

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 16 Oct 14

SUBJECT: Revised DGO K-4, REPORTING AND INVESTIGATING THE USE OF  
FORCE (01 Aug 07)

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The purpose of this revision is to update policy consistent with the revisions to DGO K-3, USE OF FORCE and DGO K-9, POLICE CANINES and to incorporate previously issued Special Orders.

SO 8999, SO 8977, SO 8970 and SO 9057 have been incorporated in the policy revision and are hereby cancelled.

The following is a summary of the substantive changes to DGO K-4. This summary shall not take the place of the review and understanding of the entire document:

- Added language raising a force level investigation to a Level 1

When the Watch Commander has raised a force a force level investigation to a Level 1, investigator preparing the Use of Force Report (TF-967) shall enter Force Type 8-XX (where “8” indicates the force investigation is being raised to a higher level and “XX” indicates the actual force type applied) into the Force Type # box in Part 2 of the Use of Force Report.

- Added language defining a restrained subject

- a. A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble.
- b. A subject with only one handcuff on is not a restrained person.

- Added a new Level 4 Use of Force for canine deployments

A canine deployment in which a suspect is located by the canine but no bite occurs.

- a. This includes alert or detaining behavior such as barking, growling circling or making non-biting physical contact with the subject which does not result in injury requiring emergency medical treatment (beyond first-aid) or hospital admittance.
- b. This does not include a canine deployment in which the suspect is located by means other than the canine or where no suspect is located.

- Added language for the minimal information required in the appropriate report when a member or employee has a use of force

Articulation of the reasonableness of the force

- Added requirement for transportation to a medical facility for evaluation

Any strike to the head with an impact weapon

Personnel shall acknowledge receipt, review, and understanding of this directive in accordance with the provisions of DGO A-1, DEPARTMENTAL PUBLICATIONS.

By order of



Sean Whent  
Chief of Police

Date Signed: \_\_\_\_\_



DEPARTMENTAL  
GENERAL  
ORDER

Effective Date  
16 Oct 14

K-4

Evaluation Coordinator:  
BFO Commander:

Index as:

Evaluation Due Date:  
16 Apr 15

Reporting and Investigating the  
Use of Force

Automatic Revision Cycle:  
3 Years

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## REPORTING AND INVESTIGATING THE USE OF FORCE

The purpose of this order is to set forth Departmental policy and procedures for reporting, investigating, reviewing, and managing use of force incidents involving Departmental personnel.

### I. POLICY

- A. Commanders, investigators and supervisors shall complete a Department approved training course for the Departmental use of force policy (DGO K-3) and reporting and investigating use of force incidents (DGO K-4) prior to conducting any use of force investigation. The training course shall include provisions of the Public Safety Officers' Procedural Bill of Rights (POBR), Departmental General Order (DGO) M-3, RECEIVING AND PROCESSING COMPLAINTS AGAINST DEPARTMENT PERSONNEL OR PROCEDURES and DGO M-4.1, CRIMINAL INVESTIGATIONS INVOLVING ACTIVE LAW ENFORCEMENT, OR A MEMBER OR EMPLOYEE OF THE DEPARTMENT.
- B. Personnel shall notify his/her supervisor immediately or as soon as practical, of any use of force, allegation of a use of force, or an allegation of unreasonable force.
1. When notified of a Level 1, 2, or 3 use of force, the supervisor or commander shall respond to the scene and conduct the appropriate force investigation.
  2. When notified of an allegation of a use of force and the member/employee denies using force, the supervisor or commander shall respond to the scene and conduct a preliminary investigation into the use of force allegation.
  3. When a subject who has incurred an injury requiring more than basic first-aid **and** the injury did not occur as a result of a member's

use of force (e.g. suspect attempts to flee and injures themselves during a fall or suspect intentionally bangs their head while in the back seat of a police vehicle) **and** there is no allegation of force by the subject; or

4. When there is a discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) by a member to accomplish a tactical police purpose that does not result in injury.
- C. If any force investigation indicates misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally initiate an internal investigation in accordance with the provisions of DGO M-3. Document the date the IAD was notified in the Use of Force Report (TF-967).
- D. If any force investigation indicates criminal misconduct, the supervisor or commander shall conduct, at a minimum, a Level 2 force investigation and additionally make the proper notifications in accordance with the provisions of DGO M-4.1. Document the date the CID was notified in the Use of Force Report.
- E. Personnel shall request medical service without delay when a subject has visible injuries or the subject has a complaint of injury.
- F. Supervisors and commanders shall be held accountable for the timely, accurate, and thorough documentation of all use of force incidents.
- G. Reports shall not contain “boilerplate” or “pat” language (e.g., “furtive movement” or “fighting stance,” etc.) without descriptive or explanatory details of the action.”
- H. Supervisors and commanders have the discretion, except as indicated in Part II, B, 7, to elevate any level of force investigation in order to conduct a more thorough investigation of the incident. The Watch Commander shall approve elevating a force investigation to a Level 1.

