



**OAKLAND POLICE COMMISSION
JOINT SPECIAL MEETING OF THE USE OF FORCE AD HOC
COMMITTEE AND THE POLICE COMMISSION
PUBLIC MEETING AGENDA**

**September 21, 2020
5:30 PM**

Pursuant to the Governor's Executive Order N-29-20, members of the Police Commission, as well as the Commission's Counsel and Community Police Review Agency staff, will participate via phone/video conference, and no physical teleconference locations are required.



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PUBLIC PARTICIPATION

The Oakland Police Commission encourages public participation in the online board meetings. The public may observe and/or participate in this meeting in several ways.

OBSERVE:

- To observe the meeting by video conference, please click on this link: <https://us02web.zoom.us/j/89750194390> at the noticed meeting time. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193>, which is a webpage entitled "Joining a Meeting"
- To listen to the meeting by phone, please call the numbers below at the noticed meeting time: Dial (for higher quality, dial a number based on your current location):

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PROVIDE PUBLIC COMMENT: There are three ways to make public comment within the time allotted for public comment on an eligible Agenda item.

- Comment in advance. To send your comment directly to the Commission and staff BEFORE the meeting starts, please send your comment, along with your full name and agenda item number you are commenting on, to clove@oaklandca.gov. Please note that e-Comment **submissions close at 4:30 pm**. All submitted public comment will be provided to the Commissioners prior to the meeting.
- By Video Conference. To comment by Zoom video conference, click the "Raise Your Hand" button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to "Raise Your Hand" are available at: <https://support.zoom.us/hc/en-us/articles/205566129>, which is a webpage entitled "Raise Hand In Webinar."
- By Phone. To comment by phone, please call on one of the above listed phone numbers. You will be prompted to "Raise Your Hand" by pressing STAR-NINE ("*9") to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. Once it is your turn, you will be unmuted and allowed to make your comment. After the allotted time, you will be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled "Joining a Meeting by Phone."

If you have any questions about these protocols, please e-mail clove@oaklandca.gov.



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I. Call to Order

Chair Regina Jackson

II. Roll Call and Determination of Quorum

Chair Regina Jackson

III. Welcome, Purpose, and Open Forum/Public Comment (1 minute per speaker)

Chair Regina Jackson will welcome public speakers. The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's (OPD) policies, practices, and customs to meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

The Use of Force Ad Hoc Committee was formed to work on revising OPD's Use of Force Policy.

IV. Presentation of the Commission's Draft Use of Force Policy

Commissioners on the Use of Force Ad Hoc Committee will provide an overview of the revision project and walk the full Police Commission through a working draft, highlighting suggested edits, community input, and the Raheem survey. ([Attachment 4](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

V. Adjournment



CITY OF OAKLAND

POLICE COMMISSION

250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CALIFORNIA 94612

TO: Oakland Police Commission
Members of the Oakland Community

FROM: Police Commission / Police Department Ad Hoc Working Group on Policy:
General Order K-03 – *Use of Force*

Honorable Commissioners and Members of the Public,

In the agenda packet before you, you can see the product of an extensive number of meetings (averaging several hours per meeting) of an ad hoc working group dedicated to re-writing the Oakland Police Department’s *Use of Force* policy from the ground up. In January 2020, the Oakland Police Commission voted to approve a new version of Department General Order (DGO) K-03 Use of Force, to comply with Assembly Bill 392 Peace Officer: Deadly Force an act to amend Sections 196 and 835a of the Penal Code, relating to peace officers. This was the first phase of a two-phase project and immediate need to bring Oakland’s Use of Force policy to legal compliance. As a part of the discussion about approving the new K-03, effective January 1, 2020, the Oakland Police Commission, external stakeholders and community groups, and the Oakland Police Department collectively asserted during this meeting that the ultimate goal, to best serve the community, was a more comprehensive revision of K-03. Members of the Use of Force Ad Hoc (UOF Ad Hoc) agreed to reconvene to complete the comprehensive revision. The UOF Ad Hoc group met nearly every other Thursday evening, and weekly after the shelter-in-place order, for almost six months to produce a comprehensive document which gives both broad conceptual guidance and specific instruction to Oakland’s sworn officers on the Use of Force in the course of their duties. Beyond leveraging the experience and knowledge of all ad hoc group members, the group also borrowed concepts and language from leading use of force policies from agencies throughout the United States (see section II, below).

I. Highlights of the Draft Policy

The draft policy created by the ad hoc working group seeks to set forth plain-language guidance and instruction for Oakland’s sworn officers while at the same time keeping the policy transparent and easily understandable by the community. Some of the highlights of the draft policy include:

- ❖ **Core Principles and Overall Mission First:** The first section of the document is dedicated to important overarching concepts that must guide all decisions surrounding the use and evaluation of force, including the primary mission of protecting life, a commitment to de-escalation, a duty to intervene to stop excessive force, a commitment to medical aid, and a commitment to through and fair evaluation of force.

- ❖ **Specific Policy Direction Mandating De-Escalation:** Sworn officers are required by the draft policy (in Section C) to utilize de-escalation tactics and techniques in order to reduce the need for force, and de-escalation is tied specifically to the Department’s mission of preserving life and limiting reliance on the use of force.
- ❖ **Overarching, Easily Understood Concepts Applicable to All Force:** Before getting into more specific rules and prohibitions, the draft policy sets forth (in Section D) general policy requirements that apply to all force, regardless of type or intensity. These include:
 - Requirements that force be reasonable, necessary, and proportional;
 - Prohibitions on unreasonable force;
 - Requirements for identification and warnings prior to all use of force;
 - Requirements to de-escalate force after force has been used; and
 - Requirements to provide medical aid after force has been used.
- ❖ **Extensive Discussion of Levels of Resistance, Force, and Less-Lethal Force Options**
- ❖ **Strict Necessity Requirements for Lethal Force in Line with AB 392**
- ❖ **Prohibitions on Discharging Firearms at Moving Vehicles**
- ❖ **Specific Rules on Preventing Positional Asphyxia:** These include specific direction against sitting, standing, or kneeling on a persons’ head, neck, chest, or back and to ensure that a subject under control is in a position to allow free breathing.

II. Policies and Sources Consulted

The draft policy owes much of its language and concepts to other policies. Each addition from other sources, however, was reviewed and often modified or added upon in the draft policy by the ad hoc group. The policies and sources consulted during the drafting of this policy include:

- ❖ **Assembly Bill 392** – text of Penal Code § 835a, which took effect January 1st 2020;
- ❖ **Denver Police Policy on Use of Force** – Includes content from Denver PD Operations Manual 101.00 (General Philosophy), 105.01 (Use of Force Policy), 105.02 (Force and Control Options), 105.03 (Reporting), 105.04 (Shooting by and/or of Police Officers), and 105.05 (Use of Force Review Board)
- ❖ **New Orleans Police Department Policy on Use of Force** – Includes content from NOPD Operations Manual Chapter 1.3, Title: “Use of Force”
- ❖ **Camden County (NJ) Police Department Order on Use of Force** – Effective date January 28th, 2013, revision date August 21st, 2019.
- ❖ **Campaign Zero’s “8 Can’t Wait” proposals** (available at www.8cantwait.org)
- ❖ **District of Columbia Metropolitan Police Department General Order on Use of Force** – Effective Date November 3rd, 2017
- ❖ **Cleveland Division of Police General Order on De-Escalation** – Effective Date January 1st, 2018
- ❖ **Seattle Police Department Manual, Title 8 – Use of Force.** Includes Chapters:
 - 8.000 - Use of Force Core Principles (Effective Date September 15th, 2019)
 - 8.050 - Use of Force Definitions (Effective Date September 15th, 2019)
 - 8.100 - De-Escalation (Effective Date September 15th, 2019)

- 8.200 - Using Force (Effective Date September 15th, 2019)
- 8.300 - Use of Force Tools (Effective Date September 15th, 2019)
- 8.310 - OC Spray Chain of Custody (Effective Date September 1st, 2019)
- 8.400 - Use of Force Reporting and Investigation (Effective Date September 15th, 2019)
- 8.500 - Reviewing Use of Force (Effective Date September 15th, 2019)
- ❖ **National Consensus Policy on Use of Force** – International Association of Chiefs of Police, October 2017
- ❖ **San Francisco Police Department General Order 5.01, Use of Force** – Revised December 21st, 2016.
- ❖ **California Jury Instructions 3160**, Great Bodily Injury – CalCRIM 2017 Edition, Judicial Council of California.
- ❖ *Graham v. Connor*, 490 U.S. 386 (1989)
- ❖ **California Attorney General Xavier Becerra’s recommended force policy reforms** (available at <https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts>)

III. Members of the Ad Hoc Group

Ginale Harris, Commissioner, Oakland Police Commission
 Tara Anderson, Commissioner, Oakland Police Commission
 Henry Gage III, Vice-Chair, Oakland Police Commission
 James B. Chanin, Civil Rights Attorney
 John Alden, Director, Community Police Review Agency
 Juanito Rus, Policy Analyst, Community Police Review Agency
 LeRonne Armstrong, Deputy Chief, Oakland Police Department
 Roland Holmgren, Deputy Chief, Oakland Police Department
 Nishant Joshi, Captain, Oakland Police Department
 Phillip Andrew Best, Police Services Manager, Oakland Police Department
 Joseph Turner, Sergeant, Oakland Police Department
 Brigid Martin, Deputy City Attorney, Office of the Oakland City Attorney

IV. Next Steps

While the UOF Ad Hoc group is formally presenting this draft to the whole of the Commission and to the public during this public meeting, the work is not done. The UOF Ad Hoc group formally endorses and recommends three activities to engage the public to inform the final development of DGO K-03. After additional work by the ad hoc group to review and modify the draft in consideration of public input, the ad hoc group will formally propose that the policy be approved by the entirety of the Police Commission. In order to facilitate authentic and meaningful inclusion of the information provided through these activities the UOF Ad Hoc believes that the final draft of the revised DGO K-03 will be presented to the Commission as a whole in September 2020.

Town Halls

A series of public town hall-style meetings to solicit public comment and input, where third party facilitators assist with organizing and collecting/contextualizing public feedback. Further discussions from the full Commission regarding planning for the fullest representation in any public outreach strategy is suggested to ensure that the voices of those most impacted will be welcomed and heard.

Public Posting & Written Feedback

The draft revisions to DGO K-03 will be posted on the Police Commission website. There will be an open 30 period to provide written feedback on the department general order. Respondents will be instructed to submit edits or recommendations to an email solely designated for this purpose.

Raheem

Virtual town hall meetings and solicitation of written feedback will unintentionally exclude members of the community from the policy development process. As a result, the Commission proactively instructed the Community Police Review Agency (CPRA) to enter into a professional services contract with Raheem for the purpose of collecting, “community input related to the Oakland Police Department Use of Force Policy Revision.” The specific services under this agreement include; an analysis of resident experiences of and attitudes towards use of force by Oakland Police and Use of Force Study Report. These activities differ in scope and scale from previous efforts in that respondents will have had recent experience with having been stopped by, called, and or directly harmed by OPD. Raheem’s main source of data on Use of Force was requested directly from the City of Oakland and the Oakland Police Department, and includes detailed police stop and incident data.



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date: XX MMM 20

Coordinator: Training Division

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DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date: XX MMM 20

Coordinator: Training Division

A. MISSION, PURPOSE, AND CORE PRINCIPLES**A - 1. Protection and Sanctity of Human Life Paramount**

The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

A - 2. Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.

While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

A - 3. Policy Direction Beyond Constitutional Principles

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (*Graham v. Connor*, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond *Graham* and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is used only when necessary, and that the amount of force used is proportional to the situation that an officer encounters.

A - 4. Department Purpose

The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives.

A - 5. Strict Prohibitions on Inappropriate Force

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that is not reasonable and necessary under the totality of the circumstances will be subject to corrective action, including discipline up to and including termination. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

A - 6. Duty to Intervene

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

A - 7. Commitment to De-Escalation

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, officers shall de-escalate the amount of force used when the officer reasonably believes that a lesser level or no further force is appropriate.

A - 8. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious

effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

A - 9. Commitment to Medical Aid

Whenever a person is injured by a use of force, complains of injury from a use of force, or requests medical attention after a use of force, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training and skillset.

A - 10. Commitment to Thorough and Fair Evaluation of Force

The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.

Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.

B. DEFINITIONS

B - 1. Carotid Restraint Hold

A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.

The carotid restraint hold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using the carotid restraint hold.

B - 2. Chokehold

A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold.

A chokehold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using chokeholds.

B - 3. Complaint of Pain

A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

B - 4. Cooperation / Compliance

Responsiveness to and compliance with officer requests.

B - 5. Crowd Control

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal

tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management**.

B - 6. De-Escalation

Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- reduce or end a use of force after resistance or an immediate threat has ceased or diminished.

B - 7. Exigent Circumstances

Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.¹

B - 8. Feasible

Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

B - 9. Force

Any physical or mechanical intervention used by an officer to defend against, control, overpower, restrain, or overcome the resistance of an individual. Force includes less-lethal and lethal force options.

B - 10. Force Options

The force options trained and deployed by the Oakland Police Department include:

- Baton / Impact Weapons
- Chemical Agents
- Control Holds / Defensive Tactics / Compliance Techniques
- Electronic Control Weapons
- Firearms
- Oleoresin Capsicum (OC) Spray
- Personal Body Weapons
- Physical Control Techniques, including escorts
- Police Canines

¹ Based on the definition from *United States v. McConney*, 728 f.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

- Specialty Impact Munitions
- Takedowns
- Verbal Commands / Instructions / Command Presence
- Verbal Persuasion

Less-lethal force options are further explained in section **G-1, Less-Lethal Force Options**, while lethal force options are further explained in section **H-1, Lethal Force Options**.

B - 11. Great Bodily Injury

Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

B - 12. Immediate Threat

A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat is ready to take place, impending, likely to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat is one that, from appearances, must be instantly confronted and addressed.

B - 13. Less-Lethal Force

Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.

B - 14. Lethal Force

The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.

B - 15. Medical Aid

Medical interventions and life-saving techniques, ranging from home remedies and first-aid to life-saving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

B - 16. Minor Bodily Injury

Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).

B - 17. Necessary

Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether

1. Objectively reasonable *alternatives* to the action were available and/or practical AND
2. Whether the action was reasonably likely to *effect the lawful purpose* intended.

B - 18. Objectively Reasonable

Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion – such as the use of force – is objectively reasonable requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The “test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”²; however its proper application requires careful attention to the facts and circumstances of each particular case.

Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.

Factors which may be considered in determining the objective reasonableness of force – and which may be used by officers to determine whether force is

² *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)

reasonable based on a situation in which they are involved – include, but are not limited to:

- The seriousness/severity of the crime or suspected offense;
- The level of threat or resistance presented by the engaged person;
- Whether the engaged person was posing an immediate threat to officers or a danger to the public;
- The potential for injury to members of the public, officers, or engaged persons;
- The risk or apparent attempt by the engaged person to escape;
- The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);
- The conduct of officers leading up to the use of force;
- The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup, and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
- The time available to the officer to make a decision;
- The availability of other resources;
- The training received by the officer;
- The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
- Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
- Environmental factors and/or other exigent circumstances;
- Whether the engaged person had any perceived physical disability;
- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

B - 19. Officer

Any sworn member of the Oakland Police Department, at any rank.

Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific

force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

B - 20. Police Canine

A canine that is specifically trained and deployed to search for, locate and assist in the apprehension of criminal suspects. The Police Canine is certified by a Peace Officer Standards and Training (POST) certified canine evaluator as meeting current voluntary POST canine standards. A Police Canine may also be cross-trained in the tracking method and narcotics detection. Reference **DO K-09, Department Canine Program.**

B - 21. Procedural Justice

Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:

- **Respect:** Treating all people with dignity and respect;
- **Voice:** Giving people an opportunity to be heard;
- **Neutrality:** Being neutral and fair when making decisions; and
- **Trustworthiness:** Conveying trustworthy motives, such as doing what is best for the community.

B - 22. Proportional Force

Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section **F, LEVELS OF FORCE**)

B - 23. Resistance

Resistance is the absence of **cooperation**, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or **level** (see section E, **LEVELS OF RESISTANCE**), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the **immediacy of the threat**, if any, posed by the person as well as whether the force used to overcome the resistance was **proportional** to the resistance posed.

B - 24. Restrained Person

A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.

B - 25. Serious Bodily Injury

Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.

B - 26. Totality of Circumstances

All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and engaged person leading up to the use of force, all viewed from the perspective of a reasonable officer.

B - 27. Vehicle Ramming/Mass-Casualty Attack

An attack in which a person deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

C. DE-ESCALATION

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to

situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department's mission.

Policing, at times, requires that an officer exercise control of a violent or resisting person, or a person experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective. Tactical repositioning or other de-escalation tactics are not considered "retreat" for the purposes of this policy.

C - 1. Goals of De-Escalation

The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

C - 2. Considerations Surrounding the use of De-Escalation

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:

- The officer's use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;

- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

C - 3. Policy Requirement Regarding De-Escalation

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the engaged person. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

C - 4. De-Escalation Tactics, Techniques, and Principles

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

Broadly, de-escalation techniques fall under the following categories:

➤ **Communication**

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands

- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to,
 - Medical conditions
 - Mental impairment
 - Developmental disability
 - Physical limitation
 - Language barrier
 - Drug interaction
 - Behavioral crisis
 - Fear or anxiety
- Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)
- Giving the engaged person a reasonable amount of time to comply with commands.

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover possible escape routes; and

- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

➤ **Positioning and Spatial Awareness**

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the engaged person. Officers should constantly be assessing their positioning relative to the engaged person and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

- Proper interview stance;
- Separation of parties during disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and
- Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

➤ **Time, Distance, and Cover**

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

- Additional resources such as crisis intervention trained officers or mental health crisis response units;
- Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);
- Using cover and concealment for tactical advantage, such as:
 - Placing barriers between an uncooperative engaged person and officers
 - Using natural barriers in the immediate environment
- Officers with stand-off or longer-distance force options; or
- Armored vehicles.

➤ **De-Escalation Resources**

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

D. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY

D - 1. Use of Force Shall be Reasonable, Necessary, and Proportional, and for a Lawful Purpose or Objective

Officers shall only use **objectively reasonable and necessary** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.

Officers may use objectively reasonable and necessary force options in the performance of their duties in the following circumstances:

- To effect a lawful arrest, detention, or search;
- To overcome resistance or prevent escape;
- To prevent the commission of a public offense;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

D - 2. Prohibitions on Unreasonable Force

Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce.

It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

D - 3. Duty to Intervene

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent

extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to interrupt the flow of events and *stop* the use of force.

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*³, and members who fail to report excessive force are subject to appropriate discipline.

D - 4. Identification and Warnings Prior to the Use of Force

When feasible, and without sacrificing officer, engaged person, or public safety, officers shall:

- Identify themselves as law enforcement officers;
- Warn the engaged person that force may be used unless their resistance ceases; and
- Give the engaged person a reasonable opportunity to comply with a warning that force may be used.

Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

D - 5. Use of Force on Restrained Persons

Officers may only use objectively reasonable, necessary, and proportional force on restrained persons. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances and when determining the level of resistance and the threat posed by the engaged person. Typically, intermediate less-lethal and lethal force may not be used against restrained persons (see G-5).

D - 6. De-escalation of Force After Force has been Used

Officers shall de-escalate the use of force when the officer reasonably believes a lesser level or no further force is appropriate. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

³ Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.

D - 7. Providing Medical Assistance to Persons Subject to the Use of Force

When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of medical distress for persons subject to the use of force, even if the aid is declined.

After requesting medical aid, officers shall, if feasible, render aid within the full scope of their training and skillset unless aid is declined. Consent should be assumed for unconscious persons or persons incapable of providing consent.

Officers shall automatically request medical aid for persons who have been struck, contacted, or contaminated by the following force options, regardless of injury:

- Lethal ammunition fired from a firearm;
- Electronic Control Weapons, whether probe or drive-stun;
- Specialty Impact Munitions;
- Impact or impromptu impact weapon strikes with contact; or
- Oleoresin Capsicum spray.

E. LEVELS OF RESISTANCE

Resistance (**Section E, LEVELS OF RESISTANCE**) and response (**Section F, LEVELS OF FORCE**) are dynamic. The engaged person's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the engaged person is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (**Section E**) and force which may be used to overcome that resistance (**Section F**) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threats to their safety or the safety of others.

E - 1. Non-Compliance

Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.

E - 2. Passive Resistance

Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.

Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.

E - 3. Active Resistance

Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.

Verbal responses indicating an unwillingness to comply with an officer's directions which **do** rise to the level of threats are also considered active resistance.

E - 4. Assaultive Resistance

Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.

E - 5. Life-Threatening Resistance

Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person.

F. LEVELS OF FORCE

Note: Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as of de-escalation attempts both before and after any use of force incident.

F - 1. Contact Controls

Low-level physical tactics used to gain control and overcome **non-compliance** or **passive resistance**. These include physical control techniques (e.g. pulling, pushing, or maneuvering an engaged person's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.

F - 2. Compliance Techniques and Defensive Tactics

Low-level physical tactics used to gain control and overcome **passive resistance** and **active resistance**, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome **passive resistance** shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.

Techniques and tactics to overcome **passive resistance** include control holds, **objectively reasonable** takedowns, and non-striking use of the baton. OC spray shall not be used on those engaged persons who go limp or offer no physical resistance.

Techniques and tactics to overcome **active resistance** include control holds, oleoresin capsicum (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.

F - 3. Intermediate Less-Lethal Force

Intermediate-level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome **active and assaultive resistance**, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsicum (OC) spray, police canines, and specialty impact munitions.

F - 4. Lethal Force

Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome **life-threatening resistance**. Lethal force includes impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

G. COMMANDS AND LESS-LETHAL FORCE

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: **Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.**

G - 1. Presence/Command Options

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are not a use of force but which are essential in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, **De-Escalation**).

G - 2. Physical Control/Personal Weapons Options

Depending on the manner and intensity in which they are used, **Physical Control/Personal Weapons Options** may fall into multiple force levels: Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less-Lethal Force. These options include, but are not limited to:

- Escorts and physical body manipulation without pain compliance

- Control Holds
- Takedowns
- Vulnerable Area manipulation
- Personal Weapon strikes – **NOTE:** Personal Weapon strikes to a restrained person are considered Intermediate Less-Lethal Force.

Absent exigent circumstances, all **Physical Control/Personal Weapons Options** shall be compliant with Oakland Police Department policy and training. Refer to **Training Bulletin III-I.1, *Weaponless Defense***.

G - 3. Less-Lethal Tool Options

Less-lethal tools are used to interrupt an engaged person's threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications. Less-lethal tools alone cannot be expected to render an engaged person harmless.

Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.

Less-lethal tools most often fall into the level of Intermediate Less-Lethal Force, although certain tools, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).

Less-lethal tools, depending on the nature of the tool and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific tool. Important warnings regarding specific less-lethal tools, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.

The Less-lethal tools authorized by the Department include:

- Patrol Canine – See **DGO K-09, *Department Canine Program***
- Electronic Control Weapon (ECW) – See **DGO (Lexipol) 304, *Electronic Control Weapon (TASER)***
 - **Important warning:** When feasible, a verbal warning of the intended use of the ECW shall proceed its use, to warn the engaged person and other officers.

- Impact Weapons: Includes the ASP® expandable baton, long wood baton, and short wood baton – See **Training Bulletin III-H.02, Hand-held Impact Weapons**
 - **Important warning:** Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
- Specialty Impact Weapons: Includes direct-fired ranged impact munitions, regardless of weapons platform – See **Training Bulletin III-H, Specialty Impact Weapons**
 - **Important warning:** SIM use during crowd control situations is further limited – see **Training Bulletin III-G, Crowd Control and Crowd Management**.
- Oleoresin Capsicum (OC) Spray – See **Training Bulletin V-F.02, Chemical Agents**
 - **Important warning:** OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.
 - **Important warning:** OC spray shall not be used on passive resisters who go limp or offer no physical resistance.
- Crowd Control and Tactical Team Chemical Agents – See **Training Bulletin V-F.02, Chemical Agents and Training Bulletin III-G, Crowd Control and Crowd Management**.

G - 4. Requirement to Carry at Least One Less-Lethal Tool

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool (e.g. ECW, impact weapon, and/or OC).

G - 5. Restrictions on Use of Less-Lethal Tools Against Restrained Persons

Officers are prohibited from using less-lethal tools against restrained persons unless that person is exhibiting **Assaultive** or **Life-Threatening** resistance or there is an immediate threat of serious or great bodily injury or death.

H. LETHAL FORCE

H - 1. Lethal Force Options

Lethal force is any force that creates a substantial risk of causing great bodily injury or death. These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person. For the purpose of this section of the policy, the term “firearms” shall indicate firearms loaded with lethal ammunition.

The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. Any deviations

from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

H - 2. Drawing, Exhibiting, or Unholstering Firearms

An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see **DGO K-04, Reporting and Investigating the Use of Force**).

When an officer determines that the threat is over, the officer shall holster his or her firearm, when feasible.

H - 3. Pointing Firearms at a Person

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.⁴ Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force.

If an officer points a firearm at a person the person shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

H - 4. Discharging Firearms at a Person

An officer is justified in discharging a firearm at another person only when the officer believes, based on the totality of the circumstances, that the discharge is necessary for either of the following reasons:

- To defend against an immediate threat of death, great bodily injury, or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:

⁴ *Robinson v. Solano County*, 278 F. 3d 1007 (9th Cir. 2002)

- There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
- The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
- There are no other reasonably available or practical alternatives to apprehend the person.

If feasible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm at a person.

H - 5. Discharging Firearms at Moving Vehicles

Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.

Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:

- Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat of death, great bodily injury, or serious bodily injury *by means other than the vehicle*;
- Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury *where the officer or other person has no reasonable avenue of protection or escape*.
- Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a **vehicle ramming mass-casualty attack**.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator.

Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack**.

H - 6. Discharging Firearms from Moving Vehicles

Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with life-threatening resistance. This behavior is strongly discouraged and should be considered a last resort.

H - 7. Discharging Firearms at Animals

Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:

- Against a dangerous animal to deter an attack or to prevent injury to persons present; or
- If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.

Other than when the animal presents an immediate threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.

H - 8. General Prohibitions Regarding Firearms

Officers are prohibited from the following actions:

- Using firearms as impact weapons, unless any of the following circumstances exist:
 - When a person is attempting to take the firearm away from the officer;
 - When lethal force is permitted; or
 - When using long-gun-specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;
- Firing warning shots; and
- Using lethal force solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death, great bodily injury, or serious bodily injury to another person or officer.

H - 9. Force Likely to Cause Great Bodily Injury or Death

Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:

- Intentional impact weapon strikes to the head; and
- Intentional use of a vehicle, at any vehicle speed, to strike the person of another.

Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:

- To defend against an immediate threat of death or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:
 - There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
 - There are no other reasonably available or practical alternatives to apprehend the person.

I. CONSIDERATIONS AFTER FORCE

I - 1. Preventing Positional Asphyxia

In addition to requesting medical assistance after certain uses of force or when the engaged person has sustained injuries or demonstrates signs of medical distress (see section D-7), officers shall, consistent with officer safety, evaluate the positioning of an engaged person to mitigate the chances of positional asphyxia. This includes positioning the person in a manner to allow free breathing once the engaged person has been controlled and placed under custodial restraint using handcuffs or other authorized methods.

Engaged persons under an officer's control should be positioned in a way so that their breathing is not obstructed – obstruction of a person's breathing could easily lead to death or serious bodily injury. This means that officers should not sit, kneel, or stand on an engaged person's head, neck, chest or back, and whenever feasible should not force the engaged person to lie on his or her stomach.

I - 2. Administrative Leave after Lethal Force Incidents

Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

I - 3. Counseling Services after Lethal Force Incidents

Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

J. TRAINING

J - 1. Annual Training on Use of Force Policy

Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher training distributed via Department intranet or other document management system.

J - 2. Use of Force Policy Training Incorporation into Practical Training

All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the force options or skills being practiced are specifically evaluated and used in light of this policy.

J - 3. Training Bulletins

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins.

By order of

Susan Manheimer
Interim Chief of Police

Date Signed: _____



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date:

Coordinator: Training Division

Summary of Policy Draft Edits – August 2020 Status Report

At the end of June 2020, the Ad Hoc committee on use of force designated ACLU staff attorney Allyssa Victory, Esq. as a legal/policy expert on use of force. The following is the August draft of proposed changes by ACLU which have been reviewed and discussed with the Ad Hoc Commissioners.

Summary of key changes:**1) Clarity and Consistency**

Technical edits to simplify organization of document, headings, and numbering and flow of policy. Removal of duplicative, conflicting, and repetitive sections on the same topic. E.g. prior draft used “immediate threat” when AB 392 standard uses “imminent threat”. There were also numerous places where the force standards for nonlethal (objective reasonable) was conflated with the standard for lethal force (necessary).

2) Reconceptualization of Use of Force

The prior version of the policy categorizes various levels of use of force each connected to levels of “resistance”. Resistance may be only one factor in the totality of circumstances of whether force was lawful. As we know, officers have used force when there is no “resistance” at all and/or when the resistance is minimal and not threatening any injuries. Connecting force options to resistance levels also unduly focuses the policy on what individuals may be doing instead of what the policy is for officers. The current policy proposes complete removal of “resistance” standards and focuses instead on officers’ options being de-escalation; less-lethal force; and lethal force. The force options had varying of levels of force that are now simplified and keyed to the two standards for less lethal force (objective reasonable) and lethal force (necessary). The current policy also proposes an explicit section on “prohibited” force to codify bans already enacted including carotid and chokehold restraints which were previously listed only in the “definitions” section of the policy. The prohibited section also proposed to remove many less-lethal weapons leaving officers with options that focus on de-escalation in hopes to encourage force in only rare encounters.

3. Review and Training Guidance

Detailed guidance on review of use of force including factors of review are mandated by SB 230 which goes into effect Jan 1, 2021. An entire section on review of use of force was added to begin to meet the requirements. The prior version of the policy included only guidance on admin leave and counseling for officers.

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OAKLAND POLICE DEPARTMENT

Effective Date

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A. MISSION, PURPOSE, AND CORE PRINCIPLES

A1 Mission

A2 Department Purpose

A3 Core Principles

- Commitment to Law, Defense of Civil Rights and Liberties, and the Protection of Human Life
- Policy Direction Beyond Minimum Legal Requirements
- Strict Prohibitions on Inappropriate Force

Commented [AV1]: Final edits should include: corrected table (headings and page numbers) And link to each section heading

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- Duty to Intervene
- Commitment to De-Escalation
- Commitment to Persons with Physical, Mental Health, Developmental, or Intellectual Disabilities
- Commitment to Anti-Racism and Non-Discrimination
- Procedural Justice
- Commitment to Medical Aid
- Commitment to Thorough and Fair Evaluation of Use of Force

Commented [AV2]: May delete in final tables. Wanted to show how sections have remained but been reorganized for clearer main headings and flow of the policy

B. DEFINITIONS

B1 Complaint of Pain

B2 Cooperation/Compliance

B3 Crowd Control

B4 De-Escalation

B5 Force

B6 Force Options

B7 Great Bodily Injury

B8 Imminent threat

B9 Medical Aid

B10 Necessary

B11 Objectively Reasonable

B12 Officer

B13 Restrained Person

B14 Serious Bodily Injury

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B15 Vehicle Ramming Mass Casualty Attack

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C1 Goals of De-Escalation

C2 Considerations for Use of De-Escalation

C3 De-escalation Requirement

C4 De-escalation Tactics, Techniques, and Principles

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- **Isolation/Containment**
- **Positioning and Spatial Awareness**
- **Time, Distance, and Cover**
- **De-Escalation Resources**

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E2 Compliance and Contact Controls

E3 Requirement to Carry at Least One Less-Lethal Tool

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J3 Incorporation in Other Departmental Training

J4 Training Bulletins

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DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date:
Coordinator: Training Division

A. MISSION, PURPOSE, AND CORE PRINCIPLES

A - 1. Protection and Sanctity of Human Life Paramount Mission

The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

Commented [AV3]: Reorganized subheadings to reflect section heading of "mission, purpose, and core principles"

Commented [TJ4]: AB392, 835a(a)(1) PC

A - 2. Department Purpose

The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives at all times.

Commented [TJ5]: Denver 105.01 (1)

A - 3. Core Principles

> Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.

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While As the ultimate objective of every law enforcement encounter is to protect the public, officers shall use de-escalation tactics and techniques in order to reduce the need for force whenever safe and feasible. nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

Commented [TJ7]: De-escalation - is there a better way to talk about that here?

> Policy Direction Beyond Constitutional Principles

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (Graham v. Connor, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond Graham and its minimum requirements. The state of California has passed increasingly restrictive legislation on peace officer use of force and officer accountability for misconduct, including excessive force. The City of Oakland has mandated strong accountability and oversight measures including creation of the Oakland Police Commission and the Citizens Police Review Agency. The Oakland Police Department aspires to go beyond Graham and its these minimum requirements Sound judgment and the appropriate exercise of discretion preservation of human life

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Commented [AV9]: SB 230; proposed AB 846 (Burke) requiring de-emphasis of paramilitary aspects of policing and emphasis on community policing and collaborative problem solving in peace officer training

will always be the foundation of police officer decision-making in the broad range of ~~possible~~feasible use of force situations. It is not ~~possible~~feasible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is used only when necessary to protect human life, and that the amount of force used is proportional to the ~~situation~~-imminent threat that an officer encounters.

Commented [TJ10]: De-escalation-first language

Commented [TJ11R10]: Worked on a few ways of rewording this and propose that it stay as written – it is a direct grab from one of the most progressive policies (Camden) and puts de-escalation first in order of mention, which fits the spirit of the discussion raised at this point.

Commented [TJ12]: Camden, p.2

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Department Purpose

~~The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives.~~

Commented [TJ13]: Denver 105.01 (1)

Strict Prohibitions on Inappropriate Force

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that ~~is not reasonable and necessary under the totality of the circumstances will be subject to~~corrective is unlawful under this policy will be subject to corrective action, including discipline up to and including termination. ~~Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and intervene as soon as feasible and, ideally, before the fellow officer does something that makes any official discipline action necessary. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.~~ Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

Commented [TJ14]: Seattle 8.2

Commented [TJ15]: Up to and including termination.

Commented [TJ16]: Denver 105.01 4, c.

Commented [TJ17]: Denver 105.01 5, c.

Commented [TJ18]: NOPD p.6

Commented [TJ19]: Camden p.4

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Duty to Intervene

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events before the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive

shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and stop the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

➤ Commitment to De-Escalation

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, officers shall de-escalate the amount of force used when the officer reasonably believes that a lesser level or no further force is appropriate.

➤ Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

➤ Commitment to Anti-racism and Non-Discrimination

The Department recognizes that the institution of American policing was birthed as part of the system to maintain African chattel slavery in the U.S. After the Emancipation Proclamation, law enforcement agencies enforced segregationist laws and other codifications of racial and economic caste in America. American law enforcement, as a whole, has been deployed domestically to quell demands for civil and human rights. Civil Rights statutes were created to address officers acting under the "color of law" to deprive people of their rights. It is well-documented that law enforcement agencies were complicit or directly involved in racial terror including, but not limited to mob lynching and membership in organizations classified as domestic terrorists. It is well-documented that as the U.S. expanded westward, so too did the system of American policing often recruiting the same officers who engaged in racist and terrorist projects in other parts of the country. Police agencies across the U.S. have inherited a structurally oppressive system.

The Department is committed to repairing public trust with the Oakland community which begins by the acknowledgment of the various breaches of trust and the origins of distrust of U.S. law enforcement generally. The Oakland Police Department is a part of the fabric of this complicated and complex history. The Department recognizes that it has a history of deploying greater levels of force during police interactions on individuals, and even entire communities, based on identity, citizenship, and/or socio-economic status disproportionate to other groups. The Department has been under a Negotiated Settlement Agreement in a civil rights

- Commented [TJ20]:** Needs a concluding sentence that mandates that members report misconduct, and failure to do so could lead to disciplinary action / or reference DGO M-03, *Complaints Against Personnel*.
- Commented [TJ21R20]:** Actual rule for reporting is in MOR, reference added.
- Commented [TJ22]:** Camden, p.9
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- Commented [TJ23]:** Seattle 8.1
- Commented [TJ24]:** Seattle 8.1
- Commented [TJ25]:** NOPD p.5
- Commented [TJ26]:** Review this title – person-first but specific
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- Commented [TJ27]:** Consistent with officer safety, officers shall make every attempt to communicate with these individuals as an alternative to force.
- Commented [TJ28R27]:** A prescription like the one referenced above likely belongs in section C, on De-Escalation
- Commented [TJ29]:** AB 392, 835a(a)(5) PC

misconduct case for the last seventeen (17) years and wishes to make true progress in all areas agreed to. Furthermore, the Department recognizes that it has a history of using significantly more force against individuals with physical, mental health, developmental, or intellectual disabilities. The Department is committed to reducing these deleterious effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

> Commitment to Procedural Justice

Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:

- o **Respect:** Treating all people with dignity and respect;
- o **Voice:** Giving people an opportunity to be heard;
- o **Neutrality:** Being neutral and fair when making decisions; and
- o **Trustworthiness:** Conveying trustworthy motives, such as doing what is best for the community.

> Commitment to Medical Aid

Whenever a person is injured by a use of force, complains of injury from a use of force, or requests medical attention after a use of force, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training and skillset.

> Commitment to Thorough and Fair Evaluation of Force

The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.

Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or reasonably perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

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Commented [AV30]: Moved from definition section. "procedural justice" is not used anywhere in the prior version or this proposed version of the policy. Definition is based on principles so it seems to fit best with core principles. I suggest further edits of combining with the previous principle on antidiscrimination.

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Commented [TJ31]: Think about how this works with guarantees

Commented [TJ32R31]: Consistent with discussion at the ad hoc, I think leaving this as is and then addressing other documents on medical assistance as needed is the best route

Commented [TJ33]: Camden, p. 9

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Commented [TJ35]: AB 392 835a(a)(4) PC

Commented [TJ36]: Re-state below? To ensure that point one is not taken as an absolute.

~~Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.~~

B. DEFINITIONS

B - 1. Complaint of Pain

A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

B - 2. Cooperation / Compliance

Responsiveness to and compliance with officer requests.

B - 2, B - 3. Crowd Control

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management.**

B - 3, B - 4. De-Escalation

Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- reduce or end a use of force after resistance or an **immediate threat imminent threat** has ceased or diminished.

Exigent Circumstances

~~These circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.~~

B - 4, B - 5. Feasible

Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

B - 5, B - 6. Force

Any physical or mechanical intervention used by an officer **against an individual for any purpose** ~~to defend against, control, overpower, restrain, or~~

Commented [TJ37]: Although some split-second decisions are inevitable, officers shall use de-escalate to try and limit them. -Perhaps we call out attempting to limit split-second decisions in A-7?

Commented [TJ38R37]: Tried a few different formations but they felt like they were just re-wording what was already present in A-7, especially the idea that the Department promotes "thoughtful resolutions" which are basically the opposite of split-second decisions. I think A-7 sets a solid expectation that thoughtfulness and wise decision making be the rule, not the exception.

