

San Francisco Bay Area Rapid Transit District

*2150 Webster Street, P. O. Box 12688,
Oakland, CA 94604-2688*



COMMITTEE MEETING AGENDA

Monday, May 8, 2023

3:00 PM

**The BPCRB-UOF Meeting will be held in-person and via
simultaneous teleconference, with an option for public
participation via teleconference.**

**BART Conference Room 161, 2150 Webster Street, 1st Floor,
Oakland, CA 94612. Zoom Link:**

**BART Police Citizen Review Board - Use of Force
Standing Committee**

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
2150 Webster Street, P. O. Box 12688, Oakland, CA 94604-2688

NOTICE OF MEETING AND AGENDA
BART POLICE CITIZEN REVIEW BOARD
USE OF FORCE STANDING COMMITTEE

May 8, 2023

3:00 p.m.

COMMITTEE MEMBERS: Members Armstrong, Davis, Perezvelez (Chairperson), and W. White.

Chairperson Perezvelez has called a Meeting of the BART Police Citizen Review Board (BPCRB) - Use of Force Standing Committee on Monday, May 8, 2023, at 3:00 p.m., in BART Conference Room 161, 2150 Webster Street, 1st Floor, Oakland, California 94612. This meeting shall consist of a simultaneous teleconference at the following locations:

BART Conference Room 161
2150 Webster Street – 1st Floor
Oakland, CA 94612

The Berkeley Public Library West Branch
Reserved Room (See Librarian for Room Location)
1125 University Avenue
Berkeley, CA 94702

The Warner Library
Reserved Room (See Librarian for Room Location)
121 North Broadway
Tarrytown, NY 10591

Please note that this meeting will be held in person in BART Conference Room 161, 2150 Webster Street, 1st Floor, Oakland, California 94612, and via teleconference at the locations listed above. Face masks are strongly recommended on BART property, including the BART Conference Room.

Presentation materials will be available at least 72 hours prior to the BPCRB - Use of Force Standing Committee meeting at <https://bart.legistar.com/Calendar.aspx> (click on “Agenda”).

You may attend the BPCRB - Use of Force Standing Committee Meeting in person or join via Zoom by calling (833) 548-0282 (Toll Free) and entering access code 857 3612 3442; logging in to Zoom.com and entering access code 857 3612 3442, or typing the following Zoom link into

your web browser:

<https://us06web.zoom.us/j/85736123442>

If you wish to make a public comment:

- 1) Submit written comments via email to CitizenReviewBoard@bart.gov, using “public comment” as the subject line. Your comment will be provided to the BPCRB - Use of Force Standing Committee and will become a permanent part of the file. Please submit your comments as far in advance as possible. Emailed comments must be received before 9:00 a.m., on May 8, 2023, in order to be included in the record.
- 2) Complete a “Request to Address the BPCRB - Use of Force Standing Committee” form (available at the entrance to the Board Room) and give it to the District Secretary’s Office staff before the Item is considered by the Committee.
- 3) Call (833) 548-0282 (Toll Free), enter access code 857 3612 3442, dial *9 to raise your hand when you wish to speak, and dial *6 to unmute when you are requested to speak; log in to Zoom.com, enter access code 857 3612 3442, and use the raise hand feature; or join the BPCRB - Use of Force Standing Committee Meeting via the Zoom link (<https://us06web.zoom.us/j/85736123442>) and use the raise hand feature.

Public comment is limited to three (3) minutes per person.

AGENDA

1. Call to Order.
 - a. Roll Call.
2. Public Comment. (Limited to 3 minutes per speaker.)
(An opportunity for members of the public to address the BPCRB - Use of Force Standing Committee on matters under their jurisdiction and not on the agenda.)
3. (Continued from the March 14, 2022, BPCRB - Use of Force Standing Committee Meeting)
Review of Draft Language and Definitions for BART Police Department's Lexipol Policy 300 - Use of Force. For Action.