1. Raising to Level 2 Use of Force

When raising a force level investigation to a Level 2, the supervisor or commander preparing the Use of Force Report (TF-967) shall enter Force Type 15-XX (where “15” indicates the force investigation is being raised to a higher level and “XX” indicates the actual force type applied) into the Force Type # box in Part 2 of the Use of Force Report.<sup>1</sup>

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<sup>1</sup> The Force Type code must be reported in this specific order in the Force Type box to ensure proper entry into iPAS.

2. Raising to a Level 1 Use of Force

When the Watch Commander has raised a force a force level investigation to a Level 1, investigator preparing the Use of Force Report (TF-967) shall enter Force Type 8-XX (where “8” indicates the force investigation is being raised to a higher level and “XX” indicates the actual force type applied) into the Force Type # box in Part 2 of the Use of Force Report

I. A supervisor or commander involved in a use of force shall not investigate the incident or review for approval the Use of Force Report.

1. In the event personnel working a tour of duty in the Patrol Division, of the rank of sergeant or above, are involved in a Level 2 or 3 use of force incident, the Watch Commander shall assign an investigator to conduct the investigation.

2. In the event personnel working a tour of duty in any division other than Patrol, of the rank of sergeant or above is involved in a Level 2 or 3 use of force incident, the unit commander shall assign an investigator to conduct the investigation with the approval of the division commander and, if unavailable, the Watch Commander<sup>2</sup>.

3. The Watch Commander may approve a supervisor or commander to investigate, a Level 2 or 3 use of force with their own self-reported Level 4 use of force when they occur in the same incident.

J. In the event multiple members use the same level of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel.

In the event multiple members use different levels of force in a single incident, the reporting member shall prepare only one Use of Force Report listing all involved personnel. An investigation shall be conducted at the highest level when multiple force options are used.

K. Supervisors and commanders shall identify Department or individual training and tactical issues and make recommendations for corrective action, when appropriate and document the recommendations in the Use of Force Report.

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<sup>2</sup> When a member is assigned to investigate a use of force incident involving another member of equal rank and an arrest is made requiring approval, the provisions of DGO M-18, ARREST APPROVAL shall be followed.

- L. Supervisors and commanders shall ensure the provisions of POBR are properly applied.
- M. Personnel may delay compliance with the provisions of this order if the scene is unstable, there is community unrest, or other conditions make immediate compliance impracticable. The protection of Department personnel and the public, and the maintenance of public safety shall remain the priority. The approving supervisor or commander shall ensure the reason for the delay is documented in the Use of Force Report. Such compliance delays are subject to review by the appropriate review board.
- N. Injured or killed animals shall be handled and/or properly disposed of in accordance with the provisions of DGO A-5, ANIMAL CONTROL PROCEDURES.

## **II. FORCE LEVELS**

Force options enumerated in DGO K-3 are grouped in the following force levels for reporting and investigating purposes only.

- A. Level 1
  - 1. Any use of force resulting in death;
  - 2. Any intentional firearm discharge at a person, regardless of injury;
  - 3. Any force which creates a substantial risk of causing death;  
  
The use of a vehicle by a member to intentionally strike a suspect shall be considered deadly force, reported and investigated as a Level 1 UOF under this section. This includes at any vehicle speed, with or without injury, when the act was intentional, and contact was made.
  - 4. Serious bodily injury, to include:
    - a. Any use of force resulting in the loss of consciousness; and
    - b. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ (includes paralysis.)
  - 5. Any unintentional firearms discharge:
    - a. If a person is injured as a result of the discharge; or



- b. As directed by the CID Commander.
  6. Any intentional impact weapon strike to the head.
  7. Any use of force investigation that is elevated to a Level 1 approved by a Watch Commander.
- B. Level 2
  1. Any strike to the head (except for an intentional strike with an impact weapon);
  2. Carotid restraint is applied that does not result in the loss of consciousness;
  3. Use of impact weapons, including specialty impact munitions or any other object, to strike a subject and **contact is made**, regardless of injury.
  4. Any unintentional firearms discharge that does not result in injury;
  5. A police canine bites the clothing or the skin of a subject, or otherwise injures a subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.
  6. Any use of force which results in injuries to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance.

