use of our Special Response Team Negotiators to enhance communication with the crowd and crowd leadership before and throughout the event. To assist in that function, we recommend BPD acquire a high quality mobile PA system.

B. Mission Clarity

Field Commanders and Mutual Aid Commanders perceived a lack of mission clarity. A lack of situational awareness contributed to confusion and delay in deployment and maneuver due to the evolving nature of the protest and its disruption by violent elements. This was a point of contention for outside agencies which were being maneuvered by BPD officer and sergeant “pathfinders”. Outside agency commanders expressed a responsibility to ensure the safety of their personnel and to function within their policy. Therefore, they have a responsibility to evaluate the mission they are given and execute its safe implementation. When the mission was unclear, they were not willing to commit their resources until the mission was clarified.

A lack of mission clarity was also an issue for BPD squad leaders. On December 6th, at MLK and Addison St., building security requested additional officers to respond to the north end of the building because building security was light on that end of the property. The arriving squads were directed to protect the north side of the PSB but not given specific directions as to how to do so. Therefore, they arrived, assessed the situation and decided to establish a rear guard skirmish line at MLK and Addison St.
MLK in order to protect the PSB. Once a skirmish line was set, orders were given to maintain a safety zone for officer safety. When protesters failed to obey verbal warnings and directives to stay back, officers were at times required to use force to maintain a safe distance from the crowd. This resulted in skirmishes between officers and individuals in the crowd. These skirmishes may have precipitated attacks on officers. Although reports of crowd members masking up had officers justifiably on alert, and violent protesters later demonstrated they were armed with projectiles and ready for conflict, the skirmish line may have exacerbated the situation because the crowd had been peaceful up to this point. Minutes later, field commanders made adjustments by opening the skirmish line.

We recommend that when Command dispatches a squad of officers to a given location, the broadcast should include a clear and specific mission or objective such as, “Proceed to MLK and Addison St. and block all northbound traffic on MLK, reroute the crowd eastbound on Addison St.” Or “Proceed to MLK and Addison and maintain the barricade line blocking westbound Addison St.” It is critically important that commanders not only know where their resources are needed, but also what they are expected to do once they arrive.

By the time officers regrouped and moved formations to University Ave. and MLK, the forward elements of the crowd had arrived at Radio Shack at University Ave. and Jefferson (several blocks away). However, available police resources were committed to securing the intersection, then to checking for looters inside of Trader Joe’s. These were the first unplanned maneuvers of large contingents of officers and were slow. Each decision to maneuver resources was made in the DOC, not in the field. This demonstrated a need to recognize when resources are not necessary and to make redeployment decisions proactively by commanders in the field. As the week of protests wore on, this lesson was discussed. Commanders and pathfinders were briefed to take the initiative to recognize and abandon assignments that have been accomplished or are no longer necessary and to be available for reassignment. By the third night of protests, coordination of squad movement was occurring almost entirely in the field.

C. Overcommitting Resources
A contingent of officers should parallel the crowd, so that violent elements in the crowd will see the police presence. BPD committed available resources to MLK and Addison St. and then to Trader Joe’s. The crowd split into two, one moved back east into downtown Shattuck Ave. area and the other moved west on University Ave. Bicycle officers had to split up to remain with the crowds. Motorcycle officers and Parking Enforcement Officers (used for traffic control only) were too few to stop traffic in
advance of the crowd. Consequently the crowd walked through stopped traffic. We received reports of protesters vandalizing cars as they marched. We had significant resources that were sent to MLK and University Ave. Although the crowd was not there at that time, formations of officers stood around waiting to be dispatched somewhere else.

D. Maneuvering
There was limited mobility by squad leaders and pathfinders guiding mutual aid resources. This was in part because drivers were not left with their vehicles. Vehicles were staged a distance away from the problem which resulted in increased remobilization time while officers walked back to the vehicles rather than being picked up. After so many vehicles were vandalized and rendered inoperable on December 6th, an adjustment was made leaving drivers with the vehicles. This improved the mobile field force’s ability to maneuver and make targeted arrests on December 7th.

Many Mutual Aid agencies have an officer safety policy that skirmish lines will not be deployed until traffic has been controlled. However, on multiple occasions, there were too few Motorcycle Officers and Parking Enforcement officers to fill these functions. The lack of traffic control caused some delays in setting skirmish lines.

On December 7th, BFD could not respond to the 2100 block of Kittredge St. for a medical emergency until the police could escort them to the scene. In the past, BPD deployed jointly with BFD as Scout teams. The officer embedded with a fire team provided security while BFD put out small fires in the streets. These scout teams could survey the scene and plan fire response to medical emergencies impacted by the crowd proximity. After December 7th, BFD was deployed with BPD as scout teams.

E. Situational Awareness
Situational Awareness is always a significant concern for Incident Command. Having a firm grasp on the situation as it evolves allows for better decisions. Incident Command gather situational awareness through updates communicated from personnel in the field as well as other sources, such as social media, video live streams and news media. Information Technology staff was called in to augment our technological capabilities in the Department Operations Center. They increased bandwidth available, added cellular repeaters to increase cell phone coverage, and reduced latency as much as possible on our end. Even with these enhancements, we were at a significant disadvantage. BPD personnel in the DOC were creative in gathering intelligence on crowd movement through crowd members, social media, and news helicopter video streams. Unfortunately, video streams were intermittent and our situational awareness was significantly impacted by third parties. For example, when a protester streaming video
decided to shut down their feed or leave the protest, we lost on-the-ground video. When the news helicopter had to leave and or film based on their news reporting objectives, we lost awareness. During the incident, commanders in the DOC learned that we did not have the software capability to record the various streams.

Due to the City policy limiting the use of helicopters, the DOC could not access timely overhead reconnaissance from mutual aid police helicopter assets. Specifically, Command interpreted the resolution to mean that BPD was prohibited in communicating with police helicopters. That view also extended to not attempting to view helicopter video as well. Instead Command had to rely on public video feeds with several minutes of delay.

The lack of overhead information controlled by police assets posed a fundamental problem for commanders in maintaining a high level of situational awareness. Poor situational awareness can lead to ill advised engagements with the crowd. Commanders reported that they were unaware of the size of the second crowd at Telegraph Ave. and Durant Ave. The decision to move the crowd south on Telegraph Ave. ultimately resulted in the use of CS gas. We recommend the department explore technology that can improve the quality and timeliness of information available to decision makers. This could be live stream capability of our own, including the ability to access police controlled aerial information. In February of 2015, the City Council issued a one year moratorium on the use of UAV Drones by police while it proposed further study of the impacts of police use. In light of this, we recommend the department consider proposing changes to the City Council Resolution 51,408 – N.S., which does not permit the use of helicopters in instances of civil unrest.

After smoke canisters were used, officers remained at MLK and Addison St. where they recovered from the assault, which had left several officers injured, including one with a dislocated shoulder. The decision to use smoke by a commander in the field was appropriate per policy. Other commanders however, were not aware smoke had been used because the order was given face to face and not over the radio. When the smoke canisters were thrown back at officers, commanders began preparing to use CS gas, but did not use it because the crowd had moved away. Chemical agent preparatory orders should be announced over the radio.

**F. Tactical Command**

Resources were deployed in a peer level structure. All BPD field level lieutenant rank commanders were responsible for 1-2 squads of officers. There was a need for an overall tactical commander over the squad level commanders directing tactics and maneuvering squads in the field. When we discussed these issues with crowd control
experts, they identified this as a weakness of the traditional Incident Command System in crowd control situations. The ICS Command Structure places the Operations Commander in the DOC with the Incident Commander. When we spoke with crowd management experts there was a consensus that tactical command decision making and responsibility should be relocated from the DOC to the field.

Absent timely overhead intelligence, situational awareness, though fragmented, was better in the field. On December 6th and 7th, the Incident Commander had the Operations Commander issue commands to employ a given tactic without the benefit of seeing the crowd behavior, mood, composition or seeing how field conditions may impact implementation. Field Commanders called the DOC on the phone to advise Command why a given tactic could not or should not be implemented. By the end of day 1, a Tactical Commander had stepped into the void at the tactical level in the field. By day 2, a field commander was successfully coordinating multiple squads from the field.

G. Social Media
Protest organizers used social media to good effect. They recruited large numbers by advertising the event on Facebook and Twitter. They used Twitter to coordinate movements and to regroup when they had been split. They used Twitter to broadcast the arrival and deployment of mutual aid resources to the staging area. Oakland and SFPD have seen crowds intentionally breaking apart and using Twitter to converge on a new location. Members of the crowd were also live streaming protests over various platforms. Approximately one year ago, BPD began using Nixle to broadcast one way advisory messages to the public regarding areas to avoid during protests. Nixle was also used to share safety information with the public and press. Nixle can be configured to tweet these messages as well.

One of the problems faced at Telegraph Ave. and Bancroft Way was that the group went from 200 protesters to 1000-1500 protesters in a short amount of time. Part of this group had heard about what was taking place from friends on social media. The crowd was comprised of mostly newly arrived protesters who had not observed any of the lawlessness which led to the issuance of the dispersal orders. During our investigation, protesters we interviewed told us that they didn’t think the dispersal order “should” apply to them. There is an opportunity here to improve communication and understanding. As dispersal orders are given over the loud speaker, social media could be used to communicate more detailed information to the crowd, including that dispersal orders apply to everyone.
Both the community and members of the press requested that BPD use Twitter, their main mode of communication, during protests to provide information.

BPD could use social media to send messages that:

- Communicate that we want protesters to have a safe event and give tips on how to express their views lawfully.
- Attempt to affect behavior before it escalates to the level of disorder that requires a dispersal order.
- Coordinate in the field press conferences to inform media of dangerous situations.
- Explain why police are issuing dispersal orders and that dispersal orders apply to everyone in earshot.
- Explain potential consequences of failure to disperse.
- Warn the public at large to shelter in place to avoid CS Gas exposure.

When officers form a skirmish line they are directed by training and policy not to engage in conversation or debates with crowd members. This makes members of the crowd uncomfortable and can be perceived as impersonal or standoffish. Constant communication and careful messaging with the crowd through social media may positively impact police/protester interactions.

H. Radio Interoperability

With few exceptions, most of the agencies that responded to our mutual aid requests were utilizing the Alameda County East Bay Regional Communication System (EBRCS). We deployed mutual aid agencies into the field using BPD Pathfinders to facilitate communications and to guide these agencies through our city. It became clear to BPD Commanders during the planning phase that although we all have tactical EBRCS radio channels we were not prepared to deploy and communicate with mutual aid agencies using common recorded EBRCS radio channels. Large scale protests are more and more frequent events and will require mutual aid assistance and communications. We recommend the Department investigate and determine the availability of regional radio interoperability for common tactical and recorded radio channels to improve communications with mutual aid partners during large scale events. Additionally, we recommend that participating agencies utilize plain talk when communicating instead of agency specific code/jargon.

I. Dispersal Orders

On December 6th, officers gave more than 23 recorded dispersal orders over the course of 54 minutes. Command instructed field personnel to give continuous dispersal orders...
so that it could not reasonably be claimed that the people present at the location did not hear a dispersal order. Once the crowd was moving, orders to disperse were given continuously. However, as previously noted, some crowd members did not think the dispersal orders applied to them. Many people in the crowd were intrigued students who came to the event as spectators. The prolonged issuance of dispersal orders without taking action was confusing to the crowd. If the crowd is told to disperse and no action is taken towards their arrest or dispersal, they might wait around until something does happen. This was also a point of contention for almost all of the mutual aid commanders we interviewed. The industry standard consensus on this issue is to give several quality dispersal orders and record evidence that the crowd should be able to hear the orders. When the determined time has lapsed, the police need to be ready to enforce the order. If the police are not ready to enforce such an order in a deliberate fashion, then the police should consider not issuing the order until they are ready. Dispersal orders should not be given until control forces are in position to support crowd movement. (POST Guidelines Crowd Management, Intervention and Control 5.2)

The decision point to issue a dispersal order is a significant one and should be taken with the same weight as the use of significant force or dispersal via gas. A dispersal order should not be issued to a crowd where arrests are not possible unless the department has predetermined the necessity to disperse the crowd by means of reasonable and appropriate force.

If the crowd relocates but their composition could have changed before being reengaged by the police, a new set of dispersal orders should be issued before making lawful arrests for failure to disperse per California Penal Code Section 409.

For all of the aforementioned reasons, issuing a dispersal order can be challenging. Agencies in our region use dispersal orders on a limited basis. Generally, mass arrests are not practical. Mass arrests require significant staffing and transportation assets. Each and every arrest for failure to disperse must be substantiated in terms of evidence or testimony that the person willfully remained after being given a dispersal order. This is difficult to prove on a large scale while a crowd is moving. Yet attempting to stop a crowd using skirmish lines can create a potential for protester violence necessitating police use of force.

J. Dispersal Order Script Revision
We recommend a revision of the Dispersal Order Script. The BPD dispersal order should be more clear on what types of less than lethal force may be used on the crowd. The dispersal order text should be amended to include specific types of force that may be used to disperse the crowd including the use of CS gas. Field Commanders or
Tactical Negotiators issuing dispersal orders should also give plain English explanations to make sure the message is understood. (POST Guidelines Crowd Management, Intervention and Control 5.2)

K. Loud Speakers and Bullhorns
Prolonged amplified dispersal orders had an unintended consequence on Telegraph Ave, as they likely attracted more protesters and increased crowd size. Telegraph Ave. has been a common location for protests and marches. Recruiting a large crowd is one of the reasons why organizers start protests on campus, proceed through South Campus, one of the busiest districts in the city for foot traffic, and pass by student housing areas before heading downtown.

Telegraph Ave. has tall buildings without many alleys and can be an ideal place to stop a crowd because the roadway is not very wide and can be effectively controlled by fewer officers. Normally these are advantages from a crowd control perspective. However, this area was disadvantageous for the issuance of prolonged dispersal orders over the loud speaker. The neighborhood surrounding the south campus is mostly student housing and the dispersal orders, which began at 9:21 pm, brought curious students down from their apartments and dorms to see what was occurring. As the evening wore on, the composition of the crowd grew in size and increased in concentration of students. Curious students joined the crowd at the point when the crowd was being forcibly dispersed.

Timing and strategy play a key role in deciding when and where to confront crowds and issue amplified dispersal orders.