Commented [TJ39]: NOPD p.5

Commented [AV40]: Fix numbering in all sub-sections

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Commented [TJ42]: Camden p. 16

Commented [TJ43]: Replaced "formidable"

Commented [TJ44]: "Force posture and reasonable force *may* be used during crowd control, and are subject to additional restriction beyond this policy when used in a crowd control setting."

This would be in a use policy.

Commented [TJ45]: Make this into multiple sentences

Commented [TJ46R45]: Broke the two prongs into separate bullet points

Commented [TJ47]: Can we create a de-escalation resource section?

Or perhaps add in a de-escalation resources Training Bulletin.
-Armored vehicle
-MET Team
-800 Language Line
-And other examples

Commented [TJ48R47]: Added this into C-4 instead

Commented [JT49]: Denver

Commented [TJ50]: Ensure that this is consistent with case law - OCA

Commented [JT51]: IACP Model Policy

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[†] Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

~~overcome the resistance of an individual.~~ Force includes less lethal and lethal force options.

~~B-6,~~**B - 7.** **Force Options**

The force options trained and deployed by the Oakland Police Department ~~include as expressly prohibited or permitted by this policy. These include lethal and less-lethal options.~~

- ~~Baton / Impact Weapons~~
- ~~Chemical Agents~~
- ~~Control Holds / Defensive Tactics / Compliance Techniques~~
- ~~Electronic Control Weapons~~
- ~~Firearms~~
- ~~Oleoresin Capsicum (OC) Spray~~
- ~~Personal Body Weapons~~
- ~~Physical Control Techniques, including escorts~~
- ~~Police Canines~~
- ~~Specialty Impact Munitions~~
- ~~Takedowns~~
- ~~Verbal Commands / Instructions / Command Presence~~
- ~~Verbal Persuasion~~

~~Less-lethal force options are further explained in section G-1, Less Lethal Force Options, while lethal force options are further explained in section H-1, Lethal Force Options.~~

~~B-7,~~**B - 8.** **Great Bodily Injury**

Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

~~B-8,~~**B - 9.** **Immediate Imminent Threat**

~~A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat/imminent threat is ready to take place, impending, likely to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat/imminent threat is one that, from appearances, must be instantly confronted and addressed. A threat is imminent when, based~~

Commented [TJ52]: Denver 105.01 2

Commented [TJ53]: Seattle 8.05

Commented [TJ54]: CalCRIM

Commented [AV55]: AB 392 uses "imminent" threat and provides definition in the statute. Updated throughout policy for consistency

Commented [TJ56]: SFPD p.2, taken from OPD DGO K-03 (Rev 2015)

Commented [TJ57]: Denver 105.01 2

Commented [TJ58]: AB 392, 835a(e)(2) PC

on the totality of the 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 imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. The following are presumed to NOT be imminent threats: (1) persons threatening or actually harming only themselves; (2) persons fleeing; (3) and persons threatening or engaging in property crimes.

Commented [AV59]: SB 230 does not permit lethal force against people who are only danger to themselves

Less Lethal Force

~~Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.~~

Lethal Force

~~The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.~~

B-9, B-10. Medical Aid

Medical interventions and life-saving techniques, ranging from home remedies and first-aid to lifesaving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

Commented [TJ60]: Seattle 8.05

Minor Bodily Injury

~~Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).~~

Commented [TJ61]: Seattle 8.05

B-10, B-11. Necessary

An action is necessary if it is reasonably believed to be required by the totality of the circumstances objectively reasonable and required under the totality of the circumstances. In determining whether deadly force is necessary, officers shall evaluate each situation in light of particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible. Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

Commented [AV62]: Deleted because phrase not used anywhere in prior draft and not included in proposed edits

Commented [TJ63]: Potential for modification

Commented [TJ64]: Denver 105.01 2

Commented [TJ65]: AB 392 835a(a)(4) PC

Commented [TJ66]: Re-state below? To ensure that point one is not taken as an absolute.

~~An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether~~

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Commented [TJ67]: Denver 105.01 2

~~Objectively reasonable alternatives to the action were available and as practical as possible.~~

~~Whether the action was reasonably likely to effect the desired purpose.~~

Commented [TJ68]: Seattle 8.05

~~B-11, B-12.~~ Objectively Reasonable

~~Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion—such as the use of force—is objectively reasonable requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The “test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”², however its proper application requires careful attention to the facts and circumstances of each particular case.~~

~~Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.~~

~~Factors which may be considered in determining the objective reasonableness of force—and which may be used by officers to determine whether force is reasonable based on a situation in which they are involved—include, but are not limited to:~~

Commented [TJ69]: Could these factors be moved to D?

Maybe different formats instead of bullets?

Commented [TJ70]: AB 392, 835a(a)(2) PC

- The seriousness/severity of the crime or suspected offense;
- The level of threat or resistance presented by the engaged person;
- Whether the engaged person was posing an ~~immediate threat~~ ~~imminent threat~~ ~~imminent threat~~ to officers or a danger to the public;
- The potential for injury to members of the public, officers, or engaged persons;
- The risk or apparent attempt by the engaged person to escape;
- The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);
- The conduct of officers leading up to the use of force;
- The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup,

Commented [TJ71]: AB 392, 835a(e)(3) PC

² *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)

- and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
 - The time available to the officer to make a decision;
 - The availability of other resources;
 - The training received by the officer;
 - The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
 - Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
 - Environmental factors and/or other exigent circumstances; as used in this section, "exigent circumstances" means those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.
 - Whether the engaged person had any perceived physical disability;
 - Whether a person is unresponsive and the reasons for that unresponsiveness;
 - Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

B-12, B-13. Officer

Any sworn member of the Oakland Police Department, at any rank. Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards "officers" shall apply to these professional staff members as well.

Procedural Justice

~~Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:~~

~~**Respect:** Treating all people with dignity and respect;~~

~~**Voice:** Giving people an opportunity to be heard;~~

~~**Neutrality:** Being neutral and fair when making decisions; and~~

³ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

Commented [TJ72]: NOPD p.7

Commented [TJ73]: ** This is different than GvC

Commented [TJ74R73]: Pinned still for ad hoc 18 Jun 2020

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Commented [TJ76]: Denver 105.01 5,a,11

Commented [TJ77]: Make definition of Professional Staff?

Commented [TJ78]: This needs to be made somewhere, but does it belong here...?

~~Trustworthiness: Conveying trustworthy motives, such as doing what is best for the community.~~

~~Proportional Force~~

~~Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.~~

~~Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section F, LEVELS OF FORCE)~~

~~Resistance~~

~~Resistance is the absence of cooperation, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or level (see section E, LEVELS OF RESISTANCE), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the immediacy of the threat, if any, posed by the person as well as whether the force used to overcome the resistance was proportional to the resistance posed.~~

~~B-13, B-14. Restrained Person~~

~~A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.~~

~~B-14, B-15. Serious Bodily Injury~~

~~Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.~~

~~Totality of Circumstances~~

Commented [AV79]: Fundamentally restructured to categorize as lethal force; less lethal force; and prohibited force

Commented [TJ80]: SFPD p.2

Commented [TJ81]: Seattle 8.05

Commented [TJ82]: AB 392, 835a(a)(4) PC

Commented [TJ83]: Seattle 8.05

Commented [TJ84]: Denver 105.01 3

Commented [TJ85]: Seattle 8.05

Commented [TJ86]: AB 392, 835a(e)(3) PC
Denver 105.01 2

~~All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and engaged person leading up to the use of force, all viewed from the perspective of a reasonable officer.~~

B-15, B-16. Vehicle Ramming Mass-Casualty Attack

An attack in which a person deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

Commented [TJ87]: DC Metro p.5

C. DE-ESCALATION

Commented [AV88]: SB 230 mandates de-escalation policy using alternatives to force whenever feasible

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department’s mission.

Commented [TJ89]: Added

~~Policing, at times, requires that an officer exercise control of a violent or resisting person, or a person experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation.~~ At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

Commented [TJ90]: Cleveland, p. 1

Commented [TJ91]: Added to qualify these two sentences and ensure that the mission stays at the forefront.

~~An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective.~~ Tactical repositioning or other de-escalation tactics are not considered “retreat” for the purposes of this policy.

Commented [TJ92]: Reverse this sentence so subject is first.

Tactical...are not defined “retreat” for the purposes of this policy.

Commented [TJ93R92]: Changed

C - 1. Goals of De-Escalation

The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

C - 2. Considerations Surrounding the use of For De-Escalation

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and

public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:

- The officer’s use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;
- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

Commented [TJ94]: Think about this...why might they not be available?

C - 3. Policy Requirement Regarding De-Escalation Requirement

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.

Commented [TJ95]: Seattle 8.1

Commented [TJ96]: Seattle 8.1

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the engaged person. Where officers use a team approach to de-escalation, each individual officer’s obligation to de-escalate will be satisfied as long as the officer’s actions complement the overall approach.

Commented [TJ97]: Seattle 8.1

C - 4. De-Escalation Tactics, Techniques, and Principles

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are

encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

Broadly, de-escalation techniques fall under the following categories:

➤ **Communication**

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands
- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to:
 - i. Medical conditions
 - ii. Mental impairment
 - iii. Developmental disability
 - iv. Physical limitation
 - v. Language barrier
 - vi. Drug interaction
 - vii. Behavioral crisis
 - viii. Fear or anxiety
- Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)
- Giving the engaged person a reasonable amount of time to comply with commands.

Commented [TJ98]: Another option for H-2 language.

Commented [TJ99]: Seattle 8.1

Commented [TJ100]: Seattle 8.1

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible/feasible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person

and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover ~~possible~~feasible escape routes; and
- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

➤ Positioning and Spatial Awareness

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the engaged person. Officers should constantly be assessing their positioning relative to the engaged person and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

- Proper interview stance;
- Separation of parties during disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and
- Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to an imminent threat, including a vehicular attack, and, whenever feasible, shall reposition in a safe location.

➤ Time, Distance, and Cover

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

- Additional resources such as crisis intervention trained officers or mental-health crisis response units;
- Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);
- Using cover and concealment for tactical advantage, such as:
 - Placing barriers between an uncooperative engaged person and officers
 - Using natural barriers in the immediate environment

Commented [TJ101]: Seattle 8.1

Commented [TJ102]: Work in a better word here. "Relative"

Commented [AV103]: Expanded from existing language on vehicle mass ramming attacks

Commented [TJ104]: Seattle 8.1

- Officers with stand-off or longer-distance force options; or
- Armored vehicles.

➤ **De-Escalation Resources**

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

D. USE OF FORCE – GENERAL POLICY CONSIDERATIONS

D - 1. Prohibitions on Unlawful Force

Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce.

It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

Commented [TJ105]: Denver 105.01 4,b,4
Also in current OPD policy

Commented [TJ106]: Denver 105.01 5, c.

Commented [TJ107]: NOPD p.6

D - 2. Duty to Intervene

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to interrupt the flow of events and *stop* the use of force.

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*⁴, and members who fail to report excessive force are subject to appropriate discipline.

Commented [TJ108]: Think about re-wording...

Commented [TJ109R108]: Added a footnote instead to the applicable MOR section with the full text.

⁴ Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class

D - 3. Duty to Report Use of Force

Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.

The Department shall promptly notify and report uses of force, including all lethal uses of force, in accordance with this policy, the Department Manual of Rules, and all applicable court orders.

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D-3, D - 4. Identification and Warnings Prior to the Use of Force

When feasible, and without sacrificing officer, engaged person, or public safety, officers shall:

- Identify themselves as law enforcement officers;
- Verbally warn the engaged person that force may be used unless their resistance ceases; and
- Give the engaged person a reasonable opportunity to comply with a warning that force may be used.

Commented [AV110]: Add language to consider people with disabilities and/or list other warning options

Commented [TJ111]: Think about language here regarding not using unwarranted threats of force... (malicious, overtly threatening, must have legitimate law enforcement purpose)

Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

Commented [TJ112]: Speak to language sent by Mr. Chanin here.

D-4, D - 5. Use of Force on Restrained Persons

Officers may only use objectively lawful and proportional force on restrained persons. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances. Typically, less-lethal force and lethal force may not be used against restrained persons (see G-5). Lethal force may not be used against restrained persons under any circumstances.

Commented [TJ113R112]: Done – added 3rd line to D-4

Commented [TJ114]: Modified in response to comments about warnings. Allows for flexibility and use of warnings of force to de-escalate and hopefully end incidents without force, while still setting a standard to which personnel can be held.

D-5, D - 6. De-escalation of Force After Force has been Used

Officers shall de-escalate the use of force whenever feasible and the officer shall de-escalate his/her own force proportional to a reduced need for force and/or an eliminated threat. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

Commented [TJ115]: Seattle 8.2

Commented [TJ116]: DC Metro p. 13

Commented [TJ117R116]: We cut this line.

D-6, D - 7. Duty to Provide Prompt Medical Aid

When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of

Commented [TJ118]: Denver 105.01 5, c

Commented [AV119]: SB 230 mandates: "A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so."

II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.

medical distress for persons subject to the use of force, even if the aid is declined.

After requesting medical aid, officers shall, if feasible, render aid within the full scope of their training and skillset unless aid is declined. Consent should be assumed for unconscious persons or persons incapable of providing consent.

Commented [TJ120]: Seattle 8.2

~~Officers shall automatically request medical aid for persons who have been struck, contacted, or contaminated by the following force options, regardless of injury:~~

- ~~➤ Lethal ammunition fired from a firearm;~~
- ~~➤ Electronic Control Weapons, whether probe or drive stun;~~
- ~~➤ Specialty Impact Munitions;~~
- ~~➤ Impact or impromptu impact weapon strikes with contact; or~~
- ~~➤ Oleoresin Capsicum spray.~~

E. USE OF FORCE - LEVELS OF RESISTANCE

~~Resistance (Section E, LEVELS OF RESISTANCE) and response (Section F, LEVELS OF FORCE) are dynamic. The engaged person's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the engaged person is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (Section E) and force which may be used to overcome that resistance (Section F) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.~~

Commented [TJ121]: Is there a need for an explanatory sentence here? Possibly to explain why it is that these are called out specifically?

Commented [TJ122R121]: I moved the last part of section F, which had been moved to the beginning of section F, to here: the beginning of section E. This introduces these two sections and hopefully allows for the purpose to be made clear.

Commented [AV123]: Reorient policy to focus on officer conduct and UOF at all times. Resistance may only be one consideration in totality of circumstances standard. Not opposed to including levels of resistance and noncompliance in training but UOF policy levels should not be correlated to this 1 aspect.

~~Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.~~

Commented [TJ124]: Is there a better word than "subject"?

Find the "Note" that disappeared. (Found it, it's still in F)

~~Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threat/imminent threats to their safety or the safety of others.~~

Commented [TJ125]: DC Metro, Use of Force Framework

Commented [TJ126]: Denver 105.01 5, b

E-1. Non-Compliance

Commented [TJ127]: Seattle 8.05

~~Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.~~

Commented [TJ128]: SFPD p. 5

Passive Resistance

~~Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.~~

Commented [TJ129]: Denver 105.01 3, c

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~~Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.~~

Commented [TJ130]: Denver 105.01 3, b

Active Resistance

~~Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.~~

~~Verbal responses indicating an unwillingness to comply with an officer's directions which **do** rise to the level of threats are also considered active resistance.~~

Assaultive Resistance

~~Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.~~

Commented [TJ131]: SFPD p. 6

Life Threatening Resistance

~~Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person.~~

Commented [TJ132]: Physical movements which demonstrate an intent and present ability...

F. LEVELS OF FORCE

Note: Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as of de-escalation attempts both before and after any use of force incident.

Contact Controls

~~Low level physical tactics used to gain control and overcome **non-compliance** or **passive resistance**. These include physical control techniques (e.g. pulling, pushing, or maneuvering an engaged person's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.~~

Compliance Techniques and Defensive Tactics

Commented [TJ133]: Overcoming passive

~~Low level physical tactics used to gain control and overcome **passive resistance** and **active resistance**, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome **passive resistance** shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.~~

~~Techniques and tactics to overcome **passive resistance** include control holds, **objectively reasonable** takedowns, and non-striking use of the baton. OC spray shall not be used on those engaged persons who go limp or offer no physical resistance.~~

Commented [TJ134]: Added, also in G-3

~~Techniques and tactics to overcome active resistance include control holds, oleoresin capsiem (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.~~

Intermediate Less Lethal Force

~~Intermediate level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome active and assaultive resistance, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsiem (OC) spray, police canines, and specialty impact munitions.~~

Lethal Force

~~Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome life-threatening resistance. Lethal force includes, but is not limited to, impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.~~

G.E. COMMANDS AND PERMITTED LESS-LETHAL FORCE OPTIONS

Officers shall only use **objectively reasonable** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

Officers may use objectively reasonable **less-lethal** force options in the performance of their duties in the following circumstances:

- To effect a lawful arrest, detention, or search;
- To overcome resistance or prevent escape;
- To prevent the commission of a public offense;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: **Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.**

E1. Presence/Command Options

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are ~~not a use of force but which are essential~~ **encouraged** in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is

Commented [TJ135]: Style staying uniform

Commented [TJ136]: Ensure we reconcile with H-1

Commented [TJ137R136]: Both now read "force that creates a substantial risk of causing great bodily injury or death"

Commented [TJ138]: Seattle 8.2

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Commented [TJ139]: AB 392, 835a(b) PC

Commented [AV140]: Reorganized as lethal force (necessary standard); less lethal force (objective reasonable standard); and prohibited force.

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used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, **De-Escalation**).

E2. Physical Control/Personal Weapons Options Compliance and Contact Controls

~~Depending on the manner and intensity in which they are used, **Physical Control/Personal Weapons Options** may fall into multiple force levels: **Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less Lethal Force.**~~ Less than lethal physical tactics used to maintain safety or to defend against a non-lethal imminent threat of great bodily injury. While not intended to cause serious or lethal injury, these techniques may cause transitory pain or discomfort. These options include, but are not limited to:

- ~~➤ Escorts and physical body manipulation without pain compliance~~
- Control Holds. This is the lowest level of physical force which includes physical force to escorts, physical manipulation without pain compliance, or simply using a firm grip. This level of force is not intended to cause any harm or injury;
- Takedowns;
- Vulnerable Area manipulation;
- Bean bags rounds; and
- Personal Weapon strikes—NOTE: Personal Weapon strikes to a restrained person are considered Intermediate Less Lethal Force. Strikes to disarm/disable a imminent threat.

~~Absent exigent circumstances, all~~ **All Physical Control/Personal Weapons Options** shall be compliant with Oakland Police Department policy and training. Refer to **Training Bulletin III-I.1, Weaponless Defense.** Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use.

E3. Requirement to Carry at Least One Less-Lethal Tool

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool.

Less Lethal Tool Options

~~Less lethal tools are used to interrupt an engaged person's threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications. Less lethal tools alone cannot be expected to render an engaged person harmless.~~

Commented [TJ141]: Seattle 8.3

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~~Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.~~

Commented [TJ142]: Seattle 8.3

~~Less-lethal tools most often fall into the level of Intermediate Less-Lethal Force, although certain tools, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).~~

~~Less-lethal tools, depending on the nature of the tool and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific tool. Important warnings regarding specific less-lethal tools, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.~~

~~The Less-lethal tools authorized by the Department include:~~

~~Patrol Canine—See **DGO K-09**, *Department Canine Program*~~

~~Electronic Control Weapon (ECW)—See **DGO (Lexipol) 304**, *Electronic Control Weapon (TASER)*~~

~~**Important warning:** When feasible, a verbal warning of the intended use of the ECW shall proceed its use, to warn the engaged person and other officers.~~

~~**Impact Weapons:** Includes the ASP® expandable baton, long wood baton, and short wood baton—See **Training Bulletin III-H.02**, *Hand-held Impact Weapons*~~

~~**Important warning:** Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.~~

~~**Specialty Impact Weapons:** Includes direct-fired ranged impact munitions, regardless of weapons platform—See **Training Bulletin III-H**, *Specialty Impact Weapons*~~

~~**Important warning:** SIM use during crowd control situations is further limited—see **Training Bulletin III-G**, *Crowd Control and Crowd Management*.~~

~~**Oleoresin Capsicum (OC) Spray**—See **Training Bulletin V-F.02**, *Chemical Agents*~~

~~**Important warning:** OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.~~

~~**Important warning:** OC spray shall not be used on passive resisters who go limp or offer no physical resistance.~~

Commented [TJ143]: Add prohibited areas here.

Commented [TJ144R143]: See above paragraph added plus “Important Warning”

Commented [TJ145]: Language from the TB V-F.02 on decontamination and medical assistance:

Steps to Decontaminate a Person Exposed to a Chemical Agent 1.Steps to Decontaminate a Person Exposed to Level 1 and Level 2 Contamination Perform the following steps to help decontaminate a person exposed to level 1 and 2 contamination: a.Remove the contaminated individual from the contaminated environment. b.Calm the subject and remind the subject to breathe normally and relax. c.Monitor the subject’s condition. d.Summon medical attention to the scene for the purpose of flushing the contaminated areas. Any subject exposed to chemical agents must receive medical assistance as soon as practical. e.Flush the contaminated area with copious amounts of cool water. The effects of the chemical agent should dissipate within 30 to 45 minutes 1)Do Not rub the affected area. Do Not use creams, salves, or lotions to ease the pain. 2)Do Not leave the individual unattended.

After officers handcuff a subject, the subject should be turned on his/her side or placed in a seated position. Medical assistance should be summoned as soon as practical. The subject should not be left unattended while waiting for medical response.

Commented [TJ146]: Want to ensure this does not preclude less-lethal force options to safely resolve situations of an armed unresponsive person or similar.

~~Crowd Control and Tactical Team Chemical Agents—See Training Bulletin V-F.02, Chemical Agents and Training Bulletin III-G, Crowd Control and Crowd Management.~~

~~(e.g. ECW, impact weapon, and/or OC).~~

Restrictions on Use of Less Lethal Force Against Restrained Persons

~~—Officers are prohibited from using less lethal tools against restrained persons unless that person is exhibiting Assaultive or Life-Threatening resistance or there is an immediate threat/imminent threat of serious or great bodily injury or death.~~

H.F. USE OF FORCE – PERMITTED LETHAL FORCE OPTIONS

Lethal force is any force that creates a substantial risk of causing great bodily injury or death. Lethal uses of force must be **necessary, proportional** to the level of resistance or threat posed, or urgency of the situation, to achieve the lawful purpose or objective. ~~These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person.~~ Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an ~~immediate threat/imminent threat/imminent threat~~ of death or serious bodily injury to another person or officer.

For the purpose of this section of the policy, the term “firearm” shall indicate firearms loaded with lethal ammunition.

Lethal uses of force are only permitted in narrow circumstances announced herein.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

F1 Drawing, Exhibiting, or Unholstering Firearms

~~Officers are only permitted to point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to create an imminent threat that would justify lethal force. An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others.~~ The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when ~~justified by appropriate circumstances~~ the conditions under this policy are met, and the

Commented [TJ147]: Seattle 8.3

Commented [AV148]: Removed. “Use of force on restrained subjects” added into prior section on general policy considerations for UOF

Commented [TJ149]: AB 392, 835a(e)(1) PC

Commented [TJ150R149]: F-4 says “Any use of force substantially likely to cause great bodily injury or death”

Commented [TJ151]: AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

Commented [AV152]: AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

Commented [AV153]: Exchanged standard from “pointing firearm” section below

Commented [TJ154]: Seattle 8.3

drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see **DGO K-04, Reporting and Investigating the Use of Force**).

~~When an officer determines that the threat is over, the~~ The officer shall holster his or her firearm, when feasible.

Commented [TJ155]: Seattle 8.3

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

Commented [TJ156]: AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

F2 Pointing Firearms at a Person

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.⁵ The pointing of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers.

Commented [AV157]: AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

~~An officer may draw, exhibit, or unholster their firearm in the line of duty only when necessary to defend against an imminent threat. Officers are only permitted to point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to create an imminent threat that would justify lethal force.~~

Commented [TJ158]: Seattle 8.3

If an officer points a firearm at a person ~~the officer, the person shall,~~ when safe and feasible, ~~be advised~~ shall advise the person of the reason why the officer(s) pointed the firearm. ~~When an officer determines that the threat is over, the~~ The officer shall cease pointing his or her firearm, when feasible.

Commented [TJ159]: SFPD p. 12

Commented [TJ160R159]: Keep working here – feasible might cause an issue with compromising investigations or having multiple officers explain their use of force.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

Commented [TJ163R162]: Changed to the passive voice. This allows for multiple things:
-Field supervisors can come and take a complaint or resolve a situation, and advise of the reasons why force was used;
-Investigators can explain why force was used on a subject after the investigatory interviews are done, avoiding compromising the investigation;
-One officer (such as FTO, senior officer on scene, Sergeant, etc.) explains the entire incident, as opposed to each officer being required to speak to the subject
-Specialized units (e.g. CIT, negotiators) developing and keeping rapport and using that rapport to explain the situation.

F3 Discharging Firearms at a Person

An officer is justified in discharging a firearm at another person only when ~~the officer believes~~ that the discharge is necessary for either of the following reasons:

- a. To defend against an ~~immediate threat~~ imminent threat ~~imminent threat~~ of death, great bodily injury, or serious bodily injury to the officer or another person; or
- b. To apprehend a fleeing person for a felony when all of the following three conditions are met:
 - i. There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - ii. The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and

Commented [TJ161]: Seattle 8.3

Commented [TJ162]: AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

Commented [AV164]: AB 392 sets more restrictive “necessary” standard for lethal use of force

SB 230 requires specific and detailed policy on when officer may unholster, exhibit, threaten to discharge weapon

⁵ *Robinson v. Solano County*, 278 F. 3d 1007 (9th Cir. 2002)

- iii. There are no other reasonably available or practical alternatives to apprehend the person.

Whenever feasible, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used.

Commented [TJ165]: AB392 835a(a)(2) PC, 835a(c)(1)(A) and (B)

Discharging Firearms at Moving Vehicles

~~Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.~~

~~Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator. Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a vehicle ramming mass casualty attack.~~

~~Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:~~

~~Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat/imminent threat of death, great bodily injury, or serious bodily injury by means other than the vehicle;~~

~~Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury where the officer or other person has no reasonable avenue of protection or escape.~~

~~Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a vehicle ramming mass casualty attack.~~

~~Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator. Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a vehicle ramming mass casualty attack.~~

Discharging Firearms from Moving Vehicles

~~Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with life-threatening resistance. This behavior is strongly discouraged and should be considered a last resort.~~

Commented [TJ166]: Seattle 8.3

Discharging Firearms at Animals

~~Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:~~

Commented [TJ167]: Added this to control all discharges of firearms against animals.

~~Against a dangerous animal to deter an attack or to prevent injury to persons present; or~~

Also, removed euthanizing: per OAS staff, they have a 24/7/365 staffer that can be summoned via Communications to euthanize badly injured animals. They also have contractual ties with VCA San Leandro, a 24/7 Vet clinic.

Commented [TJ168]: Seattle 8.3

~~If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.~~

~~Other than when the animal presents an immediate threat/imminent threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.~~

~~General Prohibitions Regarding Firearms~~

~~Officers are prohibited from the following actions:~~

~~Using firearms as impact weapons, unless any of the following circumstances exist:~~

~~When a person is attempting to take the firearm away from the officer;~~

~~When lethal force is permitted; or~~

~~When using long gun specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;~~

~~Firing warning shots; and~~

~~Life is sacred and the loss of life due to the actions of a Department officer will be addressed swiftly, transparently, and seriously. No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision-making when using force options.~~

~~The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. Any deviations from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.~~

F4 Discharging Firearms at Animals

~~e.a. Officers may discharge firearms at animals only under the following circumstance AND when it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:~~

- ~~i. Against a dangerous animal to deter an attack or to prevent injury to persons present.~~

Force Likely to Cause Great Bodily Injury or Death

~~Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:~~

- ~~➤ Intentional impact weapon strikes to the head; and~~

Commented [TJ169]: Needs to reference that need to take every effort to have Animal Control manage these situations.

Commented [TJ170R169]: Added the feasibility test to all uses of firearms against animals, above.

Commented [TJ171]: Reiteration of reliance on OAS as primary option.

Also changed from patrol district sergeant to supervisor or commander to allow for more flexibility (e.g. if patrol district sergeant is unavailable, Watch Command LT can respond). Supervisors and commanders are rank of Sergeant and above.

Commented [TJ172]: Seattle 8.3

Commented [TJ173]: Added – this was missed in previous iterations but is a taught technique.

Commented [AV174]: Remove altogether? Need more information: How often do police get animal calls? Why is the policy lethal force the only consideration? Why would there need to be a supervisor/commander to come out to put the animal down if there's no imminent threat?

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~~➤ Intentional use of a vehicle, at any vehicle speed, to strike the person of another.~~

~~— Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:~~

~~➤ To defend against an immediate threat imminent threat of death or serious bodily injury to the officer or another person; or~~

~~➤ To apprehend a fleeing person for a felony when the following three conditions are met:~~

- ~~• There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;~~
- ~~• The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and~~
- ~~• There are no other reasonably available or practical alternatives to apprehend the person.~~

G. PROHIBITED USES OF FORCE

G - 1. General Policy

The Department recognizes and affirms that uses of force may often be incongruent with the Department's mission and purpose which considers the protection of human life paramount. Thus, certain uses of force are absolutely prohibited in all instances. The reasons for prohibition may vary including legal mandate, public mandate, and centering the protection of human lives.

G - 2. Prohibited Force

The following techniques, mechanism, tools, and uses of force are prohibited and banned from use in the Department. Any such use will result in immediate disciplinary action up to, and including termination.

Prohibited uses of force against persons include:

- ~~➤ Restraints that obstruct breathing and/or the airway. Such restraints include, but are not limited to: carotid restraints; chokeholds; sitting, kneeling, standing, or pressing on a person's head, neck, throat, and/or chest. For purposes of this section, "Carotid Restraint Hold" means a physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.~~

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California Peace Officers are required by the Commission on Peace Officer Standards and Training (POST) to demonstrate competency in the carotid restraint hold during the basic police academy. The carotid restraint hold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using the carotid restraint hold. For purposes of this section, “**Chokehold**” means a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold. A chokehold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using chokeholds:-

- Chemical agents including, but not limited to: tear gas, CS gas, and other airborne chemical weapons;
- Electrical conducting weapons including, but not limited to: taser dart guns and electrified batons;
- Projectile weapons other than those listed in the “Permitted Less-Lethal Force Options” and “Permitted Lethal Force Options”-;
- Warning shots with a firearm;
- Police canines;
- Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack;**
- Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:
 - Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant’s imminent threat of death, great bodily injury, or serious bodily injury by means other than the vehicle;

Commented [TJ175]: Prohibitions for this and chokeholds (B-2) added 17 Jun 2020

Commented [AV176]: Reorganized from “definition” section B. Does not make sense to include only some prohibited uses of force in definitional section that will apply to the entire policy

Commented [AV177]: this is intended solely for uses of force against persons and do not prohibit canine uses, for example, in search and rescue operations.

~~While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.~~

Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

H - 3. Reporting Use of Force

Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.

The Department shall promptly notify and report uses of force, including all lethal uses of force, in accordance with this policy, the Department Manual of Rules, and all applicable court orders.

~~Any officer when present and observing another officer using force that the officer believes to be beyond that which is lawful and permitted under this policy must promptly report the force to a superior officer.~~

~~a.~~

~~Alameda County District Attorney's Office;~~

I. REVIEW OF USES OF FORCE

I - 1. Principles of Review

> Transparency

The Department is committed to maintaining transparency in its internal reviews of any instances of use of force.

The Department shall also promptly publicly release official records relating to uses of force resulting in grievous bodily injury and/or death including, but not limited to names of officers involved, body camera footage, and official 911 reports.

> Cooperation and Non-Interference

The Department and all officers shall refrain from actions, statements, conduct and/or policies that interfere with, obstruct, and/or undermine review of use of force by the Department or any other agency. This also includes affirmative cooperation with other agencies conducting parallel reviews.

> Retaliation Prohibited

Commented [AV183]: SB 230 requires detailed and specific review policy including: role of supervisors; prompt process for notification and reporting; factors for evaluating and reviewing all uses of force;

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The Department is prohibited from retaliating against any employee who engages in any lawful conduct or activity including, but not limited to, interceding in uses of force and reporting uses of force as provided in this policy. Retaliation is likewise prohibited for cooperating, assisting, documenting, testifying, or in any way participating in the review of a use of force.

I-3.I-2. Administrative Leave after Lethal Force Incidents

Officers involved in a lethal force incident shall be placed on unpaid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

I-3. Review of Use of Force

The following announce the standards required for review of uses of force.

> Internal Reporting and Notifications

As soon as feasible following any use of force, an officer must notify an immediate supervisor about the use of force and provide a report by documenting the force using the required forms.

A supervisor receiving notification of use of force must ensure a report documenting the incident is completed within 24 hours of the force whenever feasible.

A supervisor must respond to the scene for any notifications of use of force that is unlawful under this policy and/or use of force that results in death.

The Department shall send notification of all instances of uses of force in writing to:

- A. the California Department of Justice in compliance with Gov't Code §12525.2;
- B. The Oakland Police Commission pursuant to.....
- D. The Chief of Police and/or Mayor's Office; and
- E. The independent federal monitor and related counsel pursuant to the Negotiated Settlement Agreement.

All uses of force must be reported as soon as feasible and no later than the end of the officer's shift.

> At the Scene

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The following procedures and requirements apply when responding to and investigating any use of force at the scene of the incident.

• Involved Officers

When conducting use of force review at the scene of an incident, any involved officer shall be isolated and kept apart from other communicating with other officers and Departmental staff including physical separation and communication cut off through cell phones and dispatch channels.

Involved officer(s) must provide a statement for the Use of Force report whenever feasible. All involved officer statements must be made prior to officer's review of written reports, audio or video recordings, or other event summaries and recollections. The involved officers must be able to articulate clearly the reasons for the use of force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

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• Use of Force Report

The on-scene supervisor or superior officer at the scene is responsible for completing the appropriate Use of Force reporting form and determining whether supplemental reports are necessary. The Use of Force report must document all physical evidence including photographs and summary and analysis of evidence collected and identified. The supervisor must also document why any portion of the Use of Force report is not completed.

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• Non-Departmental Witnesses

The on-scene supervisor or superior officer at the scene is responsible to locate and to identify non-departmental witnesses that may have information helpful to a thorough and fair review. Identification including name, address, and phone contact shall be documented and shall state if and why this information was unavailable to the reporting officer. Whenever feasible, interviews of non-departmental witnesses should take place at the scene or as soon as possible thereafter. Any identification of and reports from non-departmental witnesses must be included in the Use of Force report form.

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• Resources for Bystanders

The on-scene supervisor or superior officer at the scene is responsible for assessing bystander support needs which may include counseling and other mental health services after a use of force incident. Referrals to non-law enforcement resources must be made available to

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any person who requests them. Any such requests and referrals must be documented in the Use of Force reports.

• **Notification to Victims' Families**

In the event of a use of force that results in death or grievous bodily injury, the Department must promptly identify the relatives including: next of kin, legal guardian, and/or legal dependents. The Department must promptly notify the relatives of the victim's condition and location with information on how to contact the Department in response. In all instances, the Department must provide notice to families before releasing any information to the public that would identify the victim.

➤ **Agency Review**

The Department shall promptly conduct an internal agency review all uses of force. Life is sacred and the harm to or loss of life due to the actions of a Department officer will be addressed swiftly, transparently, and seriously. This policy shall serve as evidence in any review process. However, no policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision-making when using force options.

Any deviations from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis.

• **Materials Considered in Review**

Records and materials appropriately considered in review of use of force include:

- Use of Force policy and related training bulletins;
- Use of Force Report and included attachments;
- Dispatch calls and reports;
- Body worn camera footage; and
- Footage and documents from non-departmental witnesses

Records will be given little to no weight in the review proceedings if any of the following are present:

- Boiler plate language and/or repetition of statutory language. E.g. "suspect's actions made lethal force necessary under the law";
- Indicia of evidence tampering, editing, including unlawful and excessive redactions;
- Missing chain of custody record;

• **Standards of Review**

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Officers shall only use **objectively reasonable less-lethal** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

Commented [TJ186]: Seattle 8.2

Lethal uses of force must be **necessary, proportional** to the level of resistance or threat posed, or urgency of the situation, to achieve the lawful purpose or objective. ~~These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person.~~ Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an ~~immediate threat~~ imminent threat of death or serious bodily injury to another person or officer.

Commented [TJ187R186]: F-4 says "Any use of force substantially likely to cause great bodily injury or death"

An action is necessary if objectively reasonable and required under the totality of the circumstances. In determining whether deadly force is necessary, officers shall evaluate each situation in light of particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible. Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action.

All review proceedings must meet the following minimum standards:

- Provide written summary of all records used in the review;
- An encounter may involve multiple uses of force. Each use of force shall be reviewed separately with the other(s) as consideration in the totality of the circumstances;
- Written decision of whether the use(s) of force complied with departmental policy and training;
- Written specific and detailed findings supporting the decision on whether force used complied with Departmental policy and training;
- Opportunity for officers to dispute findings and/or records relied on to make findings;
- Accessibility to ensure fair and full participation including, but not limited to, language translation and disability access tools.

• Review by Force Review Board.

Findings and conclusions of all reviews shall be documented and maintained as a regular business record of the Department and a copy of all review records placed within the personnel file of the involved officer(s).

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All internal reviews of uses of force shall be reviewed again by the Force Review Board pursuant to the NSA.

➔

➔ External Reviews

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J. TRAINING

J - 1. Annual Training on Use of Force Policy

Sworn officers of all ranks, and professional staff members who are trained on and authorized to use ~~specific~~ any force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher training distributed via Department intranet or other document management system.

Training must include guidelines regarding vulnerable populations including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

All supervisors shall receive annual training on Departmental review of uses of force and responding to scenes of use of force.

Commented [TJ188]: Comport with CPT 18 months?

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J - 2. Use of Force Policy Training Incorporation into Practical Other Departmental Training

All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the force options or skills being practiced are specifically evaluated and used in light of this policy.

J - 3. Training Bulletins

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins. This document supersedes any conflicting training content.

Commented [TJ191]: Create Appendix 1 – Referenced policies and training bulletins.

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K. MUTUAL AID

This policy shall remain in effect at all times including when the Department provides and/or receives mutual aid. A copy of this policy must be attached or included with all requests for mutual aid.

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By order of

DEPARTMENTAL GENERAL ORDER K-03
OAKLAND POLICE DEPARTMENT

Effective Date

Susan Manheimer
Interim Chief of Police

Date Signed: _____

DRAFT

DEPARTMENTAL GENERAL ORDER K-03
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OPD Highlighting Guide/Bibliography

Note: This draft includes liberal borrowing of ideas, and oftentimes exact phrasing, from a multitude of sources, including the policies, laws, and decisions listed below. While the attempt was made to highlight all instances where ideas or exact phrases borrowed from other sources occur in this document, some may have been missed. Where **possible/feasible**, direct references to borrowed phrasing is noted. Any places where credit was not appropriately attributed is an error solely of the drafter of this policy.