**Note:** For the purposes of this order, an evaluation by a medical professional to assess a complaint of injury is not emergency medical treatment.
  7. Any Level 3 use of force used on or applied to a restrained subject.
    - a. A restrained subject is a person who has been fully placed in a Department authorized restraint device such as both hands handcuffed, a WRAP or Rip Hobble.
    - b. A subject with only one handcuff on is not a restrained person.
- C. Level 3
  1. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent is applied to an unrestrained person;

2. The use of an Electronic Control Weapon (ECW), except on a restrained subject, involving any of the following circumstances:
    - a. When one or more probes impacts or penetrates the subject's clothing or skin;
    - b. When the push stun arc touches the subject's clothing or skin; or
    - c. An ECW is fired at a person, but misses.
  3. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**; or
  4. The baton is used for a non-striking purpose (e.g., prying limbs, moving or controlling a person);
  5. A Weaponless Defense Technique other than control holds, excluding strikes to the head. Examples include;
    - a. Hand/palm/elbow strikes;
    - b. Kicks;
    - c. Leg sweeps; and
    - d. Takedowns.
  6. An on-duty firearm discharge at an animal other than to dispatch an injured animal.
- D. Level 4
1. The intentional pointing of a firearm at a person.
    - a. This includes intentional pointing a firearm loaded with less-lethal ammunition at a person, except during Crowd Control Operation.
    - b. This does not include the low ready/retention position as specified in Part VI, A, 4.)

Refer to Part IV, A, 1-3 of DGO K-3, USE OF FORCE, for further information specific to the pointing of firearms.

2. A Weaponless Defense Technique is applied to a Vulnerable Area, excluding strikes (e.g., Hair grab, pressure to mastoid or jaw line; and shoulder muscle grab).
3. An on-duty firearm discharge to dispatch an injured animal; or
4. A Weaponless Defense Technique Control Hold is applied:
  - a. Escort (elbow);
  - b. Twist lock;
  - c. Arm-bar; or
  - d. Bent-wrist.

A Weaponless Defense Technique Control Hold applied for the purpose of handcuffing or escorts that do not result in injury or a complaint of injury are **NOT** reportable uses of force.

5. A canine deployment in which a suspect is located by the canine but no bite occurs.
  - a. This includes alert or detaining behavior such as barking, growling circling or making non-biting physical contact with the subject which does not result in injury requiring emergency medical treatment (beyond first-aid) or hospital admittance.
  - b. This does not include a canine deployment in which the suspect is located by means other than the canine or where no suspect is located.

### **III. LEVEL 1 FORCE OR IN-CUSTODY DEATH INCIDENTS**

These incidents require concurrent investigations conducted by the Homicide Section and the Internal Affairs Division.

- A. Involved personnel and personnel witnessing the use of force responsibilities:
  1. Notify and brief their supervisor immediately, or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
  2. Every member or employee who uses or is a witness to a Level 1 use of force shall not discuss the incident with others and limit any discussion of the incident to information required:

- a. For a Public Safety Statement;
  - b. To assist in the investigations; or
  - c. To lead to the apprehension of the suspect.
- B. Uninvolved personnel who did not witness the use of force shall perform the following, as directed by a supervisor or commander:
1. Conduct a reasonable canvas in an effort to identify and obtain statements from witnesses in the proximity of the use of force incident.
  2. Witnesses to a use of force shall be identified to the extent that it is reasonable and listed in a Supplemental Report (536-937) or Victim/Witness Report (536-935). Statements shall be taken, when practical, and included in the Use of Force or In-Custody Death Report packet. The following criteria shall be used when listing witnesses:
    - a. Outside Agency Personnel  

Outside agency personnel at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified as follows:

      - 1) Name;
      - 2) Rank/Title;
      - 3) Serial number; and
      - 4) Agency affiliation.
    - b. Private Person Witnesses  

Private persons, at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified, when possible, as follows:

      - 1) Name;
      - 2) Sex, Race, DOB;
      - 3) Contact number(s); and
      - 4) Home address.
  3. Document, in the appropriate report, why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, public safety concerns, insufficient police resources), when the witness refused to remain at the scene, or is uncooperative.

4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness' physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.
5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.
6. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.
7. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report. Group interviewing is prohibited.

C. Supervisor Responsibilities

1. Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged.
2. Scene security:
  - a. Ensure a Crime Scene Security Log is maintained to record the time and identifying information of all persons entering and exiting the scene, to include:
    - 1) Department personnel;
    - 2) Medical personnel;
    - 3) Fire Department unit number and personnel; and
    - 4) Other persons.
  - b. Ensure the Crime Scene Security Log is delivered to the Homicide Section investigator for inclusion in the investigative case file.
3. Manage the scene, until relieved by the Incident Commander.
4. Ensure the Watch Commander has been notified and briefed of the incident.