L. Crowd Control vs. Crowd Management
Crowd Management and Crowd Control are often misused synonymously, but are actually distinct concepts. Crowd Management is defined as “…strategies and tactics employed before, during and after a gathering for the purpose of maintaining the event’s lawful activities.” These strategies include, but are not limited to: communicating with leaders before and during the event, police presence and event participation, blocking traffic to facilitate a march, and bicycle officers monitoring the crowd.

Crowd Control is defined as “law enforcement response to a pre-planned event or spontaneous event, activity, or occurrence that has become unlawful or violent and may require arrests and/or the dispersal of the crowd.” (CA POST Guidelines – Crowd Management, Intervention, and Control p. 47) These strategies include but are not limited to: skirmish lines, mobile field force techniques, kettles, targeted and mass arrests and the use of force generally.
On December 6th, the vast majority of officers were deployed in the field in squad formations for crowd control. The mission and Incident Action Plan emphasized skirmish line tactics, dispersal orders and mass arrests to control an unruly crowd. The percentage of officers configured for crowd control increased on December 7th.

Based on the violent tenor of recent protests across the country and the Bay Area, the department deployed personnel resources in anticipation that Berkeley’s FTP march would rapidly become violent, requiring crowd control tactics. While the violent outcomes of the events validated intelligence gathered in planning for them, more resources should have been dedicated to crowd management efforts to “maintain the events’ lawful activities.”

We recommend greater resources be deployed in crowd management and preventative roles. If necessary, resources should be redeployed or reconfigured for crowd control needs as they arise. Greater emphasis should be placed on crowd management techniques starting at the beginning of the event. In order to set the tone, a more highly visible police presence should have joined the crowd at its inception. Additional resources should also be held in reserve in case crowd control became necessary. Unfortunately, very early in the December 6th event, the protest degenerated into violence and crowd control became the appropriate response.

On December 6th and 7th, the Berkeley Police Department only had two available bicycle officers to monitor the crowd. We recommend BPD train and deploy more bicycle officers for demonstrations. Our bicycle officers were highly mobile and assisted with providing updated crowd information, such as size and direction of travel. Bicycle officers provide a low key police presence, improve situational awareness and, if adequately staffed, can respond rapidly to crimes in progress. UCPD provided additional two bicycle officers. We recommend a full squad of twelve bicycle officers be trained and ready to deploy for large scale crowd management events.

A larger contingent of motor officers should also be deployed to show that the police are present and protecting the march. BPD deployed 5 motor officers and 5 parking enforcement officers on December 6th for traffic control. If BPD cannot adequately staff these important roles from our own resources, BPD should consider requesting these resources from mutual aid agencies.

Opportunities for the police to use crowd management rather than control tactics should be recognized and seized. Throughout the evening of December 6th, the crowd lapsed in and out of lawful behavior. Perhaps because this protest was about confronting the
police to redress grievances against “the police”, crowd control tactics such as skirmish lines were particularly antagonistic to many in the crowd. When confronted by the police, those who had come to the event intending to commit criminal acts and provocation, responded with violence.

On December 7th, BPD deployed resources in mobile field force patrols that trailed the crowd at a distance. BPD did not have sufficient police presence close to the crowd to deter the riotous acts of vandalism, looting, and violence. On one hand, this strategy accomplished the goals of minimizing conflict between officers and protesters, reducing use of force, as well as reducing injuries. BPD could not prevent injuries to some protesters who were attacked by other protesters and could not prevent significant property damage.

M. Skirmish Lines
Skirmish lines were appropriately utilized in many cases. In hindsight, using them to stop the crowd at MLK and Addison St. was not a good use. Skirmish lines represent the front line of contact and confrontation between police officers and a crowd, and can result in use of force necessary to establish the line and maintain it. Because of this, skirmish lines should be deployed judiciously and only in those situations where the reasonable use of force that may be necessary to enforce the line and protect officers is warranted by the objective of deploying the line. There should be a need to deny access, stop or reroute the crowd based on the incident priorities of life safety, incident stabilization and property protection. Commanders are challenged to balance these priorities while trying to accomplish the mission of protecting and facilitating free speech and ensuring public and officer safety.

N. Kettle Tactic
The kettle tactic is designed to stop a crowd for the purpose of issuing an enforceable dispersal order and is a fairly new tactic for the Berkeley PD. BPD used the tactic in August 2014 on a crowd of approximately 150 protesters and it worked as planned. A crowd was stopped on Telegraph Ave. between Bancroft Way and Durant Ave. and ordered to disperse. Protesters agreed to disperse and were allowed to leave. Officers went mobile to patrol in the area and the crowd did not gather again. Based on this successful use of the tactic, it was incorporated into the Incident Action Plan for December 6th in the event that issuing dispersal orders and conducting mass arrests became necessary. We deployed resources in support of this contingency plan.

The department had not had many opportunities to practice the kettle tactic. Commanders were briefed on how to implement the contingency plan. However, most line level personnel and commanders had not practiced the tactic in the field prior to its
use on December 6th. Although the tactic was simple enough in concept, due to maneuvering issues and the size of the crowd, it was difficult to successfully execute.

The Mutual Aid Liaison briefed mutual aid partners on the possible use of the kettle tactic and the plan for issuing dispersal orders and mass arrests. Once police resources had finally been maneuvered into position to make the stop at Bancroft Way and Telegraph Ave., and dispersal orders were issued, every member of the crowd complied with the dispersal order and left the immediate scene, only to go around the block and join the larger crowd. In effect, the crowd had not actually dispersed. Mutual Aid Commanders felt the kettle tactic was more appropriate when crowd to officer ratios were favorable for the police and in circumstances where protesters want to be arrested.

As crowd members left the kettle, protesters were recorded so BPD would have video evidence if they failed to disperse after the issuance of the dispersal order. By design, bicycle officers in the crowd should have been in a position to identify subjects who they witnessed committing criminal acts during the protest. When the offender went to leave the kettle, they could be separated and arrested. These quality targeted arrests were not possible and were not attempted for two reasons. First, bicycle officers were understaffed and had to keep a greater distance from the crowd for their own safety. Second, they were not trained regarding this critical role in making targeted arrests following a kettle.

When BPD pursued the crowd back to the south campus, officer to protester ratios appeared to be ideal for officers to stop the crowd, declare an unlawful assembly and issue dispersal orders. However, the crowd numbers swelled dramatically as we issued the dispersal orders over the loud speaker. Due to gaps in situational awareness, Incident Command did not know about the second crowd at Telegraph Ave. and Durant Ave. When field commanders realized the officer to protester ratios had turned dramatically, they made the correct decision not to attempt mass arrests of the 100 protesters who failed to disperse on Telegraph Ave. between Bancroft Way and Durant Ave. This would have tied up police resources with arrests and left uninvolved officers even more vulnerable to attacks from the Durant Ave. crowd.

Experts we consulted have experienced similar difficulties with dispersal orders and mass arrests. Whenever possible they rely on prima facie misdemeanor violations that are less complex to prove and can be enforced with less difficulty. In the case of a dispersal order, the burden of proof is much higher than a violation of the vehicle code or municipal code. When a prima facie violation is used, the crowd is only stopped once to effect arrests, negating the need to kettle.
O. Use Of Batons

BPD officers are trained regularly in the use of the baton. Defensive Tactic skills, including the use of batons, are considered by the California Peace Officers Standards and Training (POST) to be perishable skills and consequently require routine training. The Berkeley Police Department last provided defensive tactics perishable skills training in the summer of 2014. This training includes a review of verbal de-escalation, verbal commands, baton strikes, baton target areas and non-target areas. Lesson plans are presented to POST for evaluation and approval prior to instruction. We spoke with use of force experts to evaluate if our training in the use of batons in crowd control was consistent with current industry standards. The review team was tasked with reviewing the use of force concepts and training, as evaluating each individual use of force was not possible. Of concern to the public and community leaders was what they described as an “over the head” baton strike which leaders expressed should be banned.

Different baton techniques are appropriate for different situations and conditions. Many baton strikes are impossible in close quarters situations such as officers standing shoulder to shoulder on a skirmish line. For example, a two handed strike, which resembles a two handed baseball swing, is nearly impossible in the close confines of a skirmish line. In some situations, Squad Leaders may direct officers to use a specific strike. That aside, all trained techniques are authorized, provided that level of use of force is appropriate and the technique is correctly applied.

Officers are trained to avoid non target areas on the human body including the head, neck, throat, spine, kidneys, heart and groin. Every Defensive Tactics training related to the use of baton requires a review of the non target areas. However, the officer may intend to deliver a strike to an allowed target area only to have the subject move unpredictably, causing the strike to land in a non-target area on the body.

We recommend that the department continue to train and reinforce disciplined use of baton strikes by officers to avoid striking a person in non-targeted areas. Use of Force subject matter experts opined the origin of where a strike begins is not the central issue but rather the place on the body that is or is not targeted.

P. Less Than Lethal Munitions Inventory

We recommend certain improvements in the deployment and use of less than lethal munitions and CS gas in the area of inventorying. Typically, less lethal munitions are deployed into the field and never used, both in the context of crowd management or control and other law enforcement settings. Over time, this has led to a mindset that they would not likely be used. On December 6th, each trained less than lethal operator retrieved his or her own munitions prior to deployment. Less than lethal munitions were
not checked out for the purpose of counting how many rounds were used but to make sure that less than lethal operators were properly equipped. This led to a lack of information about how many munitions were used. At the end of the day, officers were simply required to turn in unused munitions. We recommend less than lethal munitions be checked out and checked back in by logistics personnel and coordinated by the Planning Section. This was recognized by the Logistics Section of the Special Response Team and was implemented by the third night of protests. BPD can better account for used munitions and required supply needs. The use of less than lethal munitions should be recorded in the after action report and the policy should be updated to include this requirement, should this recommendation be adopted (General Order U-04 - Unusual Occurrences).

A good practice when possible, for pre-planned events, would be to give less than lethal operators a separate additional briefing reviewing the use of force policy as it applies to less lethal munitions and CS gas prior to deploying into the field. This would give command the opportunity to review rules of engagement and the use of less than lethal munitions as they relate to accomplishing mission objectives with each operator, prior to deployment.

Q. CS Gas
We consulted with experts regarding the deployment of CS gas. Although generally safe, they recommended that prior to its use, an ambulance unit be on scene and available to respond to a need for treatment of persons affected by CS Gas. Dispatchers should transfer calls from people experiencing distress to Alameda County Emergency Medical Dispatchers, who can provide first aid advice to the caller.

R. Municipal Code
We recommend that the City of Berkeley create an addition to the Berkeley Municipal Code that would give the police department a more appropriate legal enforcement tool to restore order to unlawful crowd behavior. Currently BPD relies on Penal Code section 409 (Unlawful Assembly-Requires the use of dispersal orders). Rioters that cause damage and disorder could be held accountable for their actions under the municipal code if enforcement provisions extend to participants as well as organizers.

S. After Action Reports
Our existing policies require an After Action Report (AAR) be written after each incident. This provides overall documentation for the department and can facilitate the passing of information and lessons learned from one Incident Commander to the next as well. Per BPD General Order on Unusual Occurrences (U-4), “After-action reports will be the responsibility of the Event Commander having command at the time the incident is declared over, or as assigned by the Division Commander. A copy of the after action
report will be routed via the chain of command to the Chief of Police." There were five consecutive days of protests. Due to the continuity of operations, after action reports were not written. Events of this size, scale and duration make it difficult to prepare AARs while also preparing for continuing operations. Immediately following the event, the Chief determined that this investigation and the resulting report would be in lieu of the after action report. Due to the length of this project, a standard after action report or summary may have helped document what had transpired, the police response and recommendations for future events. (General Order U-4, Unusual Occurrences, General Order U-2 - Use of Force.)

T. Training
BPD conducted in-house training for all operations personnel in Crowd Management from February to April of 2014. This 10 hour training included instruction in crowd management theory, mobile field force, and practical scenarios. Before that, the department also trained in 2012. California POST does not require training in Crowd Management for officers other than that received in the CA POST Basic Academy. However, because the City of Berkeley routinely experiences protests, marches and large scale events, all sworn personnel attend crowd management training once every two years. This line-level training was mandatory for line-level personnel assigned to Patrol Operations and open to voluntary participation by officers and commanders outside of Operations. The 2014 class was scheduled on the same day as the weekly command staff meeting and only one Commander attended the training. We recommend all Commanders attend to improve understanding of BPD’s current capabilities and limitations in crowd management and control, which should enhance planning and tactics.

The Personnel and Training Bureau has been very diligent in identifying training needs and had implemented a Crowd Management Training plan beginning in 2012. Prior to the protest, several officers were selected to receive additional training to conduct in house training in crowd management. We recommend the entire department continue to receive crowd management training every two years, not just operations division personnel. We recommend the following trainings be developed and integrated into the 2015-2016 training calendars to cover the following topics and objectives:

- Commanders should conduct crowd management table top exercises to explore topics such as planning, command and control, mutual aid management, tactics, and operations center logistics.

- All crowd management trainings should include legal update training in the area of crowd management case law as well as a review of first amendment case law.
• Mobile Field Force training with regards to conducting targeted arrests, including a tactical review of how to deploy to better support a mission of targeted arrests while maintaining the ability to transition into crowd control formations.

• Train sufficient personnel to use higher quality camera systems to gather better video at protests. This would support identification, arrest and prosecution of violent offenders.

U. Community Perspective
To better understand the effects of these incidents on our community, the Post Incident Review Team sought input from various segments of our community. We gathered numerous students’ perspectives at several Berkeley City Council meetings and at the Police Review Commission. We met with representatives of the Associated Students at the University of California (ASUC), Berkeley Chamber of Commerce, UC Black Student Union, Berkeley Organizing Congregations for Action (BOCA), NAACP, and ACLU.

The student population conveyed frustration because members did not understand BPD’s need to disperse the crowd nor the force needed to do so when they felt that they, as individuals, were not in violation of the law. Some students felt that police use of force was unprovoked and excessive. Additionally, numerous students were upset that officers on the line would not talk to them when asked questions. Some explained that they were not “protesting” but were simply there to observe and were pushed by police into the crowd and not allowed to leave.