Attachments: [Lexipol Policy 300 - UOF - Definitions and Redlines Memo](#)
[Lexipol Policy 300 - Use of Force - Full Policy](#)

4. Discussion on Next Steps Based on Attrition of Committee Members and New Additions to the Committee. For Discussion and Action.
5. Discussion on Use of Force Standard - Possible Reversal from Prior Conversation on Minimal vs. Minimum. For Discussion and Action.
6. Next Meeting Agenda Items and Date. For Discussion.
7. Adjournment.

BART provides services/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address Board matters. A request must be made within one and five days in advance of Board meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

Pursuant to Govt. Code §54953.5, the audio recording of the open session portions of this public meeting shall be subject to inspection pursuant to the California Public Records Act (CPRA). Requests for information under the CPRA should be filed with the BART Office of the District Secretary.

BART POLICE CITIZEN REVIEW BOARD USE OF FORCE STANDING COMMITTEE

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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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 de-escalation tactics before resorting to force, whenever feasible. This Department policy builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 386 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 reasonable use of force. While there is no way to specify the exact amount or type of reasonable 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, non-biased, and reasonable manner.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary. (Government Code § 7286)

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).

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

Feasible - 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)).

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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.

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 amount of force necessary - The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

Non-deadly Force - Any application of force that is not reasonably anticipated and intended to create a substantial likelihood of death or very serious bodily injury shall be considered non-deadly 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.

Reasonable Belief - An objective belief determined by the facts and circumstances reasonably available to the officer at the time (on-scene and without hindsight) 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.

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 (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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300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers must strive to use the minimal amount of force necessary.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force. Retreating for a tactical advantage should be considered and utilized, when feasible and appropriate.

Officers shall not use force with bias, based upon: race; ethnicity or nationality; religion; sex; sexual orientation; economic status; age; cultural group; disability; or affiliation with any other similar identifiable group.

Use of force against vulnerable populations (such as, without limitation, children, elderly, pregnant women, people with physical and mental disabilities, and people with limited English proficiency) can undermine public trust and should only be used if no other options appear reasonable or effective. It is recognized that the above may not be readily apparent or known to the officer. Any

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evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

The Department recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards. This policy therefore requires rigorous reporting and review of all instances of the use of force.

300.2.1 DUTY TO INTERCEDE

A use of excessive force by law enforcement personnel is a matter of serious concern to the community, and even a single instance of excessive force may critically undermine public trust in the Department. Any officer present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.2 DE-ESCALATION TECHNIQUES

Officers shall use de-escalation techniques whenever feasible and appropriate: to potentially reduce or eliminate the need to use force; and to prevent injuries to the subject, the public and the officer(s). Use of de-escalation techniques must allow for the fact that officers are often forced to make split-second decisions, with limited information, and in circumstances that are tense, uncertain and rapidly evolving.

- (a) Officers shall, when feasible, continually assess the dynamics of a situation, and modulate their response and actions appropriately. Officers may be justified in using force at one moment, but not justified in using force the next moment due to a change in dynamics.
- (b) De-escalation techniques may include verbal persuasion, warnings and tactical de-escalation techniques, such as: slowing down the pace of an incident; “waiting out” subjects; creating distance (and thus the reactionary gap) between the officer and the threat; and requesting additional resources (e.g., specialized units, mental health care providers, negotiators, etc.) to resolve the incident.
 - (a) Officers should recognize that they may withdraw to a position that is tactically advantageous or allows them greater distance to de-escalate a situation.
 - (b) Officers should consider a variety of options, including lesser force or no force options.
 - (c) Officers should perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others.

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- (d) Officers shall not intentionally and unnecessarily escalate and/or create a need to use force.
- (e) Officers should attempt to understand and consider possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety.
- (f) Officers should continue de-escalation techniques, when feasible and appropriate, and take as much time as reasonably necessary to resolve the incident, in effort to avoid and/or minimize the use force.
- (c) When an officer recognizes that mental illness, post-traumatic stress disorder, alcohol and/or drug addictions, or other health issues are causing an individual to behave erratically, the officer shall, when feasible and appropriate, try to de-escalate the situation using de-escalation and/or Crisis Intervention techniques.