Commented [AV192]: Provided by Sgt Joseph Turner to June draft

Assembly Bill 392 – text of Penal Code § 835a, which takes effect January 1st, 2020;

Denver Police Policy on Use of Force – Includes content from Denver PD Operations Manual 101.00 (General Philosophy), 105.01 (Use of Force Policy), 105.02 (Force and Control Options), 105.03 (Reporting), 105.04 (Shooting by and/or of Police Officers), and 105.05 (Use of Force Review Board)

New Orleans Police Department Policy on Use of Force – Includes content from NOPD Operations Manual Chapter 1.3, Title: “Use of Force”

Camden County Police Department Order on Use of Force – Effective date January 28th, 2013, revision date August 21st, 2019.

District of Columbia Metropolitan Police Department General Order on Use of Force – Effective Date November 3rd, 2017

Cleveland Division of Police General Order on De-Escalation – Effective Date January 1st, 2018

Seattle Police Department Manual, Title 8 – Use of Force. Includes Chapters:

- 8.000 - Use of Force Core Principles (Effective Date September 15th, 2019)
- 8.050 - Use of Force Definitions (Effective Date September 15th, 2019)
- 8.100 - De-Escalation (Effective Date September 15th, 2019)
- 8.200 - Using Force (Effective Date September 15th, 2019)
- 8.300 - Use of Force Tools (Effective Date September 15th, 2019)
- 8.310 - OC Spray Chain of Custody (Effective Date September 1st, 2019)
- 8.400 - Use of Force Reporting and Investigation (Effective Date September 15th, 2019)
- 8.500 - Reviewing Use of Force (Effective Date September 15th, 2019)

National Consensus Policy on Use of Force – International Association of Chiefs of Police, October 2017

San Francisco Police Department General Order 5.01, Use of Force – Revised December 21st, 2016.

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California Jury Instructions 3160, Great Bodily Injury – CalCRIM 2017 Edition, Judicial Council of California.

Graham v. Connor, 490 U.S. 386 (1989)

Sources of ACLU Input/Guidance on policy suggestions:

1) Organization/Individual input

- ACLU statewide police practices team and northern CA criminal justice team
- RAHEEM council members and organizations;
- Public comment
 - Police Commission meetings
 - July 23, 2020, item #12 “Use of Force Ad Hoc Public Engagement”
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 - NAACP Richmond Policing Townhall (August 15, 2020) (public forum hosted via Zoom)

2) Existing State Law/policy

- [SB 230](#) Caballero– passed and goes into effect Jan. 1, 2020
 - adds chapter 17.4 to Gov’t Code and add Penal Code 13519.10 requiring POST revised training on UOF and any policy must provide guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public.
- [SB 1421](#)

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- amend sections 832.7 and 832.8 of the Penal Code making disclosable under the PRA peace officer records of (1) any use of force resulting in grievous bodily injury and/or lethal use of force; (2) sustained incidents of sexual assault by a peace officer; and (3) sustained incidents of dishonesty by a peace officer.
- [AB 392](#) (Weber)
 - Amend Sections 196 and 835a of the Penal Code. Revised use of force standard for lethal force to “necessary” based on totality of circumstances analysis which is higher standard than previous
- The 1925 Geneva Protocol categorized tear gas as a chemical warfare agent and banned its use in war shortly after World War I. In 1993, nations could begin signing the U.N.’s Chemical Weapons Convention (CWC) that outlawed the use of riot control agents in warfare
-

3) Proposed State Law/policy

- [AB 2054 CRISES Act](#) (Kamlager)
 - Would amend Gov’t Code 8601 to provide grants for 3 years for community-based alternatives to emergency mental health, intimate partner violence, community violence, substance abuse, and natural disasters calls
- [AB 846](#) (Burke)
 - Would amend Gov’t Code 1031 and adds 13651 of the Penal Code to require POST include bias training and bias is a basis for disqualification; requires departments to review all job postings to remove emphasis on paramilitary aspects of employment and train with emphasis on “community-based policing, familiarization between law enforcement and community residents, and collaborative problem solving”
- [AB 1709](#) (Weber) – expansion of AB 392
 - Would further amend Penal Code 835a after AB 392 to require officers use de-escalation tactics, as defined, in an effort to reduce or avoid the need to use force, to render medical aid immediately or as soon as feasible, and to intervene to stop a violation of law or an excessive use of force by another peace officer. This bill would define “necessary” to mean that, as specified, there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to another person.

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- [AB 1022](#) (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force.
 - Would amend Govt Code 1029 to require officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force, prohibit retaliation against officers that report violations of law or regulation of another officer to a supervisor, as specified, and to require that an officer who fails to intercede be disciplined in the same manner as the officer who used excessive force.
- [AB 1291](#) (Salas) proposes reporting requirements from agencies to POST about disciplined and separated officers
 - This would add 13510.6 to the Penal Code requiring any agency that employs peace officers to notify the POST when a peace officer separates from employment, including details of any termination or resignation in lieu of termination, to notify the commission if an officer leaves the agency with a complaint, charge, or investigation pending, and would require the agency to complete the investigation and notify the commission of its findings. The bill would require the commission to include this information in an officer's profile and make that information available to specified parties including any law enforcement agency that is conducting a preemployment background investigation of the subject of the profile.
- [SB 731](#) (Bradford) proposed decertification standards incorporating the Bane Act
 - Would amend Gov't C 1029 and add Penal Codes 13503 et seq. to require reporting of officer misconduct and provide bases to decertify officers with POST so that they cannot be re-employed as peace officers anywhere else
- [AB 66](#) (Gonzalez, Kalra)
 - Would amend sections 7286 and 12525.2 of the Government Code, and to add Section 832.14 to the Penal Code to prohibit the use of kinetic energy projectiles or chemical agents to disperse any assembly, protest, demonstration, or other gathering of persons and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would prohibit the use of chloroacetophenone tear gas or 2-chlorobenzalmalonitrile gas to disperse any assembly, protest, demonstration, or other gathering of persons.
- [SB 776](#) (Skinner)

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- Would further amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code to expand SB 1421 access to peace officer records including: any use of force, unlawful arrests and searches, sustained incidents of prejudice or discrimination by a peace officer
 - [AB 1314](#) (McCarty)
 - Add 12525.3 to Gov't code creating annual public posting requirements of legal settlements paid for UOF incidents by local gov'ts
 - [AB 1652](#) (Wicks)
 - amend Section 7286 of the Government Code, and to amend Sections 148 and 408 of the Penal Code to ban using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Intentional violations mandate officer suspension.
 - [SB 629](#) (McGuire) proposes to ensure media access to protests and demonstrations. Violation would be a misdemeanor.
 - add Section 409.7 to the Penal Code to prohibit a peace officers from assaults, interference with, or obstructing a duly authorized media representative who is gathering, receiving, or processing information for communication to the public during protest, demonstration, march, gathering, or other constitutional activities. Punishable as misdemeanor.
 - [AB 1506](#) (McCarty)
 - Adds Section 12525.3 to the Government mandates independent Cal Dept of Justice investigation on any request by law enforcement, city, county, board of supervisors, city council, or district attorney, and establishes new investigatory unit
 - [SB 773](#) (Skinner)
 - Amend 53115.1 of the Government Code to revise composition of state 911 Advisory Board to include welfare and health directors. Goal is “when an incident involves an issue of mental health, homelessness, and public welfare, the calls are directed to the appropriate social services agency and not to law enforcement”
 - [AB 1196](#) (Gibson) proposed
 - Would add Section 7286.5 to Gov't code to ban carotid restraint or a choke hold, and techniques or transport methods that involve a substantial risk of positional asphyxia
- 4) Local law/policy
- Oakland City Council Resolution No. 88167 (June 16, 2020; passed as item 2.21 with unanimous approval from council).

Commented [AV193]: All Oakland city council meetings and related documents can be found at: <https://oakland.legistar.com/calendar.aspx>. Click on “minutes” for appropriate meeting date. Minutes document includes internal links to legislation proposed and adopted.

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- UCSF questions TASER safety studies. Jan 22, 2009 [article](#). May 6, 2011 [article](#).
 - Amnesty International “[Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment](#)” (April 2015)
 - Teargas/chemical weapons
 - Health effects
 - Emily Deruy, “[Coronavirus: Public health experts urge police to stop using tear gas during the pandemic to prevent spread](#)” Mercury News (June 2, 2020)
 - Dhruvi Chauhan et al., “[Using tear gas on protesters perpetuates patterns of reproductive harm](#)”, The Hill (June 26, 2020).
 - The Realist Woman, “[Protesters Blame Tear Gas For Multiple Periods In A Month’s Time](#)” (July 8, 2020)
 - OPD reports
 - OPD Bureau of Services Training Section 2010 [annual report](#)
 - MOUs
 - [OPOA MOU](#) (effective until June 30, 2024)
 - [OPMA MOU](#) (effective until June 30, 2024)
- 5) Court Orders
- Negotiated Settlement Agreement (“NSA”) in Allen et al. v. City of Oakland et al. Case No. C00-4599 THE (JL) and reports of the Independent Monitor
 - Task 24: UOF notification and reporting policy and procedures
 - Task 26: review of UOF
 - [Injunction ordered](#) in APTP et al. v. City of Oakland et al., case no 3:20-cv-03866-JSC dated June 18, 2020
 - Federal Judge in Seattle grants a preliminary injunction prohibiting use of tear gas in effect currently until Sept. 30, 2020

Commented [AV194]: NSA and all related reports and docs available [HERE](#)

Sources of ACLU Input/Guidance on policy suggestions (August Draft)

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- ACLU statewide police practices team and northern CA criminal justice team
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 - amend Section 7286 of the Government Code, and to amend Sections 148 and 408 of the Penal Code to ban using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Intentional violations mandate officer suspension.
 - [SB 629](#) (McGuire) proposes to ensure media access to protests and demonstrations. Violation would be a misdemeanor.
 - add Section 409.7 to the Penal Code to prohibit a peace officers from assaults, interference with, or obstructing a duly authorized media representative who is gathering, receiving, or processing information for communication to the public during protest, demonstration, march, gathering, or other constitutional activities. Punishable as misdemeanor.
 - [AB 1506](#) (McCarty)
 - Adds Section 12525.3 to the Government mandates independent Cal Dept of Justice investigation on any request by law enforcement, city, county, board of supervisors, city council, or district attorney, and establishes new investigatory unit
 - [SB 773](#) (Skinner)
 - Amend 53115.1 of the Government Code to revise composition of state 911 Advisory Board to include welfare and health directors. Goal is “when an incident involves an issue of mental health, homelessness, and public welfare, the calls are directed to the appropriate social services agency and not to law enforcement”
 - [AB 1196](#) (Gibson) proposed
 - Would add Section 7286.5 to Gov’t code to ban carotid restraint or a choke hold, and techniques or transport methods that involve a substantial risk of positional asphyxia
- 4) Local law/policy
- Oakland City Council Resolution No. 88167 (June 16, 2020; passed as item 2.21 with unanimous approval from council).
 - establishes “zero-tolerance policy for City employees with respect to racist practices, behaviors, actions, and/or association and affiliation with white supremacist groups, organizations or cells” and specifically directing City Administrator to not hire and to terminate those found in violation.
 - City Council Resolution No. 88168 (June 16, 2020; passed as item #9 with 7 out of 8 council voting aye).
 - Resolution Urging The City Of Oakland To Immediately Halt The Use Of Tear Gas For Crowd Control During The Covid-19 Pandemic And

Requesting The Oakland Police Commission To Immediately Review And Propose Changes To The Oakland Police Department's Policy In Order To Halt Such Use directing Commission to draft a complete ban of tear gas during pandemic

- Oakland City Council Resolution No. _ (June 30, 2020; passed as item #8 with unanimous vote of the council)
 - Resolution Requesting The Oakland Police Commission To Immediately Review And Propose A Change To The Oakland Police Department's Use Of Force Policy That Would Ban The Use Of Carotid Restraints And Chokeholds Under Any And All Circumstances

- City of Berkeley complete ban on tear gas including mutual aid
 - The resolution was [proposed](#) by Mayor Jesse Arreguin citing incidents of use of teargas in Oakland by OPD. The Berkeley City council voted unanimously to approve the legislation on June 9, 2020.

- Taser disputes & policies
 - ACLU
 - Maryland best practices & guidance on tasers (2011)
 - Nebraska Taser use report (2007)
 - [Arizona taser report](#) (2011)
 - Correspondence to City of San Francisco concerning taser pilot program (July 2012)
 - Bar Association of San Francisco, "[Supplemental Memorandum in Support of the BASF's Recommendation Against Allowing Electronic Control Weapons \(ECVs\) formerly known as TASERS to be Adopted at this Time](#)" (Sept 18, 2017)
 - Eugene, OR taser use policy #309 (2011)
 - US DOJ COPS, "Conducted Energy Devices: Development of Standards for Consistency and Guidance" (Nov. 2006)
 - U.S. Commission on Civil Rights, "[Police Use of Force: An Examination of Modern Police Practices](#)" (Nov. 2018)
 - CBS "[United Nations: Tasers Are a Form of Torture](#)" (Nov. 25, 2007)
 - UCSF questions TASER safety studies. Jan 22, 2009 [article](#). May 6, 2011 [article](#).
 - Amnesty International "[Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment](#)" (April 2015)

- Teargas/chemical weapons
 - Health effects
 - Emily Deruy, "[Coronavirus: Public health experts urge police to stop using tear gas during the pandemic to prevent spread](#)" Mercury News (June 2, 2020)
 - Dhruvi Chauhan et al., "[Using tear gas on protesters perpetuates patterns of reproductive harm](#)", The Hill (June 26, 2020).

- The Realist Woman, “[Protesters Blame Tear Gas For Multiple Periods In A Month’s Time](#)” (July 8, 2020)

- OPD reports
 - OPD Bureau of Services Training Section 2010 [annual report](#)

- MOUs
 - [OPOA MOU](#) (effective until June 30, 2024)
 - [OPMA MOU](#) (effective until June 30, 2024)

- 5) Court Orders
 - Negotiated Settlement Agreement (“NSA”) in Allen et al. v. City of Oakland et al. Case No. C00-4599 THE (JL) and reports of the Independent Monitor
 - Task 24: UOF notification and reporting policy and procedures
 - Task 26: review of UOF

 - [Injunction ordered](#) in APTP et al. v. City of Oakland et al., case no 3:20-cv-03866-JSC dated June 18, 2020

 - Federal Judge in Seattle grants a preliminary injunction prohibiting use of tear gas in effect currently until Sept. 30, 2020

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15 **Pro Hac Vice Applications Forthcoming*

16 *Attorneys for Plaintiff*
17 *(Additional counsel on following page)*

18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20
21 DISABILITY RIGHTS CALIFORNIA, a
California nonprofit corporation,

22 Plaintiff,

23 vs.

24 COUNTY OF ALAMEDA; ALAMEDA
25 COUNTY BEHAVIORAL HEALTH CARE
SERVICES; and ALAMEDA HEALTH
26 SYSTEM,

27 Defendants.
28

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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INTRODUCTION

1
2 1. Plaintiff Disability Rights California (“DRC” or “Plaintiff”) brings this action
3 for declaratory and injunctive relief against Alameda County, Alameda County Behavioral
4 Health Care Services (“ACBHCS”), and Alameda Health System (“AHS”) (collectively,
5 “Defendants”). DRC challenges Defendants’ needless and illegal segregation of adults with
6 serious mental health disabilities into Alameda County’s psychiatric institutions. DRC also
7 challenges Defendants’ practice of subjecting adults with serious mental health disabilities to a
8 high risk of such institutionalization, including those experiencing homelessness and those who
9 have been incarcerated in Alameda County’s jail. Defendants must increase access to
10 community-based mental health services to end this unlawful and extremely damaging disability
11 discrimination.

12 2. Defendants’ failure to provide intensive community-based services puts adults
13 with serious mental health disabilities, especially Black adults with such disabilities, at constant
14 and high risk of unnecessary institutionalization. Alameda County’s psychiatric detention rate
15 for people with mental health disabilities is *more than three-and-a-half times the California*
16 *statewide average*. Defendants have detained more than 10,000 people in the County’s
17 psychiatric institutions since January 2018. During this time, Defendants have also detained
18 hundreds of people more than ten times, the majority of whom are Black. Some people have
19 been institutionalized more than 100 times. These “cycling admissions” are “the hallmark of a
20 failed system.” *United States v. Mississippi*, 400 F. Supp. 3d 546, 555 (S.D. Miss. 2019).

21 3. DRC is California’s Protection and Advocacy (“P&A”) system. It is
22 empowered and charged by federal law to protect the rights of California residents with mental
23 health disabilities. In 2018, DRC opened an investigation into Alameda County’s practices
24 regarding unnecessary segregation in the County’s psychiatric institutions. These institutions
25 include John George Psychiatric Hospital (“John George”), a public psychiatric hospital operated
26 by Alameda Health System, and Villa Fairmont Mental Health Rehabilitation Center (“Villa
27 Fairmont”), a locked psychiatric institution located on the same campus as John George. On
28 November 1, 2019, DRC issued a written probable cause finding detailing the results of DRC’s

1 investigation, attached herein as **Appendix A**. Specifically, DRC found probable cause to
2 believe that the mental health system's actions constitute abuse and/or neglect based on, *inter*
3 *alia*, Defendants' failure to provide people with serious mental health disabilities with needed
4 services in the most integrated setting appropriate. Because Defendants have failed to remedy
5 the issues identified in DRC's probable cause finding, DRC is compelled to now file suit.

6 4. DRC brings this action on behalf of adult Alameda County residents who have
7 serious mental health disabilities and who are unnecessarily segregated into the County's
8 psychiatric institutions or are at serious risk of being needlessly segregated into these institutions.
9 For the purpose of this action, DRC refers to these individuals—who are primary beneficiaries of
10 DRC's activities and advocacy—as “DRC Constituents.”

11 5. Defendants Alameda County and ACBHCS subject DRC Constituents to
12 unnecessary institutionalization and a serious risk of unnecessary institutionalization by failing to
13 provide timely access to intensive community-based services, which are necessary to prevent
14 DRC Constituents from requiring emergency psychiatric institutionalization or inpatient care.
15 These needed services include Full Service Partnerships, assertive community treatment,
16 rehabilitative mental health services, intensive case management, crisis services, substance use
17 disorder treatment, peer support services, supported employment, and supported housing.
18 Defendants Alameda County and ACBHCS operate existing services in a manner and amount
19 that is insufficient to meet DRC Constituents' needs, including systemic failures in the linkages
20 to and the delivery of services.

21 6. Defendant AHS, which owns and operates John George, subjects DRC
22 Constituents to unnecessary institutionalization and a serious risk of unnecessary
23 institutionalization by holding people in institutions longer than clinically appropriate, by failing
24 to develop individualized treatment and discharge plans for DRC Constituents detained at John
25 George, and by failing to ensure timely and effective implementation and coordination with the
26 County, ACBHCS, and community-based service providers.

27 7. If Defendants Alameda County, ACBHCS, and AHS collectively provided
28 needed, intensive, and culturally-responsive community services, Defendants would divert DRC

1 Constituents from psychiatric institutions such as John George and Villa Fairmont when
2 appropriate, patient stays in psychiatric institutions would be shorter, and DRC Constituents
3 could live stably in their own homes and communities with fewer psychiatric crises and better
4 outcomes.

5 8. Defendants' current policies and practices have dire effects on DRC
6 Constituents. Defendants' unnecessary institutionalization of DRC Constituents in psychiatric
7 facilities restricts their freedom to participate in life activities—such as family events,
8 educational opportunities, and stable employment—and perpetuates harmful stereotypes that
9 individuals with serious mental health disabilities are incapable or unworthy of community
10 participation.

11 9. Defendants' failure to provide adequate intensive community-based mental
12 health services causes many DRC Constituents to face homelessness and/or incarceration in the
13 County's Santa Rita Jail ("jail") for behaviors related to their mental health disabilities.
14 Approximately 50% of the people committed to psychiatric institutions in Alameda County while
15 homeless have also been incarcerated in the County's jail. A grossly disproportionate number of
16 those experiencing psychiatric institutionalization, incarceration, and homelessness are Black.

17 10. Defendants' failures, which result in needless institutionalization, also place
18 DRC Constituents at heightened risk of contracting COVID-19. Within the last two weeks,
19 COVID-19 has started spreading through Santa Rita Jail, and the risk of mass spread through
20 psychiatric facilities and homeless shelters in Alameda County is extreme. Defendants must
21 address the grave risk that COVID-19 poses to DRC Constituents by serving them in the
22 community with adequate community-based mental health services.

23 11. Unnecessary institutionalization causes irreparable harm. One DRC
24 Constituent, Azizah Ahmad, was detained at John George multiple times over the course of one
25 summer. Ms. Ahmad describes each experience with psychiatric institutionalization as leaving
26 her "with more trauma than she came in with." Her story and others are described herein.

27 12. Defendants' actions violate Title II of the Americans with Disabilities Act of
28 1990 ("ADA"), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act of 1973

1 (“Section 504” or the “Rehabilitation Act”), 29 U.S.C. §§ 794 *et seq.*, and California Government
2 Code sections 11135-11139 (“Section 11135”). The ADA and Rehabilitation Act forbid all
3 forms of discrimination against persons with disabilities, including needless unwarranted
4 institutionalization. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999). California law
5 provides similar protections.

6 13. Defendants’ unnecessary institutionalization of DRC Constituents and their
7 failure to provide needed intensive community-based services have irreparably harmed DRC
8 Constituents, and will continue to harm them irreparably unless this Court intervenes. In order to
9 prevent DRC Constituents’ unnecessary institutionalization, Plaintiff seeks an order from this
10 Court directing Defendants to provide needed intensive community services to DRC
11 Constituents, and effective linkages to ensure meaningful access to such services.

12 **JURISDICTION**

13 14. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1331, 28
14 U.S.C. § 2201, and 28 U.S.C. § 2202. A substantial, actual, and continuing controversy exists
15 between the parties. The Court’s exercise of supplemental jurisdiction over Plaintiff’s claims
16 under state law is proper, as the state law claims “are so related to [Plaintiff’s claims] that they
17 form part of the same case or controversy.” 28 U.S.C. § 1367(a).

18 **VENUE & INTRADISTRICT ASSIGNMENT**

19 15. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
20 §§ 1391(b)(1) and (2).

21 16. Defendants reside or are organized in the Northern District of California and the
22 events or omissions giving rise to this action arose in Alameda County, which is located within
23 the Northern District of California. Plaintiff Disability Rights California also has offices in
24 Alameda County, and its constituents reside in Alameda County.

25 17. While this action arises in Alameda County and would ordinarily be assigned to
26 the San Francisco or Oakland Division of the Northern District of California pursuant to Civil
27 Local Rule 3-2(c) and (d), this action concerns substantially the same parties as *Babu v. Cnty. of*
28 *Alameda*, Case No. 18-07677 (N.D. Cal.), which was filed on December 21, 2018, and is pending

1 before the Honorable Nathanael Cousins of the San Jose division of this Court. In order to avoid
2 an unduly burdensome duplication of labor and expense or conflicting results if the cases are
3 conducted before different Judges, this action should be related to *Babu* and assigned to
4 Magistrate Judge Cousins pursuant to Civil Local Rule 3-12.

5 **PARTIES**

6 **Plaintiff DRC and its Constituents**

7 18. Plaintiff Disability Rights California is a federally funded nonprofit corporation
8 organized under the laws of the State of California, with offices in Oakland, Sacramento, Los
9 Angeles, Fresno, Ontario, and San Diego. DRC’s mission is to advocate, educate, investigate,
10 and litigate to advance the rights and dignity of all people with disabilities.

11 19. The State of California has designated DRC to serve as California’s Protection
12 and Advocacy (“P&A”) system for individuals with disabilities, pursuant to the Developmental
13 Disabilities Assistance and Bill of Rights (“DD”) Act, 42 U.S.C. §§ 15041 *et seq.*, the Protection
14 and Advocacy for Individuals with Mental Illness Act (“PAIMI”), 42 U.S.C. §§ 10801 *et seq.*,
15 and the Protection and Advocacy of Individual Rights Act, § 29 U.S.C. § 794(e).

16 20. PAIMI provides for the establishment and funding of P&A systems, including
17 DRC, to investigate the abuse and neglect of people with mental health disabilities, to engage in
18 protection and advocacy “to ensure that the rights of individuals with mental health disabilities
19 are protected,” and “to ensure the enforcement of the Constitution and Federal and State statutes”
20 on behalf of people with mental health disabilities. 42 U.S.C. §§ 10801(b)(1), 10801(b)(2)(A).
21 As California’s P&A system, DRC is authorized to “pursue administrative, legal, and other
22 appropriate remedies to ensure the protection of individuals with mental illness who are receiving
23 care or treatment in the State.” 42 U.S.C. § 10805(a)(1)(B); *see also Or. Advocacy Ctr. v. Mink*,
24 322 F.3d 1101, 1110 (9th Cir. 2003).

25 21. Individuals with serious mental health disabilities have representation in DRC
26 and guide and influence its activities. DRC is governed by a multi-member board of directors
27 comprised predominantly of people with disabilities and their families. DRC’s board is advised
28 by a PAIMI advisory council, the majority of which, including the advisory council chair, are

1 individuals who have received mental health services or have family members who do. The
2 PAIMI advisory council has significant input in setting DRC's goals and objectives. Also, DRC
3 uses surveys, focus groups, and public hearings to collect input from people with disabilities and
4 their communities, and uses that input to set its goals and objectives.

5 22. DRC fulfills its federal mandate under PAIMI by providing an array of
6 protection and advocacy services to people with mental health disabilities across California,
7 including individuals who have been unnecessarily institutionalized or who are at risk of such
8 institutionalization.

9 23. Under this authority, DRC pursues legal remedies on behalf of people with
10 disabilities in California and, in the context of this action, adult Alameda County residents who
11 are unnecessarily segregated in the County's psychiatric institutions or are at serious risk of being
12 needlessly segregated into these institutions, all of whom are the primary beneficiaries of DRC's
13 activities. It is on behalf of these individuals that DRC proceeds and collectively refers to as the
14 "DRC Constituents." *See Hunt v. Washington State Appl. Adver. Comm'n*, 432 U.S. 333, 343
15 (1977); *Mink*, 322 F.3d at 1111-12.

16 24. The DRC Constituents as defined herein each have a serious mental health
17 disability that substantially limits one or more major life activities.

18 25. The majority of DRC Constituents defined herein are eligible to receive services
19 under California's Medicaid program (known as "Medi-Cal"), as well as services funded by
20 California's Mental Health Services Act.

21 26. DRC has a shared interest in the resolution of the issues alleged herein because
22 it has devoted significant organizational resources to investigating Defendants' violations and
23 advocating for necessary remedies.

24 27. DRC has standing to bring this action to vindicate the rights of the DRC
25 Constituents under the ADA, the Rehabilitation Act, and state law to be free of unnecessary
26 institutionalization and to receive needed intensive mental health services in their homes and
27 communities. DRC Constituents have representation and influence in DRC's operations. The
28 participation of individual DRC Constituents in this lawsuit is not required. The declaratory and

1 injunctive relief requested is appropriate for DRC to pursue on behalf of its constituents and is
2 germane to DRC's mission and activities.

3 28. The DRC Constituents include the following individuals, each of whom would
4 have standing to bring this lawsuit in his or her own right. Their experiences illustrate the many
5 ways in which Defendants' practices harm DRC Constituents.

6 **Azizah Ahmad**

7 29. Azizah Ahmad is a 41-year-old Black Alameda County resident and mother of
8 three children. She is currently working for the U.S. Census as a census field supervisor and is
9 enrolled in a tech-related online certificate program. Ms. Ahmad has been diagnosed with
10 bipolar disorder and is currently enrolled in Medi-Cal.

11 30. In 2016, Ms. Ahmad began an intensive community-based day program to treat
12 her bipolar disorder. She successfully graduated from the program and was symptom-free for
13 three years. In 2019, however, Ms. Ahmad developed increased symptoms of bipolar disorder
14 due to major stressors in her life. Ms. Ahmad was admitted to John George Psychiatric Hospital
15 multiple times during the summer of 2019. She stayed overnight each visit.

16 31. Ms. Ahmad recalls her admissions to John George as some of the worst
17 experiences of her life. Prior to Ms. Ahmad's first visit in June 2019, Ms. Ahmad took steps to
18 manage her symptoms, including by working with her existing mental health providers and
19 scheduling doctor's appointments as needed. Approximately two days before a doctor's
20 appointment, the County took Ms. Ahmad against her will to John George via an ambulance.
21 The County did not offer Ms. Ahmad any community-based crisis services, and denied her
22 requests to receive inpatient care at Sutter Health, where she had received treatment previously.
23 Defendant AHS employees immediately tied Ms. Ahmad down with leather restraints and
24 forcibly medicated her. Having decided to hold Ms. Ahmad involuntarily, they provided her a
25 blanket and put her in a large, general population common room. Ms. Ahmad and most of the
26 other patients were forced to sleep on the floor. She was not evaluated by a physician for over 24
27 hours. When she was finally evaluated, the doctor talked to her briefly, asked her a few
28 questions, and told her she would be released. Staff did not provide her with a treatment plan,

1 and did not arrange for any follow-up appointments. Ms. Ahmad felt that she was “on [her]
2 own.”

3 32. Ms. Ahmad reports that, after her experience at John George, she spiraled into a
4 full-blown manic episode. She could not sleep, kept seeing images of a needle coming at her,
5 and felt an intense fear of being admitted again. The fear and anxiety she experienced after her
6 stay at John George made Ms. Ahmad feel as though her symptoms were worse than if she had
7 not been treated there.

8 33. Ms. Ahmad was psychiatrically hospitalized additional times during the summer
9 of 2019, including again at John George. Defendants did not take steps to provide Ms. Ahmad
10 with community-based crisis services, even though Ms. Ahmad would have strongly preferred
11 such care. Ms. Ahmad was forced to sleep on a bench or the floor at John George’s Psychiatric
12 Emergency Services (“PES”) unit each time. Upon discharge, AHS staff provided Ms. Ahmad
13 with prescriptions for medication, but did not provide her with a treatment plan.

14 34. Ms. Ahmad sought treatment for herself. Ms. Ahmad called ACCESS, Alameda
15 County’s mental health information line, and asked for a referral to a community-based day
16 program like the one she successfully completed in 2016. The ACCESS representative told Ms.
17 Ahmad that there were no such programs available to her in Alameda County. Instead, ACCESS
18 connected Ms. Ahmad to an outpatient clinic in Alameda County which provides online
19 appointments with a psychiatrist and prescription refills, but not the intensive community
20 services she needs to help her manage her disability, such as day-program services, peer supports,
21 and social services. There is a serious risk she will be re-institutionalized at John George if her
22 condition again deteriorates. Ms. Ahmad is terrified of the prospect of relapsing and being
23 involuntarily admitted to John George again. She describes the difference between receiving
24 mental health care in the community versus receiving it in an institutional setting as the
25 difference between “healing” and simply being “kept alive.”

26 **Rian Walter**

27 35. Rian Walter is a 42-year-old Black Alameda County resident who graduated
28 from the University of California, Berkeley with degrees in Philosophy and English. He

1 developed a mental health disability when he was 26-years-old. Since his first psychotic episode,
2 Mr. Walter has had a long history of mood dysregulation and psychosis complicated by
3 insufficient outpatient mental health services, lack of housing, and untreated substance use
4 disorder. He is enrolled in Medi-Cal and is currently an ACBHCS client.

5 36. Since 2004, Mr. Walter has had over 170 contacts with the County's mental
6 health system, including approximately eighty-seven visits to John George and four admissions
7 to Villa Fairmont. He has cycled in and out of John George numerous times. He has been
8 institutionalized at Villa Fairmont on at least three different occasions. He has been incarcerated
9 at Santa Rita Jail several times for charges related to his mental health symptoms. He has also
10 been conserved on several occasions.

11 37. Over the course of Mr. Walter's multiple psychiatric institutionalizations,
12 Defendants have consistently failed to provide him with effective discharge planning. Without
13 being connected to needed community-based mental health services, Mr. Walter has
14 decompensated, each time leading to the next institutionalization.

15 38. In contrast, during periods when Defendants have effectively connected Mr.
16 Walter to community-based mental health services, he has been able to live independently in the
17 community and avoid frequent psychiatric hospitalizations.

18 39. Recently, the County re-connected Mr. Walter with a Full Service Partnership
19 program and assisted him in securing housing. However, his shared housing situation does not
20 meet his substance use disorder needs, jeopardizing Mr. Walter's efforts to maintain his recovery.
21 Additionally, Mr. Walter has tried and been unable to get supported employment services from
22 the County. Without supported housing that fits his needs, employment support, and other
23 needed services, Mr. Walter is at serious risk of re-institutionalization.

24 **KG¹**

25 40. KG is a 57-year-old Black Alameda County resident who attended Mills College
26 and San Francisco State, and received her master's degree from the University of California,
27

28 ¹ Plaintiff is using a pseudonym for this exemplar to protect the exemplar's privacy.

1 Berkeley. KG used to have her own tutoring business. She has a history of bipolar disorder,
2 depression, and post-traumatic stress disorder (“PTSD”). She is enrolled in Medi-Cal and is
3 currently an ACBHCS client.

4 41. KG has had approximately 50 psychiatric hospitalizations, mostly at John
5 George, since 1995. KG cycled in and out of John George at least five times during 2019 alone.
6 She has also cycled in and out of Villa Fairmont and other psychiatric institutions in Alameda
7 County.

8 42. KG’s mental health symptoms have been exacerbated by periods of
9 homelessness, problems with her outpatient mental health service provider, periods of
10 incarceration at Santa Rita Jail, and poor discharge planning from psychiatric institutions such as
11 John George.

12 43. KG is currently homeless and lacks community supports such as adequate case
13 management services and supported housing. Without access to needed intensive community
14 services, KG is at serious risk of further unnecessary institutionalization by Defendants.

15 **MR**²

16 44. MR is a 24-year-old motorcycle and photography enthusiast who wants to unite
17 these passions in a career. She has been diagnosed with bipolar disorder.

18 45. MR has twice been admitted to John George. In November 2019, after a period
19 of struggling with her mental health, MR experienced a psychiatric emergency and was taken to
20 John George and held for two nights. MR looks back at this stay as one of the most traumatic
21 experiences of her life. MR felt frightened and unsafe as a result of the unsanitary conditions,
22 overcrowding, and lack of medical attention in the Psychiatric Emergency Services unit at John
23 George.

24 46. MR was released from John George with no discharge plan whatsoever. With
25 no medical insurance, MR was unable to access needed mental health services. After her stay,
26
27

28 ² Plaintiff is using a pseudonym for this exemplar to protect the exemplar’s privacy.

1 MR became severely physically ill, which she believes resulted from unsanitary conditions and
2 overcrowding at John George.

3 47. In December 2019, MR's estranged, abusive husband contacted authorities
4 during a conflict knowing how traumatic MR's experience at John George had been. Police
5 officers arrived and told MR she could either be arrested or be hospitalized at John George
6 again. She was taken back to John George, even though she was not having a psychiatric
7 emergency. MR again found herself in unhygienic, overcrowded, and frightening conditions.
8 This compounded her trauma from her first stay at John George. MR again left without a
9 meaningful discharge plan: she was simply given a thirty-day supply of medication and
10 instructed to seek care from a psychotherapist.

11 48. MR now has medical insurance and is receiving care from a psychologist and a
12 psychiatrist. She has not returned to John George. However, her brief stays have had a lasting
13 negative impact. MR has been pursuing a degree in automotive photography. While she was
14 being held at John George and while ill after her first stay, she fell behind in her coursework,
15 failed a class, and nearly lost one of her jobs. Without adequate services moving forward, she is
16 at serious risk of re-institutionalization at John George.

17 49. Ms. Ahmad, Mr. Walter, KG, and MR are just a few of the many DRC
18 Constituents who daily face a serious risk of unnecessary institutionalization. Defendants' failure
19 to provide them adequate community-based mental health services has harmed them and places
20 them at serious risk of future harm.

21 **Defendants**

22 50. Defendant County of Alameda (the "County" or "Alameda County") is a public
23 entity, duly organized and existing under the laws of the State of California. The County has the
24 authority and responsibility to provide mental health treatment and services to County residents,
25 including DRC Constituents, either directly or through the administration of contracts with
26 providers. Alameda County also operates Santa Rita Jail. Alameda County is subject to Title II
27 of the ADA, and receives "federal financial assistance," thereby subjecting it to Section 504 of
28

1 the Rehabilitation Act. The County is funded directly or receives “financial assistance from the
2 state,” thereby subjecting it to California Government Code Section 11135.

3 51. Defendant Alameda County Behavioral Health Care Services (“ACBHCS”) is
4 the County entity that provides mental health services to Alameda County residents. ACBHCS is
5 subject to Title II of the ADA, and receives “federal financial assistance,” thereby subjecting it to
6 Section 504 of the Rehabilitation Act. ACBHCS also is funded directly or receives “financial
7 assistance from the state,” thereby subjecting it to California Government Code Section 11135.

8 52. Defendant Alameda Health System (“AHS”) is a public hospital authority that
9 owns and operates John George Psychiatric Hospital, in addition to four other hospitals and four
10 wellness centers in Alameda County. Defendant AHS contracts with ACBHCS to provide
11 psychiatric emergency and inpatient care at John George Psychiatric Hospital. AHS is a public
12 entity subject to Title II of the ADA. Defendant AHS receives “federal financial assistance,”
13 thereby subjecting it to Section 504, 29 U.S.C. §§ 794-794(a). AHS is also funded directly or
14 receives “financial assistance from the state,” thereby subjecting it to California Government
15 Code Section 11135.

16 53. All Defendants are responsible for ensuring that people with serious mental
17 health disabilities are served in accordance with federal and state law, including the ADA,
18 Section 504, and Section 11135.

19 **STATUTORY AND REGULATORY FRAMEWORK**

20 54. Title II of the ADA applies to all “public entities,” including Defendants herein.
21 42 U.S.C. §12131(1)(b). It provides that “no qualified individual with a disability shall, by
22 reason of disability, be excluded from participation in or be denied the benefits of services,
23 programs, or activities of a public entity or be subjected to discrimination by such entity.” 42
24 U.S.C. § 12132.

25 55. In enacting the ADA, Congress found that “historically, society has tended to
26 isolate and segregate individuals with disabilities, and, despite some improvements, such forms
27 of discrimination against individuals with disabilities continue to be a serious and pervasive
28 social problem[.]” 42 U.S.C. § 12101(a)(2). Among the areas in which Congress found that

1 discrimination persists was “in ... institutionalization ... and access to public services[.]” 42
2 U.S.C. § 12101(a)(3). “[I]ndividuals with disabilities continually encounter various forms of
3 discrimination, including ..., segregation, and relegation to lesser services, programs, activities,
4 benefits, jobs or other opportunities[.]” 42 U.S.C. § 12101(a)(5). According to Congress, “the
5 Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity,
6 full participation, independent living, and economic self-sufficiency for such individuals.” 42
7 U.S.C. § 12101(a)(7).

8 56. Twenty-one years ago, the United States Supreme Court in *Olmstead v. L.C. ex*
9 *rel. Zimring*, held that the unnecessary institutionalization of individuals with disabilities is a
10 form of discrimination prohibited under Title II of the ADA. 527 U.S. at 597. In so holding, the
11 Supreme Court made clear that public entities must serve persons with disabilities in community-
12 based, rather than institutional, settings when: (1) providing community-based services is
13 appropriate; (2) the individual does not oppose receiving such services; and (3) the provision of
14 community-based services can be reasonably accommodated, considering the resources available
15 to the entity and the needs of other persons with disabilities. *Id.* at 607.