5. Manage the scene, until relieved by the Incident Commander.
6. Attempt to obtain and document a Public Safety Statement, to include:
  - a. A verbal account from involved personnel to help determine the general circumstances of the incident;
  - b. Assess the need for resources and notifications;
  - c. Help set the perimeter;
  - d. Locate injured persons;
  - e. Determine the nature of the evidence to seek;
  - f. Identify the number of suspects involved;
  - g. Identify the number of suspects outstanding; and
  - h. The number and direction of shots fired, if any.

The supervisor shall not ask the involved personnel to provide a step-by-step narrative of the Level 1 (lethal force) incident or to provide a motive for their actions.

7. Coordinate the apprehension of the suspect, if still outstanding.
8. Coordinate the preliminary investigation with the IAD and Homicide investigators, to include but not limited to:
  - a. Identifying involved and witness personnel;
  - b. Designating a reporting officer;
  - c. Ensuring the preservation of evidence;
  - d. Identifying other witnesses in accordance with the provisions of Part III, B; and
  - e. Assisting investigators to ensure statements are taken.
9. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee.

The outcome shall be documented in the member's Supplemental Report after the supervisor has talked to the witness.

10. Separate and prohibit communication between involved personnel and witnesses.
11. Ensure involved personnel limit any discussion of the incident to information necessary:
  - a. For a Public Safety Statement;
  - b. Required to assist in the investigations; or
  - c. Leading to the apprehension of the suspect.
12. Ensure personnel complete a Supplemental Report who were on scene at the time of the incident (not including involved or witness personnel) or were assigned to assist at the scene.

Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting and interviewing is prohibited.

13. Document the reason in a Supplemental Report when personnel are directed not to complete a required report.
14. Contact and provide the IAD investigator with the complaint information if notified of an allegation of unreasonable force.

D. Follow-up Investigators Responsibilities

1. Homicide Section

The Homicide Section shall conduct a follow-up investigation and prepare and forward a Follow-up Investigation Report (336-201) to the IAD for review in accordance with the provisions of Homicide Section Policy and Procedure, LEVEL 1/IN-CUSTODY DEATH INVESTIGATIONS, **within 45 calendar days**, unless extended by the CID Commander.

2. District Attorney's (DA) Office Standby Team

- a. The DA's Office will respond with their on-call shooting team to all fatal officer-involved shootings and other incidents as they deem necessary.

- b. In the event of an officer-involved shooting in which a person is struck, and when a conflict of interest exists, the Bureau of Investigation Deputy Chief shall confer with the DA's Office to determine the most appropriate agency or investigative body to conduct the investigation.

3. Internal Affairs Division

The IAD shall conduct a concurrent but independent use of force investigation and prepare a Use of Force/In-Custody Death Report in accordance with the provisions of RWM Insert U-1 and IAD Policy and Procedure 05-04 **within 60 calendar days**, unless extended by the COP.

- E. The Watch Commander or Designee Responsibilities

1. Respond to the scene and take command of the incident.
2. Monitor the incident to ensure good scene management and ensure the assigned supervisor coordinates and assists with a thorough and proper preliminary investigation.
3. Ensure the following notifications are made as soon as possible unless conditions at the scene make such notification impractical:
  - a. The Homicide Section Commander, Homicide Call-Out Team and the CID Commander;
  - b. Internal Affairs Division Investigative Section Commander and IAD Call-Out Team;
  - c. Chief of Staff (OCOP);
  - d. Chief of Police (COP);
  - e. Alameda County District Attorney's Office Standby Team for force incidents resulting in death or injury likely to result in death;
  - f. Office of the City Attorney (OCA);
  - g. Office of Inspector General (OIG);
  - h. City Administrator;



- i. Appropriate Bureau of Field Operations (BFO) Deputy Chief;
- j. Division commander of the involved member or employee.

#### IV. LEVEL 2 FORCE INCIDENTS

A use of force investigation conducted by a supervisor or commander.

##### Responsibilities

- A. Involved or witness personnel to the use of force shall:
  - 1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
  - 2. Complete and submit for review the appropriate Offense/ Supplemental Report **prior to the end of tour of duty**, unless extended by the Watch Commander. The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense or Supplemental Report:
    - a. The original reason for police presence on the scene;
    - b. The circumstances that resulted in the use of force; and
    - c. A detailed description of the force used.
  - 3. Ensure the subject is transported to a medical facility for medical evaluation if a carotid restraint is applied. Document a refusal for medical treatment.
- B. Uninvolved personnel who did not witness the use of force shall perform the following, when directed by a supervisor or commander:
  - 1. Conduct a reasonable canvas in an effort to identify and obtain statements from other witnesses in the proximity of the use of force incident, commensurate with the availability of resources and the conditions of the event.
  - 2. Witnesses to a use of force shall be identified to the extent that it is reasonable and listed in a Supplemental Report (536-937) or Victim/Witness Report (536-935).