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

Supervisors conducting a use of force investigation will indicate de-escalation as a force option in BlueTeam whenever de-escalation was attempted or used in an incident.

300.2.3 FAIR AND UNBIASED USE OF FORCE

Officers are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any employee who observes a law enforcement officer or another employee use force that potentially exceeds what the employee reasonably believes to be necessary shall immediately report these observations to a supervisor (Government Code § 7286(b)).

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

300.2.5 FAILURE TO INTERCEDE

An officer who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the officer who used force beyond that which is necessary (Government Code § 7286(b)).

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300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

There are circumstances in which a force option may be legally justified under the principles set forth in *Graham v. Connor*, but the use of that force option may not be appropriate, warranted, and/or necessary.

This policy builds upon the broad principles in *Graham v. Connor* by adding additional, more restrictive factors upon which an officer's use of force shall be evaluated. These factors should be considered when determining whether to apply force (as time and circumstances permit), and in evaluating whether an officer has used reasonable force.

Additional factors set forth by case law and by this Policy:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The feasibility, efficacy, and safety of alternative lesser or non-force options, including the availability of de-escalation techniques that might reduce or eliminate the need to use force, or prevent injuries to the subject, the public and the officer(s).
- (c) Whether the force option is proportionate and appropriate to the totality of the circumstances, and 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.
- (d) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (e) The conduct of the officer prior to the use of force. Specifically, did the officer violate policy and unnecessarily escalate the situation to a use of force.
- (f) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (g) The effects of drugs or alcohol.
- (h) Subject's mental state or capacity, including any apparent/known mental health issues.
- (i) Proximity of weapons or dangerous improvised devices.
- (j) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (k) The availability of other options and their possible effectiveness.

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- (l) Seriousness of the suspected offense or reason for contact with the individual.
- (m) Training and experience of the officer.
- (n) Potential for injury to officers, suspects and others.
- (o) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (p) The risk and reasonably foreseeable consequences of escape.
- (q) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (r) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (s) Prior contacts with the subject or awareness of any propensity for violence.
- (t) Any other exigent circumstances.
- (u) Officers must strive to use the minimal amount of force necessary.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)).

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the approved tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer
- (c) Whether the person has been given sufficient opportunity to comply.

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The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.2 PERSONAL BODY WEAPONS

Personal body weapon strikes, punches, lifts or kicks for which the officer has received department-approved training, may be used when the officer reasonably believes that the use of such force appears necessary to further a legitimate law enforcement purpose.

Personal body weapon strikes, punches, or kicks to the rear of the head, neck or spine are prohibited. The only exception to this prohibition would be under exigent circumstances when deadly force is justified and reasonable.

300.3.3 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Department for this specific purpose.

300.3.4 RESTRICTIONS ON THE USE OF A CHOKE HOLD/CAROTID RESTRAINT

Officers of this department are not authorized to use a choke hold or carotid restraint. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe. Carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. (Government Code § 7286.5).

300.3.5 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence, or pre-existing medical conditions. While it is impractical to restrict an officer's use of reasonable control methods when attempting to restrain a combative individual, officers are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once controlled, the individual should be placed into a recovery position (e.g., supine or seated) and monitored for signs of medical distress (Government Code § 7286.5).

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify him/herself as a peace officer and to warn that deadly force may be used, unless the officer has

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objectively reasonable grounds to believe the person is aware of those facts (Penal Code 835a(5)(c)(1)(B)).

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based 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 officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. It is also noted that in many circumstances, disabling the driver of a vehicle may increase the potential for harm to bystanders and/or the officer.

- Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.
- Officers shall not intentionally and unnecessarily move into the path of an approaching vehicle to create their own exigent circumstance.
- Officers should not shoot at any part of a moving vehicle in an attempt to disable the vehicle.

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- Officers shall not discharge a firearm at a moving vehicle or its occupants when there are other reasonable means available to avert the threat.
- Officers shall not discharge a firearm from a moving vehicle when there are other reasonable means available to avert the present threat.
- Officers may only shoot at a moving vehicle under exigent circumstances, when the driver and/or occupants are targeting others with the intent to cause great bodily injury or death and there are no other reasonable means available to avert the threat.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, officers should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the officer reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such threat until the officer no longer perceives such threat.