16 57. Regulations implementing Title II of the ADA and the *Olmstead* decision
17 provide that “[a] public entity may not, directly or through contractual or other arrangements,
18 utilize criteria or ... methods of administration: (i) that have the effect of subjecting qualified
19 individuals with disabilities to discrimination on the basis of disability; (ii) that have the purpose
20 or effect of defeating or substantially impairing accomplishment of the objectives of the entity’s
21 program with respect to individuals with disabilities; (iii) that perpetuate the discrimination of
22 another public entity” 28 C.F.R. § 35.130(b)(3); 28 C.F.R. § 41.51(b)(3); 45 C.F.R. §
23 84.4(b)(4).

24 58. The regulations implementing Title II also require that public entities administer
25 their services, programs, and activities in “the most integrated setting” appropriate to the needs of
26 qualified individuals with disabilities. 28 C.F.R. § 35.130(d); 28 C.F.R. § 41.51(d). The “most
27 integrated setting” is the “setting that enables individuals with disabilities to interact with non-
28 disabled persons to the fullest extent possible.” 28 C.F.R. pt. 35, App. A, p. 450 (2010).

1 59. Title II’s “integration mandate” protects not only people who are currently
2 institutionalized but also people with disabilities who are at serious risk of institutionalization.
3 *See, e.g., M.R. v. Dreyfus*, 697 F.3d 706, 720, 734 (9th Cir. 2012) (amended). As the U.S.
4 Department of Justice has explained:

5 [T]he ADA and the *Olmstead* decision extend to persons at serious risk of
6 institutionalization or segregation and are not limited to individuals currently
7 in institutional or other segregated settings. Individuals need not wait until
8 the harm of institutionalization or segregation occurs or is imminent. For
9 example, **a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity’s failure to provide community services ... will likely cause a decline in health, safety, or welfare that would lead to the individual’s eventual placement in an institution.**

10 *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of*
11 *the Americans with Disabilities Act and *Olmstead v. L.C.**,
12 https://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020) (“Department of
13 Justice Statement on Integration Mandate”) (emphasis added).

14 60. The integration mandate requires that public entities provide individuals with
15 disabilities with “opportunities to live, work, and receive services in the greater community, like
16 individuals without disabilities.” *Id.* Defendants must provide individuals such as the DRC
17 Constituents with “opportunities to live in their own apartments or family homes, with necessary
18 supports,” as well as “expanding the services and supports necessary for [their] successful
19 community tenure,” rather than providing services in large congregate facilities. *Id.*

20 61. Section 504 of the Rehabilitation Act bans discrimination by recipients of
21 federal funds, such as Defendants herein. 29 U.S.C. §§ 794-794(a). It contains the same
22 “integration mandate” and similar prohibitions against discrimination as Title II of the ADA.

23 62. Likewise, California’s non-discrimination statute prohibits discriminatory
24 actions by the state and state-funded agencies or departments, and provides civil enforcement
25 rights for violations. Section 11135 states, in pertinent part:

26 With respect to discrimination on the basis of disability, programs and
27 activities subject to subdivision (a) shall meet the protections and prohibitions
28 contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. § 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger

1 67. Federal and state law require that Alameda County’s mental health system
2 include community-based services that prevent unnecessary institutionalization and the risk of
3 such institutionalization.³ Under California law, a primary goal of community-based “systems of
4 care” is to serve adults with serious mental health disabilities who are homeless, involved in the
5 criminal system, or require acute treatment. Cal. Welf. & Inst. Code § 5600.3(b).

6 68. Nationally, the intensive community services that are recognized as critical and
7 effective in enabling individuals with serious mental health disabilities to avoid unnecessary
8 institutionalization include: Full Service Partnerships/assertive community treatment,⁴
9 rehabilitative mental health services, intensive case management, crisis services, substance use
10 disorder treatment,⁵ peer support services, supported housing, and supported employment. The
11 references to “community services” and “community-based services” throughout this Complaint
12 are references to these specific services. Each of these services is described in further detail in
13 Section III, *infra*.

14 69. DRC opened an investigation into Alameda County’s practices regarding
15 unnecessary institutionalization in 2018. During its investigation, DRC visited numerous mental
16 health facilities and programs throughout Alameda County, including several visits to John
17 George and Villa Fairmont. DRC also visited the Santa Rita Jail and various homeless shelters,
18 and consulted with providers of supported housing. In each of these instances, DRC and its
19 designated agents toured the facilities and interviewed residents, including DRC Constituents,
20

21 ³ The provision of needed community services is authorized and funded (using federal, state and
22 local monies) under a number of California programs, including: the Bronzan-McCorquodale Act,
23 Cal. Welf. & Inst. Code §§ 5600, *et seq.*; Medi-Cal Specialty Mental Health Services, Cal. Welf.
24 & Inst. Code §§ 14700, *et seq.*; 9 C.C.R. §§ 1810.100, 1810.247; Mental Health Services Act,
Proposition 63 (2003); and California’s Medi-Cal program, Cal. Welf. & Inst. Code §§ 14000 *et*
seq., 22 C.C.R. §§ 50000, *et seq.*

25 ⁴ As discussed in further detail in Section III, *infra*, in California, Full Service Partnership
26 programs (“FSPs”) provide “whatever it takes” to promote recovery for targeted, high needs
27 individuals. Most FSPs use the “ACT model” as the primary mode of services delivery – which
includes teams of professional and peers who deliver a full range of services to clients in their
homes or the community.

28 ⁵ Many who experience a mental health disability during their lives will also experience a
substance use disorder and vice versa.

1 and providers. DRC submitted numerous Public Records Act requests to Defendants related to
2 the provision of mental health care in Alameda County and unnecessary institutionalization.

3 70. On November 1, 2019, DRC found probable cause to believe that the County's
4 actions constitute abuse and/or neglect of DRC Constituents based on, *inter alia*, Defendants'
5 failure to provide them needed services and supports in the most integrated setting appropriate, in
6 order to promote their recovery.⁶

7 71. DRC's investigation revealed that Defendants have not provided sufficient
8 intensive community-based mental health services to DRC Constituents, and are causing them,
9 particularly Black DRC Constituents, to be unnecessarily segregated in costly, publicly funded
10 institutions, often repeatedly.

11 **I. Defendants Unnecessarily Segregate DRC Constituents Into Psychiatric Institutions.**

12 72. Under California's civil commitment laws, a DRC Constituent can be detained
13 for up to 72 hours based on a statement by certain County staff that they have reason to believe
14 that the person, due to a mental health disability, is gravely disabled or a danger to themselves or
15 others.⁷ California's civil commitment laws also authorize county behavioral health systems,
16 including Defendant ACBHCS, to designate which facilities to use for the evaluation and
17 treatment of individuals.

18 73. Alameda County detains more individuals for psychiatric evaluation and
19 treatment than any other county in California. Its psychiatric detention rate is three-and-a-half
20 times higher than the statewide average.

21 74. Because Defendants' community-based services are insufficiently available, the
22 County detains vast numbers of DRC Constituents in crisis at John George, the designated public
23
24

25 ⁶ See App. A, DRC, Ltr to ACBHCS and Alameda County Re: DRC Abuse/Neglect Investigation
26 and Request for Information Alameda County's Mental Health System (Nov. 1, 2019).

27 ⁷ Cal. Welf. & Inst. Code § 5150(a). After the 72-hour period, detained individuals must either be
28 released, provided treatment on a voluntary basis, certified for intensive treatment under Welfare
& Institutions Code section 5250, or appointed a conservator or temporary conservator under
Welfare & Institutions Code section 5152.

1 hospital authority, pursuant to California Welfare & Institutions Code sections 5150 and 5250.
2 More than 10,000 people have passed through the facility since January 2018.

3 75. At John George, there are three locked inpatient units and a locked Psychiatric
4 Emergency Services (“PES”) unit. The psychiatric hospital is large, crowded, and physically
5 isolated from community life.

6 76. A shockingly high number of DRC Constituents, especially Black DRC
7 Constituents, are held in these locked institutional facilities repeatedly and for periods longer
8 than necessary.

9 **A. Unnecessary Institutionalization in John George’s PES Unit.**

10 77. Defendants detain nearly 1,000 people at John George’s PES unit every month.
11 Through its investigation, DRC learned that these numbers are 30% higher than they were a
12 decade ago.

13 78. A disproportionate number of individuals held in the PES—36%—are Black.
14 This is more than three times their overall composition in Alameda County. The County’s data
15 also shows that Black men are nearly 30% more likely than others to be involuntarily
16 institutionalized in the wake of a mental health crisis call.

17 79. An enormous number of the people taken to PES need not be detained there at
18 all. According to the County’s own estimates, more than 75% of those detained in PES do not
19 meet medical necessity criteria for inpatient psychiatric services.

20 80. At PES, Defendants crowd DRC Constituents into a locked 35-foot-by-45-foot
21 room, illuminated by harsh fluorescent lights, where they must compete for places to sit, lie, or
22 stand. The room can be filled with upwards of sixty (60) people with mental health disabilities,
23 some of whom are relegated to hallways or the floor due to overcrowding. Ms. Ahmad describes
24 the common room as “filthy” and “smelling like urine.” The facility’s harsh institutional
25 conditions often exacerbate rather than alleviate people’s mental health symptoms. MR
26 experienced sexual harassment while she was held there. Staff did not intervene until she
27 advocated for herself loudly and repeatedly. She was forced to take such large doses of Ativan—
28 an anxiety medication—that she experienced withdrawal symptoms after being discharged.

1 81. Once detained in PES, DRC Constituents languish until they are released or
2 referred to one of John George’s inpatient units or another facility. Many DRC Constituents
3 spend fewer than twenty-four hours at the PES, but a significant number remain for multiple
4 days. Some remain in the PES for more than a week.

5 82. The majority of DRC Constituents detained in the PES are released without
6 adequate intensive community-based services in place, resulting in their re-institutionalization,
7 often repeatedly. One Alameda County Mental Health Board report noted a “vicious cycle of
8 overcrowding” at the PES, and “patients being discharged and being readmitted when they fail to
9 function outside the hospital setting.”⁸

10 **B. Unnecessary Institutionalization in John George’s Inpatient Units.**

11 83. Approximately twenty-five (25) percent of those brought to PES are admitted to
12 John George’s inpatient units. In recent years, the average daily census and average length of
13 stay in John George’s inpatient units have risen, with an estimated 5,000 patient visits in 2019,
14 and an average length of stay of approximately nine days.

15 84. John George’s inpatient units are highly institutional settings. DRC
16 Constituents are confined in locked wards, monitored continuously, afforded little privacy or
17 autonomy over their daily lives, and required to abide by rigid rules.

18 85. Defendants needlessly extend DRC Constituents’ institutionalization at John
19 George due to the lack of available community-based services. These extended stays—which are
20 considered “administrative” because they are not medically necessary—last several days or more,
21 harm DRC Constituents, and cost millions of dollars in public monies. Even after
22 “administrative” stays, DRC Constituents are often released without being linked to adequate
23 intensive community-based services, resulting in their re-institutionalization.

24 **C. Unnecessary Institutionalization in Villa Fairmont’s Sub-Acute Units.**

25 86. Defendants discharge large numbers of DRC Constituents from John George’s
26 inpatient units to Villa Fairmont for an additional period of institutionalization. Villa Fairmont is

27 _____
28 ⁸ See Darwin BondGraham, *Overwhelmed*, East Bay Express (Mar. 9, 2016),
<https://www.eastbayexpress.com/oakland/overwhelmed/Content?mode=print&oid=4705660>.

1 a 96-bed, locked “sub-acute” mental health facility located on the same campus as John George.
2 Defendant ACBHCS contracts with Telecare Corporation to operate this facility.

3 87. Villa Fairmont is an institution similar in many ways to John George. DRC
4 Constituents are subjected to around-the-clock monitoring and are restricted from leaving the
5 facility.

6 88. Due to a lack of intensive community services, Defendants Alameda County and
7 ACBHCS often keep DRC Constituents at Villa Fairmont beyond the time staff deems
8 appropriate. These extended stays are damaging to DRC Constituents and costly to Defendants.

9 **II. DRC Constituents Are at Serious Risk of Unnecessary Institutionalization.**

10 89. Without access to needed intensive community services, DRC constituents are at
11 serious risk of repeated cycles of unnecessary institutionalization.

12 90. Defendants detain hundreds of DRC Constituents at John George repeatedly.
13 According to the County’s data, from January 2018 to June 2020, Defendant AHS held more than
14 350 DRC Constituents in the PES over ten (10) times. Among this group, 55% were Black.
15 During that same time period, Defendant AHS held approximately eighty-four (84) individuals
16 twenty-five (25) times or more; close to 60% were Black. Six cycled in and out of the PES more
17 than eighty-five (85) times in this two-and-half year period; five of them were Black.

18 91. Repeat admissions to John George’s inpatient Units and to sub-acute facilities
19 such as Villa Fairmont are also common among DRC Constituents. For example, since 2018, the
20 County’s data shows that at least 365 DRC Constituents have each been admitted to John
21 George’s Inpatient Units four (4) or more times. Approximately 44% of this group are Black.

22 92. The high rate of re-institutionalization is directly related to Defendants’ failure
23 to provide DRC Constituents with needed intensive community-based services upon discharge
24 from PES, John George’s inpatient units, and sub-acute facilities such as Villa Fairmont. The
25 County itself has admitted that the majority of people discharged from PES are “not linked to
26 planned services and continue to over-use emergency services.”

27 93. The risk of unnecessary institutionalization and re-institutionalization is
28 particularly serious for people experiencing homelessness or who have been incarcerated.

1 **A. DRC Constituents Without Stable Housing Are at Serious Risk of**
2 **Unnecessary Institutionalization.**

3 94. As of 2019, approximately 2,567 people experiencing homelessness in Alameda
4 County—or 32% of the County’s homeless population—identified as having a serious mental
5 disability.

6 95. Despite state law and policy that discourages discharging people from
7 psychiatric institutions to the streets or emergency shelters,⁹ Defendants frequently discharge
8 DRC Constituents from psychiatric institutions such as John George and Villa Fairmont to
9 homelessness. Some DRC Constituents end up in emergency shelters, if there are shelter beds
10 available. Others end up in homeless encampments crammed under overpasses in unsafe and
11 degrading conditions. The *New York Times* recently described the homeless encampments in
12 Alameda County as “among the world’s most dire places.”¹⁰

13 96. The vulnerability of Black DRC Constituents to unnecessary institutionalization
14 is exacerbated by the fact that they comprise approximately 47% of the unhoused population in
15 Alameda County.

16 97. DRC Constituents who are homeless are deeply vulnerable to violence and
17 trauma while living outside. Homelessness itself is a traumatic experience that aggravates the
18 effects of mental health disabilities.

19 98. By discharging DRC Constituents into homelessness, Defendants increase their
20 risk of re-institutionalization.

21 99. The County has acknowledged that, for DRC Constituents experiencing
22 homelessness, psychiatric hospitalization is among “the most frequent—and the most
23 expensive—source of [their] medical care.”

24
25 ⁹ Cal. Health & Safety Code § 1262.5(n)(3) (requiring discharge planning for homeless patients
26 that “that helps prepare the homeless patient for return to the community by connecting him or
her with available community resources, treatment, shelter, and other supportive services”).

27 ¹⁰ Thomas Fuller & Josh Haner, *Among the World’s Most Dire Places: This California Homeless*
28 *Camp*, N.Y. Times (Dec. 17, 2019), <https://www.nytimes.com/interactive/2019/12/17/us/oakland-california-homeless-camp.html>.

1 100. Mr. Walter’s experiences illustrate these challenges. From 2015 to 2017, Mr.
2 Walter was homeless and without access to outpatient mental health services. During this time,
3 Mr. Walter was assaulted, stranded naked, forced to dig through garbage bins for scraps of food,
4 and almost shot. Mr. Walter was so afraid for his safety that he would frequently use
5 methamphetamine just to stay awake as long as possible. Over the two years that Mr. Walter
6 lacked housing, Mr. Walter was institutionalized at John George on forty-three (43) occasions.
7 In one year alone, Mr. Walter was institutionalized thirty-one (31) times, and seven (7) times in
8 one month. Despite the high number of involuntary psychiatric admissions, Defendants failed to
9 provide Mr. Walter with stable housing or intensive mental health services.

10 **B. DRC Constituents Who Have Been Incarcerated or Had Other**
11 **Involvement with the Criminal System Are at Serious Risk of Unnecessary**
12 **Institutionalization.**

13 101. Without access to sufficient intensive community services, DRC Constituents,
14 particularly Black DRC Constituents, are highly likely to experience arrest and incarceration in
15 the County’s jail solely for disability-related behaviors. This compounds their risk of future
16 psychiatric institutionalization.

17 102. Approximately 53% of people—484 out of 919—whom the County identifies as
18 both “justice involved” and a “high utilizer” in the mental health system are Black. (“High
19 utilizer” is a status generally assigned to people with repeated psychiatric institutionalizations.)

20 103. Hundreds of DRC Constituents discharged from John George end up in jail
21 shortly after their release. According to County data, from January 2018 to mid-December 2019,
22 nearly 200 DRC Constituents discharged from John George’s inpatient units were jailed within
23 the next sixty (60) days. DRC’s investigation determined that, for many, the time from discharge
24 to incarceration was less than two (2) weeks.

25 104. The County—which runs the jail—is aware that many DRC Constituents are
26 arrested and detained at the County’s jail for behaviors relating to their mental health condition.
27 Typically, DRC Constituents are incarcerated in jail for minor offenses including minor
28 probation violations. Often charges are dropped or the DRC Constituents accept a plea deal

1 allowing their release for time-served. If needed intensive community services were available,
2 many of these individuals would be able to avoid incarceration.

3 105. Once entangled in the criminal system, DRC Constituents tend to stay in jail
4 longer than other jail prisoners, are at greater risk of deteriorating psychologically and
5 committing acts of self-harm, and more frequently receive punishments in response to minor
6 infractions. Approximately one-quarter of the people held in the County's jail population have
7 been identified as having a "serious mental illness."¹¹ Half of the people receiving mental health
8 services from the County while in jail are Black.

9 106. It is well known that people with mental health disabilities held in the County's
10 jail face dangerous and damaging isolation and inadequate access to mental health treatment,
11 including discharge planning. *See Babu v. Cnty. of Alameda*, Case No. 18-07677 (N.D. Cal filed
12 Dec. 21, 2018); *Babu v. Cnty. of Alameda*, Case No. 18-07677, Notice Re: Final Joint Expert
13 Reports, ECF No. 111 (N.D. Cal., Apr. 22, 2020). A large number have died while in jail.¹²

14 107. Defendant ACBHCS is responsible for providing mental health treatment to jail
15 prisoners, except for inpatient care at John George, which Defendant AHS provides. Defendants
16 ACBHCS and AHS's failures to provide adequate mental health services, including discharge
17 planning, put people at serious risk of institutionalization upon release from incarceration. These
18 failures also put people at risk of re-arrest.

19 108. The County and ACBHCS recognize that "[a] large percentage of individuals
20 with [mental health disabilities] released from County jail in Alameda County do not receive the
21 services needed to connect them to the treatment and resources that help prevent recidivism."
22 The joint mental health expert in the *Babu* case identified several deficiencies with the jail's
23

24 ¹¹ A "serious mental illness" is another term for "serious mental health disability" and is generally
25 defined as "a mental, behavioral, or emotional disorder resulting in serious functional impairment,
26 which substantially interferes with or limits one or more major life activities." Nat'l Inst. of
27 Mental Health, Mental Health Information, <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>.

28 ¹² *See, e.g.,* Lisa Fernandez, *A look at the 45 inmates who have died at Santa Rita Jail in the last five years*, KTVU Fox 2 (Oct. 4, 2019), <https://www.ktvu.com/news/a-look-at-the-45-inmates-who-have-died-at-santa-rita-jail-in-the-last-five-years>.

1 discharge planning, concluding that it “should include coordination with community services” to
2 prevent further cycling.¹³

3 109. As but one example, KG was recently imprisoned at Santa Rita Jail for a
4 misdemeanor related to her mental health symptoms. She was then transferred to John George
5 where she was involuntarily institutionalized for fourteen days, after which she was discharged
6 and returned to Santa Rita Jail. Following her incarceration, KG was released without any
7 connection to mental health services or housing supports. KG worries that she will be
8 involuntarily institutionalized at John George or Santa Rita again.

9 **III. Defendants Fail to Provide Needed Community-Based Services.**

10 110. Defendants Alameda County, ACBHCS, and AHS are the primary and
11 interconnected sources of mental health services for DRC Constituents, and therefore each carries
12 responsibility for DRC Constituents’ unnecessary institutionalization and/or serious risk of
13 institutionalization.

14 **A. Defendants Alameda County and ACBHCS Fail to Provide Needed Full**
15 **Service Partnerships, Supported Housing, and Other Intensive**
16 **Community-Based Services.**

17 111. DRC Constituents are qualified to receive mental health services in the
18 community, in settings far more integrated than John George and Villa Fairmont.

19 112. The County and ACBHCS fail to provide DRC Constituents with the
20 community services they need, including Full Service Partnerships and/or comparable intensive
21 services and supported housing. Some DRC Constituents receive *some* of the services they need
22 *some* of the time. However, Defendants deny a vast number of DRC Constituents the intensive
23 community services they need to avoid institutionalization in John George and Villa Fairmont, or
24 detention in jail.

25
26
27
28 ¹³ Evaluation of Mental Health Delivery at the Alameda County Sheriff’s Office Santa Rita Jail,
Kerry Hughes, M.D., ECF No. 111-3 at 27.

1 b. **Rehabilitative Mental Health Services** is a broad category of services
2 that includes assessment and plan development, medication management, and individual or group
3 therapies and education to increase independence and self-sufficiency.

4 c. **Intensive Case Management**, including Targeted Case
5 Management,¹⁴ helps individuals gain access to needed medical, social, educational, and other
6 services, including through face-to-face encounters. It supports the assessment and periodic
7 reassessment of individual needs and the development of an individualized care plan, and
8 includes monitoring of whether the care plan is being properly implemented and whether it is
9 successful and if not, securing adjustments to the plan.

10 d. **Crisis Services** include mobile crisis services and community-based
11 residential crisis services, such as crisis homes or apartments. Mobile crisis services are provided
12 by teams of mental health professionals who respond quickly to individuals in crisis and utilize a
13 variety of techniques to de-escalate the situation and resolve the crisis.

14 e. **Substance Use Disorder Treatment** includes individual and group
15 services, including medication assisted therapy (“MAT”), outpatient and residential treatment,
16 counseling and therapy, and peer support services.

17 f. **Peer Support Services** are provided by individuals with lived
18 experience in the mental health system who build relationships of trust with those they serve.
19 They help people with mental health disabilities stay connected to treatment providers, maintain
20 or develop social relationships, and participate in community activities. They help individuals
21 transition to the community from institutional or correctional settings.

22 g. **Supported Employment/Independent Placement and Support**
23 (“IPS”) helps people with mental health disabilities obtain and keep a job.

24 117. Defendant ACBHCS is required to provide all of these services through Medi-
25 Cal and the Mental Health Services Act.

26
27 ¹⁴ The term “targeted case management” means “services that assist a beneficiary to access
28 needed medical, educational, social, prevocational, vocational, rehabilitative, or other community
services.” 9 C.C.R. §1810.249.

1 118. Unfortunately, many DRC Constituents who need FSP services or comparable
2 intensive services do not receive them.

3 119. The County's existing FSP programs are constrained by limited capacity and
4 lack coordination and resources. Defendants fail to inform many eligible beneficiaries and
5 referral agencies about FSP services. In addition, the process for assessing eligibility for and
6 authorizing FSP services is so cumbersome that many DRC Constituents experience escalating
7 crises and dire outcomes while awaiting a determination. Many are institutionalized, become
8 homeless, or are jailed.

9 120. Existing FSPs also fail to provide DRC Constituents with access to the full
10 range of services they need to shorten or avoid institutionalization, such as community-based
11 crisis services and treatment for people with co-occurring substance use disorders. Defendants
12 have for years relied heavily, and almost exclusively, on John George Psychiatric Hospital to
13 serve people with mental health disabilities who may be experiencing a psychiatric crisis.
14 Alameda County only recently opened a Crisis Stabilization Unit ("CSU").¹⁵ This CSU, which
15 has twelve (12) beds, is the only one in the County, though the need for crisis beds is far greater.
16 Other recent initiatives to enhance crisis services in the County, including short-term crisis
17 residential treatment programs, drop-in Crisis Response Programs, and a Mobile Crisis Unit, are
18 insufficient to meet the need for such services and have significant limitations in their capacity,
19 hours of operation, and geographic accessibility.

20 121. The scarcity of FSP and similarly intensive services is especially acute for
21 individuals who have health needs beyond their mental health disabilities. For instance, in all of
22 Alameda County, there is only one dual diagnosis residential treatment program for people with
23 mental health disabilities and substance use disorders, and it serves only eight (8) Alameda
24 County residents at a time. DRC Constituents with dual diagnoses also report needing additional
25 intensive case management services, more time in dual diagnosis treatment programs, and mobile
26

27
28 ¹⁵ Crisis Stabilization Units offer an alternative to psychiatric hospitalization by providing crisis response and observation services in a community-based setting.

1 treatment teams that proactively address individuals' co-occurring mental health and substance
2 use.

3 **2. Lack of Supported Housing.**

4 122. FSPs, or similarly intensive services, are often paired with Supported Housing.¹⁶
5 Supported housing typically includes two components: (1) a rental subsidy for the individual with
6 a mental health disability, and (2) services to support the individual's successful tenancy.
7 Assistance finding and securing housing is also available. The support services can include case
8 management, training in independent living skills, medication management, home health aides,
9 and/or other services. The Department of Justice, and often courts in *Olmstead* cases, refer to
10 such housing as "supported housing."¹⁷

11 123. The California legislature has found that "[h]ousing is a key factor for
12 stabilization and recovery to occur and results in improved outcomes for individuals living with a
13 mental illness." Cal. Welf. & Inst. Code § 5849.1 (West). It has also found that tenants of
14 permanent supported housing "reduced their visits to an emergency department by 56 percent,
15 and their hospital admissions by 45 percent." *Id.* Historically, the FSP Housing Support
16 Program in Alameda County has "demonstrated reductions in inpatient ... per client costs by an
17 average of more than \$50,000/year."

18 124. DRC Constituents consistently report that the lack of supported housing in
19 Alameda County is one of the greatest challenges they face and a significant barrier to their
20 stabilizing and managing their mental health conditions.

23 ¹⁶ Housing is included in the "full spectrum of services" provided under FSPs, which includes,
24 but is not limited to "rental subsidies, housing vouchers, house payments, residence in a
25 drug/alcohol rehabilitation program and transitional and temporary housing." 9 C.C.R.
26 § 3620(a)(1)(B)(iii). California Welfare and Institutions Code section 5892.5 defines "housing
27 assistance" to include rental assistance, operating subsidies, move in costs and utility payments,
as well as capital funding to build or rehabilitate housing for homeless or at-risk persons with
mental health disabilities.

28 ¹⁷ Department of Justice Statement on Integration Mandate at 7 ("*Olmstead* remedies should
include, depending on the population at issue, supported housing.>").

1 125. Despite examples of successful supported housing in the County, Defendants
2 Alameda County and ACBHCS fail to provide sufficient supported housing services to meet the
3 needs of DRC Constituents. Recent data show that there were approximately 300 permanent
4 supported housing slots in Alameda County dedicated to people with serious mental health
5 disabilities, even though the number of homeless adults with serious mental health disabilities in
6 the County is estimated to exceed 2,500, and the number who have serious mental health
7 disabilities and are “chronically homeless”¹⁸ is over 1,500.

8 126. According to ACBHCS, “[a] number of Full-Service Partnership (FSP)
9 providers have reported that the lack of affordable housing is a major challenge for many FSP
10 clients and this is reflected in the increase in homelessness.” Many service providers have
11 underscored the enormity of this problem. In the words of one mental health provider:

12 The lack of affordable subsidized housing in Berkeley and Alameda County
13 is a huge issue for many people served by the mental health division. A
14 sizable number of those who enter care in the division are homeless, and the
lack of housing options provides a huge barrier to moving individuals forward
in their recovery.

15 127. Many DRC Constituents experience periods of homelessness or face significant
16 challenges related to their housing that contribute directly to their being involuntarily
17 hospitalized at John George or taken to jail. For example, KG did not have any psychiatric
18 admissions for five years while living in Section 8 housing. In 2018, however, KG lost her
19 Section 8 housing after her FSP provider failed to engage and assist her. Since that time, KG has
20 had at least ten psychiatric hospitalizations and the County and ACBHCS have failed to re-
21 connect her with housing.

22 **3. Lack of Culturally Congruent and Responsive Community**
23 **Services.**

24 128. In order for FSP programs, other intensive services, and supported housing
25 programs to be accessible to DRC Constituents from diverse racial and ethnic groups, these
26

27 _____
28 ¹⁸ “Chronically homeless” refers to individuals who are currently homeless and have been
homeless for six months or more in the past year.

1 programs and services must be provided in a culturally congruent and responsive manner.¹⁹
2 Specifically, these community services and programs must be delivered in ways that
3 acknowledge the various traumas that DRC Constituents have experienced and advance a person-
4 centered approach to providing services. For example, peers providing services can be more
5 effective when they share the cultural background of and have lived experiences similar to those
6 being served. All staff providing services need to understand the cultural norms and socio-
7 economic challenges of DRC Constituents.

8 129. Defendants have a longstanding policy or practice of failing to provide intensive
9 community services in ways that are culturally congruent and affirming. This failure has a
10 disproportionate impact on people of color and Black residents in particular, leading to even
11 higher rates of unnecessary institutionalization of Black DRC Constituents compared to people
12 from other racial and ethnic groups.

13 130. Defendants are well aware of this problem. In the words of former ACBHCS
14 director Marye L. Thomas, M.D., “most behavioral health care programs in California serve
15 African Americans at a disproportionately higher rate than other ethnic communities, and these
16 services are provided in extremely restrictive (often involuntary) settings such as hospitals and
17 jails.” Dr. Thomas acknowledged that, “[d]espite this ‘over-provision’ of services, across the
18 lifespan, positive mental health outcomes among African Americans in Alameda County ... are
19 inconsistent, which leads us to conclude that many African Americans are being inappropriately
20 served.”

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25 ¹⁹ Programs that rely strictly on evidence-based practices may not be accessible to racial or ethnic
26 minority groups if the studies they are based upon did not account for the cultural orientation of
27 those communities. *See, e.g.*, V. Diane Woods, et al., “We Ain’t Crazy! Just Coping with a Crazy
28 System:” Pathways into the Black Population for Eliminating Mental Health Disparities (2012)
(discussing culturally congruent mental health services for Black communities in California),
[https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/225/ReportsSubmitted/CRDPAfricanAmericanPo-
pulationReport.pdf](https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/225/ReportsSubmitted/CRDPAfricanAmericanPopulationReport.pdf).

1 **B. Defendant AHS Fails to Ensure Effective Linkages and to Coordinate Care**
2 **with the County and ACBHCS.**

3 131. Defendants Alameda County and ACBHCS’s failure to provide needed
4 community-based services to DRC Constituents, particularly Black DRC Constituents, is
5 compounded by Defendant AHS’s failure to develop individualized treatment and discharge
6 plans, to ensure their timely and effective implementation, and to coordinate with the County,
7 ACBHCS, and community-based services providers.

8 132. Through operating John George, AHS serves as a critical component in
9 Alameda County’s mental health system, including with respect to patient intake, assessment,
10 referral, admission, and discharge.

11 133. AHS’s role and specific responsibilities with respect to the operation of the
12 County’s public mental health system are set forth in detail in the AHS-ACBHCS master
13 contract. This document provides considerable guidance as to AHS’s *Olmstead*-related
14 obligations. For example, AHS is responsible for:

- 15 a. “Facilitat[ing] ... a patient’s ability to return to less restrictive
16 treatment in the community[;]”
- 17 b. “Evaluat[ing] ... continuity and coordination of care[;]”
- 18 c. “[E]xtensively review[ing] clinical and treatment history and
19 communicate with community services providers to ... optimize treatment and discharge planning
20 and reduce the likelihood of inpatient recidivism or multiple PES admissions[;]”
- 21 d. “[C]ollaborat[ing] with BHCS’s Community Placement Specialist and
22 other system administrators in the development and/or implementation of a discharge or system-
23 wide care plan for selected patients needing special management and coordination[;]” and
- 24 e. “[P]articipat[ing] in BHCS’ comprehensive analysis to assess and
25 recommend changes in the administration, management, policies, operations, relationships and
26 accountability of Information and Referral, Crisis and Emergency Services which serve as entry
27 points to BHCS’s System of Care.”
- 28

1 134. In practice, Defendant AHS fails to adequately consult and coordinate with
2 community providers and ACBHCS case managers, physicians, and other personnel in the
3 admission, diversion, referral, treatment, and discharge of patients.

4 135. Defendant AHS fails to develop adequate individualized treatment and
5 discharge plans of DRC Constituents. Defendant AHS's discharge plans are frequently
6 boilerplate and disconnected from what DRC Constituents need in order to live successfully in
7 the community. Many DRC Constituents are discharged to insecure housing or homelessness
8 and are not adequately connected to mental health care.

9 136. Defendant AHS's practices significantly contribute to DRC Constituents'
10 institutionalization and have led to numerous DRC Constituents decompensating soon after being
11 discharged from John George, leading to additional institutionalizations. For instance, in May
12 2019, AHS staff discharged Mr. Walter from the John George PES unit without sufficient
13 coordination with community-based mental health providers, and Mr. Walter was forced to return
14 to John George the very same day on an involuntary hold. Ms. Ahmad and MR also recall being
15 discharged from the John George PES without any meaningful discharge plans, and then cycling
16 through PES again within a short period of time. Ms. Ahmad, Mr. Walter, and MR all believe
17 that their repeat hospitalizations were unnecessary and avoidable.

18 **IV. Defendants' Practices Harm DRC Constituents.**

19 137. Defendants' failure to provide and link DRC Constituents to needed intensive
20 community-based services has devastating effects. DRC Constituents do not receive the services
21 they need to stabilize their conditions, and they live at constant and high risk of unnecessary
22 institutionalization.

23 138. Ms. Ahmad believes that her stays at PES contributed to her developing post-
24 traumatic stress disorder and prolonged her recovery. Ms. Ahmad thinks that, if Defendants had
25 provided her with community-based services, she could have avoided being institutionalized
26 multiple times in one summer.

27 139. MR believes her experience at John George caused her to fail a higher education
28 course and almost lose a job.

1 140. Mr. Walter and KG have experienced dozens of unnecessary
2 institutionalizations, which they believe contributed to instability in their housing and
3 stigmatization by family members and service providers, which has made them feel further
4 isolated.

5 **V. Defendants' Response to the Covid-19 Pandemic Puts DRC Constituents at**
6 **Heightened Risk of Harm.**

7 141. Defendants' practices place DRC Constituents at especially grave risk from the
8 COVID-19 pandemic.

9 142. As of July 17, 2020, more than 100 Santa Rita Jail prisoners were infected with
10 COVID-19.²⁰ The number of cases went from six to 101 in three days.

11 143. Even though Defendants have initiated social distancing protocols at John
12 George and Villa Fairmont in response to COVID-19, there remains a significant risk of COVID-
13 19 infection spreading through these institutions, just as it has done in Santa Rita and many other
14 psychiatric hospitals, detention centers, and nursing facilities throughout the country. While John
15 George has limited the PES unit to accepting 25 patients at a time, those admitted to PES still sit
16 in close proximity to one another for several hours. In John George's inpatient units and at Villa
17 Fairmont, rooms have multiple beds and sealed windows, hallways are narrow, staff move
18 between wards, and alcohol-based hand sanitizer is not readily available (and may not be kept on
19 hand by residents on the grounds as it is considered an ingestion hazard).

20 144. Due to the spread of COVID-19 at Santa Rita Jail, many DRC Constituents are
21 at high risk of contracting and dying from infection. Individuals with serious mental health
22 disabilities have significantly higher risks of cardiovascular disease, diabetes, HIV, tuberculosis,
23 and Hepatitis B and C. In addition, many DRC Constituents are older adults and/or take
24 medications that may compromise their immune systems.

25
26
27 ²⁰ Angela Ruggiero, *More Than 100 Santa Rita Jail Inmates Now Infected with Coronavirus*,
28 Mercury News (July 17, 2020, 5:08pm), <https://www.mercurynews.com/2020/07/17/nearly-100-inmates-now-infected-with-coronavirus-in-santa-rita-jail-outbreak/>.

1 145. Recent data indicates that the coronavirus death rate among Black, Native, and
2 Latinx people is substantially higher than that of other groups, and that rates of depression and
3 anxiety have spiked among Black people since the pandemic began. These factors compound the
4 racial disparities already present in the County's mental health system and put people of color at
5 heightened risk for negative health outcomes.

6 146. Given the grave risk of infection for DRC Constituents who cycle between jail,
7 John George, Villa Fairmont, and homelessness, DRC Constituents need intensive community-
8 based mental health services now more than ever. The community-based services that protect
9 DRC Constituents from unnecessary institutionalization also limit their exposure to COVID-19.

10 **VI. Defendants Can Provide Services to DRC Constituents in Integrated, Community**
11 **Settings by Reasonably Modifying the Mental Health Service System.**

12 147. The County's mental health system does not provide intensive community-based
13 services in a timely manner or at a sufficient level.

14 148. With reasonable modifications to Alameda County's mental health system,
15 Defendants would be able to meet DRC Constituents' service needs and prevent their
16 unnecessary institutionalization. Such modifications include: conducting a systemwide
17 assessment of the community-based service needs of DRC Constituents with input from the
18 Constituents themselves; ensuring the effective coordination and provision of existing
19 community-based services; expanding the capacity to provide needed intensive community-based
20 services; relocating services from institutions to community-based settings; outreach to and
21 engaging DRC Constituents in services; and maximizing federal, state, and local funding,
22 including through Medi-Cal.

23 149. Defendants could also redirect spending from segregated, institutional settings to
24 community-based programs. Publicly available records show that the average cost per John
25 George PES visit is \$3,010. The average cost per day for a John George inpatient hospitalization
26 is \$2,602, and a daily stay at Villa Fairmont costs close to \$400 per day. For people with a
27 mental health disability who are chronically homeless, the average length of John George
28

1 psychiatric hospitalization is more than eight (8) days, costing more than \$20,000 in public
2 monies. At Villa Fairmont, the average stay of four (4) months costs \$48,000.

3 150. In 2019, the County spent 30% of its entire mental health budget on about 800
4 individuals with the highest utilization of public mental health services in the County. Fully 70%
5 of those dollars were spent on institutional care at John George and Villa Fairmont and mental
6 health services in jail. Upon information and belief, it would cost the County far less to provide
7 these individuals, who are DRC Constituents, with community services—even the most intensive
8 and expensive community services available.

9 151. Ultimately, serving DRC Constituents in the least restrictive and most integrated
10 setting possible in the community is not only legally required and more humane, it is also
11 financially feasible.