Statements shall be taken from outside agency personnel or private person witnesses, when practical. The following criteria shall be used when listing witnesses:

a. Outside Agency Personnel

Outside agency personnel at the scene of a use of force incident, whether they witnessed the use of force or not, shall be identified as follows:

- 1) Name;
- 2) Rank/Title;
- 3) Serial number; and
- 4) Department affiliation.

b. Private Person Witnesses

Private persons at the scene of a use of force incident whether they witnessed the use of force or not, shall be identified, when possible, as follows:

- 1) Name;
- 2) Sex, Race, DOB;
- 3) Contact number(s); and
- 4) Home address.

3. Document in the appropriate report why witness information was not obtained in situations where it was unsafe or impractical to obtain, (e.g., hostile crowd, insufficient police resources), the witness refused to remain at the scene, or is uncooperative.
4. Members shall not detain or delay a witness who refuses to remain at the scene; however the witness' physical description, license plate, comments, or other identifiers shall be obtained when available and documented in the appropriate report.
5. Members shall summon a supervisor to the scene in the event a witness refuses to give a statement or provide identification information.
6. Complete a Supplemental Report without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.

7. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report.

C. Supervisor Responsibilities

1. Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged;

In the event the Watch Commander is involved in the use of force incident, he/she shall contact his/her immediate superior officer. The superior officer has the discretion to respond to the scene to conduct the investigation or assign another investigator.

2. Secure and manage the scene.
3. Coordinate the apprehension of the suspect, if still outstanding.
4. Ensure the subject is transported to a medical facility for medical evaluation when a carotid restraint is applied or there is any strike to the head with an impact weapon.
5. Contact the Communications Division before the end of tour of duty and advise the Communications Division Shift Supervisor to enter the use of force incident into the Daily IAD Incident Log.
6. When the situation has been stabilized and it can be accomplished safely:
  - a. Advise the Watch Commander or commander of the operation of the incident;
  - b. Ensure involved personnel and witnesses, outside agency personnel, and private person witnesses are identified in accordance with the provisions of RWM Insert U-1.
  - c. Ensure involved personnel and witnesses have been separated and advised that communication regarding the incident is prohibited.

7. Conduct an investigation in a timely manner to include, but not limited to, the following:
  - a. A separate, personal interview with involved and witness personnel including, if necessary, a written or recorded statement.
  - b. Personnel on scene at the time of the use of force incident, but not involved in or a witness to the use of force, shall be separately interviewed by the investigating supervisor, prior to clearing from the incident. Any relevant information revealed in the interview shall be included in the member or employee's Supplemental Report. Group interviewing is prohibited.
  - c. A personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.
  - d. Contact medical personnel, when practical, who evaluated and/or provided treatment to the subject for available information on the subject's injuries and condition.
  - e. Ensure photographs are taken of:
    - 1) The physical condition of the subject and involved personnel, to record the presence or lack of injuries;
    - 2) The location of the use of force incident; and
    - 3) Other relevant evidence.Document the reason why photographs were not taken.
  - f. Ensure digital photographs or films are submitted and processed utilizing one of the following procedures:
    - 1) Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or
    - 2) Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:

- a) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
  - b) **Send To** box – “To IAD Administrative Supervisor.”
8. Respond to the location of a witness who has declined to give a statement or has refused to give witness identification information when requested by a member or employee. The outcome shall be documented in the member’s Supplemental Report after the supervisor has talked to the witness.
9. Ensure personnel who were on scene at the time of the incident or were assigned to assist at the scene complete the appropriate report.
10. Offense/Supplemental Reports shall be prepared independently without discussing the details of the incident with other personnel on scene. Group reporting is prohibited.
11. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.
12. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.
13. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
  - a. The original reason for police presence on the scene;
  - b. The circumstances that resulted in the use of force; and
  - c. A detailed description of the force used.
14. Incomplete or inadequate reports shall be returned for additional details or clarification.
15. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.
16. Ensure the Use of Force Report packet contains:

- a. The **original** Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;
  - b. A **copy** of the appropriate report (e.g., Offense Report or field contact card); and
  - c. **Copies** of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).
17. Email only the Use of Force Report face sheet (page 1) to the following, **prior to the end of tour of duty**:
- a. opdiad@oaklandnet.com;
  - b. bfoadmin@oaklandnet.com;
  - c. Involved member or employee's Division Commander; and
  - d. Involved member or employee's Bureau Deputy Chief/Assistant Chief (CID).
18. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
19. Retain an electronic **copy** of the Use of Force Report until documented in the member/employee's annual performance appraisal.
20. Complete and forward the Use of Force Report packet, **within seven (7) calendar days**, through the appropriate chain-of-review<sup>3</sup>. The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.
- D. Watch Commander or Commander of the Operation Incident Scene Responsibilities

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<sup>3</sup> For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.

