

# **BART POLICE CITIZEN REVIEW BOARD USE OF FORCE STANDING COMMITTEE**

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**TO:** BPCRB – Use of Force Standing Committee Members      **DATE:** March 11, 2022  
**FROM:** Use of Force Standing Committee Chairperson George Perezvelez  
**SUBJECT:** Review of BART Use of Force Policy 300

- A. Definitions section 300.1.1**
  - 1. Redline provided by Chair for discussion and action**

## **Use of Force**

### **300.1 PURPOSE AND SCOPE**

The BART Police Department’s highest priority is safeguarding the life, dignity, and liberty of all persons. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and deescalation tactics before resorting to force. This Department policy builds upon the Supreme Court’s broad principles in *Graham v. Connor* (1989) 490 U.S. 386 as a foundation and is more restrictive than the constitutional standard and state law. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public’s trust. This policy provides guidelines on the use of force. While there is no way to specify the exact amount or type of force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and unbiased manner. Officers shall only use that amount of force that is objectively reasonable, objectively necessary and proportional with a minimum reliance on use of force in order to affect a law enforcement objective. **Approved**

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Deadly force** - Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm (Penal Code § 835a). **(ADD)** Deadly force may only be used when the officer reasonably believes that such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm. Officers shall not use deadly force if the officer reasonably believes that alternative techniques will eliminate the imminent danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons.

**Explicit Bias** - Conscious belief or attitude toward a specific social group that may lead an individual to act in discriminatory ways.

**Feasible – (discussion on keeping definition)** Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person (Government Code § 7286(a)).

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. **It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained (delete). This needs to change as it still needs documentation and evaluation. Regardless of consent. (ADD)** Further, in any encounters that do call for applying force, officers must always strive to use the minimum amount of force that is objectively reasonable and objectively necessary to safely achieve their legitimate law enforcement objective.

**(ADD) Minimum ( OPEN DISCUSSION ON KEEPING MINIMAL)amount necessary** – The lowest level of force within the range of objectively reasonable AND OBJECTIVELY NECESSARY FORCE to effect an arrest or achieve a lawful objective without increasing the risk to others. The least amount of force that is objectively reasonable and objectively necessary to safely effect an arrest or achieve some other legitimate law enforcement purpose.

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

**Implicit Bias** - Unconscious belief or attitude toward a specific social group that may lead an individual to unknowingly act in discriminatory ways. People are generally unaware of their implicit biases and may even hold contradictory conscious beliefs.

**Legitimate law enforcement objective** - Effect a lawful arrest, detention, or search; overcome resistance or prevent escape; prevent the commission of a public offense; in defense of others or in self-defense; gain compliance with a lawful order; to prevent a person from injuring himself/ herself.

**Minimal (sub Minimum) amount of force necessary** - **The lowest level of force within the range of objectively reasonable force (delete the word force and add “objectively necessary force to affect – delete also that’s is necessary to affect or achieve))** that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

**Non-deadly Force** - Any application of force that is not reasonably anticipated and OR intended to create a substantial likelihood of death or very serious bodily injury shall be considered non-deadly force. **(REVISE PER BELOW LANGUAGE)**

**(ADD) Less-Than-Lethal Force** – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

**(ADD) Non-Lethal Force** – Any use of force other than lethal force or less-than lethal force

**Personal Body Weapons** - An officer’s use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

**Proportionality** - Considers whether a particular use of force is proportionate and appropriate to the totality of the circumstances, and requires officers to consider whether alternative lesser or non-force options are feasible and likely to be effective. Proportional force does not imply equal force; officers may use superior force, consistent with this policy. **(DELETE)**

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

**Reasonable Belief** - An objective belief determined by the facts and circumstances reasonably available to the officer at the time (on-scene and without hindsight **-DELETE**) and viewed from the perspective of a reasonable peace officer in the same situation, guided by the principles set forth in this policy.

**Reasonable Force** - An objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time. **(Delete as no longer the standard)**

**Serious bodily injury** - A serious impairment of physical condition, including but not limited to the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement **ADD (or results in a prolonged loss or impairment of the functioning of any bodily member or organ)** (Penal Code § 243(f)(4)).

**Totality of the circumstances** - All facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

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