While the ASUC did not participate in organizing the December protests, it has successfully organized actions in the past. ASUC members found that working with the police contributed to their success. Some of their members reported that they were aware of illegal behavior and assaults on officers by some crowd members. Others did not understand the consequences of being arrested, for example, time spent in custody waiting to be cited out or potential costs for legal representation. They were interested in the police providing additional information about how to conduct or participate in a protest in a safe and legal manner that would assure that future protest actions ran smoother.

Members of the Chamber of Commerce expressed concern that the police did not have a large enough presence to deter looting and vandalism. Some felt that the police did not do enough to protect businesses or arrest law breakers. One member stated that he did not want to do the job of the police but would put himself in harm’s way to protect his business.
The NAACP and the ACLU told us that their members were concerned that there was a confrontation at the police station between police and crowd members. However, when crowd members got into a confrontation trying to stop violent elements from attacking Trader Joe’s, they believe the police were not there to respond. Others pointed to a successful Berkeley High protest highlighting that a protest can go well if it has full community involvement, police participation, organizer engagement and elected official involvement. Some were concerned about the use of armored vehicles by mutual aid responders. Another common theme was that there is a disconnect between the community and the department due to the perceived absence of community policing. One member of the ACLU requested that there be an open and public discussion involving the police after the release of this report.

We reached out to BAMN, the event’s organizers, several times to seek their input and perspective. They were not responsive.

V. McKinley Ave. Staging Area
During the protests BPD did not have sufficient resources to staff staging area security and had to use mutual aid agencies to staff perimeter posts around the PSB. This was understandably upsetting for the neighbors who wanted to talk to someone from the Berkeley Police Department. The main failure was the fact that the department did not communicate with its neighbors regarding the use and closure of the street prior to closing it. This oversight adversely impacted BPD’s neighbors. The presence of law enforcement personnel, vehicles, noise, and other related matters significantly impacted our neighbors’ quality of life. On December 6th, the department did not expect the protests and riots to continue for five consecutive days. After three days, a department representative met with neighbors, apologized and sought suggestions for improvement going forward. Neighbors candidly talked about their negative experiences over the previous nights.

Residents raised numerous issues and made suggestions, generally around themes of communication, transparency, and accountability:

- BPD should establish liaisons with the neighbors, to ensure communication for use of streets and a quick response to residents’ concerns.
- BPD should identify and seriously consider alternate sites for Mutual Aid staging whenever possible in planning efforts.
- If the street is needed, BPD should use the east side of McKinley for BPD vehicles normally in the BPD lot, thus freeing space inside the lot for Mutual Aid vehicles and personnel, and decreasing activity on McKinley Ave.
- Ensuring residents are respectfully treated, through creation of a uniform protocol for allowing access when the street is blocked.
- Provide Portable Toilets if the street is used.
- Ensure Public Works post-incident clean up to remove any garbage left behind.
- Excuse citations and reimburse affected neighbors for tows off of McKinley Ave, if insufficient notice is given.
- Consider disruption to the neighborhood and quality of life, and seek to identify measures to mitigate and reduce negative impacts.

The department is in the process of revising General Order U-4 – Unusual Occurrences to incorporate these suggestions.

W. Media Perspective
The Review Team met with several members of the Media including; Berkeleyside, the Daily Californian, San Francisco Chronicle, KTVU, and freelance journalists to listen to their perspectives. One member believed the police started out in a crowd control mode instead of crowd management. One person felt that the police response was “awesome overall” with the exception of a few officers who were “overly aggressive.” Three members reported having batons used against them by police officers while being in front of police skirmish lines.

It was also suggested that the police press officer should be in the field accessible to the media. One press person felt the Berkeley Police Department was too slow to release information compared to other departments. Media representatives were very vocal in their disapproval of Berkeley’s extremely minimal use of social media. Another requested that during large scale incidents that BPD give periodic press updates.

BPD General Order P-29 – Public/Media Relations regulates officers’ behavior when it comes to interacting with members of the media. Pertinent parts of that General Order were covered during the pre-protest briefings provided to BPD officers.

Members of the press were present covering stories on both nights. It was often not readily apparent who was press and who was not, as many in the crowd carried professional level equipment, and some press reported with smart phones. We did have incidents where journalists in the crowd were pushed or hit with a baton. This was because they were too close to officers and failed to heed verbal directives despite repeated verbal warnings. Officers reported that the press did not always identify themselves as members of the press. After December 6th, when we received complaints from the media, officers were advised, during each subsequent briefing, to be more aware and attempt to identify members of the press in the crowd. Officers
were instructed to allow identified members of the press to pass through the line for their safety.

Based on our interviews with the media, we learned that there is not a press credentialing system in place for members of the East Bay media. BPD participates in the Law Enforcement Alliance of Public Information Professionals, an organization of law enforcement public information officers in northern California. We recommend BPD Public Information Officer investigate the viability of establishing a regional media credentialing system through this organization. Such a system would allow press greater access and make it easier to identify themselves to officers at the line.

The members of the press we met with were interested in receiving training on how to safely report on protests and incidents of civil unrest. We recommend the Department develop a collaborative training to help ensure we adequately safeguard the First Amendment right to a free press.

X. Equipment
Review of BPD videos revealed that the video cameras used were not appropriate for the task and that video operators required training for use in crowd situations. Within a week of the demonstrations, five new cameras were purchased as a first step. To best facilitate Command’s situational awareness, we believe that the Department should invest in additional quality video cameras with the ability to live stream updates back to the DOC. Specific training should be provided to personnel tasked with videotaping during crowd management and control situations.

For future review and transparency of police-protester interactions, a video capture solution for helicopter, news, or protest video should be purchased.

To enhance BPD’s ability to communicate with future crowds i.e. give direction, admonishments, dispersal orders, we believe that a small vehicle with a mounted public address system, similar to what the Oakland Police Department’s crowd negotiators use, should be purchased.

To best protect officers from projectiles while minimizing the projection of force to protestors, the Department should purchase body armor to be worn underneath a uniform of the day.
11. **Conclusion**

The Berkeley Police Department remains committed to protecting free speech and facilitating protests regardless of the message being expressed. The Department is also committed to protecting the community from civil unrest and lawlessness. As many jurisdictions across the nation have experienced, these are difficult objectives to balance effectively and safely when faced with riotous violence and opportunistic looting and vandalism.

The commanders and officers attempted to do their best to stem the violence and lawlessness that arose during the protests and were not fully satisfied with the outcome. We have no way of knowing what would have happened had the Department applied different strategies and tactics. The Department did many things right over the course of the protests and riots. Through this process we identified many opportunities for improvement. Leaders in the department were instrumental in this process by offering candid critiques, feedback and recommendations. This review’s recommendations will serve to positively impact similar future operations.

The Department’s next step will be to review the recommendations, select those to be implemented, prioritize them and distribute the task of compliance to the appropriate commanders. Those commanders will take their tasks, create individual implementation plans which will address in detail what must be done, how, by whom and by when to accomplish the implementation plan. Upon completion of those tasks, commanders will submit their plans to the chain of command for approval and ultimate implementation.
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Appendix C
General Orders
DATE ISSUED: September 6, 1995

SUBJECT: UNUSUAL OCCURRENCES

PURPOSE

1 - The purpose of the General Order is to identify planning, operational and coordination responsibilities in the response to and the resolution of unusual occurrences. Unusual occurrences are generally defined as situations, generally of an emergency nature, that result from disasters and civil disturbances.

Specific instructions and checklists for handling unusual occurrences are contained in the Event Management Manual maintained in the Patrol Lieutenant's Office.

POLICY

2 - It is the policy of the Berkeley Police Department to maintain the capability to plan for and respond to unusual occurrences so as to provide for the safety of the community.

PROCEDURES

3 - Whenever possible, a mission statement (plan) will be developed and communicated to all responding personnel prior to any police response. In scheduled special events, the mission statement will be in writing and briefed to all assigned personnel prior to deployment. In spontaneous events or incidents, the mission statement may be distributed verbally, but must still be an integral part of the planning process.

4 - As soon as possible in spontaneous events or incidents, and in every instance in scheduled special events, an operations plan will be developed and followed. When events are scheduled in advance, a Special Order will be developed and distributed.

5 - In every unusual occurrence, an Event Commander will be appointed. In small scheduled events or spontaneous incidents, the Event Commander may be a Sergeant. In larger incidents, the Event Commander may be a Watch Commander, the Duty Command Officer, or a Division Commander. In prolonged civil disorder, the CMT Lieutenant will be the event commander. In every instance, the Event Commander will be identified and his/her identity broadcast to all assigned personnel. Every change of Event Commander will be logged in all logs maintained by command post(s) and communication center(s).

6 - After-action reports will be the responsibility of the Event Commander having command at the time the incident is declared over, or as assigned by the Division Commander. A copy of the after-action report will be routed via the chain of command to the Chief of Police.
7 - The Patrol Captain is designated as the individual responsible for planning responses to unusual occurrences. The Patrol Captain may delegate this responsibility to one of the Patrol Lieutenants, or CMT Commander.

8 - The Patrol Captain is responsible for maintaining liaison with appropriate City, County, State, and Federal disaster officials and agencies, to include attendance at meetings, training sessions and exercises as necessary. This function may be delegated to one of the Patrol Lieutenants.

9 - All plans developed to deal with unusual occurrences will be reviewed annually and, when necessary, updated.

10 - All equipment designated for use in unusual occurrences, to include Department controlled vehicles and radios, will be inspected monthly by the using Division/Bureau and noted deficiencies will be reported in the Monthly Management Report.

References: CALEA Standards
Event Management Manual
CMT Manual*
DATE ISSUED: September 18, 2012

SUBJECT: MUTUAL AID AND AGREEMENTS WITH LAW ENFORCEMENT AGENCIES

PURPOSE

1 - The purpose of this General Order is to describe Mutual Aid procedures and written agreements that the Berkeley Police Department has with other law enforcement agencies. It is also to provide guidance to the Command Staff members regarding the philosophy of Mutual Aid application.

POLICY

2 - Berkeley Police Department employees are expected to follow the procedures of the California Law Enforcement Mutual Aid Plan as well as the written agreements made with other law enforcement agencies. The Berkeley Police Department is also expected to take an event management approach to crowd control situations, and to evaluate the threat to public safety posed by each group prior to responding to, or requesting Mutual Aid.

MUTUAL AID


(a) The California Law Enforcement Mutual Aid Plan is contained in a compendium titled, "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(1) Copies are publically available on line through the City of Berkeley website.

PROCEDURES

4 - All requests for mutual aid will be made via the Alameda County Sheriff, and all responses to mutual aid will result from mutual aid notification from the Alameda
County Sheriff.

(a) When the Chief of Police determines that an emergency situation may become or is already beyond the control of Departmental resources, it is the Chief of Police's responsibility to request mutual aid from the Alameda County Sheriff. Generally, this process will be authorized by the Chief of Police in conjunction with notification of and approval by the City Manager.

I. The Chief or his/her designee will also attempt to determine if the only crimes being committed are civil disobedience offenses, and whether these offenses pose a threat to public safety.

II. If individuals are committing crimes that do not present a threat to public safety the Chief or his/her designee should seriously evaluate whether or not the Berkeley Police Department should request or participate in Mutual Aid. Crimes which do present a threat to public safety include property damage, utilizing weapons, creating physical hazards, or threats to community members or public safety personnel.

(b) It is the responsibility of the Alameda County Sheriff to provide assistance and coordination to control the problem (California Government Code Section 26602).

(1) It is also possible to obtain other services from the Alameda County Sheriff (such as a bus for prisoner transportation at a small demonstration) without invoking mutual aid.

5 - To request Mutual Aid from the Alameda County Sheriff, the Berkeley Police Department must:

(a) Place all Berkeley Police Department sworn personnel on the following shifts: 12 hours on and 12 hours off.

(b) Contact the Alameda County Sheriff Emergency Services Unit, 667-7755, and verbally request mutual aid.

(c) Send a*written message to the Alameda County Sheriff's Department. (FAX is acceptable.)*

(d) Meet with Alameda County Sheriff's Department Mutual Aid personnel to discuss, plan, and coordinate the use of outside personnel regarding:
General Orders

(1) The dates and times that mutual aid personnel are required.

(2) The number of personnel needed to assist.

(3) The staging area for responding personnel to meet.

(4) Mass processing procedures for persons arrested.

(5) Transportation plans for persons arrested.

(6) Operation of temporary detention facilities, if needed.

(e) An estimate of the number of available personnel in each agency is maintained by the Alameda County Sheriff's Department. The Alameda County Sheriff's Department will poll local agencies to obtain the necessary number of officers requested at the time of each incident.

6 - Costs for mutual aid are the responsibility of each agency participating. In the case of State or Federal involvement, mutual aid costs will be paid for by the State/Federal government.

REQUESTING STATE MUTUAL AID ASSISTANCE

7 - The Law Enforcement Division of the State of California Office of Emergency Services (OES) is responsible for coordination of State resources in support of local law enforcement during "unusual occurrences" such as disorders, demonstrations, riots, and natural or war caused disturbances. Authority is granted to OES under Article 5, Chapter 7, of the California Government Code. A 24-hour communications center is maintained at the Office of Emergency Services in Sacramento. A representative of the Law Enforcement Division can be reached at any hour of the day or night by calling (1-916) 427-4235 or 427-4341.

(a) Five State agencies have specific responsibilities to support local law enforcement during emergency situations:

(1) The California Highway Patrol: Provide traffic control and maintenance of law and order.

(2) The State Military Department, which includes the California Army and Air National Guard, the State Military Reserve and the Naval Militia: Provide military support to local jurisdictions only after a request for same is made by the Chief Executive (City Manager) of
General Orders

a City or County Sheriff, and only after the disturbance is beyond the capabilities of local law enforcement mutual aid forces.

(3) The Department of Justice: Provide legal advice and intelligence.

(4) The Department of Corrections: Provide support for local law enforcement (with resources).

(5) Office of the California State Police: Provide personnel who remain under the command of the State Police.

REQUESTING FEDERAL MUTUAL AID ASSISTANCE

8 - Only State government may make the request to the President to provide Federal resources to assist in restoring or maintaining law and order. State government may only make such requests after all of its available forces, including the State military, are unable to control the emergency. The Department of the Army has the responsibility for the temporary loan of Federal military resources to National Guard units and local civil authorities in anticipation of or during disturbances.


(a) Written agreements are maintained with agencies who have concurrent jurisdictions in Berkeley, as well as agencies who have "understandings" with the Berkeley Police Department.

