

UOF Policy topics to be discussed at July 8, 2020 PRC meeting

Page: draft (packet with comments, packet w/o)	Section Number	Section Title	Comments
3 (13, 35)	300.1.4	Definitions:	
		-- Deadly force	Subcomm. did not get back to this
4 (14, 36)		-- Control techniques	Subcomm. didn't complete discussion
12 (22, 44)	300.3.7, 300.3.7.1	Use of Non-lethal Force, Restraint and control devices	SB 230 Discuss new Calavita language
	300.3.8	Chokehold Prohibition	Council referral
14 (44, 46)	300.4.1 (duplicate section nos.)	Drawing and Pointing Firearms, Directed Fire	Unsure if should be combined, but substantive discussion needed. SB 230
16 (26, 48)	300.6	Reporting Requirements	Check pepper spray language
	300.6.4	Public Records	SB 230
	300.7	Medical Consideration	SB 230
20-21 (30-31, 52-53)	300.10	Training	SB 230
21 (31, 53)	300.11	Use of Force Analysis	Discuss new Perezvelez language
	300.12	Citizen Complaints	SB 230

Chair Calavita's topics for discussion on July 8 re UOF policy

P. 34 (2) Sec. 300.1.3: B. Proportionality. Add "unarmed or" to last line.

p. 36 (4): Add line to resistance definitions that gives a nod to issues for people who do not speak English or are hard of hearing, such as "This definition does not apply when the reason for non-compliance is related to a lack of understanding English or to a physiological difficulty hearing."

p, 37 (5): Definition of serious bodily injury to distinguish it from "deadly force": "A bodily injury that causes serious, permanent disfigurement or results...or creates risk of death."

p. 41 (9): Change "Five levels of Force" to "Continuum of Force" to distinguish it from "levels" of reporting later in the document

p. 51 (19) Sec. 300.7, Medical Consideration: Change "should" to "shall" on next to last line.

p. 52 (20) Sec. 300.9, UOF Administrative Review: last 4 paragraphs and top of page 53 (21) Sec. 300.10, Training: Change all "will" to "shall" for consistency.

Page numbers are to the packet, followed by (page numbers in draft).

Lee, Katherine

From: Kitt Saginor <ksaginor@gmail.com>
Sent: Tuesday, July 7, 2020 10:20 AM
To: Rome, Leslie
Cc: Lee, Katherine; Domingo, Donna; Martinez, Maritza
Subject: Message for Commissioners

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Leslie Rome and PRC staff,

Thanks. Below is the message that I am hoping you will forward to the Commissioners.

Thank you very much,

Kitt
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Dear Commissioners,

Tomorrow evening you will be considering revisions to BPD Policy 300, Use of Force. You and your colleagues have worked hard and made many excellent changes. Before you approve the draft I hope you will give particular consideration to what the draft says about the conditions under which officers should shoot to kill people – or as the policy terms it – use deadly force.

I'm not a lawyer nor an expert in police matters, but neither are the people who serve on juries, and neither are most of the people whose lives are affected by police actions. So the plain English meaning of the words in the policy are important.

Most of the document describes circumstances in which officers shall or shall not take particular actions and those circumstances are described as factual realities - what is actually happening. However in the sections on deadly force – and only in those sections – the proposed policy tells us that justification for shooting a person is to be found in the interior mental state of the officer – what an officer **believes**. If this is meant to be a philosophical statement about the impossibility of anyone ever knowing facts with absolute certainty, why is the verb “believe” used in only this section and not throughout the document?

A belief is not a fact. A belief exists in the mind of the believer and does not necessarily have a firm connection to the real world. Adding modifiers such as “reasonably” and “objectively” does not require officers to be unbiased in their belief. We have all grown up and are living within a system that regards black men and boys as inherently threatening. I'm sure you've seen the studies on the unconscious bias that makes it “reasonable” to expect violence from African Americans. As we have seen in innumerable incidents around the country, investigators, prosecutors, juries, and many others have agreed that it was reasonable for an officer to believe that a black man or black boy was an

imminent threat when he reached for his driver's license or a cell phone or nothing at all, or held a toy gun, or even just shifted in his sleep.