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 **Violation of Title II of the ADA**

15 **Failure to Provide Services in the Most Integrated Setting Appropriate**

16 **42 U.S.C. §§ 12131 *et seq.*, 28 C.F.R. § 35.130**

17 152. Plaintiff repeats and incorporates by reference the preceding paragraphs of this
18 Complaint as if set forth in full herein.

19 153. DRC Constituents are qualified individuals with disabilities within the meaning
20 of Title II of the ADA and meet the essential eligibility requirements for the receipt of services,
21 programs, or activities of Defendants. 42 U.S.C. § 12131(2).

22 154. Defendant Alameda County, which includes Alameda County Behavioral Health
23 Care Services, is a public entity subject to Title II, 42 U.S.C. § 12131(1). Defendant Alameda
24 Health System, which was created by and is an instrumentality of Alameda County, is also a
25 public entity subject to Title II. *Id.*

26 155. Defendants violate the ADA, and its implementing regulations, including as
27 follows:
28

1 a. By administering the County’s mental health system in a way that
2 subjects DRC Constituents to unnecessary institutionalization at a psychiatric hospital or other
3 institution, instead of providing them with services in the community. 42 U.S.C. § 12132.

4 b. By failing to administer services, programs, and activities in “the most
5 integrated setting” appropriate to the needs of DRC Constituents. 28 C.F.R. § 35.130(d).

6 c. By using criteria or methods of administration in Alameda County’s
7 mental health system that subject DRC Constituents to discrimination on the basis of their
8 disabilities. 28 C.F.R. § 35.130(b)(3).

9 d. By failing to make reasonable modifications to allow DRC Constituents
10 to participate in Defendants’ services, programs, and activities in an integrated community
11 setting.

12 156. Providing DRC Constituents with the community services they need to avoid
13 unnecessary institutionalization and segregation at a psychiatric hospital or other institution
14 would not fundamentally alter Defendants’ programs, services, or activities.

15 157. Plaintiff and DRC Constituents have suffered and will suffer injury as a
16 proximate result of Defendants’ violation of their rights under the ADA.

17 158. Plaintiff is entitled to declaratory relief, injunctive relief, attorneys’ fees, and
18 costs.

19 **SECOND CLAIM FOR RELIEF**

20 **Violation of Section 504 of the Rehabilitation Act**
21 **Failure to Provide Services in the Most Integrated Setting Appropriate**
22 **29 U.S.C. § 794; 28 C.F.R. § 41.51; 45 C.F.R. § 84.4**

22 159. Plaintiff repeats and incorporates by reference the preceding paragraphs of this
23 Complaint as if set forth in full herein.

24 160. DRC Constituents are qualified individuals with disabilities within the meaning
25 of Section 504 of the Rehabilitation Act. 29 U.S.C. § 794(a).

26 161. Defendants are engaged in providing programs or activities receiving Federal
27 financial assistance sufficient to invoke the coverage of Section 504. *Id.*
28 § 794(b)(1) & (b)(3).

1 a. failing to provide DRC Constituents with services in the most integrated
2 setting and needlessly institutionalizing them in a psychiatric hospital or other institution or
3 putting them at serious risk of such institutionalization;

4 b. discriminating against DRC Constituents on the basis of disability by
5 utilizing methods of administration, adopting and applying policies, failing to make reasonable
6 modifications to programs and policies, and engaging in practices that result in unnecessary
7 segregation and institutionalization or subjecting them to risk of institutionalization;

8 2. Enjoin Defendants, their successors in office, subordinates, agents, employees
9 and assigns, and all persons acting in concert with them from subjecting DRC Constituents to the
10 unlawful acts and omissions described herein, and issue an injunction sufficient to remedy these
11 violations;

12 3. Order Defendants to take immediate action to reform their policies, procedures
13 and practices to fully comply with the ADA, Section 504, and California Government Code
14 section 11135. Under such order, Defendants must:

15 a. Cease the unnecessary institutionalization of DRC Constituents;

16 b. Provide intensive community-based mental health services to prevent
17 unnecessary institutionalization;

18 c. Ensure that these intensive community services are provided in a manner
19 that is culturally congruent and responsive which, among other things, will address the racial
20 disparities impacting Black DRC Constituents described herein.

21 4. Retain jurisdiction of this case until Defendants have fully complied with the
22 orders of this Court and there is reasonable assurance that Defendants will continue to comply in
23 the future absent the Court's continuing jurisdiction;

24 5. Award Plaintiff reasonable attorneys' fees, costs, expenses, and disbursements
25 as authorized by law; and
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6. Grant further relief as the Court may deem just and proper.

Dated: July 30, 2020

Respectfully submitted,

DISABILITY RIGHTS CALIFORNIA

/s/ Kimberly Swain
Kimberly Swain

GOLDSTEIN, BORGEN, DARDARIAN & HO

/s/ Andrew P. Lee
Andrew P. Lee

BAZELON CENTER FOR MENTAL HEALTH
LAW

/s/ Ira A. Burnim
Ira A. Burnim

DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND

/s/ Claudia Center
Claudia Center

Attorneys for Plaintiff

SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories on this e-filed document.

Dated: July 30, 2020

/s/ Andrew P. Lee
Andrew P. Lee

Appendix A



LEGAL ADVOCACY UNIT

1330 Broadway, Ste. 500
Oakland, CA 94612
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TTY: (800) 719-5798
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November 1, 2019

Via Email

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**Re: DRC Abuse/Neglect Investigation and Request for Information
Alameda County's Mental Health System**

Dear Dr. Tribble and Ms. Ziegler,

Disability Rights California ("DRC") has been investigating Alameda County's ("the County") mental health system pursuant to its authority as California's protection and advocacy system for people with disabilities. In the last few months, DRC has visited numerous mental health facilities, including John George Psychiatric Hospital ("John George"), Villa Fairmont Mental Health Rehabilitation Center ("Villa Fairmont"), Jay Mahler Recovery Center, Woodroe Place, Casa de la Vida, Bonita House, and Cronin House, among others. DRC also visited additional facilities that detain, house, or serve a high number of Alameda County residents with mental health disabilities, including Santa Rita Jail, the Henry Robinson Center, and the South County Homeless Project.¹ This letter summarizes our initial findings.

¹ DRC has designated Goldstein Borgen Dardarian & Ho, the Bazelon Center for Mental Health Law, and Disability Rights Education and Defense Fund as its authorized agents for purposes of its investigation. 42 C.F.R. § 51.42(a).

Based on our investigation, including facility visits and interviews with patients and providers, we have concluded that there is probable cause to find that abuse and/or neglect of people with disabilities has or may have occurred, as those terms are defined in our authorizing statutes and regulations. Accordingly, consistent with DRC's statutory access authority, we are requesting the production of additional information and documents, as identified in **Attachment A** at the end of this letter.²

As our investigation continues, we propose meeting with you – along with other important stakeholders, including Alameda Health System – to discuss our findings of systemic deficiencies that amount to violations of federal and state law and that put people with mental health disabilities at serious risk of harm. It is our intention to ensure effective, durable remedial measures to address these issues with you in an efficient and cooperative manner. ***Please let us know if and when you are available for such a meeting.***

I. Definition of Probable Cause

Disability Rights California is the protection and advocacy system for the State of California, with authority to investigate facilities and programs providing services to people with disabilities under the Developmental Disabilities Assistance and Bill of Rights (“PADD”) Act,³ the Protection and Advocacy for Individuals with Mental Illness (“PAIMI”) Act,⁴ and the Protection and Advocacy for Individual Rights (“PAIR”) Act.⁵ The patients and clients we interviewed fall under the federal protections of the PADD Act and/or the PAIMI Act, and their implementing regulations.

Under the PAIMI Act, probable cause means “reasonable grounds for belief that an individual with mental illness has been, or may be at significant risk of being subject to abuse or neglect.” DRC may make a probable cause determination based “on reasonable inferences drawn from [its] experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.”⁶

² Welf. & Inst. Code § 4903.

³ 42 U.S.C. § 15041, *et seq.*, as amended, 45 C.F.R. § 1386.

⁴ 42 U.S.C. § 10801, *et seq.*, as amended, 42 C.F.R. § 51.

⁵ 29 U.S.C. § 794e; Welf. & Inst. Code § 4900, *et seq.*

⁶ 42 C.F.R. § 51.2.

“Abuse” is defined as “any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness.”⁷ It also includes “any other practice which is likely to cause immediate harm if such practices continue.”⁸ Additionally, “the P&A may determine[] in its discretion that a violation of an individual’s legal rights amounts to abuse.”⁹

“Neglect” is defined as any “negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death.” Neglect may include a failure to “establish or carry out an appropriate individual program or treatment plan (including a discharge plan),” “provide adequate nutrition, clothing, or health care”; or “provide a safe environment” with adequate numbers of appropriately trained staff.¹⁰

II. Key Initial Findings

We have found probable cause that abuse and/or neglect of people with disabilities has or may have occurred based on the County’s failure to provide people with mental health disabilities: (1) appropriate services and supports in the most integrated setting appropriate, consistent with the goals of treatment and recovery; and (2) adequate treatment, conditions, and discharge planning at the County’s institutions (psychiatric hospital, IMDs, and jail).

Alameda Health System plays a notable role in this discussion, with respect to the conditions people with disabilities face at John George as well as the deficiencies in treatment and discharge planning.

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Similarly, Alameda County’s jail system, which consistently incarcerates a disproportionately high population of people with mental health disabilities, plays a consequential role in the issues we have

⁷ 42 C.F.R. § 51.2.

⁸ 45 C.F.R. § 1326.19.

⁹ *Id.*

¹⁰ 42 C.F.R. § 51.2.

identified. We are aware that people with mental health disabilities held in jail face dangerous and damaging isolation conditions and inadequate access to programming or meaningful mental health treatment (including discharge planning), deficiencies that are the subject of current federal litigation. *Babu v. County of Alameda*, Case No. 4:18-cv-07677 (N.D. Cal). We have learned that people with mental health disabilities regularly cycle in and out of both the County's psychiatric institutions and the jail system.

A. Failure to Provide Appropriate Services in the Most Integrated Setting

People with mental health disabilities have a right to access treatment and services in the most integrated setting appropriate.¹¹ Needless segregation in institutions perpetuates unfounded assumptions that people with disabilities are incapable or unworthy of participating in society. In addition, it deprives them of benefits and opportunities of community life.¹²

Recent data shows that Alameda County involuntarily commits the highest number of adults with serious mental illness of any county in California. Its involuntary detention rate is more than three-and-a-half times the statewide average.¹³

We found that people with serious mental illness in Alameda County experience, or are at risk of experiencing, unnecessary institutionalization on a broad and systemic scale, in ways that are harmful and injurious to their health and well-being, thus constituting a ground for a finding of probable cause of abuse and/or neglect.

¹¹ Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131-12134; Section 504 of the Rehabilitation Act ("the Rehabilitation Act"), 29 U.S.C. §§ 794 *et seq.*, 28 C.F.R. § 41.51(d); 28 C.F.R. § 35.130(d) (1991); and Gov't Code §§ 11135-11139.

¹² *Olmstead v. L.C.*, 527 U.S. 581, 600-01 (1999).

¹³ See California Involuntary Detentions Data Report, FY 2016/2017, http://www.dhcs.ca.gov/services/MH/Documents/FY16-17_InvolunDetenRep_12pt.pdf (Alameda County's 72-hour involuntary detention rate is 162.5 per 10,000 people, in contrast to the statewide average of 46.0, and that its 14-day intensive treatment rate is 46.6 per 10,000 people, in contrast to the statewide average of 13.1).

1. Harmful and Needless Institutionalization in John George’s Psychiatric Emergency Services Unit

John George’s Psychiatric Emergency Services (PES) unit is the primary facility providing services for adult Alameda County residents in psychiatric crisis. The PES is experiencing record high numbers of crisis visits—more than 1,100 visits per month. The number of people experiencing a psychiatric crisis regularly exceeds John George’s capacity to treat such patients safely.

During our recent monitoring visits, we observed that individuals at John George’s PES unit regularly wait 24 hours or more to receive an evaluation or any treatment. Our analysis of available data found that scores of people have been held for 70 hours or longer in 2019 alone, including at least one person who remained in the PES unit for eight days.

We observed individuals crowded into a single room awaiting evaluation and treatment. While waiting, patients compete for places to sit and lie down—including on the floor and in the hallways. On our recent tour, the census in the PES had reached 60 patients, far above the number of people it is designed and equipped to serve (resulting in a “census hold,” discussed below).

Subjecting Alameda County residents to these counter-therapeutic conditions is particularly disconcerting given the County’s own estimate that more than 75% of those placed on involuntary psychiatric holds—almost 10,000 people per year—do “not meet medical necessity criteria for inpatient acute psychiatric services.”¹⁴

John George periodically institutes “census holds,” which means that, in the troubling yet common situation where demand outpaces the facility’s resources, John George must cut off admissions of patients from local emergency departments and inpatient units, regardless of their need for acute psychiatric evaluation and treatment.

¹⁴ See, e.g., Alameda County Project Summary, Community Assessment and Transport Team (Apr. 13, 2018), https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda_INN%20Project%20Plan_Community%20Assessment%20and%20Transport%20Team_8.6.2018_Final.pdf.

Given these circumstances, people with serious mental illness face enormous risks, both of being confined unnecessarily in counter-therapeutic institutions and of being denied needed acute care.

These problems are compounded by systemic deficiencies that drive cycling in and out of John George for many people. The County itself has recognized that, upon discharge from PES, the majority of patients are “not linked to planned services and continue to over-use emergency services.”¹⁵ For example, we spoke with a patient who spent well over 24 hours in the PES and had multiple previous PES admissions. He reported that he is generally provided with little or no support at discharge (other than a non-individualized list of resources), and we confirmed that he would soon be discharged again without adequate discharge planning.

2. Harmful and Needless Institutionalization in John George’s Inpatient Units

We learned through the course of our monitoring that the average daily census and average length of stay in John George’s inpatient units is on the rise in recent years. The inpatient units are on pace to have over 5,000 patient visits in 2019. These units are segregated, institutional settings that allow little autonomy and are defined by rigid rules and monitoring.

All too often, patients are subjected to extended stays beyond what is clinically necessary due to a lack of sufficient community mental health resources, housing support, and/or programs that can meet patients’ needs. These extended “administrative” stays can last several days or more, costing millions of dollars and harming patients through unnecessary institutionalization.

3. Harmful and Needless Institutionalization in Institutes for Mental Diseases

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ACBHCS contracts with the Telecare Corporation to operate three mental health facilities that collectively hold almost 200 people with mental illness on a given day: (1) Villa Fairmont Mental Health Rehabilitation

¹⁵ Alameda County Project Summary, Community Assessment and Transport Team (Apr. 13, 2018), https://mhsoac.ca.gov/sites/default/files/documents/2018-10/Alameda_INN%20Project%20Plan_Community%20Assessment%20and%20Transport%20Team_8.6.2018_Final.pdf.

Center, (2) Gladman Mental Health Rehabilitation Center, and (3) Morton Bakar Center. These facilities are large, congregate, institutional settings populated by individuals with mental health disabilities. Individuals confined to these psychiatric institutions, especially Villa Fairmont, regularly remain institutionalized for weeks beyond what is clinically necessary due to the shortage of appropriate community options.

For example, we understand that, at Villa Fairmont, people are often held longer than clinically indicated due to the lack of appropriate residential and supportive services in the community. One patient at Villa Fairmont who was clinically ready for discharge faced an extremely lengthy delay in discharging from the institution due to the lack of a program to support his diabetes care needs. We also learned of incidents where people identified as appropriate for the community-based Casa de la Vida program waited weeks in Villa Fairmont, and even in Santa Rita Jail, for a spot to become available.

4. Lack of Community-Based Mental Health Services and Permanent Supported Housing

DRC found that, even with the recent implementation of some community programs (including the new crisis intervention services¹⁶), the need for community-based mental health treatment in Alameda County greatly outpaces the County's current capacity to provide such services. Indeed, providers at virtually every facility we visited spoke about how the lack of sufficient community-based mental health services and inadequate housing options create significant barriers to providing Alameda County residents with long-term safe environments and opportunities for recovery.

While the lack of community-based mental health services is extensive, a few key deficiencies raised repeatedly by mental health providers and Alameda County residents include not only the limited crisis intervention services but also: (1) failure to link high needs individuals to

¹⁶ We are encouraged to see the recent implementation of programs designed to address the historical service deficit in the area of crisis intervention, including this year's rollout of the Community Assessment and Transport Team (CATT) program and the recent opening of Amber House's crisis stabilization unit and crisis residential treatment program. These programs are essential, and will almost certainly require significant expansion in order to meet the needs of the County's mental health services consumer population.

Full Service Partnerships; (2) lack of housing, especially permanent supported housing; and (3) lack of integrated services.

We learned of people with mental health disabilities discharging from residential treatment programs to inadequate housing or homelessness, and without essential services and support to avoid further incident of psychiatric decompensation and institutionalization. We discovered waitlists for housing and other services of six months or more.

The scarcity of community-based mental health resources in Alameda County is especially acute for individuals who have both mental health and other co-occurring needs. For instance, there is insufficient service capacity for people with a dual diagnosis of mental illness and substance use. The primary provider of this service, Bonita House, has capacity to serve just fifteen people. Patients must be ambulatory. This means that individuals who have dual-diagnoses and need such services are often left without timely access to such services.

Likewise, patients with co-occurring disabilities and health conditions experience a shortage of treatment and housing options, as noted above.

These systemic deficiencies are dangerous and damaging in multiple ways: first, they prolong unnecessary institutionalization in restrictive facilities; and second, they place at serious risk patients who have mental health disabilities combined with other disability and/or treatment needs that are not adequately addressed. Indeed, a high number of chronically homeless individuals report living with multiple disabling conditions, including not just psychiatric disorders but also intellectual and developmental disabilities, chronic health problems, physical disabilities, and/or substance abuse disorders. The situation also serves to stigmatize members of the population that ACBHS serves who are already marginalized and at elevated risk.

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Alameda County's harmful and needless institutionalization of large numbers of its residents with serious mental illness puts people at serious risk of harm, at times with life-threatening consequences. The County's failure to provide services in the most integrated setting possible—through community services and supports—also violates Alameda County residents' federal and state rights. The ADA, the Rehabilitation Act, and the federal Medicaid Act, as well as related state law, prohibit

discrimination against persons with disabilities, which includes unnecessary segregation in institutions like psychiatric hospitals and other locked facilities.

B. Inadequate Discharge and Other Treatment Plans

Alameda County's system of discharge planning for people returning to the community from institutions is inadequate; the County maintains no effective practice for ensuring that individuals are discharged to appropriate settings with adequate services and supports to prevent re-institutionalization. This deficiency constitutes "neglect" under the law, which is defined, *inter alia*, as a failure to "establish or carry out an appropriate individual program or treatment plan (*including a discharge plan*)."¹⁷

During our monitoring visits, we observed significant deficiencies related to discharge planning, and a lack of adequate coordination between facilities and community-based service providers. We learned that many individuals are discharged to dangerous situations without adequate linkages to essential mental health care and related supports. The discharge plans for people with mental health disabilities at John George, IMDs, and Santa Rita Jail are frequently boilerplate and disconnected from a person's individualized needs as they prepare to return to the community.

Due to inadequate treatment and discharge plans, Alameda County residents with mental health disabilities end up experiencing repeated placements at John George or other locked psychiatric facilities. We are aware of many patients with mental health disabilities who have been repeatedly admitted to John George. Public documents show that approximately 2,300 John George PES visits each year consist of "high utilizers" of care (defined by AHS as people with at least four PES visits in a twelve-month period).¹⁸ Data recently provided by AHS also reveals that more than 250 people have had four or more John George inpatient admissions since 2016. Nearly half of this group identifies as Black or

¹⁷ 42 C.F.R. § 51.2 (emphasis added); see *also* Welf. & Inst. Code § 4900(g)(3).

¹⁸ Rebecca Gebhart & Karyn Tribble, John George Pavilion, Capacity Issues: Causes and Potential Solutions at 6 (July 11, 2016), http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_7_11_16/HEALTH%20CARE%20SERVICES/Regular%20Calendar/John_George_Pavilion_Psych_services_Health_7_11_16.pdf.

African-American, a striking and disproportionately high number. One person estimated that he had been held at John George more than 150 times.

We are also concerned about these same individuals cycling unnecessarily between locked psychiatric facilities, jail, and homelessness. It is notable and disturbing that an estimated 25% of the County's jail population and one-third of the County's homeless population has serious mental illness.

Alameda County also lacks an adequate system for assessing, placing, and tracking its mental health patients, which compounds the problems that DRC observed related to discharge planning. The system is comprised of various different providers and lacks an effective method for tracking each patient's evaluations, referrals, treatment, and progress.

Deficiencies in the County's coordination between the County's jail system and Alameda County Behavioral Health Care Services plays a role here as well. We observed deficiencies in the provision of discharge/reentry planning and services for people with mental health disabilities being released from Santa Rita Jail. These deficiencies expose this group to significant risks of re-institutionalization, homelessness, and a range of physical and psychological harms.

As one federal court recently noted, the recurring cycle of institutionalization, without adequate community-based services to stop it, is "the hallmark of a failed system."¹⁹

III. Next Steps

Given these initial findings, we plan to proceed with our investigation, including reviewing additional relevant documents and information.

Because DRC has found probable cause to believe that abuse and/or neglect has occurred, we are entitled to access and examine all relevant

¹⁹ *United States of America v. State of Mississippi*, --- F.Supp.3d ----, 2019 WL 4179997, *7, No. 3:16-CV-622-CWR-FKB (S.D. Miss. Sept. 3, 2019).

records.²⁰ We are also entitled to lists of names of individuals receiving services from the County's mental health system.²¹

While DRC has broad discretion and independence in determining how to best gain access to individuals, facilities, and records, we have a statutory duty to maintain the confidentiality of any records obtained in the course of an investigation.²² The access authority and confidentiality requirements that apply to DRC apply equally to its authorized agents.

DRC's statutory access authority directs that it shall have access to such records "relevant to conducting an investigation . . . not later than three business days after the agency makes a written request."²³

We request that the County provide the records and information requested in Attachment A no later than November 22, 2019.

IV. Conclusion

If you have any questions regarding our initial findings or our request for documents and information, please feel free to contact us.

²⁰ 42 C.F.R. § 51.41(d); Welf. & Inst. Code § 4902(a)(1); Welf. & Inst. Code § 4903(a).

²¹ DRC's access comes with Congress' intent that protection and advocacy systems have extensive investigative authority to "ensure that PAIMI's mandates can be effectively pursued." *Ala. Disabilities Advocacy Program v. J.S. Tarwater Developmental Ctr.*, 97 F.3d 492, 497 (11th Cir. 1996). Courts have found this to mean that following the requisite probable cause finding that neglect and abuse occurs within a facility charged with caring for individuals with a mental illness, authorized agencies, like DRC, may access a list names of individuals at the facility or involved in a specific program at the facility. *Connecticut Office of Prot. & Advocacy for Persons With Disabilities v. Hartford Bd. of Educ.*, 464 F.3d 229, 244-45 (2d Cir. 2006); *Penn. Prot. & Advocacy, Inc. v. Royer-Greaves Sch. for the Blind*, 1999 WL 179797 (E.D. Pa 1999).

²² 42 U.S.C. §§ 10805, 10806; see also Welf. & Inst. Code § 4903(f).

²³ Welf. & Inst. Code § 4903(e)(1).

We also look forward to having the opportunity to sit down and speak with you about next steps toward achieving an effective, durable remedy to the issues we have identified. Please let us know when you are available for such a meeting.

Thank you for your ongoing cooperation and courtesy.

Sincerely,

/s/ Kim Swain

Kim Swain
Disability Rights California

/s/ Andrew P. Lee

Andrew P. Lee
Goldstein Borgen Dardarian & Ho

/s/ Jennifer Mathis

Jennifer Mathis
Bazelon Center for Mental Health Law

/s/ Namita Gupta

Namita Gupta
Disability Rights Education & Defense Fund

Cc: David Abella, Alameda Health System [dabella@alamedahealthsystem.org]

Encl: Attachment A-DRC Requests for Records and Information

Attachment A

DRC REQUESTS FOR RECORDS AND INFORMATION

Pursuant to its access authority, DRC requests the documents and information described below *no later than November 22, 2019*.

DRC reserves the right to follow up with additional document and information requests.

- A. List of all individuals, including their respective current commitment status, length of stay, and contact information, currently (*i.e.*, as of date of response) receiving treatment at: (1) John George Psychiatric Hospital, (2) Villa Fairmont, (3) Gladman, and (4) Morton Bakar.
- B. List of all individuals, including contact information, who visited John George's PES unit more than three times since January 1, 2018, including documentation of how many times they visited John George's PES and/or inpatient unit, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.
- C. List of all individuals, including contact information, who were admitted to John George's inpatient unit two or more times since January 1, 2018, including documentation of how many times they visited John George's inpatient unit, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.
- D. List of all individuals, including contact information, who stayed at Villa Fairmont, Morton Bakar, and/or Gladman two or more times since January 1, 2018, including documentation of how many times they visited these facilities, the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.
- E. List of all individuals, including contact information, who have within the past two years received treatment at: (1) John George Psychiatric Hospital, (2) Villa Fairmont, (3) Gladman, or (4) Morton Bakar, AND had a co-occurring disorder or chronic condition, such as a substance abuse disorder, a physical disability, or a chronic condition, with the dates and lengths of stay for each visit, the setting to which each person was discharged, and any discharge plans provided.

- F. List of all individuals, including contact information, who have a serious mental illness and have been discharged to a homeless shelter following a visit/admission at John George.
- G. List of all individuals, including contact information, who have used crisis or emergency services for psychiatric reasons two or more times within the past two years.
- H. List of all individuals, including contact information, who were booked at Santa Rita Jail within 60 days or less of discharge from John George's inpatient or PES units, Villa Fairmont, Gladman, or Morton Bakar since January 1, 2018.
- I. List of all individuals, including contact information, who were admitted to John George's inpatient or PES units within 60 days or less of release from Santa Rita Jail since January 1, 2018.
- J. The MHS-140 Client Information Face Sheet(s) for each person on any of lists produced in response to any of the aforementioned Requests.
- K. The County's definition of a "high utilizer" of mental health services, and any policies or procedures that correspond with special treatment or care provided to such high utilizers.
- L. Any and all policies and training materials regarding referrals to Full Service Partnerships.
- M. The criteria that ACCESS uses to determine eligibility for a Full Service Partnership.
- N. Any and all policies and training materials regarding discharge plans from John George's PES, John George's inpatient units, Villa Fairmont, Gladman, Morton Bakar, and Santa Rita Jail.



LAW ENFORCEMENT & PEOPLE IN MENTAL HEALTH CRISIS

ACBA / August 12, 2020



INTRODUCTIONS

- Cat Brooks, Justice Teams and Anti-Police Terror Project
- Judge Charles Crompton; SF Superior Court, Mental Health Court
- Ebony Sinnamon Johnson, forensic social worker, Court Appointed Attorney Program (CAAP)
- Ryan Knutson; Knutson Law Offices
- Megan Low, forensic social worker, Court Appointed Attorney Program (CAAP)
- Susan Mizner; Director of the ACLU's Disability Rights Project
- Jennifer Stark is the Managing Attorney of the Mental Health division at Disability Rights California



HISTORY: Healthcare and Mental Health Care in the U.S.

Statistics, Costs, Lack of Treatment

California and National Insurance Coverage Rates - Systemic Issues

1. Multiple types of insurance coverage - to oversimplify there are private non-employer based, employer based group coverage, and government coverage (in CA Medi-Cal and Medicare)
2. Drop in California's number of uninsured from 17.2% in 2013 to 7.2% in 2017 as a direct result of passage of ACA and Medi-Cal expansion up to 200% of poverty line - state based insurance marketplace estimates 60% of uninsured are undocumented, 3% of Californians eligible for subsidies do not have them
3. Nationally, in 2017, non-Hispanic Whites had the lowest uninsured rate among race and Hispanic-origin groups (6.3 %). The uninsured rates for Black Americans and Asians were 10.6 % and 7.3 %, respectively. Hispanics had the highest uninsured rate (16.1 %).
4. Health insurance coverage directly translates into coverage for existing mental illness, outpatient treatment, and counseling services

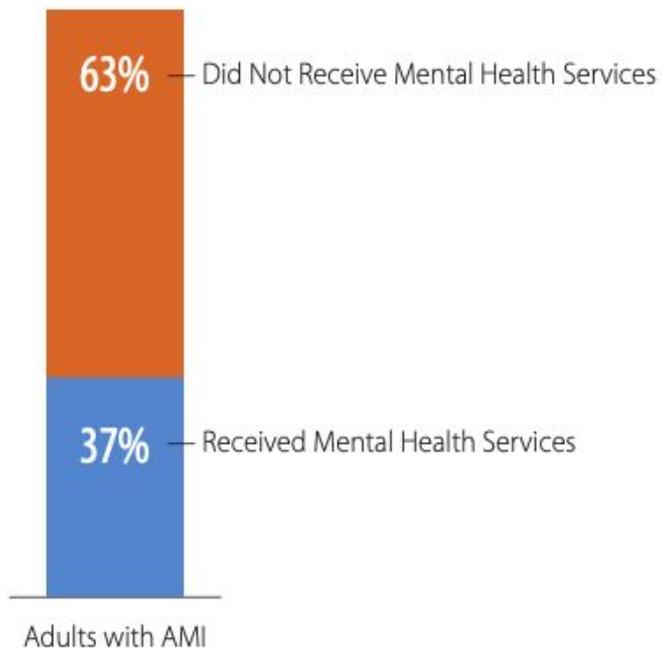
Access to Mental Health Treatment

1. According to California Health Care Foundation, 20% of California adults experience a mental illness in their lifetime
2. 7.9% of children experienced severe emotional disturbance
3. 63% of adults who experience mental illness do not receive treatment
4. Clear connection to class/race based on CHCF data
5. 30% increase in inpatient hospitalization for severe mental health issues from 2010-2015
6. With expansion of Medi-Cal eligibility, 50% increase in consumers receiving mental healthcare from 2012 to 2015

INCIDENCE, BY INCOME, 2014



Treatment, 2010–2014



Incidence, 2014

4.2% Adults with Serious Mental Illness 15.4% Adults with Any Mental Illness

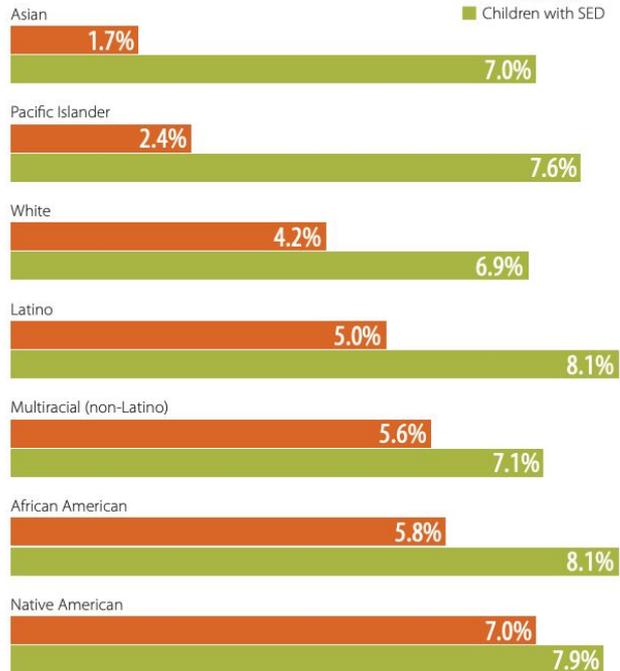


7.6% Children with Serious Emotional Disturbance



INCIDENCE, BY RACE/ETHNICITY, 2014

■ Adults with SMI ■ Children with SED

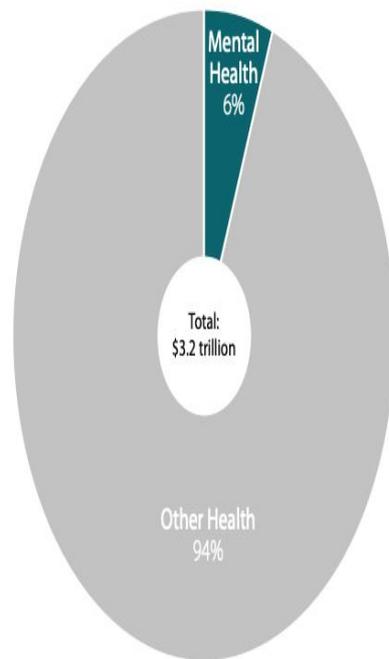


Notes: Any mental illness (AMI) is a categorization for adults 18 and older who currently have

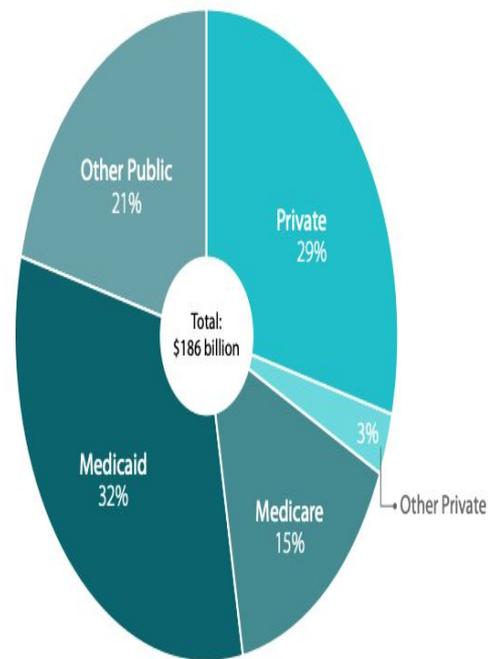
IN

Expenditures

AS A SHARE OF ALL, US, 2015P



BY PAYER, US, 2015



o currently have, or at any time in the past year had, a diagnosable mental, behavioral, or emotional disorder, regardless of the level of impairment in all illness causes serious, moderate, or mild functional impairment. *Serious mental illness (SMI)* is a categorization for adults 18 and older who currently have a behavioral, or emotional disorder resulting in functional impairment that interferes with or limits major life activities. *Serious emotional disturbance (SED)* is a categorization for children 17 and younger who currently have had, a mental, behavioral, or emotional disorder resulting in functional impairment that substantially limits functioning during the past year. California data except where noted.