(1) The agreements are maintained in a compendium entitled: "Agreements, Understandings and Policies Existing between the Berkeley Police Department and Other Law Enforcement Agencies".

(a) The compendium is publicly available from the City of Berkeley website.

(b) A list of the agreements with other agencies is listed in the table of contents.

(b) The Berkeley Police Department will provide a report to Berkeley City Council summarizing all requests, responses, and denials of
requests for Mutual Aid that involve civil disobedience offenses and First Amendment activity -- submitted in conjunction with the agreements contained in the above referenced compendium which is submitted annually as per BMC Sections 2.04.150 - 2.04.210
GENERAL ORDERS

DATE ISSUED: June 11, 2009

SUBJECT: CROWD MANAGEMENT AND CONTROL

PURPOSE

1 - The purpose of this Order is to provide policy and procedural guidance to Berkeley Police Department personnel involved in the planning, response, and/or deployment of police personnel for crowd situations.

Mission Statement

2 - The mission of the Berkeley Police Department in all crowd situations is to appropriately manage events with the overall goal of ensuring public safety and protecting First Amendment rights of free speech and assembly.

(a) Appropriate action will be determined by the Incident Commander in the field, and will be based on the behavior of the people in the crowd.

(b) Police action shall be reasonable, intended to prevent lawlessness or restore order, and may include responses ranging from no police action to full crowd control tactics.

POLICY

3 - In the event a crowd situation is determined to be a peaceful protest or demonstration, wherein participants are exercising their rights to free speech in a lawful manner, the policy of the Berkeley Police Department shall be to facilitate the event to the extent possible.

4 - In the event that a crowd situation is unlawful, and lack of immediate police action to may lead to the escalation of criminal behavior and violence, the Berkeley Police Department will take steps to restore order.

(a) Steps to restore order may include monitoring with minimal police presence, a strong police presence, selective arrest of those committing crimes, or a dispersal order, if the assembly is unlawful.

Use of Force

5 - Employees who employ force in a crowd control situation shall do so in conformance with policy set forth in General Order U-2.

(a) Pain compliance techniques (e.g., gum nerve, buckle nerve pressure, etc.), impact weapons, and chemical agents should not be used on persons participating in a crowd situation who are committing an unlawful act with passive resistance (e.g., sitting or lying down to block a doorway) solely to effectuate a custodial arrest.
General Orders

(1) Verbal commands to stand followed by control holds (e.g. wrist lock, twist lock, etc.) with reasonable pressure may be utilized to attempt to require an arrestee who is sitting or lying down to stand up to effectuate a custodial arrest.

(2) If an arrestee who is sitting or lying down continues to refuse to stand up in response to verbal commands followed by pressure applied from a control hold, the officer should use drag, carry, or roll techniques to effectuate the custodial arrest.

(3) Once an arrestee is standing in a self-supporting manner, the officer may counter an arrestee's lapse into passive resistance (e.g., attempting to fall or sit down) with control holds that would likely prevent such a movement.

(b) Officers attempting to move a crowd or individual should not strike anyone who is unable to move back for reasons out of their control (i.e., physical disability, crowd surge, being pinned against a fixed object, etc.)

(c) Sworn officers should employ particular applications of force (e.g., a specific baton strike, such as a “rake” or “jab”) as may be directed by their chain of command, when its use is intended to accomplish a desired crowd control objective.

(d) Officers are not precluded from using authorized force, as appropriate, to address the actions of a particular person(s).

6 - If physical force becomes necessary to disperse the crowd, make arrests, or move a crowd from an area, only reasonable force shall be used to accomplish the mission.

7 - In squad or team movement, the type and scope of force used shall be at the discretion of the Incident Commander, Field Commander, Squad or Team Leader.

8 - Less-than-lethal munitions, chemical agents (excluding OC spray), and/or smoke shall only be deployed in crowd situations as outlined in General Order U-2.

Use of Vehicles

9 - Patrol vehicles may be used in crowd control situations by trained officers to employ authorized Mobile Field Force (MFF) tactics at the direction of the Incident Commander.

10 - Specialized police vehicles (e.g., police motorcycles, off-road motorcycles, parking enforcement vehicles, mobile command vehicles, etc.) may be used in crowd situations at the discretion of the Incident Commander.

(a) Specialized police vehicles shall not be used to contact demonstrators for the purpose of physically pushing people back or forcibly dispersing them from an area.
(b) Specialized police vehicles may be in a MFF line with other marked vehicles as a visual deterrent.

11 - Police bicycles employed by specifically trained officers may be used in crowd control situations to physically control or disperse an unlawful assembly.

(a) The use of police bicycles in crowd control situations should only occur when reasonable and until other officers arrive to assist.

DEFINITIONS

12 **Control Hold**: Any Department approved hold, designed to allow an officer to control the movement of a subject (e.g., twist lock, rear wrist lock, finger lock, etc.).

13 - **Counter Demonstration**: An assembly of persons in conflict with a different demonstration at the same location.

14 - **Crowd Control**: Any tactic indicating force may be used to dictate crowd movement or actions. Options include, but are not limited to: show of force (large numbers of officers in riot gear); crowd dispersal; crowd containment; and/or, physical arrest of persons in the crowd.

15 - **Crowd Management**: Tactics used to manage a crowd or event that do not indicate force may be used. Options include, but are not limited to: active involvement in the permit process; communication with crowd monitors; visible monitoring of the crowd; and/or re-direction of pedestrian or vehicular traffic.

16 - **Crowd Management Team (CMT)**: Sworn officers who have received special training to deal with crowd management and crowd control situations, and are available for callout at the discretion of the Patrol Division Captain with approval from the Chief of Police.

17 - **Demonstration**: A public assembly of persons to exhibit thoughts, ideas, or opinion.

18 - **Incident Commander**: A sworn officer, usually a lieutenant or captain, responsible for all personnel assigned to an event.

(a) During the initial stages of a spontaneous event, the Incident Commander will be the highest ranking or senior officer available to take charge, until relieved of responsibilities by a higher ranking officer.

19 - **Mobile Field Force (MFF)**: a statewide tactical concept that utilizes groups of trained officers with standard marked police vehicles and equipment, who have the capability to respond to crowd events that are highly mobile or that break up and quickly reform in other locations.
20 - **Non-Permitted Event**: Any demonstration, whether spontaneous or planned, wherein organizers have not obtained permits or licenses that are lawfully required under the circumstances.

21 - **Operations Commander**: A sworn officer, usually a lieutenant or sergeant, responsible for the movement and actions of a platoon, squad, or other identified group of officers at the scene of an event.

22 - **Pain Compliance Technique**: Any technique designed to inflict pain for the purpose of motivating a person to comply with verbal commands (e.g., buckle nerve, gum nerve, sternum rub).

23 - **Passive Resistance**: When an individual does not follow the lawful verbal commands of a police officer, but does not physically resist in any way (i.e., a person who goes completely limp, sits down and refuses to stand or walk, or who may stand with arms at their sides without attempting to strike at or physically resist officers.)

(a) Persons who lock arms, use lockdown devices, or physically resist officers in any other way are not considered "passive".

24 - **Permitted Event**: Any demonstration or event wherein organizers have obtained all applicable permits or licenses.

25 - **Platoon**: Any group of officers, usually 36 or more in number, organized into 3 or more squads. Each platoon will have a commander, usually a lieutenant, who is responsible for the actions of the platoon in the field.

26 - **Protected First Amendment Activity**: Various forms of expression including, but not limited to, speech, assembly, marching, holding signs, street theater, distribution of literature, or displaying banners.

(a) Freedom of speech and assembly are rights protected by the First Amendment of the United States Constitution, and Article 1 Sections 2 & 3 of the California Constitution subject to reasonable time, place and manner regulations, such as, compliance with lawful permit requirements and traffic regulations (ref. paragraph 34 of this Order).

27 - **Riot**: Any group of two or more people, acting together, who use force, violence, or the threat of force or violence, to disturb the public peace. (ref. Penal Code §405)

28 - **Riot Gear**: Police equipment visible to the public and generally associated with crowd control, such as, helmets, batons, flex-cuffs, special uniforms, specialized vehicles, etc.

29 - **Spontaneous Event**: Any unplanned event that develops, usually as a result of some catalyst, such as sporting events, parties, concerts, court rulings, festivals,
major political events, major news events, or any combination thereof.

30 - **Squad**: A group of sworn officers, usually 12 in number, with an identified squad leader responsible for the actions of the squad.

31 - **Squad Leader**: A sworn officer, usually a sergeant, responsible for the movement and actions of a squad.

32 - **Team**: A group of four sworn officers within a squad, inclusive of an identified leader responsible for the actions of the team.

33 - **Team Leader**: A sworn officer, sometimes a sergeant, responsible for the movement and actions of a team of officers within a squad.

34 - **Time, Place, or Manner Restrictions**: Reasonable restrictions on protected activity imposed by law (e.g., an applicable permit) intended to serve a specific governmental interest (e.g., public safety), with regard to the time, location, or manner in which protected activity is to be conducted.

35 - **Unlawful assembly**: Two or more persons, assembled together to commit an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (ref. PC §407)

   (a) The prohibition in PC §407 against persons in an assembly doing a lawful act in a violent, boisterous or tumultuous manner is limited only to situations where the conduct poses a clear and present danger of imminent violence. (ref. In re Brown (1973) 9 Cal. 3d 612, 623)

**PROCEDURE**

**Planned Events**

36 - At such time as a special event or crowd situation comes to the attention of police department personnel, the Patrol Division Captain or Patrol Watch Commander shall be notified, and forwarded all information regarding the event.

37 - The Patrol Division Captain or Acting Captain will review the information and determine whether or not a request to call out CMT is warranted.

38 - The Incident Command System shall be used for managing all crowd situations.

   (a) The command structure should include the appointment of an Incident Commander, and be structured to sufficiently distribute responsibilities allowing for all necessary tasks to be accomplished with a manageable span of control.

   (b) If CMT is called out for an event, the CMT Commander may be assigned as the Incident Commander.
General Orders

39 - The Incident Commander shall, whenever possible, establish a liaison with the group or groups involved, and other potential stakeholders.

(a) Stakeholders may include event organizers, business owners or their employees, or private residents that may be affected by an event.

(1) Stakeholder involvement is critical to the overall success of managing any crowd event, but may be especially helpful during planned demonstrations where civil disobedience is expected.

(2) If a leader or cooperative event organizer is not identified, the Incident Commander shall ensure that attempts to communicate with the group and establish a liaison will continue to the extent reasonable.

40 - Once assigned to a preplanned event, the Incident Commander shall make an initial assessment of the personnel needed to appropriately manage the event based on the information available at the time.

(a) Initial assessment may include on-duty personnel in the Patrol Division and other divisions within the department.

(b) If available on-duty personnel will not be sufficient to manage an event, consideration should be given to calling in off duty personnel and requesting mutual aid resources from surrounding police agencies. (ref paragraphs 67-71 of this Order)

41 - Once sufficient details of the event are known to accurately estimate the scope of response, and required personnel are identified, the Incident Commander shall work with Division Commanders to secure their participation.

42 - Once all personnel required to work the event are identified and committed to an event, the Incident Commander shall ensure a written Operations Plan is completed, time and circumstances permitting.

(a) An Operations Plan shall contain sufficient detail to allow an uninvolved party who reads it to understand the nature of the event, department policy involved, planned response, and the department resources dedicated to it. (ref. General Order P-23)

(b) Upon approval by the Patrol Captain and signed by the Chief of Police, the original Operations Plan shall be routed to the Bureau of Internal Controls in the Office of the Chief, and copies distributed to all appropriate personnel.

Spontaneous Events

43 - Sworn officers shall respond to a reported spontaneous crowd situation to assess
immediate hazards to public safety.

44 - The ranking sworn officer, or senior officer, shall assume the role and responsibilities of Incident Commander, and take the following immediate actions:

(a) Broadcast the type of event, if known, and estimated number of participants.

(b) Report known or imminent public safety hazards.

(c) Request sufficient on-duty personnel resources to address life-threatening public safety emergencies.

45 - The on-duty Patrol Division Watch Commander, or if absent or unavailable, the senior Patrol Division Sergeant, shall respond to the event scene and take the following actions:

(a) Assume the role and responsibilities of Incident Commander.

(b) Assess the potential risks to public safety.

(c) Assess whether or not a static event has the potential to go mobile, either on foot in the form of a march, or in vehicles.

(d) Assess the number of officers and type of equipment required to maintain order and their manner of response.

(e) Assess the potential need for outside resources:

(1) On-duty personnel from other police agencies.

(2) Fire Department personnel and resources.

(3) Media relations personnel.

(f) Identify and broadcast the location of the Incident Command Post, operational staging areas, and routes to and from.

46 - The Incident Commander should consider the following factors when making decisions regarding the police response:

(a) The number of people involved in the event and their behavior.

(b) The level of vehicular traffic.

(c) The level of disruption to those not involved in, but impacted by the event.

(d) The overall level of risk to both participants and the general public who may be inadvertently caught up in the event.
General Orders

(e) The personnel and equipment available for the task.

47 - The Incident Commander may use on-duty personnel from other Divisions or units to assist in the police response to a spontaneous event.

48 - The Incident Commander shall direct necessary on-duty personnel to a static event and make response assignments as required, which may include, but are not limited to:

(a) Assign personnel to monitor the event only.

(b) Use personnel to maintain order at the event and/or divert uninvolved, effected traffic away from the area.

49 - If the event is mobile, the Incident Commander should consider response actions appropriate to manage or control the behavior and activities of the crowd, options including, but not limited to:

(a) Let the group proceed with no police presence.

(b) Assign officers to facilitate the mobile event by providing traffic control.

(c) Attempt to direct the path of the mobile event by denying access to certain roadways.

(d) Allow the mobile event to proceed, but deny access to certain locations that would create a public safety hazard, such as, roadways to bridge approaches and roadways in busy commercial districts.

(e) Declare the event an unlawful assembly if circumstances qualify, and allow the group to disperse, make arrests, or use force to disperse the group for the purpose of restoring public order.

50 - There is no required order of response; the Incident Commander shall be responsible for continually accessing the event and adjusting the response strategies and tactics accordingly.

51 - The Incident Commander shall remain responsible for the police response to a planned or spontaneous crowd event until relieved by a higher ranking officer, or the position is relinquished another officer who officially assumes the responsibility.

