

POLICY LANGUAGE RECOMMENDATIONS

Hi Kathy,

For today's meeting it would be great if we could complete the Sanctity of Life and the Standard, and figure out the formatting; where things go in the General Order based on the template George Started. I still think that the Sanctity of life should not be a free floating item, but should be a "principle" at Section 300.

Section 300. ~~On~~ Sanctity of Life Principle

The Berkeley Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible. Proportionality when determining any use of force is inherent to this principle. We still need to integrate the relevant Camden language Julie flagged last week.

Commented [MC1]: The purpose of this statement is to establish an underlying ethical and human rights based principle upon which all of the use of force policy is based upon and which flows through all policies, procedures, trainings, strategies and tactics used by the BPD.

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On Core Values

A. **SAFEGUARDING HUMAN LIFE AND DIGNITY.** The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity and life.

B. **ESTABLISH COMMUNICATION.** Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

C. **DE-ESCALATION.** Officers shall, when ever possible [removing feasible, language] employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. Understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to de-escalate an incident, which can delay taking a

Commented [MC2]: See comment below. I think the committee needs to discuss the meaning of "feasible" and how it would be interpreted legally and in police practice. For now I think it is better to use "whenever possible" but am willing to hear from others. Whenever possible means, to me a presumption that you will do so, whereas "feasible" may be interpreted to mean, *only* when you can-thus it does not suggest a presumption that you must do so when it is possible-at least that is how I think it would be interpreted by a BPD officer.

subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

D. **PROPORTIONALITY.** When determining the appropriate level of force, at all times officers shall, ~~removing the mitigation language feasible~~ ~~when feasible~~ balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm.

E. **CRISIS INTERVENTION.** ~~When ever possible~~ ~~feasible~~, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in mental or behavioral health crisis pursuant to the CIT Department General Order.

F. **DUTY TO INTERVENE.** ~~When ever possible in a position to do so~~, officers shall intervene when they know or have reason to know that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

G. **FAIR AND UNBIASED POLICING.** Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased pursuant to Department General Orders

H. **VULNERABLE POPULATIONS.** The use of force against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency – can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted.

Commented [MC3]: We should consider the "when feasible" language in the context of criminal law. Normally, the term would be "when reasonable," however, we are trying to further specify (i.e such as with AB 392) the narrower band of circumstances under which the broader "reasonable" standard is appropriate for use of force. I am concerned that "feasible" may be construed in the opposite manner, as a broad scope term. Thus, I think with proportionality the term should be "shall" which is basically "must" (creating a presumption) to indicate at all times when using force proportionality must be inherent to that calculation of when to use and what to use. But I think we should focus on this term in committee meeting.

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Commented [MC4]: Perhaps instead of "feasible" here, use "whenever possible" showing that this is the gold standard, but we recognize that time, availability may mean that sometimes BPD can't get the CIT out in time.

On Mission and Vision

On useUse of force Continuum

1. Direct the department to institute the ICAT training recommendations from the Police Forum in addition to a presentation to City Council on an Use of Force Continuum inclusive of the following six steps: All Instances of Use of Force will be reported to include all action within the incident. Inclusive of any use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.
 - a. Officer Presence — No force is used. Considered the best way to resolve a situation. Presence must be non threatening and engaging as needed
 - i. The mere presence of a law enforcement officer works to deter crime or diffuse a situation.
 - ii. Officers' attitudes are professional and nonthreatening.
 - b. Verbalization and De-escalation — Force is not-physical. Usage of Verbal Judo and de-escalation techniques
 - i. Officers issue calm, courteous, nonthreatening commands, such as "Let me see your identification and registration."

- ii. Officers may increase their volume and shorten commands in an attempt to gain compliance. Short commands might include "Stop," or "Don't move."
- iii. In instances of an individual under mental health distress , CIT and a Mental Health Crisis Unit shall be utilized.
- c. Empty-Hand Control — Officers use bodily force to gain control of a situation.
 - i. *Soft technique.* Officers use grabs, holds and joint locks to restrain an individual.
 - ii. *Hard technique.* Officers use punches and kicks to restrain an individual are not authorized unless in defense of a member of the public or as a response to an imminent threat to personal safety (open for discussion).
- d. Less-Lethal Methods — Officers use less-lethal technologies to gain control of a situation.
 - i. *Blunt impact.* Officers may use a baton or projectile to immobilize a combative person. (Prohibition on over the head strikes or strikes to vulnerable body organs)
 - ii. *Chemical.* Officers may use chemical sprays (e.g., pepper spray) only under exigent circumstances.
- e. Lethal Force — Officers use lethal weapons to gain control of a situation. Should only be used under exigent circumstances and only if a suspect poses a serious deadly threat to the officer or another individual.

Section 301. ~~On~~ Use of Force Standard

In compliance with AB 392, the standard for the use of force must be both the minimal amount of force necessary in any circumstances as well as only that amount of force (in terms of purpose and scope) that is reasonably

1. Incorporate Minimal Use of Force Language Standard in addition to the "Necessary Standard" per AB 392
 - a. **Under Definitions - Minimal amount of force necessary** - The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.
 - b. **Under Purpose and Scope-** Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

Commented [MC5]: This should be moved up directly underneath Section 300, "Sanctity of Life Principle" as Section 301". I don't think it needs to be 300.1, 300.1 suggests a subsection of 300. This is it's own stand alone section. I am assuming here that we can reconfigure the 300 series based on our new formatting.