Once it is reasonably safe to do so, officers should carefully secure all firearms.

Whenever an officer draws/deploy a firearm during the performance of his/her duties to defend, detain or take any person into custody (the suspect is contacted or arrested, the officer is present and is within potential sight of the suspect), it is considered a use of force and an account of the incident must be made in a police report. The officer should include in the narrative of the report how the weapon was used in the incident, as well as the justification for such action. The documentation of how the weapon was used should include information on how the weapon was presented. The officer must notify a supervisor as soon as practical, and the supervisor will complete a Use of Force Investigation with accompanying documentation as outlined in this policy.

Whenever an officer draws/deploy a firearm during the performance of his/her duties in the presence of others, but does not use the firearm to defend, detain or take any person into custody (the suspect is not contacted or arrested), it is not considered a use of force and an account of the incident must be made in a police report.

Whenever an officer draws/deploy a firearm during the performance of his/her duties not in the presence of others, it is not considered a use of force and no documentation is required. An example of that type of incident would include, but is not limited to, the search of an empty building or car where no person is contacted during the search.

To the extent reasonable under the circumstances, officers shall consider their surroundings and potential risks to bystanders before discharging a firearm

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300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

Supplemental reports will be completed by personnel who are present when force is used by another officer. Officers have a duty to report all pertinent facts known to them.

All police reports, inclusive of any supplemental reports, involving the documentation of a use of force must be reviewed and approved by a supervisor prior to the employee going off duty.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following any Level 2, 3, or 4 application of force. Levels of force and the respective reporting, investigation, documentation, and review requirements are defined in section 300.5.2.

All use of force must be documented in a police report and reviewed by a supervisor.

300.5.2 USE OF FORCE INVESTIGATION, DOCUMENTATION, AND REVIEW

Upon receiving notification of a use of force, a supervisor who was not involved in the use of force incident, will determine the level of investigation and documentation.

The following categories and parameters will explain levels of force and the respective reporting, investigation, documentation, and review requirements. Incidents will be categorized as Level 1, Level 2, Level 3, or Level 4.

Level 1: Documentation in a Police Report Only

Level 1 Incident Parameters:

- (a) Subject allowed him/herself to be searched, escorted, and/or handcuffed. The officer did not use force to overcome resistance, nor did the officer use force in the absence of resistance.
- (b) Officer used any of the following, and the circumstances of the application would lead a reasonable officer to conclude that the subject did not experience more than momentary discomfort:
 - 1. Control holds/pressure point application
 - 2. Leverage
 - 3. Grab
 - 4. Bodyweight
 - 5. The officer lowered the subject to a seated position or to the ground while partially or completely supporting the person's bodyweight.
- (c) Officer used any of following:
 - 1. TASER/LLIMs Deployed (no activation)

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2. Drawn/deployed firearm, but no suspect contacted or arrested
- (d) Subject has no visible injury due to interaction with officer.
- (e) Subject has no complaint of injury or continuing pain.
- (f) Subject does not indicate intent to pursue litigation.
- (g) Subject was not rendered unconscious due to interaction with officer.
- (h) No allegation of misconduct against officer, regarding force.
- (i) Entirety of the contact was captured on audio and video, inclusive of the buffering period.

Level 1 Incidents should be documented by an officer in an appropriate police report, citation, Field Interview, and/or CADS entry. Supervisors will review police report narratives for approval.

Level 2: Use of Force

Level 2 Incident Parameters:

- (a) No suspect injury or complaint of continuing pain due to interaction with officer.
- (b) No allegation of misconduct against officer, regarding force.
- (c) Entirety of the contact was captured on audio and video, inclusive of the buffering period.
- (d) Officer's use of force was limited to the following:
 1. Any takedown, that did not appear to cause more than momentary discomfort.
 2. Firearm drawn/deployed but not fired, suspect contacted
 3. Control hold, pressure point, leverage, grab, and/or bodyweight, and the application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses, and that photos are taken of the involved parties. If the incident fits the parameters for a Level 2 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist with a brief summary.