(a) Any change of command shall be broadcast on the radio frequency used to manage the police response.

General Event Procedures

52 - Employees dispatched or pre-assigned to a crowd situation shall be in a
General Orders

department-approved uniform appropriate for their assignment.

(a) CMT members shall be in approved CMT uniform when assigned to CMT operations.

(b) Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn.

53 - Officers dispatched or pre-assigned to a crowd situation shall have immediately available relevant department-issued safety equipment. (i.e., helmet, chemical agent mask, etc.)

54 - Specialized weapons and equipment (i.e., patrol rifles, less-than-lethal munition launchers, chemical agent masks, etc.) shall be deployed at the discretion of the Incident Commander.

55 - The Incident Commander shall ensure personnel receive an operational briefing, whether in person or via radio, prior to their deployment.

(a) Information communicated in an operational briefing shall include, at minimum:

(1) The nature of the event.
(2) The mission and operational goal(s) of the department.
(3) The chain of command managing the event.
(4) The individual’s assignment and any special equipment he/she may require to accomplish it.
(5) When possible, the identity and appearance of all undercover personnel involved in the police response.

(i) Undercover personnel should be present at operational briefings for planned events.

56 - Undercover personnel shall adhere to laws and policies governing information gathering by law enforcement.

57 - Verbal requests or commands should be used before and when advancing on a crowd.

(a) Commands should be simple and stated clearly, giving members of the crowd an opportunity to comply before force is used. (Examples: “Step back!” or “Move onto the sidewalk!”)

58 - Employees shall not engage members of a crowd in debate or unnecessary dialogue.
59 - When practical, as part of an implemented crowd control plan, police personnel should attempt to identify and separate from the crowd individuals who are violating law.

(a) Efforts to take an offender into custody in a crowd situation should strive to minimize the risk to uninvolved persons, to the extent reasonably possible.

60 - In conformance with procedures set forth in General Order V-10, visual recording devices should be used to document the activities of police personnel and the people involved in a crowd situation.

(a) Activities that should be documented via visual recording device include, but are not limited to:

(1) Criminal activity (misdemeanor or felony);
(2) Violation of a Permit condition, City Ordinance, or traffic violation.
(3) Use of force by officers.
(4) Arrests by officers.
(5) Any person who, by words or action, is inciting violence.
(6) Dispersal orders issued by police.

61 - Employees shall adhere to information release and media liaison protocols set forth in General Orders R-23 and P-29, respectively.

(a) The Incident Commander shall ensure legitimate “credentialed” members of the media are provided access to areas available to them by law.

(b) A person who claims to be a member of the media, but who does not possess a bona fide media credential, has no special privilege and shall be treated like any other citizen with regard to event area access.

Dispersal Orders

62 - The Incident Commander at any crowd situation shall make the determination as to when or if a crowd, whose behavior poses a clear and present danger of imminent violence, will be declared an unlawful assembly.

63 - Unless otherwise directed or required, the following dispersal order text shall be used by Berkeley Police Department personnel in crowd control situations:

(a) "I am (rank) (name) with the Berkeley Police Department. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at (location) to leave the area immediately. If you do not leave, you are in violation of section 409 of the California Penal Code, and may be arrested or subject to other
General Orders

police action. Other police action may include the use of less lethal munitions, which may pose a risk of serious injury. The following routes of dispersal are available: (state options available) You have (state time expectation) to leave the area."

64 - Except when exigent circumstances exist and doing so would place officers or the public at risk, a dispersal order shall be issued prior to forcibly dispersing a crowd.

65 - The Incident Commander, or his/her designee, shall issue a dispersal order:

(a) As close to the crowd as practical;

(b) In a manner clearly audible to persons in the crowd;

(1) Use sound amplification systems when necessary;

(2) When practical, employ officers stationed around the perimeter of the crowd to ensure the dispersal order is clearly audible.

(c) In more than one language, depending on the needs of the crowd; and,

(d) A second time, following a reasonable period of time to allow for crowd dispersal.

Mass Arrests

66 - When considering the arrest of multiple people at a crowd control event, the Incident Commander should evaluate preparedness of the following operational elements:

(a) **Resource Availability**: Sufficient personnel should be available to maintain order, accomplish intended arrests and subsequent processing, and maintain control of the arrestees through a booking process, if necessary.

(b) **In-Field Arrest Processing**: Equipment and logistics should be available to facilitate in-field processing of mass arrests.

(c) **Transportation**: In the event arrestees are not released in-field on citation, vehicles should be available to facilitate necessary transportation to a custodial facility.

(d) **Booking/Jail Capacity**: The custodial facility to which arrestees are transported should have the capacity to receive and maintain custody of persons not released on citation.

(e) **Documentation**: Arresting personnel must ensure arrestees are identified and photographed, arrests are effectively documented, and associated paperwork is properly directed for administrative processing.
67 - An official request for mutual aid resources shall adhere to procedures set forth in General Order M-2.

   (a) Emergency requests for immediate assistance may be made directly to local agencies.

68 - The Chief of Police or his/her designee shall contact the liaison from the Alameda County Sheriff’s Department to coordinate a plan for mutual aid resources and response.

   (a) This plan should include the number of officers potentially needed, any special equipment requested, and an expected response time if called out.

69 - In preparation for mutual aid forces, the Incident Commander shall ensure that liaison officers from BPD are assigned to work with the outside agency to assist with response routes into the staging area, parking vehicles, checking in with the staging area supervisor, communications, and response to event location.

70 - MFF organization should be employed when integrating mutual aid personnel into local crowd event response, or when responding to another jurisdiction as a mutual aid unit.

   (a) Personnel should be formed into squads or teams that are easily integrated into squads and platoons.

71 - When responding to another jurisdiction as a mutual aid unit, personnel will have with them enough vehicles and equipment to allow the deployed team or squad to patrol a designated area, use less-than-lethal munitions or authorized chemical agents, if necessary, and have enough food and water to last for a reasonable operational period until relieved.

   Post-Event

72 - At the conclusion of an event the Incident Commander shall ensure that an After Action Report is prepared.

   (a) An After Action Report shall document arrests, injuries, and property damage, personnel costs, and a critique of the police preparation and response.

   (b) An After Action Report should include information in sufficient detail to help others prepare for the event if it, or a similar event, should occur in the future.
General Orders

Training

73 - When possible, training in crowd management and crowd control shall be incorporated into general departmental in-service training.

74 - When possible prior to a major pre-planned event, update training should be provided to all assigned officers.

75 - The CMT will train regularly, and incorporate as appropriate, all General Orders and Training Bulletins related to crowd management and crowd control into their sessions.

76 - All newly hired police officers will receive supplementary training on crowd management and crowd control by attending a CMT training session as part of their Field Training Program.

References:  
In re Brown (1973) 9 Cal. 3d 612, 623  
Penal Code §§405, 407, 409 and 830.10  
General Orders C-1, C-10, M-2, P-23, P-29, R-23, U-2, V-10 and X-1  
Police Regulations 225, 226, 249 and 250
DATE ISSUED: May 4, 2009

SUBJECT: USE OF FORCE

PURPOSE

1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

2 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.

   (a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.

3 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.

   (a) 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 “spoked wheel” is one visual concept of the various options that an officer should consider in a threatening situation.

   (b) 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 to the threat.

DEFINITIONS

4 - **Lethal Force**: Any use of force that creates a substantial risk of causing death or serious bodily injury.

5 - **Less-Than-Lethal Force**: Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options.
General Orders

(a) Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

6 - Non-Lethal Force: Any use of force other than lethal force or less-than-lethal force.

7 - Officer (or) Police Officer: Any sworn peace officer.

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

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

10 - Deploy:

(a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.

(b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.

11 - Use:

(a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.

(b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

12 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

(a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
General Orders

(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and
(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
(3) Where feasible, some warning has been given.

(c) During other police duty:

(1) In supervised Department training sessions at an approved range, or other site.
(2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

Use Of Vehicles

13 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:

(a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.

(b) To apprehend a suspected fleeing felon:

(1) When necessary to prevent escape, and
(2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
(3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

14 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

15 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.

16 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:

(a) When an act of violence is occurring, or is about to occur;

(b) To overcome the resistance of a physically combative person, or to gain
compliance from a non-compliant person reasonably believed to be armed;

(c) To deter a person who is reasonably believed to be armed and is threatening to harm him-/herself, another person, or an officer; or,

(d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

17 - When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).

(a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.

(b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

18 - In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

(a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

Use of Non-Lethal Force

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

(a) To protect themselves or another person from physical injury;

(b) To restrain or subdue a resistant individual; or

(c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

20 - The following uses of force are prohibited:
General Orders

(a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated 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.”

(1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, “bar-arm hold” refers to any use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

(b) Oleoresin Capsicum (pepper spray) for use as a crowd control technique is prohibited. On September 16, 1997, the City Council passed a policy recommendation that says, in part, “no pepper spray will be used for crowd control by the Berkeley Police Department.”

(c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

21 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order A-17)

Unauthorized Use of Force / Intervention and Reporting

22 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:

(a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.

(1) A sworn officer’s failure to act may potentially expose him/her to criminal charges and/or civil liability.

(b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

Use of Force / Reporting Requirements

23 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:
General Orders

(a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

(b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

(c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

(d) When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained, except in those situations deemed "Unusual Occurrences" as set forth in General Order U-4 and the Event Management Manual, in which case, the After Action Report will serve as the police report. (See also General Order U-4)

24 - The officer or employee must also complete a police or incident report in any of the above four situations.

25 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a “Use of Pepper Spray Report” form. (See Training and Information Bulletin #216 for detailed instructions in completing this form).

Use of Force / Supervisor Responsibilities

26 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:

(a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.

(b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.

(c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)

(d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

27 - A supervisor shall complete a Use of Force Report in any of the above four situations.

(a) A supervisor shall complete a Use of Force Report whenever an officer or
employee uses a non-lethal weapon on a person, even if no injury results.

(b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

28 - The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Commander through the chain of command.

**Use of Force / Administrative Review**

29 - The Division Commander shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.

(a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Commander Review.

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

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

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

33 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

**SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY**

34 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:

(a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: "... If any person is seriously injured or killed as a result of an officer’s actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
General Orders

(b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings And Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References:  
Tennessee v. Garner (1986) 471 U.S. 1  
Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272  
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843  
General Orders A-17, C-16, C-64, F-2, P-12, P-26. R-3 and U-4  
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332  
Training and Information Bulletin 216  
Lethal and Non-Lethal Force Manual  
Uniform and Equipment Manual  
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),  
“Prohibiting use of ‘chokehold’ for law enforcement purposes in the City of Berkeley”  
EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; or (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.

Date: __________________________________________

To: Chief of Police via Chain of Command

From: __________________________________________

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): __________________________________________

Date / Time of Incident: __________________________________________

Location of Incident: __________________________________________

Nature of Incident: __________________________________________

________________________________________________________________

Officer(s)/Employee(s) Involved: __________________________________

Type of Force used: □ Physical □ Baton □ O.C.
□ Firearm □ Less-than-lethal □ Other

Was Officer or Police Employee injured? □ Yes □ No

If yes, nature of injuries: __________________________________________

________________________________________________________________

Medical treatment required: BFD Response - □ Yes □ No

________________________________________________________________
General Orders

Was a citizen(s) injured during this incident? □ Yes □ No

If “yes,” nature of injuries: ________________________________

Medical treatment required: BFD Response - □ Yes □ No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? □ Yes □ No

Summary of actions of Officer(s) involved: ________________________________

Supervisor’s Comments:

Division Commander Recommendation:

____________________________________  Findings: □ Within Policy

Chief of Police (Signature)  □ Referred for Administrative

(Date)  Action/Investigation
General Orders

DATE ISSUED: August 17, 2009

SUBJECT: PUBLIC / MEDIA RELATIONS

PURPOSE

1 - The purpose of this General Order is to establish policies and procedures regarding contacts and relations with media organizations and their representatives, and responsibilities for the release of information by the Public Information Officer (PIO) and other authorized department representatives.

POLICY

2 - It is the policy of this department to provide accurate and timely information about crime, public safety and departmental activities to the news media and public.

   (a) Within the confines of practicality and in accordance with law, it is the Department’s intention to keep the community informed of and engaged in public safety issues relevant to their lives.

   (b) In accordance with information release policy set forth in General Order R-23, consideration shall be given to the confidentiality, integrity and security of investigations (e.g., reference to/discussion of suspect statements), compliance with applicable law, and the privacy rights of victims, witnesses and suspects prior to release of any information.

3 - As used in this Order, “Media” shall mean entities, their employees and official agents, whose primary service and professional purpose is the communication of news and information to the general public via print, radio, television or digital/electronic means.

PROCEDURES

Categories of Information

4 - Categories of information that may be released to the media are:

   (a) **Routine:** These are reports of incidents of human interest which would not affect normal police operations, and information about available police services.

   (b) **Major:** These are reports of incidents that impact normal police operations and create a large volume of media interest, information about which is disseminated via the department’s PIO, in conjunction with involved investigators.

   (c) **Policy News Release:** These are reports about the internal operations of the Police Department, which originate from the Office of the Chief.
General Orders

(d) **Publicity Releases**: These are reports about incidents and programs designed to arouse public interest, understanding, or involvement, dissemination of which are coordinated by the PIO upon the approval of the Chief of Police.

(e) **Newsworthy Events**: These are reports of major crimes, arrests, disasters, unusual occurrences, or traffic accidents which would be of interest to the media, including, but not limited to:

1. Any information necessary to obtain public assistance in the investigation of a crime or apprehension of a criminal suspect.
2. Any information warning the public of danger, or of the nature and frequency of crime in the community.

**General**

4 - **Cooperation**: As authorized by Police Regulation 226, and within the parameters of relevant General Orders, employees shall cooperate with members of the media.

(a) A media inquiry that cannot be answered or is inappropriate for response by an employee shall be referred to the PIO or a superior officer.

5 - **Information Release**: Employees shall follow policy set forth in General Order R-23 regarding release of police reports, official department documents, and information contained therein.

6 - **Opinion**: Employees representing this department shall refrain from offering any opinion as to an arrestee’s guilt or innocence, the merits of a particular case, or the existence, nature or value of evidence unless expressly authorized by the Chief of Police to issue such official comment.

7 - **Persons In-Custody, Intentional Exposure to Media**: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being photographed or televised.