Publicly Funded Mental Healthcare in California - History and Outcomes

Figure 3. Revenue for County-Administered Specialty Mental Health Services, by Source, FY2003–04 to FY2012–13

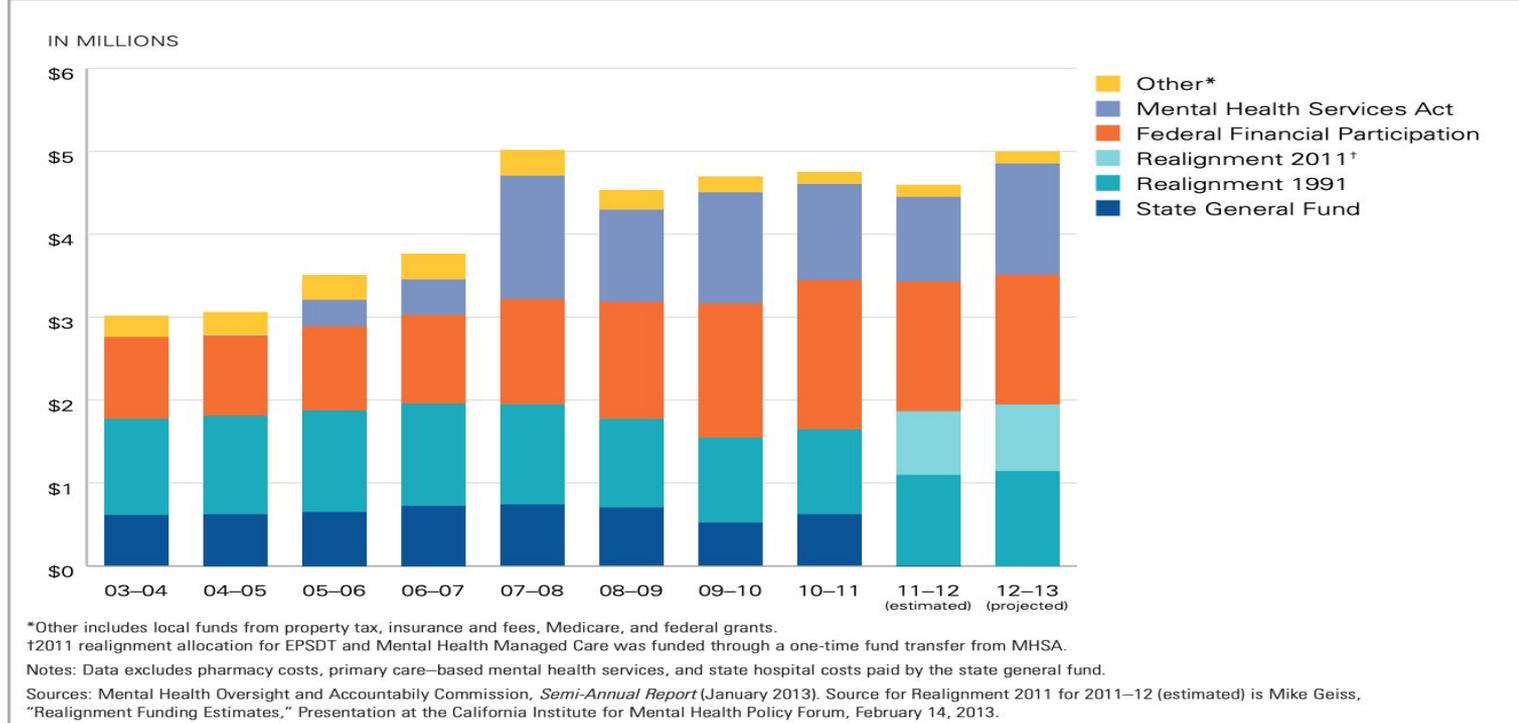
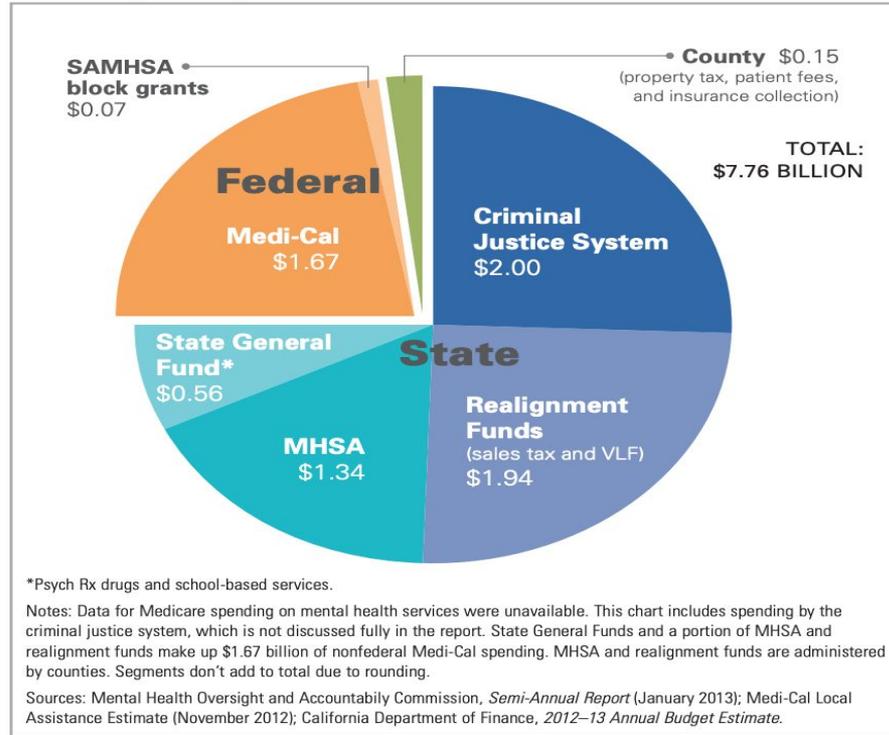
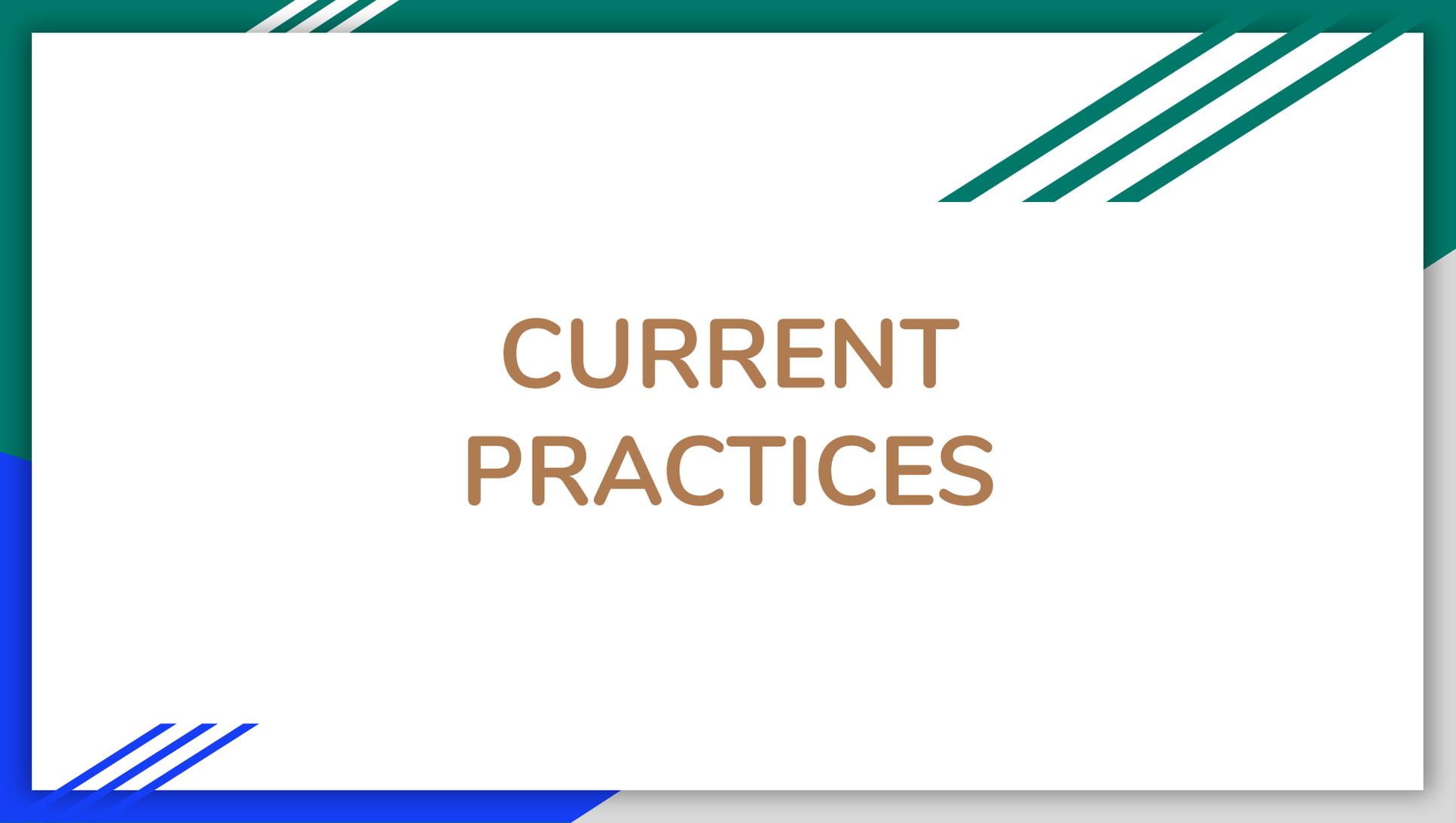


Figure 1. Estimated Public Spending on Mental Health Services in California, by Source, FY 2012–13 (in billions)





CURRENT PRACTICES

Limited Mental Health Systems

- Mental health services are limited and available to only a fraction of those who need them. In especially short supply are services with a good track record of success for people with the most significant needs.
- Black people with mental health disabilities are especially poorly served, and a large percentage of them receive no services at all.
- As a result, Black people are disproportionately reliant on emergency rooms for mental health care. They are also at greater risk for being involuntarily committed to a hospital, and are more likely to have a police encounter when experiencing a mental health crisis.

In far too many communities, police take the lead in responding to people who are experiencing a mental health crisis. This often leads to tragic consequences, especially for Black people with mental health disabilities.

- As many as one-quarter of the fatalities from police shootings are people with mental health disabilities.
- Black people with mental health disabilities are at great risk of dying at the hands of the police.
- Because of over-policing, people with mental health disabilities, especially those who are Black, disproportionately experience high rates of incarceration and unnecessary institutionalization.

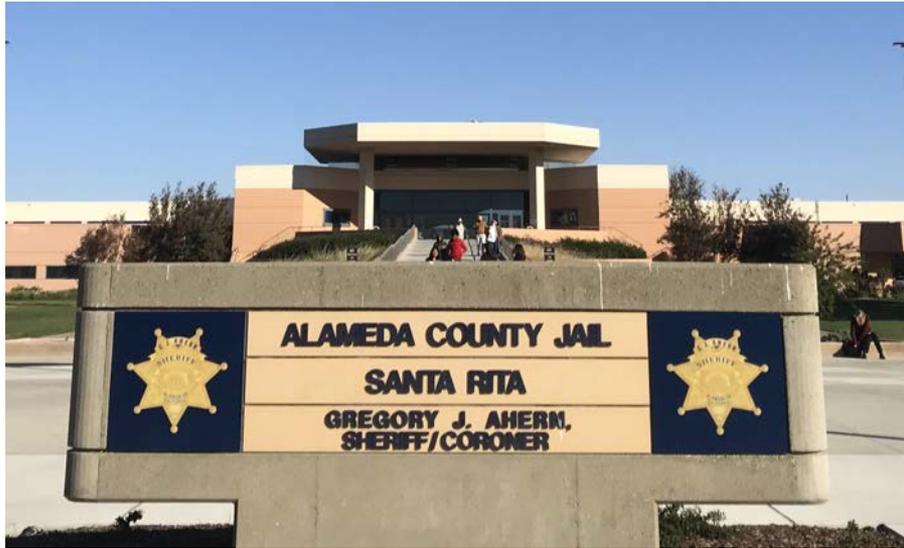


Case Study: *Disability Rights California v. Alameda County, et al.*, Case No. 20-5256 (N.D. Cal., filed July 30, 2020)

Disability Rights California, the Bazelon Center for Mental Health Law, Disability Rights Education and Defense Fund, and Goldstein, Borgen, Dardarian & Ho



Alameda County: Case Study Continued



Approximately one-quarter of the people held in Alameda County's jail population have been identified as having a "serious mental illness."

On average, people with serious mental health disabilities spend five times longer in Alameda County's Santa Rita Jail than other prisoners.

Although individuals who are Black comprise 11% of Alameda County's population, half of the people receiving mental health services from the County while in jail are Black.

People with mental health disabilities held in the County's jail face dangerous and damaging isolation and inadequate access to mental health treatment, including discharge planning. A large number have died while in jail.

Christian Madrigal

Mr. Madrigal, a 20-year-old man in need of mental health services, died tragically on June 15, 2019.⁷

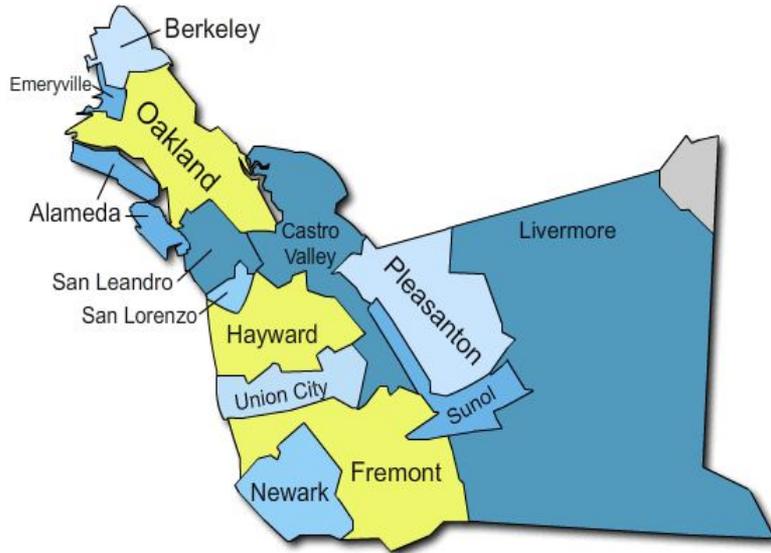
Despite the fact that Mr. Madrigal's family called 911 seeking mental health treatment, police officers physically assaulted Mr. Madrigal and then took him to Santa Rita Jail rather than to a mental health facility.

At the jail, deputies continued to abuse Mr. Madrigal, including chaining him to a door. Mr. Madrigal died of the physical injuries he sustained in the custody of the police and jail a few days later. His untimely death was wholly preventable.



Alameda County

Population: 1.67
million



Alameda County is beginning a 3-year pilot program in which teams of mental health workers will be dispatched with EMTs to respond to some people having a mental health crisis. While this is a step in the right direction, there are not enough of these teams to meet the need.

The County estimates that approximately 15,260 Alameda County residents have a serious mental health disability.

Currently, there are only six mobile crisis teams, and they are limited in terms of geographic scope and hours of availability.

There also need to be far more options for diversion. Currently, there is only one community-based crisis stabilization unit in the entire county, and its capacity is about 12 people.

There needs to be follow-up care for individuals who have experienced a mental health crisis.

In Alameda County and elsewhere, we must end the over-reliance on the police, especially in predominantly Black communities, and we must invest in public mental health systems, expanding their caPacity to deliver community-based mental health services, including full service partnerships/assertive community treatment, intensive case management, crisis services, supported housing, substance use treatment, peer support services, and supported employment.

In order to improve outcomes and reduce racial disparities, these services be provided in a culturally responsive manner and include individuals with lived experience.

Recommendations for Minimizing Police's Role in Responding to People with Mental Health Disabilities

***Bazelon Center for Mental Health Law**

- *Re-direct requests for police intervention.*
- *Capacity for a mental health response.*
- *Follow-up care.*

JUVENILE JUSTICE & MENTAL HEALTH

What happens to a youth when a doubt is declared?

- 709 proceedings
- ACBHCS juvenile competency protocols

Case Presentation

BEHAVIORAL HEALTH COURT (BHC)

ESTABLISHED BY SF SUPERIOR COURT IN 2002 TO ADDRESS THE INCREASING NUMBER OF DEFENDANTS IN MENTAL HEALTH CRISES CYCLING THROUGH THE CRIMINAL JUSTICE SYSTEM BY:

- FINDING APPROPRIATE CASE DISPOSITIONS IN LIGHT OF THEIR VOLUNTARY PARTICIPATION IN BHC, THEIR MENTAL HEALTH STATUS, AND THEIR CHARGES;
- SETTING CONDITIONS, INCLUDING ADHERENCE TO TREATMENT PLANS AND REMAINING ARREST-FREE FOR AT LEAST ONE YEAR; AND
- CONNECTING THEM WITH COMMUNITY TREATMENT SERVICES, INCL. HOUSING.

BEHAVIORAL HEALTH COURT (BHC)

MOST CASES ARE POST-PLEA AND INVOLVE PROBATION SUPERVISION AND RESOURCES.

ELIGIBILITY REQUIREMENTS INCLUDE:

- A “SERIOUS AND PERSISTENT MENTAL ILLNESS,” ACC. TO THE DSM-V;
- A CONNECTION BETWEEN THE CHARGES AND THE “SERIOUS AND PERSISTENT MENTAL ILLNESS”; AND
- CHARGES OTHER THAN HOMICIDE, ELDER ABUSE, DOMESTIC VIOLENCE, AND SEX OFFENSES.

MENTAL HEALTH DIVERSION (MHD)

- CREATED IN 2018 BY PENAL CODE § 1001.36.
- PROVIDES FOR DISMISSAL OF CHARGES AND RECORD-SEALING UPON SUCCESSFUL COMPLETION OF DIVERSION.
- JUDGE DETERMINES “SUCCESS” (DISCRETIONARY).
- MAXIMUM TWO-YEAR DURATION.
- IMPLEMENTATION ON A COURT-BY-COURT BASIS.

MENTAL HEALTH DIVERSION (MHD)

ELIGIBILITY REQUIREMENTS INCLUDE:

- A DIAGNOSED DSM-V DISORDER PLAYED A SIGNIFICANT ROLE IN THE CHARGED OFFENSES;
- DEFENDANT AGREES TO TREATMENT PLAN AND WAIVES SPEEDY TRIAL;
AND
- JUDGE SEES NO UNREASONABLE RISK TO PUBLIC SAFETY (DISCRETIONARY).



ALTERNATIVES TO POLICE AND SPECIALTY COURTS

Problem Statement

- Approximately 25% of all police killings are people in mental health crisis.
- 911 responders are police, EMT's, and fire fighters
- Armed and uniformed officers can quickly escalate crisis situations.
- Officers too often use force, resulting in injury, trauma, and death.
- If the person in crisis is also a person of color, the risk of force increases.

Alternatives to Police – Existing Models

Mobile Crisis Teams

- Link the community with mental health services and supports.
- Composed of mental health social workers and nurses, with medical back-up by phone.
- Provide support on the street, in homes, not in ER's or clinics.
- Costs, on average, 23% less than police.
- Reduces hospitalizations, and hospitalization costs by 79%.

Alternatives to Police – Existing Models

Peer Crisis Services

- Programs offer a calm environment
- Staffed by people with lived experience with psychiatric disabilities.
- Short-term assistance.
- Significantly less expensive (1/6th the cost of day treatment), with better outcomes.

Alternatives to Mental Health Courts – Existing Models

Assertive Community Treatment

- Case workers with only 10 – 12 clients.
- Help with treatment needs, but also in getting and maintaining housing, employment and community activities.
- 83% decrease in jail days; 85% reduction in hospital costs.

The Camel's Nose Under the Tent



Goals

- Move resources from police and the criminal legal system to community services and supports.
- Develop a functioning, culturally appropriate, full-service mental health system, to reduce people getting to the point of crisis.
- When crises do occur, ensure reliable, culturally appropriate, well-funded, and sufficiently staffed alternatives to police responses.

Anti-Police Terror Project

- Socially competent support



QUESTIONS / DISCUSSION



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

DRAFT BY POLICE COMMISSION WITH CPA ADDITIONS

COALITION FOR POLICE ACCOUNTABILITY DISCUSSION DRAFT 9-9-20

(Proposed CPA Edits and Additions=RED. Black is existing Police Commission Draft. Additional suggestions welcomed - purpose of draft.)

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CPA DRAFT
9.9.20

A. MISSION, PURPOSE, AND CORE PRINCIPLES

A.1. Protection and Sanctity of Human Life Paramount

1. The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.
2. The Oakland Police Department is committed to transformative, equitable policing that values and serves the entirety of our community. The Department recognizes that historically policing and law enforcement, - including too many members of OPD - have often failed in these responsibilities.

A.2. Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

1. Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.
2. While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a ~~an officer to member to retreat or~~ be exposed to possible physical injury before applying ~~reasonable~~ necessary force within the directives restrictions.

A.3. Policy Direction Beyond Constitutional Principles

1. The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (Graham v. Connor, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department ~~aspires to go~~ sets standards beyond the minimum requirements of Graham ~~and its minimum requirements~~. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is ~~intended to ensure~~ requires that de-escalation techniques are used whenever feasible, that force is used only when necessary, and that the amount of force used is proportional to the ~~situation that an officer encounters~~ threat or resistance of the subject under the circumstances.

A.4. Department Purpose

1. The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make

forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances, **and gravity of the situation** do not allow for the use of these alternatives.

2. **Officers who violate those values by using (unnecessary) force degrade the confidence of the community, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.**

A.5. Strict Prohibitions on Inappropriate Force

1. Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. ~~Force that is not reasonable and necessary under the totality of the circumstances will be subject to corrective action, including discipline up to and including termination.~~ **(SEE #2 re strikeout)** It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force.
2. **Actions inconsistent with this directive (prohibiting unnecessary force under the totality of the circumstances) shall result in (corrective action and) discipline, up to and including termination.**
3. **Any action taken by an officer that is inconsistent with the provisions of this directive shall be considered an unauthorized use of force by the department and not be considered as activity within the proper scope of the officer's departmental duties as an employee of the city of Oakland from a legal perspective.**
4. **Officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force. (Camden NJ)**

A.6. Disparities and Bias (NEW SECTION)

1. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.
2. **Data from numerous academic studies of policing* demonstrate that a person's race affects the likelihood and severity of use of force, even when all variables are considered. OPD data on racial profiling continues to show that a subject's race is a significant factor in determining police response and**

behavior. (* Ross, Winterhalder, McElreath - 2020; Goff, Lloyd, Geller, Raphael, Glaser - 2016; Fryer - 2016.)

3. It is fundamental to Oakland Police Department values and the communities we serve that use of force policies, training and discipline recognize the history and continued racial disparities in use of force, that the Department is committed to eliminating these practices. Any officer who engages in any such patterns of behavior cannot fulfill the duties of a police officer effectively and shall be subject to corrective action up to and including termination.

A.7. Duty to Intervene & Report

1. Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer **using or** about to use force that is **not objectively reasonable and proportional to the risk presented**, or otherwise inconsistent with this policy shall, ~~absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events~~ **stop before the fellow officer before the officer does something that makes any official action necessary as quickly as possible**. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. ~~Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and stop the use of force as quickly as possible~~. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.
2. The duty to intervene requires that officers accurately report any use of force by fellow officers that is not objectively reasonable or is otherwise inconsistent with this policy. Failure to accurately report will subject an officer to discipline.

A.8. Commitment to De-Escalation

1. When safe, feasible, and without compromising **essential** law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. **Officers shall attempt to control an incident through the use of time, distance, communications, tactical repositioning, available resources area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis response resources, in order to reduce the need for force, and**

increase officer and civilian safety.(AB392 original language as proposed by the bill's author, Dr. Weber and New Orleans PD Use of Force directive)

2. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, the officers shall ~~de-escalate~~ reduce the amount of force used as the resistance decreases, as soon as ~~whenever~~ it is safe, feasible, and reasonable to do so..

A.9. Commitment to Serving All Members of the Community: (NEW SECTION)

1. (The Oakland) Police Department recognizes the magnitude of the responsibility that comes with the constitutional authority to use force. This responsibility includes maintaining vigorous standards and transparent oversight systems to ensure accountability to the community in order to maintain their trust. This includes: Force prevention efforts, Effective tactics and Eliminating persistent racial disparities in use of force and ongoing, Objective review of all use of force.
2. Uses of force, even if lawful and proper, can have a damaging effect on the public's perception of the Department and the Department's relationship with the community. Both the Department and individual officers need to be aware of the negative effects of use-of-force incidents and be empowered to take appropriate action to mitigate these effects, such as:
 - Explaining actions to engaged persons or members of the public
 - Offering all reasonable aid to those affected by a use-of-force
 - Treating subjects, witnesses, and bystanders with professionalism, respect and courtesy
 - Department follow-up with neighbors or family to explain police actions and hear concerns and feedback.

A.10. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities

1. The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious harmful effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies. Commitment to Medical Aid.

A.11. Commitment to Medical Aid

1. Whenever a person is injured by a use of force, complains of injury from a use of force, requests medical attention after a use of force, **or when medical aid is required by policy**, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training, ~~and skillset~~ **and OPD policy**.

A.12. Commitment to Thorough and Fair Evaluation of Force

1. The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.
2. Any evaluation of force, de-escalation or disengagement must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the best strategy to utilize amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and where the officer is still assessing the risk. dangerous.

A.13. Additional Core Principles in Use of Force Policies Mandated In This General Order

1. **DISENGAGEMENT:** In addition to de-escalation, officers shall use tactical disengagement - i.e. leave the scene - when continued contact may result in an unreasonable risk to the subject, the public or the officer and no crime or a minor crime has occurred, the subject is experiencing a mental health crisis or the officer has means to follow up later such as ID or a license number.

Disengagement can also mean quickly bringing another form of assistance to bear, such as crisis intervention or mental health services. (P23)

2. **PROPORTIONALITY:** Officers shall only use objectively reasonable and necessary force, proportional to objective circumstances, the seriousness of the infraction and the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective. (P16)

3. **FURTHER RESTRICTIONS ON USE OF FORCE:** Force may not be used to resolve a situation more quickly unless to serve public safety nor to force compliance with an officer's request unless the request is necessary to serve public safety. ~~or criminal adjudication.~~

Officers shall identify themselves and issue warnings prior to use of force and give subjects reasonable time to comply. Typically intermediate less lethal and lethal force may not be used against restrained subjects.

Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.

4. ASPHYXIA BAN: Chokeholds, carotid holds and other neck holds are banned. Additionally, officers shall not sit, kneel, or stand on a person's chest, back, or shoulders, thereby reducing the person's ability to breathe. (See SO 9205 - 7-1-21)

5. ELECTRONIC CONTROL WEAPONS: Use of ECWs is only allowed when the subject is causing or clearly threatening immediate bodily harm. ECW's are never allowed on physically vulnerable individuals.

6. SPECIALTY IMPACT WEAPONS: SIM is banned in crowd control situations. Warning is required and SIM shall be used only in situations where lethal force is justified. (P.33)

7. CHEMICAL AGENTS: (CONSIDER TOTAL BAN OR...)

Chemical agents can be used to subdue an unarmed attacker or resistance with a weapon other than a firearm that is likely to cause physical injury.

Chemical agents shall not be used on crowds except in extreme violent circumstances that pose serious physical danger to the public or officers, nor shall they be used on individuals with physical vulnerabilities. (P.33)

8. POINTING A FIREARM: The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force. Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force. (P.36)

9. FIRING AT MOVING VEHICLES: Firearms shall not be discharged at a moving vehicle. The only exception is to defend against the vehicle being used to cause death or great bodily injury to the officer or members of the public, with no other reasonable avenue of protection or escape. (P.37)

10. WARNING SHOTS: Officers are prohibited from firing warning shots. (P. 38)

11. USE OF FORCE REPORTING AND REVIEW: The Department is committed to full reporting of use of force incidents, to thorough, objective and fair evaluation of all incidents of reportable force and outcomes. Failure to report is a serious cause for discipline.

Reporting and Review shall be used to evaluate overall department practices, revise policy and improve training as well as to evaluate particular incidents and actions by individual officers. (P.40)

12. CROWD CONTROL: Special Impact Weapons and Chemical Agents are banned for crowd control, excepting circumstances that seriously endanger the public or officers.

Agencies that are not trained in and bound to OPD Use of Force and related general orders shall not be brought in to assist in crowd control. (P.35)

13. MILITARY WEAPONS: INCORPORATE ELEMENTS OF THE PROPOSED MILITARY WEAPONS ORDINANCE THAT ARE APPROPRIATE TO USE OF FORCE GENERAL ORDER.

14. CANINES: Direct apprehension by canines shall be used only when the officer has probable cause to believe that the subject poses an imminent threat of harm to the officers or public or apprehension in very serious crimes that threaten public safety. (P.31.)

B. DEFINITIONS

B.1. Carotid Restraint Hold

1. A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, **which restricts blood flow to the brain with no effect on the respiratory structures of the throat, is applied in order to gain control.**
2. The carotid restraint hold is considered lethal force by the Oakland Police Department and members are prohibited from using **any neck hold, including the carotid restraint hold.**

B.2. Chokehold

1. A physical maneuver that restricts an individual's ability to breathe **for the purposes of incapacitation.** This does not include the carotid restraint hold. A chokehold is considered lethal force by the Oakland Police Department and members are prohibited from using **any neck holds, including chokeholds.**

B.3. Complaint of Pain

1. A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

B.4. Cooperation /Compliance

1. Responsiveness to and compliance with officer requests.

B.5. Crowd Control

1. Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal tactics, and arrest procedures. Reference Training Bulletin III-G, *Crowd Control and Crowd Management.* **(Bulletin has not been vetted by CPA.)**

B.6. De-Escalation

1. Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, **risk assessment** or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- ~~reduce or end a use of force after resistance or an immediate threat has ceased or diminished.~~ Force reduction shouldn't be confused with de-escalation, which is a strategy to avoid using force and shouldn't be conflated. Find another place for this - as a separate definition?

B.7. Disengagement

1. **Disengagement is the tactical decision to leave, delay contact, delay custody or plan to make contact at a different time and under different circumstances.**

B.8. Exigent Circumstances

1. Those circumstances that would cause an **objectively** reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence **in a serious crime**, or the escape of a suspect.¹

B.9. Feasible

1. Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

B.10. Force

1. Any physical or mechanical intervention used by an officer to defend against, control, overpower, restrain, or overcome the resistance of an individual. Force includes less-lethal and lethal force options.

B.11. Force Options

1. The force options trained and deployed by the Oakland Police Department include:
 - Baton / Impact Weapons
 - Chemical Agents
 - Control Holds / Defensive Tactics / Compliance Techniques
 - Electronic Control Weapons
 - Firearms
 - Oleoresin Capsicum (OC) Spray
 - Personal Body Weapons

¹ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

- Physical Control Techniques, including escorts
 - **Police Canines**
 - Specialty Impact Munitions
 - Takedowns
 - Verbal Commands / Instructions / Command Presence
 - Verbal Persuasion
2. Less-lethal force options are further explained in section G-1, Less-Lethal Force Options, while lethal force options are further explained in section H-1, Lethal Force Options. **(H & I in this draft)**

B.12. Great Bodily Injury

1. Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

B.13. Immediate Threat

1. A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat is ready to take place, impending, likely to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat is one that, from appearances, must be instantly confronted and addressed.

B.14. Less-Lethal Force

1. Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.

B.15. Lethal Force

1. The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.

B.16. Medical Aid

1. Medical interventions and life-saving techniques, ranging from home remedies and first-aid to life-saving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring a subject's vital

signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

B.17. Minor Bodily Injury

1. Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).

B.18. Necessary and Objectively Reasonable

1. Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.
2. An action is necessary if it is reasonably **known by the officer** ~~believed~~ to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether **objectively reasonable** alternatives to the action were available and/or practical AND whether the action was reasonably likely to effect the lawful purpose intended **and was proportional to the circumstances and dangers posed.**
3. **Necessity and** Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion – such as the use of force – is **necessary** ~~objectively reasonable~~ requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The test of ~~reasonableness~~ **necessity** under the Fourth Amendment is not capable of precise definition or mechanical application however its proper application requires careful attention to the facts and circumstances of each particular case.
4. Any evaluation of the ~~necessity~~ ~~reasonableness~~ of a particular use of force shall be judged from the perspective of an **objectively** ~~reasonable,~~ **experienced, properly trained** officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. All evaluations of ~~necessity~~ ~~reasonableness~~ shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.

5. Factors which may be considered in determining the objective **necessity** ~~reasonableness~~ of force – and which may be used by officers to determine whether force is reasonable based on a situation in which they are involved – include, but are not limited to:
- The seriousness/severity of the crime or suspected offense;
 - The level of threat or resistance presented by the subject;
 - Whether the subject was posing an immediate threat to officers or a danger to the public;
 - The potential for injury to members of the public, officers, or subjects;
 - The risk or apparent attempt by the subject to escape;
 - The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
 - The conduct of officers leading up to the use of force;
 - The apparent need for immediate control of the subject for a prompt resolution of the situation versus the ability to step back, regroup, and develop an alternative approach, and the time available to the officer to make that decision;
 - Efforts made by officers to de-escalate the situation, and the reactions of the subject(s) to those efforts;
 - The time available to the officer to make a decision;
 - The availability of other resources;
 - ~~The training received by the officer;~~ *CPA: NOTE: The “reasonableness” or necessity of using force in a particular situation should be as objective a criterion as possible, and not a variable based on the subjective inexperience or possible deficiencies in training of a particular officer. Those are appropriate considerations in determining disciplinary action or retraining of an individual officer or upgrading departmental training, but should not be the criterion for determining whether or not a subject was treated properly or improperly according what should be objective departmental and legal standards.*
 - The proximity or availability of weapons, or items which could be used as weapons, to the subject;
 - Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus subjects;
 - Environmental factors and/or other exigent circumstances;
 - Whether the subject had any perceived physical disability;

- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the subject was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.
- **If a person indicates they wish self-harm, such as indicating they want officers to shoot them.**

B.19. Officer

1. Any sworn member of the Oakland Police Department, at any rank.
2. Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

B.20. Police Canine

1. A **dog** ~~canine~~ that is specifically trained and deployed to search for, locate and assist in the apprehension of criminal suspects. The Police Canine is certified by a Peace Officer Standards and Training (POST) certified canine evaluator as meeting current voluntary POST canine standards. A Police Canine may also be cross-trained in the tracking method and narcotics detection. Reference DGO K-09, Department Canine Program. **(Manual not vetted by CPA.)**

B.21. Procedural Justice

1. Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:
 - Respect: Treating all people with dignity and respect;
 - Voice: Giving people an opportunity to be heard;
 - Neutrality: Being neutral and fair when making decisions; and
 - Trustworthiness: Conveying trustworthy motives, such as doing what is best for the community.

B.22. Proportional Force

1. Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.
2. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section F, LEVELS OF FORCE - **G in this draft**)

B.23. Resistance

1. Resistance is the absence of cooperation, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or level (see section E, LEVELS OF RESISTANCE - **F in this draft**), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the immediacy of the threat, if any, posed by the person as well as whether the force used to overcome the resistance was proportional to the resistance posed.

B.24. Restrained Person

1. A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.

B.25. Serious Bodily Injury

1. Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.

B.26. Totality of Circumstances

1. All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and subject leading up to the use of force, all viewed from the perspective of a reasonable officer.

B.27. Vehicle Ramming Mass-Casualty Attack

1. An attack in which a subject deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

B.28. Vulnerable Populations

1. Vulnerable people include children (especially those under 14 years old), elderly persons (especially those over 64 years old), pregnant women, people with physical, mental health or intellectual challenges, people of small stature, and people with limited English proficiency or other communications challenges

C. DE-ESCALATION

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department's mission.

Policing, at times, requires that an officer exercise control of a violent or resisting subject, or a subject experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective. Tactical repositioning

or other de-escalation tactics, and tactical disengagement are not considered “retreat” for the purposes of this policy.

C.1. Goals of De-Escalation

1. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

C.2. Considerations Surrounding the use of De-Escalation

1. De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, subject, and public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.
2. Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:
 - The officer’s use of a critical decision-making structure;
 - The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
 - Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
 - Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;
 - The availability of additional de-escalation resources;
 - Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
 - The level of resistance posed;
 - Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.
 - Indications that a person is in crisis, such as if a person indicates that they wish self-harm, such as saying that they want officers to shoot them.

C.3. Policy Requirement Regarding De-Escalation

1. When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.
2. Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the subject. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

C.4. De-Escalation Tactics, Techniques, and Principles

1. De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, subject, and public safety, and completing the law enforcement mission.
2. Officers must recognize in assessing de-escalation versus use of force that racial bias, even if implicit, is a reality and consider their actions prior to, during and after any incident in context of how race impacts decisions to use force, particularly lethal force, versus choosing de-escalation.
3. Officers must recognize that real and perceived racial bias in outcomes of their encounters with the community can improve or diminish effective law enforcement. OPD commits to the highest standards of officer training and discipline in confronting this challenge.
4. Officer's conduct prior to the use of force, including the display of a weapon, may be a factor which can influence the level of force necessary in a given situation. Officers shall take reasonable care that their actions do not precipitate an unnecessary or disproportionate use of force, by placing themselves or others in jeopardy. Officers should continually assess the situation and changing circumstances, and modulate the use- of-force appropriately.
5. Broadly, de-escalation techniques fall under the following categories:
Communication

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons the weapons tool belt when not necessary for safety reasons

~~Avoidance of~~ **Not** using disrespectful language, such as taunting or insults, which **could** will escalate **situations** ~~the incidents~~.

Clear instructions and commands

Active listening, repetition, and indications of understanding

Gathering information

Assessing communication barriers

Warnings and clear indications of the consequences of resistance

Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to,

Medical conditions

Mental impairment

Developmental disability

Physical limitation

Language or communications barrier

Drug interaction

Behavioral Crisis

Fear or anxiety

Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)

Giving the subject a reasonable amount of time to comply with commands.

Isolation/Containment

Isolating the subject (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the subject (limiting the ability of the subject to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the subject and allow officers to lower the number of

variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

~~Separating parties in disputes;~~ Physical separation implies a use of force that should not be included in de-escalation section.

Encouraging people who are having conflict to move away from each other, often with officers having separate conversations with the parties.

~~Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;~~ (Handcuffs are uses of force - should not be included in de-escalation, even if appropriate in this circumstance as a low-level use of force.)

Placing barriers between officers and uncooperative subjects;

Setting police perimeters, and limiting access to the scene;

Using additional personnel to cover possible escape routes; and

Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

Positioning and Spatial Awareness

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the subject. Officers should constantly be assessing their positioning relative to the subject and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

Proper interview stance;

Separation of parties during disputes;

Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and

Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

Time, Distance, and Cover

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and risk and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

Additional resources such as crisis intervention trained officers or mental-health crisis response units;

Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);

Using cover and concealment for tactical advantage, such as:

Placing barriers between an uncooperative subject and officers

Using natural barriers in the immediate environment

Officers with stand-off or longer-distance force options; or

Armored vehicles.

De-Escalation Resources

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mobile Assistance Community Responders of Oakland (when/where implemented.)
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team, MATT, CATT)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

D. Disengagement (NEW SECTION)

1. Disengagement is the tactical decision to leave, end an interaction, delay contact, delay custody or plan to make contact at a different time and under different circumstances. This tactic should be used when an officer reasonably believes continued contact may result in an unreasonable risk to the person in crisis, the public and/or Department members, especially in situations involving a barricaded suspect, a suicidal subject or a person believed to be experiencing a mental health crisis.
2. While some situations require immediate police action, other circumstances may allow officers the opportunity to tactically disengage. Under the appropriate circumstances, tactical disengagement may improve officer safety, mitigate threats, reduce injuries, build public trust, and preserve life.
3. Tactical situations vary and there is no single solution to resolving every incident. Disengagement is only one of many tactics that should be

considered, if feasible, to potentially reduce the intensity of the encounter if believed it would de-escalate the situation and no crime or a minor crime has occurred.

Note: Minor crimes include, but are not limited to infractions or crimes that can be followed up with an Investigative Report.

4. Officers should continually assess the situation as circumstances change and new information is received. Officers should additionally evaluate if further contact with the subject may result in an undue safety risk to the person, the public, and/or officers.
5. In the training of officers and in OPD policy, officers have options. For example, in a traffic stop that starts to go really wrong, once you get into that confrontation to enforce an arrest, when things are that excited, the chances for things to go wrong...are pretty high. In such a scenario, the officer should step back. Officer has the person's information - driver's license and tag number, and can get a warrant and make an arrest later. *(May be too vernacular, but this is a prime example of when disengagement needs to be an option, or better yet mandated.)*
6. SUICIDAL SUBJECTS: Not all suicidal subject calls require immediate police action. There is a distinction between a suspect wanted for a crime and an individual who has not committed a crime but has expressed the desire to commit suicide. It is not a criminal act to express the desire or even attempt to commit suicide within one's home and suicidal subjects or persons suffering from a possible mental health crisis are afforded the same constitutional rights as everyone else.
7. The actions of first responders will be weighed against the information known and reasonably believed, governmental interest, subject's actions, and efforts to de-escalate the situation. First responders may choose to strategically disengage to avoid resorting to force when the danger to the subject by self-harm is no longer imminent, and he/she has not committed a serious or violent crime. *(Mostly from LAPD Training Bulletin - "Tactical Disengagement" - 7/19. as well as recommendations from Wash. DC Metro Chief Cathy Lanier, 3/16)*
8. Officers will be judged based on the information available to them at the time, not by "20/20 Hindsight" nor face discipline for objectively reasonable use of disengagement to avoid unnecessary use of force.

E. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY

- E.1.** Use of Force Shall be ~~Reasonable~~, Necessary, and Proportional, and for a ~~Lawful Purpose~~ ~~that is lawful and necessary to maintain public safety.~~ ~~or Objective~~
1. Officers shall only use objectively reasonable and necessary force, proportional to the level of resistance posed, ~~identified~~ threat ~~perceived~~, or urgency of the situation, to achieve the ~~lawful purpose~~ ~~that is lawful and necessary to maintain public safety.~~ ~~or objective.~~
 2. Lethal force is strictly prohibited solely to protect property.
 3. ~~Lethal fore is strictly prohibited~~ ~~or~~ against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.
 4. ~~In order to reduce the likelihood of unnecessary force by officers who are experiencing adrenaline or other physical stress in situations of pursuit or other prolonged or intense physical engagement, another officer should relieve them of restraint and arrest of the engaged person as soon as possible.~~
 5. ~~Vulnerable Populations: The use of force against vulnerable populations - including children (especially those under 14 years old), elderly persons (especially those over 64 years old), pregnant women, people with physical, mental health or intellectual challenges, people of small stature, people experiencing a behavioral crisis, and people with limited English proficiency or other communications challenges. - can undermine public trust, cause even more harm than the same force used against a healthy, able person, and should be used as a last resort, when all other objectively reasonable means have been exhausted. Specific restrictions are in ... OC spray & tasers & higher level of force~~
 6. Officers may use objectively reasonable and necessary force options in the performance of their duties in the following circumstances:
 - To effect a lawful arrest, detention, or search;
 - To overcome resistance or prevent escape;
 - ~~To prevent the commission of a public offense; (Language too broad.)~~
 - In defense of others or in self-defense;
 - To gain compliance with an ~~lawful~~ order ~~that is both lawful and necessary to maintain public safety;~~
 - To prevent a person from injuring him/herself. ~~(Except that an officer may never use a lethal level of force on a person who is threatening or attempting to harm only themselves.)~~

E.2. Prohibitions on Unreasonable Force

1. Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce. **Historically, some officers have used unnecessary force to punish a person for running away or trying to escape; this is a violation of policy and will result in discipline.**
2. **Officers are prohibited from using neck and carotid restraints in all circumstances.**
3. **Officers may not threaten to use force in situations where the use of force is not objectively reasonable and proportional to the risk presented or otherwise inconsistent with this policy.**
4. **Officers may not use or threaten to use force for the following reasons:**
 - **To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others.**
 - **To force compliance with an officer's request, unless that request is necessary to serve officer or public safety, ~~or criminal adjudication; (CNJ)~~**
 - **Against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function;**
 - **To stop a subject from swallowing a substance that is already in their mouth; however:**
 - **Officers may use objectively reasonable force, not including hands to the neck or insertion of any objects or hands into a subject's mouth, to prevent a suspect from putting a substance in their mouth**
 - **In the event that an officer reasonably believes that a suspect has ingested a harmful substance, officers shall summon medical assistance as soon as feasible.**
 - **To extract a substance or item from inside the body of a suspect. Exception: This prohibition does not apply when force is necessary to facilitate a forensic blood draw. In that situation, officers will document any use of reportable force.**
5. **It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force.**
6. **Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic. It is well documented the Oakland Police Department has not treated all residents equally. Racial disparities in use of**

force by law enforcement are of particular concern for purposes of adhering only to necessary use of force, and also for training, discipline, and ensuring equitable treatment of all members of our community.