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On Use of ~~Carotid~~ restraints or Chokeholds

1. CAROTID CONTROL HOLD The use of the carotid restraint or any other chokeholds is strictly prohibited. A Chokehold or Neck hold is any hold or contact with the neck that may inhibit breathing by compression of the airway in the neck, may inhibit blood flow by

compression of the blood vessels in the neck, or that applies pressure to the front, side, or back of the neck.

On Use of Force Investigation, Documentation and Review

Upon receiving notification of a use of force, a supervisor who was not involved in the use of force incident, will determine the level of investigation and documentation. The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements.

Incidents will be categorized as Level 1, Level 2, Level 3, or Level 4.

Level 1: Documentation in a Police Report Only Level 1 Incident Parameters:

(a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.

(b) Officer used any of the following, and the circumstances of the application would lead a reasonable officer to conclude that the subject did not experience more than momentary discomfort:

1. Control holds/pressure point application
2. Leverage
3. Grab
4. Bodyweight
5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.

(c) Officer used any of the following:

1. Professional presence and/or verbalization
2. Drawn/deployed firearm, but no suspect contacted or arrested

(d) Subject has no visible injury due to interaction with the officer.

(e) Subject has no complaint of injury or continuing pain.

(f) Subject does not indicate intent to pursue litigation.

(g) Subject was not rendered unconscious due to interaction with the officer.

(h) No allegation of misconduct against the officer, regarding force.

(i) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy. Level 1 Incidents should be documented by an officer in an appropriate police report, citation, Field Interview, and/or CADS entry. Supervisors will review police report narratives for approval.

Level 2: Use of Force Level 2 Incident Parameters:

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Officer body camera was activated in a timely manner, prior to the enforcement contact, per policy.
- (d) Officer's use of force was limited to the following:
 1. Any takedown, that did not appear to cause more than momentary discomfort.
 2. Firearm drawn/deployed but not fired, suspect contacted
 3. Control hold, pressure point, leverage, grab, and/or bodyweight, and the application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort. An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of the involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into Blue Team and attach a completed Use of Force Investigation Checklist **(must be generated)** with a brief summary.

Witness statements from fire and medical personnel are not required under the following circumstance: an officer assists medical personnel to restrain and/or secure a subject to a gurney for medical transport in a non-criminal detention, and all of the following conditions are met:

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/ or bodyweight.
- (b) No subject injury or complaint of continuing pain due to interaction with the officer.
- (c) No allegation of misconduct against the officer, regarding force.
- (d) Officer body camera was activated in a timely manner, per policy.
- (e) The unit number for the fire and medical personnel is obtained.

Level 3: Use of Force Level 3 Incident Parameters:

- (a) Would have otherwise been classified as a Level 2, except one or more of the following apply:
 1. Suspect injury or complaint of injury or continuing pain due to interaction with the officer.
 2. Allegation of misconduct against officer, regarding force.
 3. Officer body worn camera was not activated in a timely manner, prior to the enforcement contact, per policy.
- (b) The use of force is Level 3 if the officer used any of the following force options:
 1. Any takedown that appears to have caused more than momentary discomfort.
 2. Chemical Agents/Munitions
 3. Impact Weapon Strikes
 4. Personal Body Weapons

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist. The supervisor will also complete a Use of Force Investigation Report narrative for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation.

Level 4: Use of Deadly Force Level 4 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Or any force likely to cause death or serious bodily injury An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to Policy 300.

EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT When a Berkeley Police employee has a use of force as defined in this policy, the use of force must be reported to a Berkeley Police supervisor and investigated in accordance with this policy. When two or more Berkeley Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor should also be present.

On Use Of Force Analysis and Reporting

Annually, the Training and Standards Division Captain will generate a report on use of force incidents. The report should be submitted to the Chief of Police, City Council and the Berkeley Police Review Commission.

Monthly, on a monthly basis the department will generate an Use of Force report for review by the Berkeley Police Review Commission

The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Any statistical data and demographics related. to race, gender, age or as requested by the Berkeley Police Review Commission and in line with any and all Impartial Policing reporting standards
- (c) Training needs recommendations.
- (d) Equipment needs recommendations.
- (e) Policy revision recommendations.

On De-escalation

300.1.1 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions (which may be- FULLY DELETE THIS) used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and (should- DELETE AND INSERT SHALL) be used when it is safe to do so, without compromising law enforcement objectives and priorities. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. ADD HERE: "Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.

The application of these tactics is intended to increase the potential for resolution with a **minimal reliance on** the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) (should- DELETE AND INSERT SHALL) attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member (should- DELETE AND INSERT SHALL) be called upon as a resource.

When reasonable under the totality of circumstances (DELETE THIS EXCUSATORY LINE), officers (should- DELETE AND INSERT SHALL) gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to (INSERT ANY DELETE HIGHER) higher levels of force. Officers may (MAY- DELETE AND INSERT SHALL) move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

- a) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; "waiting out" subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
- b) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
- c) Officers should consider a variety of options, including lesser force or no force

Commented [MC7]: I think when feasible should be removed here. As a matter of practice, officers should at all times process proportionality and de-escalation

options. 3. Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others. D

- d) Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
- e) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest.
- f) A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- g) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or **minimize the use force**.
- h) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or crisis Intervention techniques.
- i) Establishing Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.
- j) The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances allow, officers should **(DELETE SHOULD ADD SHALL)** consider the following tactical principles:

- (a) Use available cover or concealment and identify escape routes.
- (b) Stage Berkeley Fire Department.
- (c) Control vehicle and pedestrian traffic.
- (d) Create an emergency plan and a deliberate plan with contingencies.