8 - **Persons In-Custody, Media Interviews**: Employees shall not deliberately expose a person in the custody of this department to representatives of the media for the purpose of being interviewed by such representatives, except if all of the following conditions exist:

(a) The prisoner requests or consents to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.

(1) A prisoner’s consent to a media interview shall be obtained in writing.

(b) If the prisoner has legal counsel, the attorney affirms his/her client’s
request or consent to a media interview, and authorizes said activity.

(1) Whenever practical, the attorney’s affirmation and authorization should be obtained in writing.

(2) When represented by legal counsel, any request by the media to interview or photograph a person in-custody shall be referred to the prisoner’s attorney.

(c) Unless unavoidable, department employees shall not appear in authorized and facilitated photographs or filming of prisoners.

9 - Media Conferences: Media conferences shall only be called by the City Manager, Assistant City Manager, Chief of Police or individuals serving in those capacities (ref. City of Berkeley Administrative Regulation (AR) 1.14.)

(a) The department’s PIO will act as a liaison between the media and the department in arranging for, or coordinating media conferences.

10 - During non-business hours, the on-duty Patrol Division Watch Commander, or in his/her absence the senior on-duty Patrol Division supervisor, shall be responsible for media relations and related notifications.

11 - Unless dissemination is authorized by policy and appropriate given the circumstances of the inquiry, media requests for information concerning any incident under investigation shall be referred to the PIO.

(a) When an employee of this Department provides information to the media, that employee shall, as soon as practical, inform the PIO of the scope of media’s inquiry and of the information provided.

12 - When the Communications Center receives a media inquiry for routine matters including, but not limited to, traffic conditions in Berkeley, Communications Center personnel shall furnish the information requested.

(a) Specific or general media requests for information on newsworthy cases, (e.g., rape, major burglaries or robberies, felony assaults/batteries, cases involving death, etc.) received by the Communication Center shall be referred to the PIO (normal business hours) or Patrol Division Watch Commander (non-business hours.)

13 - Media inquiries regarding department policy, personnel, or administrative investigations should be handled in accordance with General Order R-23 and, as appropriate, forwarded to the Office of the Chief of Police.

14 - "Media Releases" or other official media-directed documents shall be disseminated by the PIO, Patrol Division Watch Commander, or the Office of the Chief of Police in accordance with department information release policy.
General Orders

(a) A press release of high media and public interest should be forwarded by the PIO to the City Manager’s Office, when feasible, for review prior to public dissemination.

(b) Publications intended for the media which require significant Department time and effort (e.g., in-depth articles, feature stories, etc.) should be prepared by the PIO.

15 - Documents intended for distribution to media representatives may be left at the Front Counter of the Public Safety Building.

16 - Employees are encouraged to collaborate with the PIO to develop media releases regarding outstanding service performed by members of this department, significant events, community participation, and proactive projects that enhance the quality of life in Berkeley.

17 - A request for information received from a private person concerning police operations, procedures, authority, or concerning interpretation of the law shall be referred to the on-duty Patrol Division Watch Commander, or, if necessary, the Office of the Chief of Police.

Public Information Officer

18 - The PIO shall be a department employee appointed by the Chief of Police to serve as the primary liaison with representatives of the media.

(a) The PIO is responsible for providing relevant, timely, and accurate information to the media at disasters, major crime scenes, catastrophes, special events, and unusual occurrences.

19 - During normal business hours when the PIO is absent, or on-duty but unavailable, the PIO’s supervisor shall either serve as Acting PIO or designate a trained subordinate to temporarily serve in that capacity.

20 - The PIO shall coordinate the preparation and release of factual information regarding all major Departmental incidents, major crimes, or other newsworthy events.

21 - The PIO shall be notified as soon as practical of the following offenses/situations:

(a) Arson (e.g., major events, series, offense with injuries).

(b) Bombing and explosions.

(c) Escapes.

(d) Kidnapping.
General Orders

(e) Homicide.

(f) Deployment of the Barricaded Subject Hostage Negotiation Team.

(g) In all other offenses/situations, when a Patrol Division command officer determines circumstances warrant PIO notification.

22 - Subsequent to notification of an event described in paragraph 21 of this Order, the PIO shall determine the proper actions to be taken in accordance with department policy to insure that good media relationships are maintained.

23 - When the PIO receives a media request for information, he/she shall:

(a) Obtain and review a copy of the police report(s).

(b) Review the facts of the case with the investigating officer or Detail prior to release of information concerning an ongoing criminal investigation.

(1) Unless precluded by law, policy or direction of a command rank officer, employees shall provide information requested by the PIO without delay.

(c) Provide the requesting media representative relevant information permitted by law and department policy.

24 - When known or advised, the PIO should regularly report contacts with representatives of the media to his/her chain of command.

(a) The PIO will be responsible for notification of the City Manager’s Office regarding non-routine contacts with media representatives as required by AR 1.14.

Involved Party’s Request for “No Release”

25 - “No Release” shall be requested sparingly, and only when it is necessary for the successful investigation or prosecution of a case or the security of principals, witnesses, or the premises involved, when disclosure of event information would subject the victim to serious embarrassment of mental distress, or when required by law (e.g., PC §293).

(a) Any officer requesting “No Release” shall include at the end of his/her report full justification for the request.

(b) In the event a request for “No Release” is, or appears to be, for purely personal reasons, and does not fall within the provisions of paragraph 25, the requesting person should be advised police cases are matters of public record and, as such, are subject to media review.
(1) In situations noted in paragraph 25(b), the officer may include at the top of his/her report, "Request No Release."

In-Field Media Management

26 - Whenever the media is present at a police scene, a Patrol Division Watch Commander, supervisor, or a designated liaison officer may release appropriate factual information about an incident and/or police activity in accordance with the information release policies described in this Order and General Order R-23.

(a) Whenever necessary or appropriate, the PIO may be called to an incident scene by the Patrol Division Watch Commander to perform in-field media liaison duties.

27 - In the event of a major disturbance, disaster, or state of emergency, a second PIO may be designated to assist the primary PIO with media relations and public dissemination of information.

28 - In the event the National Incident Management System (NIMS) is employed, the PIO will report to the Incident Commander (Command Section) and perform media liaison activities in support of the PIO Branch.

(a) If a Joint Information Center (JIC) is activated, the department PIO, or his/her designee, will report to that location to coordinate information management with other involved agency PIOs.

Media Relations at Multi-Agency Incidents

29 - For incidents involving the mutual efforts of the Berkeley Police Department and any other department or agency, the ranking department employee present at the scene shall confer with the ranking personnel from all other involved agencies to determine which agency shall be responsible for the release of information to the media.

(a) Unless upon mutual agreement or when necessary, the agency having primary jurisdiction over an incident shall be responsible for the dissemination of information to the media.

Media Access to Disaster or Accident Scenes

30 - Employees involved in the management of a disaster, accident, or riotous civil disturbance shall not prohibit duly authorized media representatives from entering and remaining in any area closed to the public pursuant to Penal Code §409.5.

(a) Authorized media representatives are those persons possessing valid press passes issued by any bona fide law enforcement agency, or other suitable identification establishing regular news media affiliation or
(1) While the Berkeley Police Department does not issue “Press Passes”, official press documents issued by other law enforcement agencies shall be honored.

(2) Reporters or photographers who are not affiliated with or employed by established media entities (i.e., “Freelance”) will not be considered authorized media representatives for the purpose of this policy.

(b) Authorized media representatives shall be permitted free movement in police-controlled or otherwise publicly restricted areas as long as they do not hamper, deter, or interfere with law enforcement or public safety functions.

(c) Employees allowing the entry of an authorized media representative shall advise that person of any known danger existing within the restricted area.

(d) Employees should not provide general escort services to media representatives into, through, or out of dangerous areas.

(e) Employees shall not refuse to rescue media personnel who are in danger, providing such assistance can be provided with reasonable effort and without unnecessary hazard to rescuers.

31 - Employees shall not take action which would prohibit media aircraft from flying over disaster scenes.

(a) Notwithstanding the exemption afforded to media aircraft, law enforcement officers may employ Federal regulations to stop both commercial and civilian aircraft from flying over a disaster scene.

(1) To implement over-flight control at a disaster scene in Berkeley, the request shall be made to the Federal Aviation Administration (FAA) Office at Oakland Airport.

Media Access to Crime Scenes

32 - Employees involved in a criminal investigation may prohibit media access to a crime scene.

(a) Media representatives shall be kept sufficiently distant from a crime scene to ensure officer safety and preservation of evidence.

(b) A crime scene located in an area of public access may be opened for media inspection after the area is secure and any search for, preservation, and processing of evidence has been completed.

33 - Employees shall, upon request of a private property owner or agent thereof, prohibit media access to private property wherein a crime scene is located.
General Orders

(a) Regarding access to crime scenes located on private property, media representatives have no right of access greater than the general public and, therefore, are subject to any access restrictions established by the owner or person in charge of the property.

34 - The immediate area (i.e., inner perimeter) of an in-progress critical incident, including, but not limited to, a hostage situation or barricaded subject, is deemed a “crime scene” and shall be subject to the media access restrictions set forth in this Order.

(a) Authorized media representatives may be permitted access to areas within the outer perimeter of a critical incident, subject to any restrictions established by the Incident Commander.

35 - Department employees shall not jeopardize public or officer safety in order to accommodate media access or inquiry, but reasonable effort shall be made to keep the media informed of the progress of police activity.

Suggested Changes to Media Relations Policy

36 - Any suggestion for significant change in department policy and/or procedure concerning media relations received from a media representative shall be forwarded in writing to the Chief of Police via the recipient employee’s chain of command.

(a) The Chief of Police shall be responsible for evaluating the suggested change and, if appropriate, directing its implementation.

(b) The PIO shall be responsible for advising the involved media representative of any changes and/or actions taken by the Department in response to their suggestion.

CONDUCT OF MEDIA REPRESENTATIVES

37 - An employee having a complaint regarding the conduct of any media representative should submit the complaint in writing to the Community Service Bureau Lieutenant.

38 - The CSB Lieutenant shall investigate the allegation and, if appropriate, forward the results and action recommendation to the Chief of Police via the chain of command.

39 - Any official action that may effect the involved media representative, including, but not limited to, communication of the complaint to the person’s media organization, shall be taken only at the direction of the Chief of Police.
General Orders

References:  
South Coast Newspapers, Inc. vs. City of Oceanside (160 Cal.App.3d 261 (1984))
T.N.G. vs. Superior Court, (4 CA, 3rd 767)
14 CFR §91.137 (Federal Aviation Administration Regulations)
Penal Code §§409.5 and 832.7
City of Berkeley Administrative Regulation 1.14
General Order R-23
Police Regulation 226
"ABA Standards for Criminal Justice: Fair Trial and Free Press" (3rd Ed., 1992), a publication of the American Bar Association
Appendix D
Glossary
Glossary

After Action Report: A report covering response actions, application of SEMS, modifications to plans and procedures, training needs, and recovery activities. After action reports are required under SEMS after any emergency requiring a declaration of an emergency. Reports are required within 90 days.

Command: The act of directing and/or controlling resources at an incident by virtue of explicit legal, agency, or delegated authority. Also may refer to the Incident Commander.

Command Staff: The Command Staff usually consists of the Public Information Officer, Deputy Incident Commander, Liaison Officer, Safety Officer and/or other specialists who report directly to the Incident Commander.

Critical Facilities: Any location essential to the well-being and safety of the community requiring law enforcement protection during a critical incident. Examples of critical facilities and services include: communication systems, public utilities, hospitals and clinics, fire stations, police stations, public works facilities, transportation infrastructure, shelter sites, and drinking water systems.

Crowd: A number of persons gathered together.

Department Operations Center (DOC): A facility used by a distinct discipline, such as flood operations, law enforcement, fire service, medical, hazardous materials, or a unit, such as Department of Public Works or Department of Health. DOCs may be used at all SEMS levels above the field response level depending upon the requirements of the emergency.

Dispatch: The ordered movement of a resource or resources to an assigned tactical mission, or an administrative move from one location to another.

Dispatch Center: A facility from which resources are directly assigned to an incident.

Dispersal Order: Lawful orders communicated by law enforcement personnel commanding individuals unlawfully assembled to disperse.

DOC: See Department Operations Center
**Glossary**

**Event:** A planned, non-emergency activity. ICS can be used as the management system for a wide range of events such as parades, concerts, or sporting events.

**Foam Baton Round:** 40-mm foam cylinders (shorter-range because they are so light; they are fired at single aggressors who are getting close enough to the officer to directly threaten him or her) Each baton round is filled with small discs, like little hockey pucks, made of the appropriate material. When officers skip the rounds off the ground in front of rioters, the discs separate from the round and tend to hit multiple targets. Or, if they hit someone directly, the round breaks apart into the separate discs on impact, dissipating a lot of the kinetic energy. It hurts, but it has less chance of doing damage than if it were a solid chunk of the material. The object is to cause enough pain to get the rioter to comply with the officers. (Source: [http://people.howstuffworks.com/riot-control3.htm](http://people.howstuffworks.com/riot-control3.htm))

**Formations:** Coordinated unit tactics utilized by law enforcement to control crowds, stop unlawful activity, and disperse and/or arrest violators.

**IAP:** See Incident Action Plan

**ICS:** See Incident Command System

**Incident:** An occurrence, natural or human-caused, that requires an emergency response action to protect life and/or property.

**Incident Action Plan (IAP):** A written document containing general objectives reflecting the overall strategy and specific action plans for the use of responding forces. The Incident Action Plan may have a number of attachments, which support the operational strategy and tactics.

**Incident Command System (ICS):** The statewide model for field-level management of emergencies mandated by the Standardized Emergency Management System (SEMS). ICS is specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single and multiple incidents without being hindered by jurisdictional boundaries.

**Incident Commander:** The individual responsible for the command of all functions at the field response level.

**Incident Objectives:** Statements of guidance and direction necessary for the selection of appropriate strategy(s), and the tactical direction of resources. Incident objectives are
based on realistic expectations of what can be accomplished when all allocated resources have been effectively deployed. Incident objectives must be achievable and measurable, yet flexible enough to allow for strategic and tactical alternatives.