Witness statements from fire and medical personnel are not required under the following circumstance: an officer assists medical personnel to restrain and/or secure a subject to a gurney for medical transport in a non-criminal detention (i.e. 5150 or 5170 detention), and all of the following conditions are met:

- (a) The officer only used force options limited to the following: grab, hold, leverage, and/or bodyweight.
- (b) No subject injury or complaint of continuing pain due to interaction with officer.

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- (c) No allegation of misconduct against officer, regarding force.
- (d) Entirety of the contact was captured on audio and video, inclusive of the buffering period.
- (e) The unit number for the fire and medical personnel is obtained.

Level 3: Use of Force

Level 3 Incident Parameters:

- (a) Would have otherwise been classified as a Level 2, except one or more of the following apply:
 - 1. Suspect injury or complaint of injury or continuing pain due to interaction with officer.
 - 2. Allegation of misconduct against officer, regarding force.
 - 3. Entirety of the contact was not captured on audio and video, inclusive of the buffering period.
- (b) The use of force is Level 3 if the officer used any of the following force options:
 - 1. Any takedown, that appears to have caused more than momentary discomfort.
 - 2. TASER Activation/LLIMS Activation
 - 3. Chemical Agents/Munitions
 - 4. Impact Weapon Strikes
 - 5. Personal Body Weapons
 - 6. Police canine deployment resulting in injury

An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation, ensuring that statements are taken from the suspect and witnesses. If the incident fits the parameters for a Level 3 incident, the supervisor will enter all applicable data into BlueTeam and attach a completed Use of Force Investigation Checklist. The supervisor will also complete a Use of Force Investigation Report narrative for review through the Use of Force Review process. Suspect and witness statements from the crime report will be attached to the use of force investigation. Use of Force involving police canines will be documented and reviewed additionally per Policy 318.

Level 4: Use of Deadly Force

Level 4 Incident Parameters:

- (a) Use of firearm, officer involved shooting
- (b) Or any force likely to cause death or serious bodily injury

An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to Policy 310.

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300.5.3 EMPLOYEES WHO USE FORCE WHILE ON A SPECIAL ASSIGNMENT

When a BART Police employee has a use of force as defined in this policy, the use of force must be reported to a BART Police supervisor and investigated in accordance with this policy.

When two or more BART Police officers are temporarily assigned to assist an outside agency or multi-agency task force in the performance of law enforcement activities, a BART police supervisor should also be present.

300.5.4 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Division Policy.

300.6 MEDICAL CONSIDERATION FOLLOWING A USE OF FORCE

Prior to booking or release, and as soon as possible under the circumstances, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed. Officers should pay particular attention to vulnerable populations, including but not limited to, children, elderly persons, pregnant individuals and individuals with physical, mental and developmental disabilities, whose vulnerabilities could exacerbate the impact or risk of injury.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called "excited delirium"), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage nearby if appropriate.

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300.7 SUPERVISOR RESPONSIBILITY

An uninvolved supervisor should respond to the scene of a Level 2, Level 3, or Level 4 use of force. The supervisor is expected to do the following:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) Ensure that arrestees and witnesses are interviewed, and that the interviews are audio/video recorded. If the arrestee invokes their Miranda rights at any point, all interrogation shall cease as outlined per case law.
 - 1. Officers should take recorded suspect and witness statements related to all criminal charges as appropriate, including the circumstances involving the use of force. These statements will be documented in the crime report. If the responding supervisor conducts the interview, then the supervisor should document the statement in the crime report.
 - 2. In addition to the statement taken for the criminal report, supervisors conducting the use of force investigation should seek a voluntary statement regarding the use of force from suspects who have not invoked their Miranda rights. The interview should be audio/video recorded. If the statement contains information that is relevant to the criminal case but is not covered in the primary crime report, the supervisor will document the interview in a supplemental crime report.
 - 3. In the event that force is used on an individual with no criminal charges (i.e. psychiatric detentions), then the responding supervisor should interview the detainee regarding the use of force.
 - 4. In all cases, the responding supervisor should identify themselves as a supervisor to the arrestee/detainee. If the subject makes an allegation of misconduct, the supervisor will receive and forward the complaint to Internal Affairs.
- (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- (e) Review the portion(s) of the body worn camera video pertaining to the use of force and/or allegation of misconduct.
- (f) Review and approve all related reports.