1. Respond to the scene and take Incident Command when advised the incident involves significant Department resources or is likely to generate unusual public interest.
2. Monitor and ensure the use of force investigation is conducted in a thorough, methodical, and efficient manner.

## **V. LEVEL 3 FORCE INCIDENTS**

A review of a Level 3 force incident conducted by a supervisor or commander to assess the appropriate reporting level.

### **A. Involved or witness personnel to the use of force shall:**

1. Notify and brief their supervisor immediately or as soon as practical. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified.
2. Every member or employee who uses or witnesses a level of force requiring a Level 3 investigation shall independently complete the appropriate Offense or Supplemental Report;

The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense or Supplemental Report:

- a. The original reason for police presence on the scene;
  - b. The circumstances that resulted in the use of force; and
  - c. A detailed description of the force used.
3. Personnel who are assigned to assist at the scene shall complete a Supplemental Report if directed by a supervisor, commander or investigator.

### **B. Supervisor/Commander Responsibilities**

Respond to the location of the incident unless community unrest or other conditions make such response impracticable. In such instances, an alternate safe location shall be arranged; and

1. Secure the scene, if necessary;
2. Coordinate the apprehension of the suspect, if still outstanding;

3. Discuss the general circumstances of the incident with the involved personnel and witnesses to assess the appropriate reporting level, the need for resources, and to assess whether injuries, if present, are consistent with the force applied;
4. Conduct a personal interview with the subject(s) upon whom the use of force was used to include a written or recorded statement, when possible.
5. The responding on-scene supervisor or commander may authorize a Level 3 use of force incidents to be reported as a Level 4 when there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, **and** no indication the use of force was out of policy. Affirmative approval shall be made by signing the approval box on the Use of Force Report - Part 3a. The following Level 3 use of force incidents may be considered:
  - a. An ECW is fired at an unrestrained subject, but misses;
  - b. Oleoresin Capsicum (OC/Pepper Spray) or other chemical agent applied to a person;
  - c. Any impact weapon, including specialty impact munitions, or any other instrument is used in an attempt to strike another person but **no contact is made**;
  - d. A baton used for a non-striking purpose (e.g., prying limbs, moving or controlling a person); or
  - e. A Weaponless Defense Technique other than control holds, excluding strikes to the head, to include:
    - 1) Hand/palm/elbow strikes;
    - 2) Kicks;
    - 3) Leg sweeps; and
    - 4) Takedowns.

In the event the Watch Commander is involved in a Level 3 use of force incident enumerated above in Part V, B, 5, a-e, he/she shall contact his/her immediate superior officer to determine the appropriate level of reporting. If a Level 3 investigation is determined, the superior officer has the discretion to respond to the scene to conduct the investigation or assign another investigator.



6. Level 3 reporting shall include documentation of the following:
  - a. The absence of injuries to the subject;
  - b. A description of the injury not requiring emergency medical treatment or hospital admittance; or
  - c. Any injury to OPD personnel and any medical care or treatment provided.
7. Assess any complaint of injury and consider it as a factor toward elevating the Level 3 force to a Level 2 force investigation.
8. Ensure photographs are taken of the subject and involved member/employee to record the presence or absence of injuries, the location of the incident, and other relevant evidence. Document the reason why photographs were not taken.
9. Ensure digital photographs or films are submitted and processed utilizing one of the following procedures:
  - a. Digital – Copy digital files to a compact disk, handle and submit as evidence, and list as evidence in the Use of Force Report; or
  - b. Film – Submit film for processing utilizing a Photo Evidence Card (536-317). Complete the appropriate boxes on the card. Additionally, ensure the following information is on the card:
    - 1) **Comments** box – Indicate “Use of Force” & RD No. & “Put on CD”;
    - 2) **Send To** box – “To IAD Administrative Supervisor.”
10. Interview available witnesses at the scene.

**NOTE:** Written/recorded statements are not required for a Level 3 force incident.
11. Contact Communications Division and advise the Communications Supervisor, or in his/her absence, the on-duty Police Communications Supervisor, to enter the use of force into the Daily IAD Incident Log.