**Information Officer:** See Public Information Officer.

**Kettle Tactic:** A police tactic for controlling large crowds during demonstrations or protests. It involves the formation of large cordons of police officers who then move to contain a crowd within a limited area. Protesters are left only one choice of exit controlled by the police – or are completely prevented from leaving, with the effect of denying the protesters food, water and toilet facilities for an arbitrary period determined by the police forces.

The tactic has proved controversial, in part because it has resulted in the detention of ordinary bystanders as well as protesters. In March 2012 kettling was ruled lawful by the European Court of Human Rights. (Source: [http://en.wikipedia.org/wiki/Kettling](http://en.wikipedia.org/wiki/Kettling))

**Less Lethal Impact Munitions:** Projectiles launched or otherwise deployed for purposes of overcoming resistance, preventing escape, effecting arrest, reducing serious injury and may be applied without a significant likelihood of causing death.

**Media:** Radio, television, and print sources for providing information and instructions to the public.

**Mobile Field Force:** An organized, mobile law enforcement tactical force equipped and trained to respond to unusual occurrences. The mobile field force is currently the statewide standard configuration known as “Mutual Aid Response Mobile Field Force.”

**Mutual Aid Agreement:** Written agreement between agencies and/or jurisdictions in which they agree to assist one another upon request by furnishing personnel and equipment.

**Operational Period:** The period of time scheduled for execution of a given set of operational objectives as specified in the Incident Action Plan, and usually is less than 24 hours.

**Operations Plan:** A plan describing the tactical deployment of resources at an incident or event to meet the objectives of the Incident Action Plan.
**Glossary**

**Pathfinder:** A local police officer embedded with incoming outside police (mutual aid) resources to assist with navigation and communication. This role was developed by OPD during recent protest activity and proved useful to mutual aid agencies. (Source: BPD)

**PIO:** See Public Information Officer.

**Policy:** Statements of principles and values which guide the performance of a specific agency activity. Policy establishes limits of action and reflects a statement of guiding principles that should be followed in order to achieve an agency’s objective.

**Procedure:** A method of performing an operation or a manner of proceeding on a course of action within the limits of policy.

**Public Information Officer (PIO):** The individual assigned at field or EOC level who has delegated authority to prepare public information releases and to interact with the media. Duties may vary depending upon the agency and SEMS level.

**SEMS:** See Standardized Emergency Management System.

**Situation Report:** A periodic progress report and record of significant items, completed for submission to concerned staff officers. It includes control measures and a summary of the situation.

**Social Media:** Communications of social interaction, using highly accessible and scalable devices, including web-based and mobile technologies used to promote interactive dialogue.

**Squad:** An organizational element of a mutual aid response mobile field force consisting of 11 deputies/officers and a supervisor.

**Staging Area:** Staging areas are locations set up at an incident where resources can be placed while awaiting a tactical assignment. In ICSS, staging areas are managed within the Operations Section.

**Staging Officer:** The Staging Officer is a member of the Operations Section staff responsible for supervising Staging Unit staff and activities within the staging area. This position also is referred to as the Staging Area Manager.

**Standardized Emergency Management System (SEMS):** Is a system required by California Government Code for managing response to multi-agency and multi-
jurisdiction emergencies in California. SEMS consists of five organizational levels, which are activated as necessary: Field Response, Local Government, Operational Area, Region, and State.

**Unlawful Assembly:** Penal Code Section 407 defines an “unlawful assembly” as: “Whenever two or more persons assemble together to do an unlawful act, or to do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.” “Boisterous or tumultuous manner” has been interpreted by the courts to mean conduct which poses a clear and present danger of imminent violence.
Appendix E
Relevant Penal Code Sections
69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

71. (a) Every person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense punishable as follows:

   (1) Upon a first conviction, such person is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both that fine and imprisonment.

   (2) If the person has been previously convicted of a violation of this section, such previous conviction shall be charged in the accusatory pleading, and if that previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, he or she is punishable by imprisonment pursuant to subdivision (h) of Section 1170.

   (b) As used in this section, "directly communicated" includes, but is not limited to, a communication to the recipient of the threat by telephone, telegraph, or letter.

148. (a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

   (2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

   (b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or
Relevant Penal Code Sections

immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

(c) Every person who, during the commission of any offense described in subdivision (a), removes or takes a firearm from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Except as provided in subdivision (c) and notwithstanding subdivision (a) of Section 489, every person who removes or takes without intent to permanently deprive, or who attempts to remove or take a firearm from the person of, or immediate presence of, a public officer or peace officer, while the officer is engaged in the performance of his or her lawful duties, shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170. In order to prove a violation of this subdivision, the prosecution shall establish that the defendant had the specific intent to remove or take the firearm by demonstrating that any of the following direct, but ineffectual, acts occurred:

1. The officer's holster strap was unfastened by the defendant.
2. The firearm was partially removed from the officer's holster by the defendant.
3. The firearm safety was released by the defendant.
4. An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
5. An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.
6. The defendant's fingerprint was found on the firearm or holster.
7. Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.
8. In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.

(e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.

(f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.
Relevant Penal Code Sections

151. (a) Any person who advocates the willful and unlawful killing or injuring of a peace officer, with the specific intent to cause the willful and unlawful killing or injuring of a peace officer, and such advocacy is done at a time, place, and under circumstances in which the advocacy is likely to cause the imminent willful and unlawful killing or injuring of a peace officer is guilty of (1) a misdemeanor if such advocacy does not cause the unlawful and willful killing or injuring of a peace officer, or (2) a felony if such advocacy causes the unlawful and willful killing or injuring of a peace officer.

(b) As used in this section, "advocacy" means the direct incitement of others to cause the imminent willful and unlawful killing or injuring of a peace officer, and not the mere abstract teaching of a doctrine.

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment pursuant to subdivision (h) of Section 1170 for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of
Relevant Penal Code Sections

conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. When they receive a felony conviction for conspiring to commit identity theft, as defined in Section 530.5, the court may impose a fine of up to twenty-five thousand dollars ($25,000).

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

185. It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of:

One--Evading or escaping discovery, recognition, or identification in the commission of any public offense.

Two--Concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

240. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

241. (a) An assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(b) When an assault is committed against the person of a parking control officer engaged in the performance of his or her duties, and the person committing the offense knows or reasonably should know that the victim is a parking control officer, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment.

(c) When an assault is committed against the person of a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process
server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the assault is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(d) As used in this section, the following definitions apply:

(1) Peace officer means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Care Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" refers to those persons who meet the standards set forth in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Lifeguard" means a person who is:

(A) Employed as a lifeguard by the state, a county, or a city, and is designated by local ordinance as a public officer who has a duty and responsibility to enforce local ordinances and misdemeanors through the issuance of citations.

(B) Wearing distinctive clothing which includes written identification of the person's status as a lifeguard and which clearly identifies the employing organization.

(6) "Process server" means any person who meets the standards or is expressly exempt from the standards set forth in Section 22350 of the Business and Professions Code.

(7) "Traffic officer" means any person employed by a county or city to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(8) "Animal control officer" means any person employed by a county or city for purposes of enforcing animal control laws or regulations.

(9) (A) "Code enforcement officer" means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any
governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, that has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(10) "Parking control officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking.

(11) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a governmental agency.

242. A battery is any willful and unlawful use of force or violence upon the person of another.

243. (a) A battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, security officer, custody assistant, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged
in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars ($2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail not exceeding one year or pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, or by both that fine and imprisonment.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e) (1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a
Relevant Penal Code Sections

condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(4) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(5) If a peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of this section, the peace officer is not required to inform the victim of his or her right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

(f) As used in this section:
(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person who is either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses a valid certificate or license in accordance with the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(4) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(5) "Injury" means any physical injury which requires professional medical treatment.

(6) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(7) "Lifeguard" means a person defined in paragraph (5) of subdivision (d) of Section 241.

(8) "Traffic officer" means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) "Code enforcement officer" means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) "Code enforcement officer" also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Manufactured Housing Act of 1980 (Part 2 (commencing
with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

(12) "Custody assistant" means any person who has the responsibilities and duties described in Section 831.7 and who is employed by a law enforcement agency of any city, county, or city and county.

(13) "Search and rescue member" means any person who is part of an organized search and rescue team managed by a government agency.

(14) "Security officer" means any person who has the responsibilities and duties described in Section 831.4 and who is employed by a law enforcement agency of any city, county, or city and county.

(g) It is the intent of the Legislature by amendments to this section at the 1981-82 and 1983-84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

245.  (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 16880, or an assault weapon, as defined in Section 30510 or 30515, or a .50 BMG rifle, as defined in Section 30530, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(4) Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.
(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 16880, or an assault weapon, as defined in Section 30510 or 30515, or a .50 BMG rifle, as defined in Section 30530, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Sections 18000 and 18005.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

246. Any person who shall maliciously and willfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar, as defined in Section 362 of the Vehicle Code, or inhabited camper, as defined in Section 243 of the Vehicle Code, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for three, five, or seven years, or
Relevant Penal Code Sections

by imprisonment in the county jail for a term of not less than six months and not exceeding one year.

As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

404. (a) Any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

(b) As used in this section, disturbing the public peace may occur in any place of confinement. Place of confinement means any state prison, county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, or any juvenile hall, juvenile camp, juvenile ranch, or juvenile forestry camp.

404.6. (a) Every person who with the intent to cause a riot does an act or engages in conduct that urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances that produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of incitement to riot.

(b) Incitement to riot is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) Every person who incites any riot in the state prison or a county jail that results in serious bodily injury, shall be punished by either imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170.

(d) The existence of any fact that would bring a person under subdivision (c) shall be alleged in the complaint, information, or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt, by the court where guilt is established by a plea of guilty or nolo contendere, or by trial by the court sitting without a jury.

405. Every person who participates in any riot is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

405a. The taking by means of a riot of any person from the lawful custody of any peace officer is a lynching.

405b. Every person who participates in any lynching is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three or four years.
Relevant Penal Code Sections

406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

407. Whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

415. Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars ($400), or both such imprisonment and fine:

   (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.

   (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

   (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a deadly weapon other than a firearm in any fight or quarrel is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than 30 days.

   (2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses a firearm in any fight or quarrel is punishable as follows:

   (A) If the violation occurs in a public place and the firearm is a pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in a county jail for not less than three months and not more than one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.
Relevant Penal Code Sections

(B) In all cases other than that set forth in subparagraph (A), a misdemeanor, punishable by imprisonment in a county jail for not less than three months.

(b) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any loaded firearm in a rude, angry, or threatening manner, or who, in any manner, unlawfully uses any loaded firearm in any fight or quarrel upon the grounds of any day care center, as defined in Section 1596.76 of the Health and Safety Code, or any facility where programs, including day care programs or recreational programs, are being conducted for persons under 18 years of age, including programs conducted by a nonprofit organization, during the hours in which the center or facility is open for use, shall be punished by imprisonment in the state prison for 16 months, or two or three years, or by imprisonment in a county jail for not less than three months, nor more than one year.

(c) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, and who knows, or reasonably should know, by the officer's uniformed appearance or other action of identification by the officer, that he or she is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties, shall be punished by imprisonment in a county jail for not less than nine months and not to exceed one year, or in the state prison for 16 months, or two or three years.

(d) Except where a different penalty applies, every person who violates this section when the other person is in the process of cleaning up graffiti or vandalism is guilty of a misdemeanor, punishable by imprisonment in a county jail for not less than three months nor more than one year.

(e) As used in this section, "peace officer" means any person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) As used in this section, "public place" means any of the following:
   (1) A public place in an incorporated city.
   (2) A public street in an incorporated city.
   (3) A public street in an unincorporated area.

451. A person is guilty of arson when he or she willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of, any structure, forest land, or property.

(a) Arson that causes great bodily injury is a felony punishable by imprisonment in the state prison for five, seven, or nine years.

(b) Arson that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for three, five, or eight years.

(c) Arson of a structure or forest land is a felony punishable by imprisonment in the state prison for two, four, or six years.
Relevant Penal Code Sections

(d) Arson of property is a felony punishable by imprisonment in the state prison for 16 months, two, or three years. For purposes of this paragraph, arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's structure, forest land, or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

452. A person is guilty of unlawfully causing a fire when he recklessly sets fire to or burns or causes to be burned, any structure, forest land or property.

(a) Unlawfully causing a fire that causes great bodily injury is a felony punishable by imprisonment in the state prison for two, four or six years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(b) Unlawfully causing a fire that causes an inhabited structure or inhabited property to burn is a felony punishable by imprisonment in the state prison for two, three or four years, or by imprisonment in the county jail for not more than one year, or by a fine, or by both such imprisonment and fine.

(c) Unlawfully causing a fire of a structure or forest land is a felony punishable by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than six months, or by a fine, or by both such imprisonment and fine.

(d) Unlawfully causing a fire of property is a misdemeanor. For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned his own personal property unless there is injury to another person or another person's structure, forest land or property.

(e) In the case of any person convicted of violating this section while confined in a state prison, prison road camp, prison forestry camp, or other prison camp or prison farm, or while confined in a county jail while serving a term of imprisonment for a felony or misdemeanor conviction, any sentence imposed shall be consecutive to the sentence for which the person was then confined.

453. (a) Every person who possesses, manufactures, or disposes of any flammable, or combustible material or substance, or any incendiary device in an arrangement or preparation, with intent to willfully and maliciously use this material, substance, or device to set fire to or burn any structure, forest land, or property, shall be punished by
Relevant Penal Code Sections

imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail, not exceeding one year.

(b) For the purposes of this section:

(1) "Disposes of" means to give, give away, loan, offer, offer for sale, sell, or transfer.

(2) "Incendiary device" means a device that is constructed or designed to start an incendiary fire by remote, delayed, or instant means, but no device commercially manufactured primarily for the purpose of illumination shall be deemed to be an incendiary device for the purposes of this section.

(3) "Incendiary fire" means a fire that is deliberately ignited under circumstances in which a person knows that the fire should not be ignited.

(c) Subdivision (a) does not prohibit the authorized use or possession of any material, substance or device described therein by a member of the armed forces of the United States or by firemen, police officers, peace officers, or law enforcement officers authorized by the properly constituted authorities; nor does that subdivision prohibit the use or possession of any material, substance or device described therein when used solely for scientific research or educational purposes, or for disposal of brush under permit as provided for in Section 4494 of the Public Resources Code, or for any other lawful burning. Subdivision (a) does not prohibit the manufacture or disposal of an incendiary device for the parties or purposes described in this subdivision.