In the event that an uninvolved supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit. The investigation will be documented in a Use of Force Investigation checklist and narrative as warranted.

When practical, involved supervisors, meaning those who use force in a given incident or those who witness the use of force by another officer in a given incident, should not obtain statements

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from other officers as part of a report on the use of force, as such is the responsibility of an uninvolved supervisor. Furthermore, involved supervisors and officers shall not attempt to influence other officers' or civilian witnesses' accounts of what occurred during the incident or otherwise compromise the integrity of the use of force investigation.

Use of Force Investigation Reports will be forwarded and reviewed through the chain of command.

300.7.1 WATCH COMMANDER RESPONSIBILITY

A watch commander will review the Use of Force Investigation Report to ensure compliance with this policy and that any training issues are addressed.

Nothing in the policy precludes the watch commander from requiring that a supervisor complete a Use of Force Investigation Report for any incident involving force.

The on-duty watch commander shall promptly notify the Office of the Independent Police Auditor in the event that a use of force resulted in significant (i.e. life threatening) injury, notwithstanding the notification requirements regarding officer-involved shootings and in-custody deaths pursuant to Policy 310.

300.8 TRAINING

Officers will receive annual training on this policy (at a minimum) and demonstrate their knowledge and understanding.

Departmental personnel authorized to carry lethal and less-lethal weapons will be issued copies of, and be instructed in, the policies of lethal and less-lethal force before being authorized to carry a weapon. The issuance and instruction shall be documented.

Training standards and requirements relating to demonstrated knowledge and understanding of the use of force policy, and training about interactions with vulnerable populations (including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities) are established in the Department's Training Plan. Relevant course titles from the Training Plan include, but are not limited to; POST Basic Academy material, POST-Approved Field Training Program, POST Continued Professional Training, POST-Certified Force Options Update, POST-Certified Driving Update, POST-Certified Force Options Update, POST Certified Driving Update, POST Certified Arrest & Control, POST-Certified Tactical Communications, First Aid/CPR Update, Firearm Qualification, Patrol Rifle, Racial Profiling or Fair & Impartial Update, Impact Weapons Update, TASER Training, Code of Ethics Training, Crisis Intervention Training, Reality Based Training, Active Shooter Training, Cultural Diversity Training, POST Field Training Officer Course, Field Training Officer Update Course, Firearms Instructor Course, Firearms Instructor Update, Arrest & Control/Impact Weapons Instructor, Arrest & Control/Impact Instructor Update, Impact Weapons Instructor Update, In-House New Sergeant Orientation, Officer Involved Shooting – Supervisor Responsibilities, POST Basic Instructor Development Institute, Fair and Impartial Policing Train the Trainer, Racial Profiling Instructor Course, Tactical Medical Course, POST First Aid / CPR Instructors Course, Force Options Simulator Instructor Course, Basic TASER Instructor Course, TASER Instructor Recertification Course.

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300.9 USE OF FORCE ANALYSIS

At least annually, the Operations Bureau Deputy Chief should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the Office of the Independent Police Auditor, and the BART Police Citizen Review Board. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.10 USE OF FORCE COMPLAINTS

Complaints by members of the public related to this policy may be filled with the BART Police Department Internal Affairs Division (IAD), the BART Police Citizen Review Board (BPCRB) or the Office of the Independent Auditor (OIPA). The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Personnel Complaints Policy (Government Code § 7286(b)). Complaints filed with the BPCRB and/or OIPA will be investigated with the applicable procedures of the BART Citizen Oversight Model.

300.11 POLICY REVIEW

The Chief of Police or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

300.12 POLICY AVAILABILITY

The Chief of Police or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.13 PUBLIC RECORDS REQUESTS

Requests for public records involving an officer's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records and Records Maintenance and Release policies (Government Code § 7286(b)).