E.3. Duty to Intervene and Report

1. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to **prevent that use of force.** ~~interrupt the flow of events before the fellow officer does something that makes any official action necessary.~~
2. Similarly, any officer who observes an officer using force that is ~~illegal, excessive,~~ **not objectively reasonable and proportional to the risk presented** or is otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to **stop any unnecessary** ~~interrupt the flow of events and stop the use of force.~~
3. An officer who observes or has knowledge of a use of force by their peers, supervisors, or employees of an other agency or jurisdiction that is not reasonable, proportional, or is or otherwise inconsistent with this directive shall: a. Notify a supervisor as soon as possible; and b. Submit an individual written report with all relevant information and circumstances to a supervisor before reporting off duty on the day the officer becomes aware of the misconduct. [need to amend MOR says 24 hours]. If extraordinary circumstances prevent reporting by the end of shift, the report shall be submitted within 24 hours.
4. Reporting uses of force completely and honestly is central to the mission of OPD and is essential to public safety, the safety of officers, and public trust in OPD. No officer shall harass, pressure, or publicly degrade a fellow officer for honest and complete reporting of any use of force by themselves, another officer, or supervisor. No employee may retaliate, in any form, against another employee who intercedes in or reports a violation of this directive, or who cooperates with an investigation into a possible violation of this directive.
5. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately.
6. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, Reporting Violations of

Laws, Ordinances, Rules, or Orders², and members who fail to report excessive force are subject to appropriate discipline.

E.4. Identification and Warnings Prior to the Use of Force

1. When feasible, and without sacrificing officer, subject, or public safety, officers shall:
 - Identify themselves as law enforcement officers;
 - Warn the subject that force may be used unless their resistance ceases; and
 - Give the subject a reasonable opportunity to comply with a warning that force may be used.
2. Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

E.5. Use of Force on Restrained Subjects

1. Officers may only use objectively reasonable, necessary, and proportional force on restrained subjects. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances and when determining the level of resistance and the threat posed by the subject. Typically, intermediate less-lethal and lethal force may not be used against restrained subjects (see G-5).

E.6. ~~De-escalation~~ Reduction of Force After Force has been Used

1. Officers shall ~~de-escalate~~ reduce the use of force when the officer reasonably believes a lesser level or no further force is necessary. appropriate. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

E.7. Providing Medical Assistance to Subjects of the Use of Force

1. When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of medical distress for subjects of the use of force, even if the aid is declined.
2. After requesting medical aid, officers shall render aid within the full scope of their training unless aid is declined. Consent should be assumed for unconscious subjects or subjects incapable of providing consent.

² Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.

3. Officers shall automatically request medical aid for subjects who have been struck, contacted, or contaminated by the following force options, regardless of injury:
 - Lethal ammunition fired from a firearm;
 - Electronic Control Weapons, whether probe or drive-stun;
 - Specialty Impact Munitions;
 - Impact or impromptu impact weapon strikes with contact; or
 - Oleoresin Capsicum spray.

E.8. Discipline

1. **Actions inconsistent with this directive may result in disciplinary action, up to and including termination. ...Officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force. (Camden NJ)**

F. LEVELS OF RESISTANCE

Resistance (Section E, LEVELS OF RESISTANCE - **F here**) and response (Section F, LEVELS OF FORCE -**G here**) are dynamic. The subject's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the subject is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (Section E) and force which may be used to overcome that resistance (Section F) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.

Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threats to their safety or the safety of others.

F.1. Non-Compliance

1. Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.

F.2. Passive Resistance

1. Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.
2. Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.

F.3. Active Resistance

1. Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.
2. Verbal responses indicating an unwillingness to comply with an officer's directions which do rise to the level of threats are also considered active resistance.

F.4. Assaultive Resistance

1. Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.

F.5. Life-Threatening Resistance

1. Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person

G. LEVELS OF FORCE

Note: Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as to de-escalation attempts both before and after any use of force incident.

G.1. Contact Controls

1. Low-level physical tactics used to gain control and overcome non-compliance or passive resistance. These include physical control techniques (e.g. pulling, pushing, or maneuvering a subject's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.

G.2. Compliance Techniques and Defensive Tactics

1. Low-level physical tactics used to gain control and overcome passive resistance and active resistance, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome passive resistance shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.

2. Techniques and tactics to overcome passive resistance include control holds, **handcuffing**, objectively reasonable takedowns, and non-striking use of the baton. OC spray shall not be used on those subjects who go limp or offer no physical resistance.
3. Techniques and tactics to overcome active resistance include control holds, oleoresin capsicum (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.

G.3. Intermediate Less-Lethal Force

1. Intermediate-level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome active and assaultive resistance, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsicum (OC) spray, police canines, and specialty impact munitions.

G.4. Lethal Force

1. Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome life-threatening resistance. Lethal force includes-impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

H. COMMANDS AND LESS-LETHAL FORCE

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.

H.1. Presence/Command Options

1. Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of Presence/Command Options. These are communication techniques, both verbal and non-verbal, which are not a use of force but which are essential in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, De-Escalation - **D in this draft**).

H.2. Physical Control/Personal Weapons Options

1. Depending on the manner and intensity in which they are used, Physical Control/Personal Weapons Options may fall into multiple force levels: Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less-Lethal Force. These options include, but are not limited to:

- Physically restraining or handcuffing a person is a use of force. The use of handcuffs and other restraints is intrusive and can impact the community's trust in the police. As courts put it, the use of handcuffs "substantially aggravates the intrusiveness of an otherwise routine investigatory detention and is not part of a typical Terry (investigative) stop." The application of restraints shall never be considered a part of standard operating procedure. At the same time, officers must ensure their safety and face many unknowns. When using restraints, members must follow the use-of-force policy and the handcuffing and restraint procedure (Policy Lexipol 302). Only members who have successfully completed Department-approved training on the use of restraint devices are authorized to use them. (Ref SF Policy on Detaining Juveniles)
- When detaining, arresting or taking a juvenile (a person under 18 years of age) into temporary custody, officers shall choose the alternative that least restricts the juvenile's freedom of movement, provided that alternative is compatible with the best interests of the child and the community. Every effort should be made to find alternatives to handcuffing or using other restraints on a child (under 14 years of age).
- Modified restraints or handcuffing in the front of the body should be used for people who cannot comfortably put their arms behind their back.
- *Consider total ban of spit hoods - *Ref. Chicago PD which does not use.*
- Escorts and physical body manipulation without pain compliance.
- Control Holds.
- Takedowns ("Objectively reasonable" takedowns are subject to consideration of the age or other physical vulnerability of the engaged person and conditions related to impact engaged person will experience in course of takedown.)
- Vulnerable Area manipulation
- Personal Weapon strikes – NOTE: Personal Weapon strikes to a restrained subject are considered Intermediate Less-Lethal Force.
- Persons under an officer's control (shall) be positioned in a way so that their breathing is not obstructed. After gaining control of a person, officers should position the person in a manner to allow the person to breath unobstructed. This means that officers (shall) not sit, kneel, or stand on a person's chest or back, and whenever feasible should not force the person to lie on his or her stomach. (Note - ASPHYXIA DIRECTIVE SO 9205-SUPERSEDES ALL PRIOR ASPHYXIA LANGUAGE)

2. Absent exigent circumstances, all Physical Control/Personal Weapons Options shall be compliant with Oakland Police Department policy and training. Refer to Training Bulletin III-I.1, Weaponless Defense. (Not vetted by CPA)

H.3. ~~Less-Lethal-Tool~~ Weapons Options

1. Less-lethal ~~tools~~ weapons are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by other force applications. Less-lethal ~~tools~~ weapons alone cannot be expected to render a subject harmless.
2. Officers will only carry and use ~~tools~~ weapon that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.
3. Less-lethal ~~tools~~ weapons most often fall into the level of Intermediate Less-Lethal Force, although certain ~~tools~~ weapons, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).
4. Less-lethal ~~tools~~ weapons, depending on the nature of the ~~tool~~ weapon and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific ~~tools~~ weapon. Important warnings regarding specific less-lethal ~~tools~~ weapons, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.
5. The Less-lethal ~~tools~~ weapons authorized by the Department include:
 - Patrol Canine – See DGO K-09, Department Canine Program (Have not yet reviewed Canine Policy in detail for CPA.) Direct apprehension by canines shall be used only when the officer has probable cause to believe that the subject poses an imminent threat of harm to the officers or others or apprehension in
 - Homicide
 - Serious Assault
 - Kidnapping
 - Arson with threat of harm to people
 - Domestic Violence felony crimes
 - Serious Sexual Assault

- Electronic Control Weapon (ECW) – See DGO (Lexipol) 304, Electronic Control Weapon (TASER) CPA NOTE - SIMPLY BAN TASERS/ ECWs???? SF has, in effect. One important consideration that favors banning ECW's is that the weapons bring an officer into closer proximity with the subject - so if the ECW fails, an objectively unnecessary use of lethal force may be seen as or become a necessary fallback.

The necessary standard for ECW use is when the subject is causing bodily harm or the officer is satisfied, on reasonable grounds, that the subject's behavior will immediately cause bodily harm.

Even if the above-threshold is met, officers are prohibited from deploying a taser unless 1) no lesser force option has been, or will be, effective in eliminating the risk of bodily harm; and 2) de-escalation and/or crisis intervention techniques have not been or will not be effective in eliminating the risk of bodily harm.

(SF Dept of Police Accountability: - This standard is based upon the Braidwood Commission's recommendations after lengthy evidentiary hearings followed by two comprehensive reports on the death of Robert Dziekanski who died within minutes after being tasered at the Vancouver International Airport in October 2007.)

Officers should understand the problems with ECWs. Although ECWs are a less lethal use of force, people do die and suffer grave harm from being shot with ECWs. Using an ECW can also bring an officer closer to a person for optimal ECW range which can work against efforts at de-escalation; this is especially problematic given the failure rate of ECWs.

Officers shall not use ECWs against particularly vulnerable people — including pregnant women, elderly people over 64 years of age, children under 14 years of age, and people with identifiable physical frailties. *(Ref: Univ. of So. Carolina Law Professor Seth Stoughton, Evaluating Police Uses of Force, forthcoming May 2020. NYU Press. Stoughton was an advisor to CA Assembly-member Dr. Shirley Weber in crafting the language of AB392.)*

- Important **warning**: ~~When feasible, a verbal warning of the intended use of the ECW shall proceed its use, to warn the subject and fellow officers.~~ Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a (ECW) will be used and defer using the (ECW) a reasonable amount of time to allow the subject to comply with the warning.

- Absent an immediate threat to any person's safety that cannot be reasonably dealt with in any other fashion, (ECW) users shall not target a subject's head, neck, or genital area. The center mass of the back to the buttocks is a viable target. Targeting the chest and heart area should be avoided if possible.
 - Officers shall target below the ribcage down to the upper thigh, splitting the beltline, if possible.
 - When encountering subjects wearing heavy or loose clothing on the upper body, the legs should be considered as targets. (Seattle)
 - Each time an officer shoots a TASER, there must be a separate, individual justification.
 - Officers are required to report each use of a TASER, whether or not the use of the TASER was effective.
 - Whenever a person has been hit with a TASER, officers shall call for medical air as soon as feasible and shall monitor the person while they are in police custody.
 - Officers shall not remove TASER probes or barbs that are embedded in a person's flesh.
- **Impact Weapons:** Includes the ASP® expandable baton, long wood baton, and short wood baton – See Training Bulletin III-H.02, Hand-held Impact Weapons (Training Bulletins not vetted by CPA) **CONSIDER RAISING SIMS TO “LETHAL FORCE”, IN EFFECT BANNING THEIR USE**
- Important warning: Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
 - The use of an impact weapon to a vital area has a likelihood of causing serious bodily injury or death, and the intentional use of an impact weapon to these areas shall only be used in situations where lethal force is justified.
 - Impact weapons shall not be used on individuals with frail health, children under 14 years of age, elderly over 64 years of age, women believed to be pregnant, or people with physical, mental health or cognitive challenges, except under exceptional circumstances involving imminent danger of serious bodily harm where the use of the impact weapon is necessary.
- **Specialty Impact Weapons:** Includes direct-fired ranged impact munitions, regardless of weapons platform –Important warning: SIM use during crowd control situations is further limited -- See Training Bulletin III-G,

Crowd Control and Crowd Management.(Training Bulletin referenced, not vetted by CPA) -

- An impact weapon may be used in accordance to Department training to administer strikes to non-vital areas of the body, which can subdue an assaultive subject who is actively resisting and poses a threat to the safety of officers or others (SF)
 - SIMs shall not be used as a crowd control weapon.
 - Announce a warning to the subject of the intent to use the impact weapon if the subject does not comply with officer's commands.
 - Give the subject a reasonable opportunity to voluntarily comply, except that officers need not do so where it would pose a risk to the public or the officer.
- Oleoresin Capsicum (OC) Spray – See Training Bulletin V-F.02, Chemical Agents (CONSIDER TOTAL BAN, re New Orleans PD.)
- Important warning: OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.
 - Important warning: OC spray shall not be used on passive resisters who go limp or offer no physical resistance.
 - Chemical agents can be used to subdue an unarmed attacker or to overcome active resistance (unarmed or armed with a weapon other than a firearm) that is likely to result in injury to either the subject or the officer. In many instances, chemical agents can reduce or eliminate the necessity to use other force options to gain compliance, consistent with Department training.
 - Only use chemical agents issued by OPD.
 - Officers shall provide a warning prior to deploying a chemical agent, if feasible:
 - Announce a warning to the subject and other officers of the intent to deploy the chemical agent if the subject does not comply with officer commands; and
 - Give the subject a reasonable opportunity to voluntarily comply unless it would pose a risk to the public or the officer, or permit the subject to undermine the deployment of the chemical agent.
 - OC spray shall not be used on individuals with frail health, young children, the elderly, women believed to be pregnant, or persons with known respiratory conditions. In these cases, the spray (shall) only be used under exceptional circumstances involving imminent danger of suffering serious bodily harm, and the use of the pepper spray is

the only and necessary method to control the child or elderly in order to avoid harm.

- OC spray shall not be used in an enclosed, highly populated space where there is a likelihood that innocent people will be affected by the spray.
- Finally, OC spray (shall) not be used in confined spaces or to wake up or arouse unconscious or sleeping individuals. *(language drawn from recommendations by Daigle Law Group - consultants to law enforcement agencies nationwide in developing effective policy.)*
- At the scene or as soon as possible, officers shall administer first aid by:
 - Seating exposed person(s) in an upright position;
 - Flushing his/her eyes out with clean water and ventilating with fresh air, and;
 - If the person exhibits or reports difficulty breathing or allergic reaction or the person indicates that they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by OC spray, officers shall ensure that the person receives ongoing monitoring and medical aid.
- **Crowd Control and Tactical Team Chemical Agents** – See Training Bulletin V-F.02, Chemical Agents and Training Bulletin III-G, Crowd Control and Crowd Management. (Bulletins not yet vetted by CPA)
 - Chemical agents shall not be used on crowds except in extreme violent circumstances that pose serious physical danger to the public or officers, nor shall they be used on individuals with physical vulnerabilities.

ESSENTIAL INTER-DEPARTMENTAL CROWD CONTROL

RESTRICTIONS: Law enforcement or military agencies that are not trained and bound to OPD Use of Force and related general orders for managing crowds shall not be brought in to assist in crowd control.

- H.4.** Requirement to Carry at Least One Less-Lethal ~~Tool~~ Weapon
1. Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal ~~tool~~ weapon (e.g. ECW, impact weapon, and/or OC).
 2. Officers Shall Only Use Department-Issued or Approved Less-Lethal Weapons.

3. Officers will periodically check the manufacturer's date on their issued OC Spray container and ECW cartridges and check that the weapon is fully functional.

H.5. Restrictions on Use of Less-Lethal ~~Tools~~-Weapons Against Restrained Persons

1. Officers are prohibited from using less-lethal ~~tools~~-weapons against restrained persons unless that person is exhibiting Assaultive or Life-Threatening resistance or there is an immediate threat of serious or great bodily injury or death.

I. LETHAL FORCE

I.1. Lethal Force Options

1. Lethal force is any force that creates a substantial risk of causing great bodily injury or death. These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person. For the purpose of this section of the policy, the term "firearms" shall indicate firearms loaded with lethal ammunition.
2. The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. Any deviations from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

I.2. Drawing, Exhibiting, or Unholstering Firearms

1. An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm or weapons belt during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.
2. Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see DGO K-04, Reporting and Investigating the Use of Force).
3. When an officer determines that the threat is over, the officer shall holster his or her firearm, ~~when~~ as soon as feasible. Officers shall not place their hand on

a holstered firearm **or weapons belt** when addressing or conversing with members of the public in situations unrelated to potential use of force, thus creating needless anxiety or misperceptions.

4. **To the extent reasonable under the circumstances, officers must consider their surroundings and potential risks to bystanders before drawing, pointing, and discharging a gun.**

I.3. Pointing Firearms at a Person

1. The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.³ Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force.
2. If an officer points a firearm at a subject the subject shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

I.4. Discharging Firearms at a Person

1. An officer is justified in discharging a firearm at another person only when ~~officer believes~~, based on the totality of the circumstances, ~~that~~ the discharge is necessary for either of the following reasons:
 - To defend against an immediate threat of death, great bodily injury, or serious bodily injury to the officer or another person; or
 - To apprehend a fleeing person for a felony when the following three conditions are met:
 - There is probable cause to arrest the subject for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - ~~The officer reasonably believes that~~ **It is required, based on the totality of circumstances to stop** the person ~~will~~ **from** causing death or great bodily injury to another **person** unless immediately apprehended; and
 - There are no other reasonably available or practical alternatives to apprehend the person.
2. If feasible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm ~~at a person~~.

I.5. Discharging Firearms at Moving Vehicles

³ *Robinson v. Solano County*, 278 F. 3d 1007 (9th Cir. 2002)

1. Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.
2. Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:
 - Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat of death, great bodily injury, or serious bodily injury by means other than the vehicle;
 - Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury where the officer or other person has no reasonable avenue of protection or escape.
 - Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a vehicle ramming mass-casualty attack.
3. Officers ~~shall not~~ ~~are prohibited from intentionally~~ positioning themselves in a location vulnerable to a vehicular attack, ~~and,~~ Whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator.
4. Officers ~~are also prohibited from~~ ~~shall not~~ discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a vehicle ramming mass-casualty attack.

I.6. Discharging Firearms from Moving Vehicles

1. Officers shall not discharge a firearm from a moving vehicle unless a subject is immediately threatening the officer or another person with life-threatening resistance. **Discharging firearms from a moving vehicle poses an increased risk for the occupants of the vehicle, officers, and the public at large** This behavior is strongly discouraged and should be considered a last resort.

I.7. Discharging Firearms at Animals

1. **If feasible, officers should remove themselves and anyone else who may be at risk from an animal to a safer location.**
2. **If feasible, officers should call for Oakland Animal Services (OAS) to control the animal.**
3. **Officers should not shoot animals solely as a time-saving measure if there is no urgent and essential public safety or law enforcement priority.=**

4. Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:
 - Against a dangerous animal to deter an attack or to prevent injury to persons present; or
 - If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.
5. Other than when the animal presents an immediate threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.

I.8. General Prohibitions Regarding Firearms

1. Officers are prohibited from the following actions:
 - Using firearms as impact weapons, unless either of the following circumstances exist:
 - When a subject is attempting to take the firearm away from the officer;
 - When lethal force is permitted; or
 - When using long-gun-specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;
 - Firing warning shots; and
 - Using lethal force solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death, great bodily injury, or serious bodily injury to another person or officer.

I.9. Force Likely to Cause Great Bodily Injury or Death

1. Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:
 - Intentional impact weapon strikes to the head; and
 - Intentional use of a vehicle, at any vehicle speed, to strike the person of another.

2. Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:
 - To defend against an immediate threat of death or serious bodily injury to the officer or another person; or
 - To apprehend a fleeing person for a felony when the following three conditions are met:
 - There is probable cause to arrest the subject for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - ~~The officer reasonably believes that the person will~~ **It is required, based on the totality of circumstances to stop** the person ~~will~~ **from** causing death or great bodily injury to another **person** unless immediately apprehended; and
 - There are no other reasonably available or practical alternatives to apprehend the person.

J. CONSIDERATIONS AFTER FORCE

J.1. Preventing Positional Asphyxia

In addition to requesting medical assistance after certain uses of force or when the engaged person has sustained injuries or demonstrates signs of medical distress (see section D-7), officers shall, consistent with officer safety, evaluate the positioning of an engaged person to mitigate the chances of positional asphyxia. This includes positioning the person in a manner to allow free breathing once the engaged person has been controlled and placed under custodial restraint using handcuffs or other authorized methods.

Engaged persons under an officer's control should be positioned in a way so that their breathing is not obstructed – obstruction of a person's breathing could easily lead to death or serious bodily injury. This means that officers should not sit, kneel, or stand on an engaged person's head, neck, chest or back, and whenever feasible should not force the engaged person to lie on his or her stomach.

J.2. Administrative Leave after Lethal Force Incidents

1. Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

2. While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

J.3. Counseling Services after Lethal Force Incidents

1. Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

K. REPORTING AND REVIEW: (Add additional references to Reporting/Investigation Policy as relevant to Use of Force)

1. The Department is committed to full an accurate reporting of use of force incidents, to thorough, objective and fair evaluation of all incidents of reportable force and outcomes. Failure to report is a serious cause for discipline.
2. The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer prior to and at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.
3. Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.
4. Reporting and Review shall be used as part of an ongoing interdepartmental data analysis process to evaluate overall department practices, revise policy and improve training as well as to evaluate particular incidents and actions by individual officers, in order to ensure our enforcement practices are fair, non-discriminatory, and involve the minimum amount of force necessary to accomplish a legitimate law enforcement objective.
5. The Department is responsible for completing an annual analysis of the previous calendar year's use of force incidents, Department polices, and use of force practices. Examples of some analytical categories may include, but are not limited to:
 - Use of force by time of day and day of week;
 - Use of force by type of location (e.g., business, residential, or industrial) and zip code;

- Use of force by type of incident;
 - Use of force by race, age, gender of engaged person;
 - Use of force by officer/detective involved;
 - Use of force by division, bureau, unit;
 - Use of force by person's actions;
 - Use of force by type (e.g., deadly force);
 - Use of force resulting in injury to personnel;
 - Use of force resulting in injury to actors;
 - Use of force resulting in arrests;
 - Percentage of use of force vs. total number of custodial arrests.
6. The annual analysis is designed to: (1) identify any broad patterns or trends that could indicate policy ineffectiveness, training needs, equipment upgrade needs, and/or policy modification needs; and (2) identify any pattern or practice of behavior by particular officers that could warrant intervention, remediation, and/or re-training.

L. TRAINING (Add\ key references from Training Bulletins relevant to use of force. Training manuals not vetted by CPA)

L.1. Annual Training on **De-Escalation and Use of Force Policy**

1. Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher distributed via Department intranet or other document management system.

L.2. Use of Force Policy Training Incorporation into Practical Training

1. All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the **de-escalation and force options** or skills being practiced are specifically evaluated and used in light of this policy.

L.3. Training Bulletins

1. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins. **(All Training Bulletins not vetted by CPA)**

By order of

Susan Manheimer
Interim Chief of Police

Date Signed: _____

CPA DRAFT
9.9.20

CPA NOTES: This version is a revision of the draft that the Use of Force working group, comprised of the Police Commission's Use of Force Committee, attorney in NSA federal oversight Jim Chanin representatives of OPD, have produced for public review and comment.

Much of the CPA draft with edits and revisions, like the Commission draft, is based on research into existing use of force and related directives currently in effect in departments that have recently made significant improvements in use of force practices (several of these were recommended by Dr. Shirley Weber, the state legislator responsible for CA's AB392.) Original draft language deleted or changed is in strike-outs. CPA additions are in RED. *There are formatting anomalies that resulted from re-editing a previously formatted document which have not been fully corrected.*

This research doesn't include information we anticipated from a full community outreach strategy, which voices will need to be included systematically in any final drafting process. Also, some of the inclusion of language from other existing directives will require a more consistent re-formatting.

And the entire document should be re-edited and reformatted in a final form so that the language is consistently accessible and clear to community members and officers in training. To this end we have added a summary of key issues and restrictions for use of force in the first section, i.e. Mission, Purpose and Core Principles.

There should also be maximum clarity when training manuals or other directives are cited - beyond the simple citation - with clarity on what issues are covered.

CPA DRAFT
9.9.20

Input from Formstack/online form

Are you an Oakland resident?	What Council District do you live in?	Age Range	Gender	Do you identify as transgender?	Race	Comments
Yes	District 1	65+	Female	No	Other: Asian/ European	Your survey does not work for me. I was rejected for being under 13 years of age.....
No		45-55	Female	No	White	I work in Oakland and have many friends in Oakland, so care about this policy. I'm glad to see attention being paid to use of force, but the underlying problem is that because of pervasive racism and White supremacist structures in our society, Black people are so often viewed (consciously and unconsciously) as threatening, even when they are just going about ordinary, every day actions.
Yes	District 5	65+	Female	No	White	I think use of force guidelines should be reviewed and enforced regularly as a matter of course. More importantly, I think more education - at the very least, an A.A. Degree - should be required of ALL officers. Additionally, I think all officers should receive regular training in de-escalating tense situations, practicing non-violent, positive communications and listening skills. Finally, I'm a firm believer in community policing. Bike cops around the lake. Beat cops in every business district. PAL activities with kids. Police athletics at OUSD. And, it's not a cop's job to be all things to all citizens. We need school social workers, psychologists, street drug and alcohol rehab counselors and, of course, housing, housing, housing.
No		35-45	Prefer not to say	No	White	This draft is really comprehensive and looks like significant progress. In terms of being fully aligned with the standards of the 8CantWait campaign, there is one clause missing from the shooting at moving vehicles policy. The policy states that there can be no shots fired at the occupant (except in specific circumstances), but should also include that there should be no shooting at the vehicle itself for the purpose of disabling (except in certain, extreme circumstances). Hope this is helpful and please reach out if I can provide further clarification.

#001

Posted by **Drew** on **09/12/2020** at **1:23pm** [Comment ID: 20] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This is the type of wide open loop hole that allows for police violence. OPD's resources should be relocated to the impoverished. That's a far more effective strategy to prevent violence. Just by showing up with a gun, they are often escalating the situation.

#002

Posted by **Lisa Schiff** on **08/30/2020** at **5:02pm** [Comment ID: 10] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Shouldn't de-escalation always be the first recourse? And if so, shouldn't that be clearly stated here?

#003

Posted by **Drew** on **09/12/2020** at **1:26pm** [Comment ID: 21] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This doesn't take into consideration the victim of police brutality in the moment. A police officer witnessing abuse by another officer should arrest and detain that officer and remove themselves from the situation entirely.

#004

Posted by **Lisa Schiff** on **08/30/2020** at **5:00pm** [Comment ID: 9] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

It seems like this intervention should be required; the language should be stronger.

#005

Posted by **Lisa Schiff** on **08/30/2020** at **5:03pm** [Comment ID: 11] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

What about including/using staff from departments focused on public health and mental health?

#006

Posted by **Drew** on **09/12/2020** at **1:28pm** [Comment ID: 22] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This is the rubber stamp that officers are allowed to do anything if they felt threatened. By upholding this known, toxic position, you allow for extreme abuse and violence from police. Remove this and all qualified immunity!

#007

Posted by **Jesse Hsieh** on **09/11/2020** at **12:33am** [Comment ID: 16] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This should be "Responsiveness to and compliance with officer COMMANDS or ORDERS" rather than requests. Police officers do not and should not have the right to use force when a person does not comply with their "requests" or "asks."

In the same vein, I do not think that cooperation should be used interchangeably with compliance. Cooperation shows up in only 3 places in this document: In the table of contents, in this definition section, and in a later section that states an officer's action should promote "cooperation." In contrast, "compliance" and "non-compliance" is used many times in the sections below.

#008

Posted by **Drew** on **09/12/2020** at **1:30pm** [Comment ID: 23] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This should be fully unlawful for an officer to use unless they have 10+ years of medical and professional training on how to do it effectively. Most officers will mess this up cause serious harm.

#009

Posted by **Lisa Schiff** on **08/30/2020** at **5:05pm** [Comment ID: 12] - [Link](#)

Agree: 0, Disagree: 0

What is the evaluation process? Is it transparent?

#010

Posted by **Drew** on **09/12/2020** at **1:34pm** [Comment ID: 24] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

An officer should ALWAYS listen to and react to a complaint of pain.

#011

Posted by **Drew** on **09/12/2020** at **1:36pm** [Comment ID: 25] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Chemical agents are a violation of international law and human decency. We're only one of 3 countries in the world that use that on their own population. The other 2 countries are extreme totalitarian states.

#012

Posted by **Drew** on **09/12/2020** at **1:38pm** [Comment ID: 26] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Often, the presence of a police officer is a threat to a civilians life immediately. So if a police officers presence is already threatening, by no means can they use that as an excuse to say the officer feels threatened. The officer is the threat.

#013

Posted by **Samuel Sinyangwe** on **09/17/2020** at **12:17pm** [Comment ID: 31] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This language about necessity "not requiring that all possible alternatives be exhausted" is contrary to the spirit of AB 392 and there are many departments with use of force policies that do not contain language explicitly rejecting the idea that officers should use available alternatives prior to force.

#014

Posted by **Lisa Schiff** on **08/30/2020** at **5:11pm** [Comment ID: 13] - [Link](#)

Agree: 2, Disagree: -1

This describes looking at a given incident from the vantage point of another officer, but given that this policy is aspiring to reduce harm resulting from racial bias (acknowledged or unacknowledged), evaluations should also consider whether the same actions would have been taken if the non-officer's race/ethnicity were different.

#015

Posted by **tracyf** on **08/28/2020** at **4:41pm** [Comment ID: 5] - [Link](#)

Type: Question

Agree: 0, Disagree: -1

Reply by **SiteAdmin** on **08/28/2020** at **4:47pm** [Comment ID: 6] - [Link](#)

Agree: 0, Disagree: 0

September 25th at 11:59pm

#016

Posted by **Drew** on **09/12/2020** at **1:42pm** [Comment ID: 27] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

De-escalation should be the only tool officers can use.

#017

Posted by **Jesse Hsieh** on **09/11/2020** at **1:04am** [Comment ID: 19] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

I suggest that the type of force the officer intends to use (should/must) be stated.

#018

Posted by **Drew** on **09/12/2020** at **1:50pm** [Comment ID: 28] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Officers who fail to intervene from another officers excessive use of force should be charged and punished for the crimes of the offending officer.

#019

Posted by **Jesse Hsieh** on **09/11/2020** at **12:44am** [Comment ID: 17] - [Link](#)

Agree: 0, Disagree: 0

I have seen many clients apprehended by police canines suffer injuries that are legally sufficient for GBI and I would consider them GBI as well.

One client had part of his forearm bitten away. It never healed to full.

Another client had seven (7) subsequent surgeries due to the canine bite apprehension that the police used. He needed bypass surgery for his arm and nearly lost the arm.

Canines can and often do cause great injury when used in apprehension.

#020

Posted by **Samuel Sinyangwe** on **09/15/2020** at **5:26pm** [Comment ID: 29] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

The requirement that there be "no reasonably available alternatives" prior to using deadly force should be applied to the first condition just as it is applied to the second. Currently, the "or" between the two sections of H-4 implies that officers do not need to exhaust available alternatives to deadly force in cases where there's an immediate threat.

#021

Posted by **Jesse Hsieh** on **09/11/2020** at **12:52am** [Comment ID: 18] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

I think condition 2 is meant to focus on whether the fleeing person is an imminent danger to others and will cause death or great injury *in the near future* unless immediately apprehended.

I think condition 2 could be interpreted to mean that the person will cause death or great injury to another *at anytime in the future* unless immediately apprehended.

It is feasible to think that a homicide suspect may fall into the latter category but not the former. But I don't think it appropriate to discharge a firearm at this person in the latter situation.

It should be modified so that it is clear it relates to those that are an immediate danger to others.

#022

Posted by **Jesse Hsieh** on **09/11/2020** at **12:08am** [Comment ID: 15] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Consider a provision that states that officers (should/must) stop using force likely to cause GBI if one of the conditions goes away (e.g., suspect disarmed, disabled, or apprehended; reasonably available and practical alternatives become available.)

#023

Posted by **Samuel Sinyangwe** on **09/16/2020** at **12:39pm** [Comment ID: 30] - [Link](#)

Agree: 0, Disagree: 0

This is unnecessary and only the most egregious use of force policies nationwide explicitly contain language specifying paid administrative leave for police deadly force.

#024

Posted by **Jesse Hsieh** on **09/11/2020** at **12:07am** [Comment ID: 14] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Consider a provision that states that the use of force likely to cause GBI (must/should) cease after one of the conditions is no longer met. (e.g., when there is no longer a reasonable belief that the fleeing person is a danger to others, when the fleeing person has been detained, when reasonably available or practical alternatives become available.)



DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date: XX MMM 20
Coordinator: Training Division

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DEPARTMENTAL GENERAL ORDER

K-03: USE OF FORCE

Effective Date: XX MMM 20
Coordinator: Training Division

A. MISSION, PURPOSE, AND CORE PRINCIPLES

A - 1. Protection and Sanctity of Human Life Paramount

The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

A - 2. Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life

Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.

While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

A - 3. Policy Direction Beyond Constitutional Principles

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (*Graham v. Connor*, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond *Graham* and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is used only when necessary, and that the amount of force used is proportional to the situation that an officer encounters.

A - 4. Department Purpose

The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives.

A - 5. Strict Prohibitions on Inappropriate Force

#001

Posted by **Drew** on **09/12/2020** at **1:23pm** [Comment ID: 20] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This is the type of wide open loop hole that allows for police violence. OPD's resources should be relocated to the impoverished. That's a far more effective strategy to prevent violence. Just by showing up with a gun, they are often escalating the situation.

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that is not reasonable and necessary under the totality of the circumstances will be subject to corrective action, including discipline up to and including termination. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

A - 6. Duty to Intervene

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent 004 extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this 003 directive shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

A - 7. Commitment to De-Escalation

When safe, feasible, and without compromising law enforcement priorities 002 officers shall use de-escalation tactics and techniques in order to reduce the need for force. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, officers shall de-escalate the amount of force used when the officer reasonably believes that a lesser level or no further force is appropriate.

A - 8. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing the 005 deleterious

#002

Posted by **Lisa Schiff** on **08/30/2020** at **5:02pm** [Comment ID: 10] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Shouldn't de-escalation always be the first recourse? And if so, shouldn't that be clearly stated here?

#003

Posted by **Drew** on **09/12/2020** at **1:26pm** [Comment ID: 21] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This doesn't take into consideration the victim of police brutality in the moment. A police officer witnessing abuse by another officer should arrest and detain that officer and remove themselves from the situation entirely.

#004

Posted by **Lisa Schiff** on **08/30/2020** at **5:00pm** [Comment ID: 9] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

It seems like this intervention should be required; the language should be stronger.

#005

Posted by **Lisa Schiff** on **08/30/2020** at **5:03pm** [Comment ID: 11] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

What about including/using staff from departments focused on public health and mental health?

effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

A - 9. Commitment to Medical Aid

Whenever a person is injured by a use of force, complains of injury from a use of force, or requests medical attention after a use of force, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training and skillset.

A - 10. Commitment to Thorough and Fair Evaluation of Force

The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.

Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.

B. DEFINITIONS

B - 1. Carotid Restraint Hold

A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.

The carotid restraint hold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using the carotid restraint hold.

B - 2. Chokehold

A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold.

A chokehold is considered **lethal force** by the Oakland Police Department, and members are prohibited from using chokeholds.

B - 3. Complaint of Pain

A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

B - 4. Cooperation / Compliance

Responsiveness to and compliance with officer requests.

B - 5. Crowd Control

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal

#006

Posted by **Drew** on **09/12/2020** at **1:28pm** [Comment ID: 22] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This is the rubber stamp that officers are allowed to do anything if they felt threatened. By upholding this known, toxic position, you allow for extreme abuse and violence from police. Remove this and all qualified immunity!

#007

Posted by **Jesse Hsieh** on **09/11/2020** at **12:33am** [Comment ID: 16] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This should be "Responsiveness to and compliance with officer COMMANDS or ORDERS" rather than requests. Police officers do not and should not have the right to use force when a person does not comply with their "requests" or "asks."

In the same vein, I do not think that cooperation should be used interchangeably with compliance. Cooperation shows up in only 3 places in this document: In the table of contents, in this definition section, and in a later section that states an officer's action should promote "cooperation." In contrast, "compliance" and "non-compliance" is used many times in the sections below.

#008

Posted by **Drew** on **09/12/2020** at **1:30pm** [Comment ID: 23] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

This should be fully unlawful for an officer to use unless they have 10+ years of medical and professional training on how to do it effectively. Most officers will mess this up cause serious harm.

#009

Posted by **Lisa Schiff** on **08/30/2020** at **5:05pm** [Comment ID: 12] - [Link](#)

Agree: 0, Disagree: 0

What is the evaluation process? Is it transparent?

#010

Posted by **Drew** on **09/12/2020** at **1:34pm** [Comment ID: 24] - [Link](#)

Type: *Suggestion*

Agree: 0, Disagree: 0

An officer should ALWAYS listen to and react to a complaint of pain.

tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management**.

B - 6. De-Escalation

Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- reduce or end a use of force after resistance or an immediate threat has ceased or diminished.

B - 7. Exigent Circumstances

Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.¹

B - 8. Feasible

Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

B - 9. Force

Any physical or mechanical intervention used by an officer to defend against, control, overpower, restrain, or overcome the resistance of an individual. Force includes less-lethal and lethal force options.

B - 10. Force Options

The force options trained and deployed by the Oakland Police Department include:

- Baton / Impact Weapons
- Chemical Agents⁰¹¹
- Control Holds / Defensive Tactics / Compliance Techniques
- Electronic Control Weapons
- Firearms
- Oleoresin Capsicum (OC) Spray
- Personal Body Weapons
- Physical Control Techniques, including escorts
- Police Canines

¹ Based on the definition from *United States v. McConney*, 728 f.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

#011

Posted by **Drew** on **09/12/2020** at **1:36pm** [Comment ID: 25] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Chemical agents are a violation of international law and human decency. We're only one of 3 countries in the world that use that on their own population. The other 2 countries are extreme totalitarian states.