455. (a) Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any structure, forest land or property, or who commits any act preliminary thereto, or in furtherance thereof, is punishable by imprisonment in the state prison for 16 months, two or three years.

(b) The placing or distributing of any flammable, explosive or combustible material or substance, or any device in or about any structure, forest land or property in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of the same shall, for the purposes of this act constitute an attempt to burn such structure, forest land or property.

594. (a) Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism:

(1) Defaces with graffiti or other inscribed material.

(2) Damages.

(3) Destroys.

Whenever a person violates this subdivision with respect to real property, vehicles, signs, fixtures, furnishings, or property belonging to any public entity, as defined by Section 811.2 of the Government Code, or the federal government, it shall be a
Relevant Penal Code Sections

permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property.

(b) (1) If the amount of defacement, damage, or destruction is four hundred dollars ($400) or more, vandalism is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or if the amount of defacement, damage, or destruction is ten thousand dollars ($10,000) or more, by a fine of not more than fifty thousand dollars ($50,000), or by both that fine and imprisonment.

(2) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(B) If the amount of defacement, damage, or destruction is less than four hundred dollars ($400), and the defendant has been previously convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7, vandalism is punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court shall, when appropriate and feasible, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term "graffiti or other inscribed material" includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(g) This section shall become operative on January 1, 2002.

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602. Except as provided in subdivisions (u), (v), and (x), and Section 602.8, every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor:

(a) Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another.
(b) Carrying away any kind of wood or timber lying on those lands.
(c) Maliciously injuring or severing from the freehold of another anything attached to it, or its produce.
(d) Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant, any earth, soil, or stone.
(e) Digging, taking, or carrying away from land in any city or town laid down on the map or plan of the city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone.
(f) Maliciously tearing down, damaging, mutilating, or destroying any sign, signboard, or notice placed upon, or affixed to, any property belonging to the state, or to any city, county, city and county, town or village, or upon any property of any person, by the state or by an automobile association, which sign, signboard, or notice is intended to indicate or designate a road or a highway, or is intended to direct travelers from one point to another, or relates to fires, fire control, or any other matter involving the protection of the property, or putting up, affixing, fastening, printing, or painting upon any property belonging to the state, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention to it.
(g) Entering upon any lands owned by any other person whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing, or on any of those lands, whether covered by water or not, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.
(h) (1) Entering upon lands or buildings owned by any other person without the license of the owner or legal occupant, where signs forbidding trespass are displayed, and whereon cattle, goats, pigs, sheep, fowl, or any other animal is being raised, bred, fed, or held for the purpose of food for human consumption; or injuring, gathering, or carrying away any animal being housed on any of those lands, without the license of the owner or legal occupant; or damaging, destroying, or removing, or causing to be removed, damaged, or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any of those lands.
Relevant Penal Code Sections

(2) In order for there to be a violation of this subdivision, the trespass signs under paragraph (1) shall be displayed at intervals not less than three per mile along all exterior boundaries and at all roads and trails entering the land.

(3) This subdivision shall not be construed to preclude prosecution or punishment under any other provision of law, including, but not limited to, grand theft or any provision that provides for a greater penalty or longer term of imprisonment.

(i) Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open without the written permission of the owner, or maliciously tearing down, mutilating, or destroying any sign, signboard, or other notice forbidding shooting on private property.

(j) Building fires upon any lands owned by another where signs forbidding trespass are displayed at intervals not greater than one mile along the exterior boundaries and at all roads and trails entering the lands, without first having obtained written permission from the owner of the lands or the owner's agent, or the person in lawful possession.

(k) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent, or by the person in lawful possession.

(l) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another, or entering upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands without the written permission of the owner of the land, or the owner's agent, or of the person in lawful possession, and any of the following:

(1) Refusing or failing to leave the lands immediately upon being requested by the owner of the land, the owner's agent, or by the person in lawful possession to leave the lands.

(2) Tearing down, mutilating, or destroying any sign, signboard, or notice forbidding trespass or hunting on the lands.

(3) Removing, injuring, unlocking, or tampering with any lock on any gate on or leading into the lands.

(4) Discharging any firearm.

(m) Entering and occupying real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession.

(n) Driving any vehicle, as defined in Section 670 of the Vehicle Code, upon real property belonging to, or lawfully occupied by, another and known not to be open to the general public, without the consent of the owner, the owner's agent, or the person in lawful possession. This subdivision shall not apply to any person described in Section 22350 of the Business and Professions Code who is making a lawful service of process,
provided that upon exiting the vehicle, the person proceeds immediately to attempt the service of process, and leaves immediately upon completing the service of process or upon the request of the owner, the owner's agent, or the person in lawful possession.

(o) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by (1) a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, or (2) the owner, the owner's agent, or the person in lawful possession. The owner, the owner's agent, or the person in lawful possession shall make a separate request to the peace officer on each occasion when the peace officer's assistance in dealing with a trespass is requested.

However, a single request for a peace officer's assistance may be made to cover a limited period of time not to exceed 30 days and identified by specific dates, during which there is a fire hazard or the owner, owner's agent, or person in lawful possession is absent from the premises or property. In addition, a single request for a peace officer's assistance may be made for a period not to exceed 12 months when the premises or property is closed to the public and posted as being closed. The requestor shall inform the law enforcement agency to which the request was made when the assistance is no longer desired, before the period not exceeding 12 months expires. The request for assistance shall expire upon transfer of ownership of the property or upon a change in the person in lawful possession. However, this subdivision shall not be applicable to persons engaged in lawful labor union activities which are permitted to be carried out on the property by the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code) or by the federal National Labor Relations Act. For purposes of this section, land, real property, or structures owned or operated by any housing authority for tenants as defined under Section 34213.5 of the Health and Safety Code constitutes property not open to the general public; however, this subdivision shall not apply to persons on the premises who are engaging in activities protected by the California or United States Constitution, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise suspected of violating or actually violating any law or ordinance.

(p) Entering upon any lands declared closed to entry as provided in Section 4256 of the Public Resources Code, if the closed areas shall have been posted with notices declaring the closure, at intervals not greater than one mile along the exterior boundaries or along roads and trails passing through the lands.

(q) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchperson, or custodian of the
public agency owning or maintaining the building or property, if the surrounding circumstances would indicate to a reasonable person that the person has no apparent lawful business to pursue.

(r) Knowingly skiing in an area or on a ski trail which is closed to the public and which has signs posted indicating the closure.

(s) Refusing or failing to leave a hotel or motel, where he or she has obtained accommodations and has refused to pay for those accommodations, upon request of the proprietor or manager, and the occupancy is exempt, pursuant to subdivision (b) of Section 1940 of the Civil Code, from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. For purposes of this subdivision, occupancy at a hotel or motel for a continuous period of 30 days or less shall, in the absence of a written agreement to the contrary, or other written evidence of a periodic tenancy of indefinite duration, be exempt from Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code.

(t) (1) Entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public, after having been informed by a peace officer at the request of the owner, the owner's agent, or the person in lawful possession, and upon being informed by the peace officer that he or she is acting at the request of the owner, the owner's agent, or the person in lawful possession, that the property is not open to the particular person; or refusing or failing to leave the property upon being asked to leave the property in the manner provided in this subdivision.

(2) This subdivision shall apply only to a person who has been convicted of a crime committed upon the particular private property.

(3) A single notification or request to the person as set forth above shall be valid and enforceable under this subdivision unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.

(4) Where the person has been convicted of a violent felony, as described in subdivision (c) of Section 667.5, this subdivision shall apply without time limitation. Where the person has been convicted of any other felony, this subdivision shall apply for no more than five years from the date of conviction. Where the person has been convicted of a misdemeanor, this subdivision shall apply for no more than two years from the date of conviction. Where the person was convicted for an infraction pursuant to Section 490.1, this subdivision shall apply for no more than one year from the date of conviction. This subdivision shall not apply to convictions for any other infraction.

(u) (1) Knowingly entering, by an unauthorized person, upon any airport operations area, passenger vessel terminal, or public transit facility if the area has been posted with notices restricting access to authorized personnel only and the postings occur not greater than every 150 feet along the exterior boundary, to the extent, in the case of a passenger vessel terminal, as defined in subparagraph (B) of paragraph (3), that the
Relevant Penal Code Sections

exterior boundary extends shoreside. To the extent that the exterior boundary of a passenger vessel terminal operations area extends waterside, this prohibition shall apply if notices have been posted in a manner consistent with the requirements for the shoreside exterior boundary, or in any other manner approved by the captain of the port.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:
   (A) By a fine not exceeding one hundred dollars ($100).
   (B) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the person refuses to leave the airport or passenger vessel terminal after being requested to leave by a peace officer or authorized personnel.
   (C) By imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, for a second or subsequent offense.

(3) As used in this subdivision, the following definitions shall control:
   (A) "Airport operations area" means that part of the airport used by aircraft for landing, taking off, surface maneuvering, loading and unloading, refueling, parking, or maintenance, where aircraft support vehicles and facilities exist, and which is not for public use or public vehicular traffic.
   (B) "Passenger vessel terminal" means only that portion of a harbor or port facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal Regulations, with a secured area that regularly serves scheduled commuter or passenger operations. For the purposes of this section, "passenger vessel terminal" does not include any area designated a public access area pursuant to Section 105.106 of Title 33 of the Code of Federal Regulations.
   (C) "Public transit facility" has the same meaning as specified in Section 171.7.
   (D) "Authorized personnel" means any person who has a valid airport identification card issued by the airport operator or has a valid airline identification card recognized by the airport operator, or any person not in possession of an airport or airline identification card who is being escorted for legitimate purposes by a person with an airport or airline identification card. "Authorized personnel" also means any person who has a valid port identification card issued by the harbor operator, or who has a valid company identification card issued by a commercial maritime enterprise recognized by the harbor operator, or any other person who is being escorted for legitimate purposes by a person with a valid port or qualifying company identification card. "Authorized personnel" also means any person who has a valid public transit employee identification.
   (E) "Airport" means any facility whose function is to support commercial aviation.
   (v) (1) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a sterile
area of an airport, passenger vessel terminal, as defined in subdivision (u), or public transit facility, as defined in Section 171.5, if the sterile area is posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision, is a violation of this subdivision, punishable by a fine of not more than five hundred dollars ($500) for the first offense. A second and subsequent violation is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(2) Notwithstanding paragraph (1), if a first violation of this subdivision is responsible for the evacuation of an airport terminal, passenger vessel terminal, or public transit facility and is responsible in any part for delays or cancellations of scheduled flights or departures, it is punishable by imprisonment of not more than one year in a county jail.

(w) Refusing or failing to leave a battered women's shelter at any time after being requested to leave by a managing authority of the shelter.

(1) A person who is convicted of violating this subdivision shall be punished by imprisonment in a county jail for not more than one year.

(2) The court may order a defendant who is convicted of violating this subdivision to make restitution to a battered woman in an amount equal to the relocation expenses of the battered woman and her children if those expenses are incurred as a result of trespass by the defendant at a battered women's shelter.

(x) (1) Knowingly entering or remaining in a neonatal unit, maternity ward, or birthing center located in a hospital or clinic without lawful business to pursue therein, if the area has been posted so as to give reasonable notice restricting access to those with lawful business to pursue therein and the surrounding circumstances would indicate to a reasonable person that he or she has no lawful business to pursue therein. Reasonable notice is that which would give actual notice to a reasonable person, and is posted, at a minimum, at each entrance into the area.

(2) Any person convicted of a violation of paragraph (1) shall be punished as follows:

(A) As an infraction, by a fine not exceeding one hundred dollars ($100).

(B) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment, if the person refuses to leave the posted area after being requested to leave by a peace officer or other authorized person.

(C) By imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both that fine and imprisonment, for a second or subsequent offense.

(D) If probation is granted or the execution or imposition of sentencing is suspended for any person convicted under this subdivision, it shall be a condition of probation that the person participate in counseling, as designated by the court, unless the court finds
good cause not to impose this requirement. The court shall require the person to pay for this counseling, if ordered, unless good cause not to pay is shown.

(y) Except as permitted by federal law, intentionally avoiding submission to the screening and inspection of one's person and accessible property in accordance with the procedures being applied to control access when entering or reentering a courthouse or a city, county, city and county, or state building if entrances to the courthouse or the city, county, city and county, or state building have been posted with a statement providing reasonable notice that prosecution may result from a trespass described in this subdivision.

659. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

727. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

835a. Any peace officer who 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 efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
Relevant Penal Code Sections

(2) The person arrested has committed a felony, although not in the officer's presence.
(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest, unless the peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of Section 243 or 273.5. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions Code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the dominant aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical
injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 25400 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 25400.

(2) The violation of Section 25400 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 25400.

17500. Every person having upon the person any deadly weapon, with intent to assault another, is guilty of a misdemeanor.
Appendix F
Standardized Emergency Management System
To plan, prepare for and manage the operational activities of protest activities, the Department utilized the industry standards laid out in the California Office of Emergency Services Law Enforcement Guide for Emergency Operations which incorporates the principles of the Standardized Emergency Management System (SEMS). This system is required by California Government Code 8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in California. Of the five organizational levels of SEMS (Field Response, Local Government, Operational Area, Region and State), the protest activities that took place in Berkeley on December 6th and 7th 2014, necessitated the activation Field, Local Government and Operational Area assets.

The following information regarding SEMS is taken from the California Office of Emergency Services Law Enforcement Guide for Emergency Operations, which was developed to standardize the response of law enforcement agencies involved in major multi-jurisdictional and multi-agency incidents such as a civil disorder, technological disaster, or natural disaster. The guide provides an organizational framework for efficient and safe response, management, and coordination of major emergencies and disasters.

SEMS facilitates the flow of information within and between all levels of the system and improves the interaction and coordination among all responding agencies. The use of SEMS improves the processes of mobilization, deployment, tracking, and demobilization of needed mutual aid resources while reducing the incidence of ineffective coordination and communications, and avoids duplication of resource ordering in multi-agency and multi-jurisdiction response actions. SEMS is designed to be flexible and adaptable to the varied types of disasters that occur in California and to meet the needs of all emergency responders.

For information on SEMS, the following website is provided for reference:

For a copy of the of the Cal OES Law Enforcement Guide for Emergency Operations:

http://www.caloes.ca.gov