

Public Reporting on the Use of Controlled Equipment.

Kitt Saginor, 1/26/21

Concerning the inclusion or exclusion of the language in red in 2.100.050 (A)(1)...

The Police Department shall submit a report on Controlled Equipment to the Police Review Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use, ~~for any Controlled Equipment not included in a Use of Force report.~~

If the phrase in red is retained, much important information will not be publicly reported, because information required by the Ordinance is **not** duplicated in public reports required under the Use of Force Policy

What types of equipment are included or excluded by this language?

Types of equipment covered by the Controlled Equipment Ordinance include:

- various sorts of vehicles (2.100.020(A)(1-4))
- breaching apparatus (2.100.020(A)(5))
- certain types of firearms and ammunition (2.100.020(A)(6-8))
- projectile launch platforms and their associated munitions (2.100.020(A)(9))
- equipment used to disperse chemical agents (2.100.020(A)(9))
- knife designed to be attached to a firearm (2.100.020(A)(10))
- explosives, pyrotechnics, such as “flashbang” grenades (2.100.020(A)(11))
- chemical weapons such as “teargas,” CS gas, pepper spray, and “pepper balls (2.100.020(A)(11))
- long batons (2.100.020(A)(12))
- active area denial weapons (2.100.020(A)(13))

From this list, only:

- various sorts of vehicles (2.100.020(A)(1-4))
- breaching apparatus (2.100.020(A)(5))

are **not** weapons, and so will definitely be fully included in the Controlled equipment reports. All of the rest are weapons. Use of Force Policy 300 requires reporting on all incidents that involve the use of weapons, so the firearms or other weapons will be largely excluded from the Controlled Equipment reports. Additionally, breaching apparatus may be used in use of force incidents, and could therefore be excluded from the Controlled Equipment reports, leaving only the vehicles.

What will Public Controlled Equipment Reports contain?

Components of the reports specified in Section 2.100.050(A)(1) may be summarized as:

- description of each type of equipment and how many the department has
- summary of how it is used
- geographical breakdown of where in Berkeley it is used
- summary of complaints or concerns about controlled equipment
- information about violations of equipment use policies.

For weapons NOT included in Controlled Equipment reports, will that the same information be in the Use of Force policy 300 public reports?

No. It is not the case that public reports required by the Use of Force policy 300 will duplicate information covered by the Controlled Equipment Ordinance. The data that must be reported **publicly** under the Use of Force policy (300.11.1) is:

- demographic information about “impacted” individuals.
- types of force by Level as defined in Section 300.6.2

In addition to these data points, Use of Force policy public reporting requires analysis in regards to training, equipment needs, and policy revisions. It does **not** require descriptions, equipment inventory, geographic information, summaries of complaints about equipment, nor information about policy violations.

The 4 levels of the Use of Force policy are not defined by type of weapon. For instance, a firearm of any type could be included in a use of force of Level 2, Level 3, or Level 4. And Level 3 includes not just incidents involving firearms, it also includes incidents involving chemical agents and/or impact weapons. Nor will public Use of Force reports identify where in Berkeley incidents took place. If weapons are excluded from the Controlled Equipment Ordinance reporting requirements, the data will **not** be available to the public.

Haven't past Use of Force Reports publicly presented information on types of weapons?

Under Policy U-2, now superseded, the Berkeley Police did provide some categorization by type of weapons along with the frequency of use of force where:

- the suspect complained of injury,
- the suspect was visibly injured, or
- a weapon was used

The total number of uses of force has been fewer than 100 for each of the past five years. For 2019, the total of 90 uses of force were categorized in two ways.

- 1) A total count for 2019 of each of these types of weapon or force:
 - firearm (no breakdown for type of firearm)
 - less lethal (no further breakdown)
 - straight baton
 - expanded baton
 - OC (Oleoresin Capsicum = pepper spray)
 - physical

The report notes that one incident could include multiple types of force, but provided no data on those combinations.

- 2) A total count for 2019 of suspects who were on the receiving end of the injurious use of force broken out by gender and race (Hispanic categorized as a race) and also by age cohorts.

This 2019 Use of Force Report was made available to the public only through the agenda packets or supplemental materials of the public bodies that received it in October, 2020. It was not posted on the Berkeley Police Department website. The old report on Use of Force did not include the data points required by the Controlled Equipment Ordinance. (Find the report at: https://www.cityofberkeley.info/Clerk/City_Council/2020/10_Oct/Documents/2020-10-13_Item_19_2019_Crime_Report_and_Five_Year.aspx)

2.100.020 Definitions from the proposed Controlled Equipment Ordinance

(A) “Controlled Equipment” includes, but is not limited to, all of the following:

(1) Vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are: built to operate both on-road and off- road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck; or built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

(3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

(4) Aircraft, vessels, or vehicles of any kind, whether manned or unmanned, with attached or mounted weapons.

(5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive innature. Items designed to remove a lock, such as bolt cutters, small gauge frangible rounds, or a handheld ram, are excluded from this policy.

(6) Firearms of .50 caliber or greater.

(7) Ammunition of .50 caliber or greater.

(8) Specialized firearms, including the Colt M4, and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.

(9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, “bean bag,” rubber bullet, or specialty impact munition (SIM) weapons, and equipment used to disperse chemical agents.

(10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.

(11) Explosives, pyrotechnics, such as “flashbang” grenades, and chemical weapons such as “teargas,” CS gas, pepper spray, and “pepper balls”.”

(12) Batons 30 inches or longer in length.

(13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, and water cannons **and the Long Range Acoustic Device (LRAD).**

(a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.

(14) Any other equipment as determined by a majority of the City Council to require additional oversight.

2.100.050 Reports on the Use of Controlled Equipment from the proposed Controlled Equipment Ordinance

(A) Annual Report on Controlled Equipment

(1) The Police Department shall submit a report on Controlled Equipment to the Police Review Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use, ~~for any Controlled Equipment not included in a Use of Force report~~. The report shall be provided no later than March 15th of each year, unless the Police Review Commission advises the Department that an alternate date is preferred. The Department shall also make each annual report publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how Controlled Equipment was used. For the purposes of annual reports, "use" of equipment shall refer to deployments in which equipment is publicly displayed or visible, or is deployed in an operation or critical response, not to transfers of location or placement of equipment inside Department vehicles.

(c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(d) A summary of any complaints or concerns received concerning Controlled Equipment.

(e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

Public reporting requirements from POLICY 300 USE OF FORCE

300.11.1 USE OF FORCE ANALYSIS

The Professional Standards Division Captain or his or her designee shall prepare a comprehensive analysis report on use of force incidents. The report shall not contain the names of officers, suspects or case numbers, and should include but not be limited to:

- (a) An analysis of use of force incidents with demographic details of the individual impacted including, but not limited to race, gender and age.
- (b) All types of force as delineated in Levels 1, 2, 3 and 4 in Section 300.6.(2).
- (c) The identification of any trends in the use of force by members.
- (d) Training needs recommendations.
- (e) Equipment needs recommendations
- (f) Policy revisions recommendations.

300.11.2 REPORTING FREQUENCY

- (a) On a quarterly basis via the City's Open Data Portal website;
 - (b) On a quarterly basis to the Police Review Commission; and
 - (c) On a yearly basis as part of the Police Department's Annual Crime Report to Council
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