- Specialty Impact Munitions
- Takedowns
- Verbal Commands / Instructions / Command Presence
- Verbal Persuasion

Less-lethal force options are further explained in section **G-1, Less-Lethal Force Options**, while lethal force options are further explained in section **H-1, Lethal Force Options**.

B - 11. Great Bodily Injury

Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

B - 12. Immediate Threat

A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat is ready to take place, impending, ¹⁰¹² to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat is one that, from appearances, must be instantly confronted and addressed.

B - 13. Less-Lethal Force

Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.

B - 14. Lethal Force

The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.

B - 15. Medical Aid

Medical interventions and life-saving techniques, ranging from home remedies and first-aid to life-saving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

B - 16. Minor Bodily Injury

#012

Posted by **Drew** on **09/12/2020** at **1:38pm** [Comment ID: 26] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Often, the presence of a police officer is a threat to a civilians life immediately. So if a police officers presence is already threatening, by no means can they use that as an excuse to say the officer feels threatened. The officer is the threat.

Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).

B - 17. Necessary ⁰¹⁴

Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all ⁰¹³ possible alternatives be exhausted prior to the use of force.

An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether

1. Objectively reasonable *alternatives* to the action were available and/or practical AND
2. Whether the action was reasonably likely to *effect the lawful purpose* intended.

B - 18. Objectively Reasonable

Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion – such as the use of force – is objectively reasonable requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The “test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”², however its proper application requires careful attention to the facts and circumstances of each particular case.

Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.

Factors which may be considered in determining the objective reasonableness of force – and which may be used by officers to determine whether force is

² *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)

#013

Posted by **Samuel Sinyangwe** on **09/17/2020** at **12:17pm** [Comment ID: 31] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

This language about necessity "not requiring that all possible alternatives be exhausted" is contrary to the spirit of AB 392 and there are many departments with use of force policies that do not contain language explicitly rejecting the idea that officers should use available alternatives prior to force.

#014

Posted by **Lisa Schiff** on **08/30/2020** at **5:11pm** [Comment ID: 13] - [Link](#)

Agree: 2, Disagree: -1

This describes looking at a given incident from the vantage point of another officer, but given that this policy is aspiring to reduce harm resulting from racial bias (acknowledged or unacknowledged), evaluations should also consider whether the same actions would have been taken if the non-officer's race/ethnicity were different.

reasonable based on a situation in which they are involved – include, but are not limited to:

- The seriousness/severity of the crime or suspected offense;
- The level of threat or resistance presented by the engaged person;
- Whether the engaged person was posing an immediate threat to officers or a danger to the public;
- The potential for injury to members of the public, officers, or engaged persons;
- The risk or apparent attempt by the engaged person to escape;
- The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);
- The conduct of officers leading up to the use of force;
- The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup, and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
- The time available to the officer to make a decision;
- The availability of other resources;
- The training received by the officer;
- The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
- Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
- Environmental factors and/or other exigent circumstances;
- Whether the engaged person had any perceived physical disability;
- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

B - 19. Officer

Any sworn member of the Oakland Police Department, at any rank.

Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific

#015

Posted by **tracyf** on **08/28/2020** at **4:41pm** [Comment ID: 5] - [Link](#)

Type: Question

Agree: 0, Disagree: -1

Reply by **SiteAdmin** on **08/28/2020** at **4:47pm** [Comment ID: 6] - [Link](#)

Agree: 0, Disagree: 0

September 25th at 11:59pm

force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

B - 20. Police Canine

A canine that is specifically trained and deployed to search for, locate and assist in the apprehension of criminal suspects. The Police Canine is certified by a Peace Officer Standards and Training (POST) certified canine evaluator as meeting current voluntary POST canine standards. A Police Canine may also be cross-trained in the tracking method and narcotics detection. Reference [DGO K-09](#), *Department Canine Program*.

B - 21. Procedural Justice

Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:

- **Respect:** Treating all people with dignity and respect;
- **Voice:** Giving people an opportunity to be heard;
- **Neutrality:** Being neutral and fair when making decisions; and
- **Trustworthiness:** Conveying trustworthy motives, such as doing what is best for the community.

B - 22. Proportional Force

Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section F, **LEVELS OF FORCE**)

B - 23. Resistance

Resistance is the absence of **cooperation**, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or **level** (see section E, **LEVELS OF RESISTANCE**), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the **immediacy of the threat**, if any, posed by the person as well as whether the force used to overcome the resistance was **proportional** to the resistance posed.

B - 24. Restrained Person

A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.

B - 25. Serious Bodily Injury

Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.

B - 26. Totality of Circumstances

All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and engaged person leading up to the use of force, all viewed from the perspective of a reasonable officer.

B - 27. Vehicle Ramming Mass-Casualty Attack

An attack in which a person deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

C. DE-ESCALATION

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to

situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department's mission.

Policing, at times, requires that an officer exercise control of a violent or resisting person, or a person experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective. Tactical repositioning or other de-escalation tactics are not considered "retreat" for the purposes of this policy.

C - 1. Goals of De-Escalation

The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

C - 2. Considerations Surrounding the use of De-Escalation

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:

- The officer's use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;

#016

Posted by **Drew** on **09/12/2020** at **1:42pm** [Comment ID: 27] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

De-escalation should be the only tool officers can use.

- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

C - 3. Policy Requirement Regarding De-Escalation

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the engaged person. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

C - 4. De-Escalation Tactics, Techniques, and Principles

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

Broadly, de-escalation techniques fall under the following categories:

➤ Communication

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands

- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to,
 - Medical conditions
 - Mental impairment
 - Developmental disability
 - Physical limitation
 - Language barrier
 - Drug interaction
 - Behavioral crisis
 - Fear or anxiety
- Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)
- Giving the engaged person a reasonable amount of time to comply with commands.

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover possible escape routes; and

- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

➤ **Positioning and Spatial Awareness**

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the engaged person. Officers should constantly be assessing their positioning relative to the engaged person and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

- Proper interview stance;
- Separation of parties during disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and
- Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

➤ **Time, Distance, and Cover**

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

- Additional resources such as crisis intervention trained officers or mental-health crisis response units;
- Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);
- Using cover and concealment for tactical advantage, such as:
 - Placing barriers between an uncooperative engaged person and officers
 - Using natural barriers in the immediate environment
- Officers with stand-off or longer-distance force options; or
- Armored vehicles.

➤ **De-Escalation Resources**

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

D. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY

D - 1. Use of Force Shall be Reasonable, Necessary, and Proportional, and for a Lawful Purpose or Objective

Officers shall only use **objectively reasonable** and **necessary** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.

Officers may use objectively reasonable and necessary force options in the performance of their duties in the following circumstances:

- To effect a lawful arrest, detention, or search;
- To overcome resistance or prevent escape;
- To prevent the commission of a public offense;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

D - 2. Prohibitions on Unreasonable Force

Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce.

It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

D - 3. Duty to Intervene

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent

extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this objective shall, absent extraordinary circumstances, do whatever he/she can do to interrupt the flow of events and *stop* the use of force.

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*³, and members who fail to report excessive force are subject to appropriate discipline.

D - 4. Identification and Warnings Prior to the Use of Force

When feasible, and without sacrificing officer, engaged person, or public safety, officers shall:

- Identify themselves as law enforcement officers;
- Warn the engaged person that force may be used unless their resistance ceases; and
- Give the engaged person a reasonable opportunity to comply with a warning that force may be used.

Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

D - 5. Use of Force on Restrained Persons

Officers may only use objectively reasonable, necessary, and proportional force on restrained persons. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances and when determining the level of resistance and the threat posed by the engaged person. Typically, intermediate less-lethal and lethal force may not be used against restrained persons (see **G-5**).

D - 6. De-escalation of Force After Force has been Used

Officers shall de-escalate the use of force when the officer reasonably believes a lesser level or no further force is appropriate. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

³ Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.

#017

Posted by **Jesse Hsieh** on **09/11/2020** at **1:04am** [Comment ID: 19] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

I suggest that the type of force the officer intends to use (should/must) be stated.

#018

Posted by **Drew** on **09/12/2020** at **1:50pm** [Comment ID: 28] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Officers who fail to intervene from another officers excessive use of force should be charged and punished for the crimes of the offending officer.

D - 7. Providing Medical Assistance to Persons Subject to the Use of Force

When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of medical distress for persons subject to the use of force, even if the aid is declined.

After requesting medical aid, officers shall, if feasible, render aid within the full scope of their training and skillset unless aid is declined. Consent should be assumed for unconscious persons or persons incapable of providing consent.

Officers shall automatically request medical aid for persons who have been struck, contacted, or contaminated by the following force options, regardless of injury:

- Lethal ammunition fired from a firearm;
- Electronic Control Weapons, whether probe or drive-stun;
- Specialty Impact Munitions;
- Impact or impromptu impact weapon strikes with contact; or
- Oleoresin Capsicum spray.

E. LEVELS OF RESISTANCE

Resistance (**Section E, LEVELS OF RESISTANCE**) and response (**Section F, LEVELS OF FORCE**) are dynamic. The engaged person's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the engaged person is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (**Section E**) and force which may be used to overcome that resistance (**Section F**) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threats to their safety or the safety of others.

E - 1. Non-Compliance

Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.

E - 2. Passive Resistance

Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.

Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.

E - 3. Active Resistance

Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.

Verbal responses indicating an unwillingness to comply with an officer's directions which **do** rise to the level of threats are also considered active resistance.

E - 4. Assaultive Resistance

Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.

E - 5. Life-Threatening Resistance

Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person.

F. LEVELS OF FORCE

Note: Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as of de-escalation attempts both before and after any use of force incident.

F - 1. Contact Controls

Low-level physical tactics used to gain control and overcome **non-compliance** or **passive resistance**. These include physical control techniques (e.g. pulling, pushing, or maneuvering an engaged person's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.

F - 2. Compliance Techniques and Defensive Tactics

Low-level physical tactics used to gain control and overcome **passive resistance** and **active resistance**, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome **passive resistance** shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.

Techniques and tactics to overcome **passive resistance** include control holds, **objectively reasonable** takedowns, and non-striking use of the baton. OC spray shall not be used on those engaged persons who go limp or offer no physical resistance.

Techniques and tactics to overcome **active resistance** include control holds, oleoresin capsicum (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.

F - 3. Intermediate Less-Lethal Force

Intermediate-level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome **active** and **assaultive resistance**, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsicum (OC) spray, police ⁰¹⁹ines, and specialty impact munitions.

F - 4. Lethal Force

Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome **life-threatening resistance**. Lethal force includes impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

G. COMMANDS AND LESS-LETHAL FORCE

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: **Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.**

G - 1. Presence/Command Options

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are not a use of force but which are essential in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, **De-Escalation**).

G - 2. Physical Control/Personal Weapons Options

Depending on the manner and intensity in which they are used, **Physical Control/Personal Weapons Options** may fall into multiple force levels: Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less-Lethal Force. These options include, but are not limited to:

- Escorts and physical body manipulation without pain compliance

#019

Posted by **Jesse Hsieh** on **09/11/2020** at **12:44am** [Comment ID: 17] - [Link](#)

Agree: 0, Disagree: 0

I have seen many clients apprehended by police canines suffer injuries that are legally sufficient for GBI and I would consider them GBI as well.

One client had part of his forearm bitten away. It never healed to full.

Another client had seven (7) subsequent surgeries due to the canine bite apprehension that the police used. He needed bypass surgery for his arm and nearly lost the arm.

Canines can and often do cause great injury when used in apprehension.

- Control Holds
- Takedowns
- Vulnerable Area manipulation
- Personal Weapon strikes – **NOTE:** Personal Weapon strikes to a restrained person are considered Intermediate Less-Lethal Force.

Absent exigent circumstances, all **Physical Control/Personal Weapons Options** shall be compliant with Oakland Police Department policy and training. Refer to **Training Bulletin III-I.1, *Weaponless Defense***.

G - 3. Less-Lethal Tool Options

Less-lethal tools are used to interrupt an engaged person's threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications. Less-lethal tools alone cannot be expected to render an engaged person harmless.

Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.

Less-lethal tools most often fall into the level of Intermediate Less-Lethal Force, although certain tools, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).

Less-lethal tools, depending on the nature of the tool and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific tool. Important warnings regarding specific less-lethal tools, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.

The Less-lethal tools authorized by the Department include:

- Patrol Canine – See [DGO K-09](#), *Department Canine Program*
- Electronic Control Weapon (ECW) – See [DGO \(Lexipol\) 304](#), *Electronic Control Weapon (TASER)*
 - **Important warning:** When feasible, a verbal warning of the intended use of the ECW shall proceed its use, to warn the engaged person and other officers.

- Impact Weapons: Includes the ASP® expandable baton, long wood baton, and short wood baton – See **Training Bulletin III-H.02, *Hand-held Impact Weapons***
 - **Important warning:** Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
- Specialty Impact Weapons: Includes direct-fired ranged impact munitions, regardless of weapons platform – See **Training Bulletin III-H, *Specialty Impact Weapons***
 - **Important warning:** SIM use during crowd control situations is further limited – see **Training Bulletin III-G, *Crowd Control and Crowd Management***.
- Oleoresin Capsicum (OC) Spray – See **Training Bulletin V-F.02, *Chemical Agents***
 - **Important warning:** OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.
 - **Important warning:** OC spray shall not be used on passive resisters who go limp or offer no physical resistance.
- Crowd Control and Tactical Team Chemical Agents – See **Training Bulletin V-F.02, *Chemical Agents*** and **Training Bulletin III-G, *Crowd Control and Crowd Management***.

G - 4. Requirement to Carry at Least One Less-Lethal Tool

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool (e.g. ECW, impact weapon, and/or OC).

G - 5. Restrictions on Use of Less-Lethal Tools Against Restrained Persons

Officers are prohibited from using less-lethal tools against restrained persons unless that person is exhibiting **Assaultive** or **Life-Threatening** resistance or there is an immediate threat of serious or great bodily injury or death.

H. LETHAL FORCE

H - 1. Lethal Force Options

Lethal force is any force that creates a substantial risk of causing great bodily injury or death. These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person. For the purpose of this section of the policy, the term “firearms” shall indicate firearms loaded with lethal ammunition.

The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. Any deviations

from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

H - 2. Drawing, Exhibiting, or Unholstering Firearms

An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see [DGO K-04, Reporting and Investigating the Use of Force](#)).

When an officer determines that the threat is over, the officer shall holster his or her firearm, when feasible.

H - 3. Pointing Firearms at a Person

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.⁴ Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force.

If an officer points a firearm at a person the person shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

H - 4. Discharging Firearms at a Person

An officer is justified in discharging a firearm at another person only when the officer believes, based on the totality of the circumstances, that the discharge is necessary for either of the following reasons:

- To defend against an immediate threat of death, great bodily injury, or serious bodily injury to the officer or another person;
- To apprehend a fleeing person for a felony when the following three conditions are met:

⁴ *Robinson v. Solano County*, 278 F. 3d 1007 (9th Cir. 2002)

#020

Posted by **Samuel Sinyangwe** on **09/15/2020** at **5:26pm** [Comment ID: 29] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

The requirement that there be "no reasonably available alternatives" prior to using deadly force should be applied to the first condition just as it is applied to the second. Currently, the "or" between the two sections of H-4 implies that officers do not need to exhaust available alternatives to deadly force in cases where there's an immediate threat.

- There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
- The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
- There are no other reasonably available or practical alternatives to apprehend the person.

If feasible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm at a person.

H - 5. Discharging Firearms at Moving Vehicles

Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.

Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:

- Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat of death, great bodily injury, or serious bodily injury *by means other than the vehicle*;
- Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury *where the officer or other person has no reasonable avenue of protection or escape*.
- Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a **vehicle ramming mass-casualty attack**.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator.

Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack**.

H - 6. Discharging Firearms from Moving Vehicles

Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with life-threatening resistance. This behavior is strongly discouraged and should be considered a last resort.

#021

Posted by **Jesse Hsieh** on **09/11/2020** at **12:52am** [Comment ID: 18] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

I think condition 2 is meant to focus on whether the fleeing person is an imminent danger to others and will cause death or great injury *in the near future* unless immediately apprehended.

I think condition 2 could be interpreted to mean that the person will cause death or great injury to another *at anytime in the future* unless immediately apprehended.

It is feasible to think that a homicide suspect may fall into the latter category but not the former. But I don't think it appropriate to discharge a firearm at this person in the latter situation.

It should be modified so that it is clear it relates to those that are an immediate danger to others.

H - 7. Discharging Firearms at Animals

Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:

- Against a dangerous animal to deter an attack or to prevent injury to persons present; or
- If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.

Other than when the animal presents an immediate threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.

H - 8. General Prohibitions Regarding Firearms

Officers are prohibited from the following actions:

- Using firearms as impact weapons, unless any of the following circumstances exist:
 - When a person is attempting to take the firearm away from the officer;
 - When lethal force is permitted; or
 - When using long-gun-specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;
- Firing warning shots; and
- Using lethal force solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death, great bodily injury, or serious bodily injury to another person or officer.

H - 9. Force Likely to Cause Great Bodily Injury or Death

Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:

- Intentional impact weapon strikes to the head; and
- Intentional use of a vehicle, at any vehicle speed, to strike the person of another.

Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:

- To defend against an immediate threat of death or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:
 - There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
 - The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
 - There are no other reasonably available or ⁰²²optical alternatives to apprehend the person. ⁰²⁴

I. CONSIDERATIONS AFTER FORCE

I - 1. Preventing Positional Asphyxia

In addition to requesting medical assistance after certain uses of force or when the engaged person has sustained injuries or demonstrates signs of medical distress (see section **D-7**), officers shall, consistent with officer safety, evaluate the positioning of an engaged person to mitigate the chances of positional asphyxia. This includes positioning the person in a manner to allow free breathing once the engaged person has been controlled and placed under custodial restraint using handcuffs or other authorized methods.

Engaged persons under an officer's control should be positioned in a way so that their breathing is not obstructed – obstruction of a person's breathing could easily lead to death or serious bodily injury. This means that officers should not sit, kneel, or stand on an engaged person's head, neck, chest or back, and whenever feasible should not force the engaged person to lie on his or her stomach.

I - 2. Administrative Leave after Lethal Force Incidents

Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than ⁰²³three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

#022

Posted by **Jesse Hsieh** on **09/11/2020** at **12:08am** [Comment ID: 15] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Consider a provision that states that officers (should/must) stop using force likely to cause GBI if one of the conditions goes away (e.g., suspect disarmed, disabled, or apprehended; reasonably available and practical alternatives become available.)

#023

Posted by **Samuel Sinyangwe** on **09/16/2020** at **12:39pm** [Comment ID: 30] - [Link](#)

Agree: 0, Disagree: 0

This is unnecessary and only the most egregious use of force policies nationwide explicitly contain language specifying paid administrative leave for police deadly force.

#024

Posted by **Jesse Hsieh** on **09/11/2020** at **12:07am** [Comment ID: 14] - [Link](#)

Type: Suggestion

Agree: 0, Disagree: 0

Consider a provision that states that the use of force likely to cause GBI (must/should) cease after one of the conditions is no longer met. (e.g., when there is no longer a reasonable belief that the fleeing person is a danger to others, when the fleeing person has been detained, when reasonably available or practical alternatives become available.)

I - 3. Counseling Services after Lethal Force Incidents

Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

J. TRAINING

J - 1. Annual Training on Use of Force Policy

Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher training distributed via Department intranet or other document management system.

J - 2. Use of Force Policy Training Incorporation into Practical Training

All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the force options or skills being practiced are specifically evaluated and used in light of this policy.

J - 3. Training Bulletins

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins.

By order of

Susan Manheimer
Interim Chief of Police

Date Signed: _____

Violence Prevention Coalition:
Community Conversation Notes for September 8th, 2020

Topic: “Use of Force” policy by the Oakland Police Department

Participants: 19 - 21 community members

Note: Comments are grouped by theme, not in the order given

Commentary on police culture:

- If money comes from the pockets of police for misconduct, it would change how police think about accountability; the community should not be responsible for paying those costs.
- If court costs come out of police union funds, officers would have to pay for other officers’ error and I think it would change their perspective
- Part of the problem we have is we can change and add to the policy however; use of force is escalating – they show up with military equipment. If we don’t look at the equipment they use, then this [use of force policy] becomes just a very small piece.
 - Why do you have a bearcat at 73rd and Bancroft? Black and brown people. They don’t care. It’s not even a thought. (referring to an event in District 6)
- How low is the bar to become a police officer in Oakland? It seems we need to raise the bar. The bar is too low and might be contributing to some of the problems. [Also] whistleblowers and others who actively try and prevent police brutality aren’t protected. The bar is low because so few people want the job.
- Lots of people apply to OPD; lots of requirements – which typically disadvantages Black people; b/c Black people are arrested disproportionate to others, then [requirements] weeds them out.
 - How do we not make the requirements increasingly more prohibitive?
 - Change requirements so they are real; work closely with the appropriate people on the requirements.

- Police lie. And, if they're going to lie, they should have to lie in public. (RE: how policies are implemented within the department).
- How do we handle the issue of race?
 - "If they stop Betty Sue, a white woman, they're going to abide by the policy. But if they stop me [MoC] or [another MoC] then the policy is unlikely to be followed."
 - Police deny race is a factor when policing; put language in policy that requires you to agree to police in a way that addresses these disparities
- Group expressed desire for a test that evaluates implicit bias or racism; if other companies can have these tests, so should the police.
 - [Harvard Implicit Bias test](#)

Commentary on officer training:

- If you're a teacher or social worker or other type of mandated reporter, you are required to report misconduct, why not the same from officers
- "I'm a small woman with grey hair – they stomped me because I didn't immediately give them my backpack. They're trained to obtain domination at any cost. They've been trained that it's their right and job to completely overpower."
- The training won't make a difference if the individuals being hired are ill-suited, or there's inadequate reinforcement of the culture shift from all levels within the force.

Comments on changing policing policy:

- Can we also talk about the policies of use of force, but the procedures?
 - If there is a disagreement between? CPRA + OPD, then it's resolved by the Police Commission by a discipline committee. We need to work on the quality of the CPRA investigation; to include an understanding of how they came to their findings. Be a watchdog over the Commission + CPRA
- Do we feel like the system is doing what it is supposed to do? How do we get updated use of force into training?

- We have started to see pretty significant change. Officers who shot J. Pollack were fired – will they stay fired? We’ll see. [Because] it’s important that bad officers stay fired.
- People on probation and parole were stopped constantly, but it had very little impact on actual crime. [It] resulted in a lower return rate than if OPD went to Rockridge to stop and search folks.
- Do we know what works?
 - 1) is there a community somewhere in the U.S. where they are trying new things and it’s working; 2) we should find progressive thinkers – a Brookings Institute [type] think tank about how you start over, because there’s a mindset in the police department that has to change.
- There is a racial disparity in the stop of vehicles, but also use of force and it is the reason we’ve been under Federal Oversight. And the needle hasn’t moved.
- Who negotiates? Who else is a part of this process? Who is in opposition to what happens here? (RE: Use of Force policy)
 - We could come up with all the policies we want, but who is really in there.
 - **Response:** right now, it’s the police commissioners (ad hoc committee) gathering input from the community.
 - Two Sgt. of OPD invited by Commissioners; “...no one else gets to make their own job description.”
- There is an effort to center people directly impacted by police violence. It is up to the ad hoc commission who will then go back to their commissioners.
 - We ask that there be no more private meetings w/ OPD.
- Social workers, counselors, etc. will one day be the folks deployed instead of police.

Resources discussed:

- [City Auditor’s review](#)
- [Use of Force policy](#)
- [Harvard Implicit Bias test](#)

9/8/2020 Oakland Violence Prevention Coalition Townhall on UOF

Notes by Allyssa Victory, ACLU NorCal (taken while participating and is not intended to represent official minutes from the event)

1. Introduction
 - a. VPC is a coalition in Oakland that focuses on making Oakland the safest city in CA; structured with subgroups including policing that focuses on different areas; goal to reduce certain safety issues by 80%
 - i. Website: <https://www.oaklandvpc.org/>
 - ii. Twitter + Instagram handle: @OaklandVPC
 - iii. Facebook: <https://www.facebook.com/oaklandvpc/>
2. CPA: Anne Janks and Antwon will co-moderate overview
 - a. Technical background
 - i. Police Commission is rewriting OPD UOF policy
 - ii. Resident experiences to inform policy changes
 - iii. UOF only covers OPD because of jurisdiction of Oakland Police Commission
 - iv. Doesn't mean that officers will immediately follow policy changes and doesn't change culture of policing
 - v. Policy is the foundation of the changes we want to make
 - b. What is CPA: created vision of community board to oversee police dept. Measure LL established the police commission.
 - c. Summary of proposals to discuss
 - i. Add de-escalation requirement → time, distance, and cover requirements
 - ii. Reviews of force based on circumstances including whether officer attempted de-escalation
 - iii. Proportionality: only use force necessary to overcome any resistance and consider how serious situation will be
 - iv. POA should pay for all police misconduct lawsuits
 - v. Accountability of officers who witness misconduct of their fellow officers
 1. Propose a concept of mandated reporting like teachers who see abuse of children who can be liable if they do not report
 - d. Experiences
 - i. Elderly woman stopped at Oakland protest by 4 cops. Wouldn't open or give OPD her backpack. OPD officers harassed and "stomped on" her for refusing. Feels that cops are trained to dominate people and that their job is to get people to be completely powerless in any encounter.
 1. How to address?
 - a. Starts with policy de-emphasizing that police need to always gain "control" of a situation but need to assess and understand what is happening and what is really needed in the moment
 - ii. Eastmont mall event with OPD Bearcat showing off equipment (CM Taylor sponsored?)
 1. Military equipment like bearcats should not be present in our communities and no consideration by OPD for the impact it may have

- 2. the presence of the bearcat is a use of force
 - iii. Executive Force Review Board is made up of police
 - 1. Review procedure needs to be revised
 - 2. AV and Rashidah clarify what feedback is helpful right now
 - 3. How has it been working now?
 - iv. Low standard to become police officer and OPD discriminates against Black applicants
 - 1. Peace officer requirements produce disparate effect E.g. disqualified if you even have an arrest record or have had claims filed against you (even if never came to fruition or dismissed)
 - 2. Mandate psych testing and drug testing for officers
 - 3. Racism/implicit bias testing like corporate offices require
 - a. Racial profiling got us into the NSA and still major issue in OPD
 - b. Eberhart did study and report with OPD and still concluded racial disparity
 - c. Harvard Implicit Bias test is an example
 - v. How to implement UOF policy into training? What is the process?
- e. Other sources of expertise and examples of successful reforms?
 - i. Studies by academic institutions?
 - ii. Discussion with Chief of Camden, NJ police force?
 - iii. Community research and push can make the case
- f. Mental health crises
 - i. Police should be diverted away from mental health calls or have to go out with trained mental health professional
 - ii. De-escalation more important in these circumstances
 - iii. Require peace officer certification in first year of training
 - 1. De-escalation and mental health training
- g. ID racial disparities
 - i. Name that they are historical and present
 - ii. Specifically address fantasies that police live under
 - 1. E.g. Being able to talk (e.g. saying "I can't breathe" to an officer) does not mean a person can adequately breath

3. Follow-up

- a. Other ways to get involved: City's Defund Task Force
- b. Research and follow-up
- c. Contacts
 - i. subcommittee: erice@bradyunited.org; Erica Rice
 - ii. For the VPC as a whole: oakviolenceprevention@gmail.com; connects w/ the Chair of the Coalition

Use of Force Policy WISHLIST

*Guiding document provided by ACLU NorCal to community partners (Communities United for Restorative Youth Justice; East Oakland Collective; Ella Baker Center; MISSSEY; Anti-Police Terror Project; Just Cities; American Friends Service Committee; Coalition for Police Accountability) in July 2020

Policy Subject	Proposed language	Rationale	Support?
Values statement	Explicit policy values of: human life and protecting people over property. Diversion from the criminal justice system leads to the healthiest outcomes for individual and community. Emphasis on public service in all training, recruitment, public interactions over militarization, control, surveillance.	De-emphasize militarization, control, and surveillance in all elements of policing from recruitment to training AB 846 (Burke) proposed changes to POST training. This bill would also require every department or agency that employs peace officers to review the job descriptions used in the recruitment and hiring of those peace officers and to make changes that deemphasize the paramilitary aspects of the job and place more emphasis on community interaction and collaborative problem solving	
Use of Force	Delineate use of police as a method of force as well Defer certain calls for community responders and social services		
De-escalation	De-escalation: means use of crisis interventions and exhausting all other feasible options before use of force; include distance, cover, and/or time options	Required by SB 230	

	Beyond de-escalation? Retreat and do not get involved. Defer to community responders or social workers. Suggested have step matrix to direct what types of calls should be directed where.	AB 1709 (Weber) is expansion of AB 392	
Proportionality	UOF must be proportional to actual threat meaning only the level of force necessary and no less lethal/injurious force could achieve the same result. Immediate discontinuation/decrease in force as threat decreases/control gained.	Required by SB 230 AB 1709 (Weber) is expansion of AB 392	
Duty to Report fellow officers	A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer. Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2. Include citizen oversight in reporting structure. Retaliation protections	Required by SB 230 AB 1022 (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force. AB 1291 (Salas) proposes reporting requirements from agencies to POST about disciplined and separated officers	
Drawing Firearm	Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.	AB 392 AB 1709 (Weber) is expansion of AB 392	

Pointing a Firearm	Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.	AB 392 AB 1709 (Weber) is expansion of AB 392	
Bystanders & Surroundings	Officers required to consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before drawing a firearm, pointing, and/or discharging a firearm.	AB 1709 (Weber) is expansion of AB 392	
Duty to Intercede	An officer must intercede to stop or prevent the unnecessary use of force by another officer and immediately report that use or attempted use of excessive force.	AB 1022 (Holden) proposes requiring officers to immediately report potential excessive force, and to intercede when present and observing an officer using excessive force.	
Weapons to apply force	Comprehensive listing of methods and devices dis/allowed for the application of force and specific guidelines regarding approved methods and situations for use	AB 392 AB 1709 (Weber) is expansion of AB 392 Military Equipment policy proposed to Police Commission	
Zero tolerance for racist, bias behavior	Officers are required to carry out duties, including use of force, in a manner that is fair and unbiased. Termination for sustained finding of unauthorized lethal use of force; sexual assault against fellow officer and/or civilian; dishonesty; and Bane Act or other civil rights statutory violations. Reporting of bases for termination/discipline to POST and other law enforcement agencies	Oakland City Council resolution adopted 6/16/2020 establishing “zero-tolerance policy for City employees with respect to racist practices, behaviors, actions, and/or association and affiliation with white supremacist groups, organizations or cells” and specifically directing City Administrator to not hire and to terminate those found in violation.	

		<p>AB 846 (Burke) proposed changes to POST training to include bias and set officer disqualifications and decertification standards for 3 instances of misconduct or more)</p> <p>SB 731 (Bradford) proposed decertification standards incorporating the Bane Act</p> <p>SB 1421 and SB 776 (Skinner) expansion bill</p>	
Review of Use of Force	<p>Clear process and include role of citizen oversight.</p> <p>Independent investigation?</p> <p>List of factors to consider upon review/evaluation of a UOF incident</p> <p>Public reporting on the number of incidents, time of investigation, outcome of investigations, types of force involved, and settlements paid by City related to UOF</p>	<p>Review process required by SB 230</p> <p>AB 1314 (McCarty) proposes annual public posting requirements of legal settlements paid for UOF</p> <p>AB 1506 (McCarty) proposes mandate that all lethal uses of force resulting in death be independently investigated by Cal DOJ and establishes new investigatory unit</p> <p>SB 776 (Skinner) proposes expansion to SB 1421 allowing disclosure of records relating to any use of force, discharge of firearm by officer, sustained findings of sexual assault or dishonesty under the CPRA</p>	
Duty to provide medical attention	<p>Officers required to promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident. Include persons where injury is known or visible, where</p>	<p>Required SB 230;</p> <p>AB 2054 (Kamlager) CRISES Act</p>	

	lethal use of force deployed, and where person complains of injury/requests medical attention. If call concerns mental health, substance abuse, domestic violence, homelessness, or property damage, need for medical attention must be assessed at dispatch to divert to first responders or community safety network.	AB 1709 (Weber) is expansion of AB 392	
Training on UOF	<p>Clear standards and requirements that include demonstrated knowledge and understanding of agency's use of force policy by officers, investigators, and supervisors. Must include guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.</p> <p>Mandate any temp or contract workers with police dept to receive training.</p> <p>Cannot request mutual aid from agencies with conflicting training.</p>	<p>Required by SB 230</p> <p>AB 392</p> <p>AB 846 (Burke) proposed changes to POST training to include bias and set officer disqualifications and decertification standards for 3 instances of misconduct or more)</p>	
Shooting at moving vehicles prohibited	Shooting at moving vehicles is prohibited in all instances	SB 230	
Time and opportunity to respond	Allow adequate time and opportunity to respond to commands especially in incidents of expected, apparent, and/or known disabilities (including mental and pregnancy) and/or incapacity.		
911 diversion	Presumptive no need for police presence/lethal force when responding to any calls for community and intimate partner violence, mental health issues, homelessness, substance use, and climate and natural disasters which should be first addressed by community responders	<p>Connects to CRISIS Act</p> <p>SB 773 (Skinner): revise composition of state 911 Advisory Board</p>	

	Affirmative diversion to mental health and/or community services		
Use of Force for Fleeing individuals	uses of force to punish individuals for fleeing or resisting arrest are prohibited in all instances	Required by SB 230 AB 392	
Use of Force on people who are danger to self	Uses of all types of force against individuals who pose a threat to only themselves are prohibited in all instances. De-escalation more required if indications of "I want the police to kill me"	Required by SB 230 AB 392	
Uses of Force that cause Airway Obstruction	Chokeholds, Carotid restraints, and any other restraint of the airway is prohibited in all instances because the risk of death is too great	City Council Resolution passed on 6/30/2020 directing Commission to draft a complete ban. AB 1196 (Gibson) proposed – chokeholds and carotid restraints	
Use of chemical agents	Chemical agents including teargas and CS gas are prohibited in all instances, including for crowd control	City Council 6/16/2020 passed resolution directing Commission to draft a ban on use during pandemic City of Berkeley enacted full ban 6/10/2020 and in mutual aid situations June 2020: Federal Judge in Seattle grants an injunction on tear gas use until Sept. 30, 2020 June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas, flash bangs and rubber bullets on protesters	

		<p>The 1925 Geneva Protocol categorized tear gas as a chemical warfare agent and banned its use in war shortly after World War I</p> <p>In 1993, nations could begin signing the U.N.'s Chemical Weapons Convention (CWC) that outlawed the use of riot control agents in warfare</p> <p>AB 66 (Gonzalez, Kalra) proposed to prohibit teargas and rubber bullets</p>	
Rubber Bullets prohibited	Rubber Bullets are prohibited in all instances because the threat to life is too great	<p>June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas, flash bangs and rubber bullets on protesters</p> <p>AB 66 (Gonzalez, Kalra) proposed to prohibit teargas and rubber bullets</p>	
Warning Shots	Warning shots are prohibited in all instances		
Use of Force on restrained persons	Uses of Force on restrained persons are presumed unnecessary and unlawful		
Tasers or conducted electrical weapons	Uses of force with tasers or other conducted electrical weapons is prohibited in all instances		
Canines	Uses of force with canines are prohibited in all instances		
Uses of Force on demonstrators	Prohibit using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Expressly includes positioning tactics like kettling crowds.	<p>1st amendment</p> <p>June 19, 2020: Federal Judge Spero granted prelim and temp injunctions against City of Oakland using tear gas,</p>	

	<p>Use of force to preserve/protect solely property is presumed unnecessary and unlawful</p>	<p>flash bangs and rubber bullets on protesters</p> <p>AB 1652 (Wicks) proposes to ban using force on individuals engaged in, or members of the press covering, a lawful assembly or protest. Intentional violations mandate officer suspension.</p> <p>SB 629 (McGuire) proposes to ensure media access to protests and demonstrations. Violation would be a misdemeanor.</p>	

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Police Commission

To: Chair Regina Jackson, Chair Oakland Police Commission

From: Use of Force Ad Hoc Commission Representatives

Date: March 5, 2020

RE: Use of Force Ad Hoc Bi-Weekly Report

Background

In January 2020, the Oakland Police Commission voted to approve a new version of Department General Order (DGO) K-03 Use of Force. As a part of the discussion about approving The new K-03 to be in compliance with AB 392 an act to amend Sections 196 and 835a of the Penal Code, relating to peace officers, effective January 1, 2020. The Oakland Police Commission and Oakland Police Department collectively asserted during this meeting that the ultimate goal to best serve the community is a more comprehensive revision of K-03. Members of the Use of Force Ad Hoc (UOF Ad Hoc) agreed to reconvene to complete the comprehensive revision. Subsequently, at the January 16th meeting of the UOF Ad Hoc the committee worked to establish purpose and goals for the revision of K-03 and referenced Training Bulletins. During the February 27, 2020 Oakland Police Commission the UOF Ad Hoc committed to produce regular reports on the progress of the revision process.

Meeting Update

The UOF Ad Hoc met on Thursday March 5th. The meeting content focused on De-Escalation goals, considerations, resources, tactics, techniques, and principles. The committee proposes the creation of an entire section devoted to De-Escalation. The emphasis on De-Escalation reinforces the priority that thoughtful resolutions to situations reduce the likelihood of harm to all persons involved. Including a section devoted to De-Escalation in Use of Force policy is a national best practice.

The committee reviewed sections from the following model Use of Force policies during the course of the meeting;

- Albuquerque, NM
- Camden, NJ
- Cleveland, OH
- Denver, CO
- Seattle, WA

The UOF Ad Hoc completed review of the De-Escalation section during the committee meeting. The next meeting is scheduled for March 19th.

To: Chair Regina Jackson, Chair Oakland Police Commission
From: Use of Force Ad Hoc Commission Representatives
Date: March 19, 2020
RE: Use of Force Ad Hoc Bi-Weekly Report

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Meeting Update: March 19, 2020

The UOF Ad Hoc met remotely on March 19, 2020. The meeting content focused on general considerations and policy including objectively reasonable, necessary, and proportional force. The committee discussed the provisions on use of force, and officer duty to intervene, warnings and De-escalation after force has been used.

The committee reviewed sections from the following model Use of Force policies during the course of the meeting;

Camden, NJ
Denver, CO
San Francisco, CA
Seattle, WA

The UOF Ad Hoc completed review of the general considerations and policy section during the committee meeting. The next meeting is scheduled for March 26, 2020.

Meeting Update: March 26, 2020

The UOF Ad Hoc met remotely on March 26, 2020. The meeting content focused on levels of resistance and levels of force. The discussion included conditions of compliance and explored the distinguishing characteristics between the following levels of resistance; passive, active, assaultive and life threatening forms of resistance. The discussion on levels of force included techniques, tactics, and tools available to Oakland police Department officers in the context of levels of resistance. Emphasis was placed on not creating a continuum of force.

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Seattle, WA

The Committee agreed to continue discussions on level of force during the next meeting. The next meeting is scheduled for April 2, 2020.

Meeting Update: April 2, 2020

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Seattle, WA

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