At your last meeting, Commissioner Ramsey defended this language. I think he was claiming that requiring an officer to have a specific belief strengthened the policy. Although I have great respect for Commissioner Ramsey's depth of knowledge in this area, I don't see how substituting a belief requirement for an actual fact requirement protects anyone but mistaken officers. I think most of those who use this policy will read it the same way I do. A reasonable belief is not a strong standard. For instance there is a phrase in one of the numbered clauses of the first sentence of Section 300.4 that says, "provided the officer has a **reasonably objective** belief..." Perhaps you will change that arrangement of words, but it illustrates that the adverb "reasonably" weakens rather than strengthens. For example, "I am reasonably sure that I remembered to turn off the oven before I left home," expresses less certainty than "I am sure that I remembered to turn off the oven before I left home."

The effect of this language about "believing" is that your draft policy provides stronger protection for police officers who make mistakes when shooting people than for police officers who make mistakes with less deadly consequences. I find it particularly telling that within your document, Section 300.4.2 concerning shooting at or from moving vehicles, manages to clearly describe when officers may or may not shoot at vehicles without talking about what they believe. That section says, in part:

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person with deadly force.

And then it goes on to describe "factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle" all in factual terms without ever once using the word "believe." Your draft policy provides stronger protection to car tires than to human beings. I'm sure that's not what you want.

The language about the beliefs of officers when they shoot people is not unique to Berkeley. Such language is also, most unfortunately, found in the California code. But my understanding is that Berkeley may choose to have standards for police conduct that are stricter than the law. At your last meeting I heard that you expect Berkeley's policy to serve as a model for other communities. Please take additional time to think carefully, remove beliefs out of our policy and move Berkeley's Police Department forward towards fact-based policing.

Thank you for your consideration of this matter.

Kitt Saginor
ksaginor@gmail.com

Particularly relevant sections of the proposed policy – as it will read if the changes from the subcommittee are incorporated.

THE SECTIONS ABOUT DEADLY FORCE (THESE USE "BELIEVE" OR "BELIEF")

300.1.3 Core Principles. Section C MINIMIZING THE USE OF DEADLY FORCE:

Deadly force may be used only when the officer reasonably **believes** that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if the officer reasonably **believes** that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.

300.4 USE OF DEADLY FORCE

An officer's use of deadly force is justified only when the officer reasonably **believes**, based on the totality of the circumstances, that such force is necessary to 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided the officer has a reasonably objective **belief** that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to **believe** that the person is aware of those facts.

An officer shall not use deadly force against another person unless the officer objectively and reasonably **believes** that using deadly force would not endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of circumstances, a reasonable officer in the same situation would **believe** that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably **believed** to require instant attention.

SOME SECTIONS ABOUT OFFICER ACTIONS THAT SPECIFY CIRCUMSTANCES AND DO NOT USE "BELIEVE" OR "BELIEF – similar wording could be used for the sections about deadly force.

300.4.2 SHOOTING AT OR FROM MOVING VEHICLES

...

Firearms shall not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person with deadly force.

...

Because this policy may not cover every situation that may arise, a deviation from this policy may be objectively reasonable and objectively necessary depending on the totality of the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

- (a) The availability and use of cover, distance, and/or tactical relocation
- (b) Incident command and personnel placement
- (c) Tactical approach
- (d) regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable, objectively necessary, and proportional force to effect an arrest, to prevent escape or to overcome resistance. ...

300.3.2 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use objectively reasonable, objectively necessary, and proportional force to lawfully seize evidence and to prevent the destruction of evidence. ...

300.3.5 DE-ESCALATION TACTICS

...

If immediate action is not necessary, an officer(s) shall attempt to use verbal de-escalation techniques. ...

300.3.7 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use objectively reasonable, objectively necessary, and proportional 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