12. Ensure personnel complete a Supplemental Report who were witnesses to a Level 3 force incident or were assigned to assist at the scene.
13. When a supervisor, commander or investigator directs personnel not to complete a required report, the reason shall be documented in the Use of Force Report.
14. Conduct a thorough review of all documents to be included in the Use of Force Report packet to ensure completeness, accuracy, and quality.
15. Ensure the appropriate Offense or Supplemental Report contains the following minimum information regarding the use of force incident:
  - a. The original reason for police presence on the scene;
  - b. The circumstances that resulted in the use of force;
  - c. A detailed description of the force used; and
  - d. Document the number of bursts, duration of each burst, the approximate distance from the subject, and the location of spray contact, when OC is used.
16. Incomplete or inadequate reports shall be returned for additional details or clarification.
17. Prepare a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT, unless otherwise directed by a commander or investigator.
18. Ensure the Use of Force Report packet contains:
  - a. The **original** Use of Force Report to include a Chronological Activity Log and Use of Force Checklist;
  - b. A **copy** of the appropriate report (e.g., Offense Report or field contact card); and
  - c. **Copies** of ancillary documents, if necessary (e.g., statements (if any), Supplemental Reports, Technician Reports, Detail, CAD purge, available medical information obtained, and photographs, if available).

19. Email only the face sheet of the Use of Force Report to the following, **prior to the end of tour of duty**:
  - a. opdiad@oaklandnet.com;
  - b. bfoadmin@oaklandnet.com;
  - c. Involved member or employee's Division Commander; and
  - d. Involved member or employee's Bureau Deputy Chief/Assistant Chief (CID).
20. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
21. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.
  - a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a **Level 2** force investigation and initiate an internal investigation.
  - b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Report.
22. Retain an electronic **copy** of the Use of Force Report until documented in the member/employee's annual performance appraisal.
23. Complete and forward the Use of Force Report packet, **within seven (7) calendar days**, through the appropriate chain-of-review<sup>4</sup>. The due date may be extended with the approval of the reviewing Division Commander and shall be documented in the Chronological Activity Log.

## VI. LEVEL 4 FORCE INCIDENTS

A self-reported use of force.

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<sup>4</sup> For the purpose of this order, the appropriate chain-of-review refers to the chain-of-command under which the involved member was working during that tour of duty when the force incident occurred.

A. Involved Personnel Responsibilities

1. Notify and brief their supervisor immediately or as soon as practical after the Level 4 use of force. If the immediate supervisor is unavailable, another field supervisor or commander shall be notified. This notification shall take place before the member clears the call in which the UOF incident took place. If circumstances exist that prevent this notification, before the call is cleared, it shall be documented in the UOF report.

2. Complete a Use of Force Report (TF-967) in accordance with the provisions of RWM Insert U-1, USE OF FORCE REPORT or when authorized by a supervisor or commander.

A narrative shall be included in the Use of Force Report if no other required Offense or Supplemental Report is completed.

3. The member or employee who uses force shall include the following minimum information regarding the use of force incident in their Offense, Supplemental, or Use of Force Report:

- a. The initial reason for the police encounter;
- b. The circumstances that resulted in the use of force;
- c. Articulation of the reasonableness of the force; and
- d. A detailed description of the force used.

4. Low Ready/Retention Position

The low ready/retention position is where the firearm is pointed at a 45-degree angle or less and **not at a person**. The purpose of the low ready/retention position is to:

- a. Scan areas for threats without the weapon obscuring the officer's view;
- b. Make a proper assessment of persons by being able to see the hands and areas where weapons can be concealed; and
- c. Move around persons so the muzzle does not sweep them.

Although the use of the low ready/retention position is not a reportable use of force, members should document their use of the position in the appropriate report.

5. In the event a firearm loaded with less-lethal munitions is pointed at multiple people, members shall document in their report:

- a. Approximately how many people the officer intentionally pointed the firearm with less-lethal munitions at;
  - b. The justification for pointing the firearm with less-lethal munitions; and
  - c. The approximate time and location of the incident(s)
6. Place the **original** Use of Force Report and, if applicable, the appropriate Offense Report and ancillary documents in an In-Custody/Case Envelope and deliver to his/her immediate supervisor or, if unavailable, to an on-duty supervisor for review **prior to the end of tour of duty**.

B. Supervisor/Commander Responsibilities

1. When contacted by involved personnel, supervisors shall review the general circumstances of the incident with the involved personnel as necessary, and ensure the facts are consistent with the reporting level. Supervisors are not required to respond to the incident.
2. Prior to reducing a Level 3 use of force incident to a Level 4, the approving supervisor shall ensure there is no injury to the subject requiring emergency medical treatment (beyond first-aid) or hospital admittance, allegation of misconduct, **and** there is no indication the use of force was out of policy. Affirmative approval shall be made by the supervisor by signing the appropriate box on the Use of Force Report - Part 3a.
3. If notified of an allegation of unreasonable force, the supervisor shall conduct a preliminary investigation.
  - a. If there is corroborating evidence that unreasonable use of force occurred, the supervisor shall conduct a **Level 2** force investigation and initiate an internal investigation.
  - b. If there is no corroborating evidence that unreasonable use of force occurred, the supervisor shall document the results of the preliminary complaint investigation in a Risk Management Memorandum if no Use of Force Report is completed.
4. **Level 4** incidents do not require witness identification.

5. Supervisors shall monitor officers' performance through direct observation, UOF investigations, report review or other methods to ensure the drawing at low-ready or the pointing of firearms at or in the direction of a person is safe, tactically sound and reasonable.

If safety or tactical deficiencies are identified, or the level of force by the officer(s) is inappropriate or disproportionate (e.g. too many officers pointing a firearm at a single person), AND the deficiency or the level of force does not denote Class-1 misconduct or a pattern of similar conduct by the involved officer(s), supervisors shall address the matter by counseling the officer and documenting such counseling in the officers' SNF file.

## **VII. LEVEL 1 FORCE INCIDENTS INVOLVING AN OUTSIDE AGENCY**

- A. A Level 1 force incident occurring outside the City of Oakland
  1. Upon notification, the Watch Commander shall:
    - a. Send an on-duty supervisor to the jurisdiction in which the incident occurred unless the distance makes it impractical. The supervisor shall remain with the member(s) during the investigation by the outside agency;
    - b. Notify the CID Commander who shall determine if Homicide investigators are to be called-out; and
    - c. Notify the IAD Commander who shall determine if IAD investigators are to be called-out.
  2. The law enforcement agency which has jurisdiction, in which the incident occurred, shall have incident command and primary criminal investigation responsibility. The Homicide Section shall only assume primary criminal investigation responsibility upon the request of the outside agency.
  3. Homicide Section investigators shall request to attend the interview of OPD personnel, unless the distance involved makes this impractical.
  4. IAD investigators shall request to monitor the interview of OPD personnel, unless the distance involved makes this impractical.
- B. A Level 1 force incident involving outside agency personnel within the City of Oakland

1. The Homicide Section shall conduct the criminal investigation for the following incidents:
  - a. Any use of force resulting in death;
  - b. Any intentional firearm discharge at a person regardless of injury;
  - c. Any force which creates a substantial risk of causing death;
  - d. Any unintentional firearms discharge if a person is injured as a result of the discharge; or
  - e. Any use of force incident referred by a Watch Commander.
2. The outside agency may assist at the discretion of the CID Commander.

#### **VIII. COMMAND REVIEW AND ENDORSEMENT**

- A. All reviewers shall:
  1. Review the Use of Force Report packet and evaluate the Use of Force Report and ancillary documents for completeness, accuracy, and quality and ensure reports do not contain "Boilerplate" or "Pat" language without descriptive or explanatory details of the action. Return any reports that are incomplete or inadequate and ensure corrections are made;
  2. Order further investigation or additional investigative resources when necessary;
  3. Evaluate and document whether the use of force was in compliance with Departmental policy and comment on any training and tactical issues, when appropriate; and
  4. Document extension approvals by the reviewing Division Commander on the Use of Force Chronological Activity Log. The Division Commander shall ensure the IAD and BFO Administrative Unit are notified of any approved extensions.
  5. Complete, endorse, and sign a Use of Force Report Signature Page (TF-967c) and forward the Use of Force Report packet within four (4) calendar days.

B. Level 1 Force Review Responsibilities

1. The Homicide Section Commander shall:
  - a. Ensure a follow-up investigation is conducted and the assigned Homicide investigator prepares a Follow-up Investigation Report (336-201) in accordance with the provisions of Homicide Section Policy and Procedure 01, LEVEL 1/IN-CUSTODY DEATH INVESTIGATIONS.
  - b. Review and forward the approved Follow-up Investigation Report to the IAD **within 45 calendar days of the incident**, unless extended by the CID Commander in accordance with the provisions of Homicide Section Policy and Procedure.
  - c. Provide an oral report to the Chief of Police within 72 hours of the incident.
2. The IAD Commander shall:
  - a. Ensure IAD investigators have conducted a concurrent use of force investigation and prepared a Use of Force or In-Custody Death Report in accordance with the provisions of RWM Insert U-1 and IAD Policy and Procedure 05-04 **within 60 calendar days of the incident**, unless extended by the Chief of Police.
  - b. Review and forward the approved Use of Force or In-Custody Death Report packet to the BOS Deputy Chief and Chief of Staff, **within 15 calendar days from receipt**, unless extended by the COP in accordance with the provisions of IAD Policy and Procedure 05-04.
  - c. Provide an oral report to the COP within 72 hours of the incident.
3. Force Board Coordinator (FBC)
  - a. Enter data from the Use of Force/In-Custody Death Report face sheet into a log upon receipt;
  - b. Track the Use of Force/In-Custody Death Report due date to ensure the timeliness of the investigation, and ensure the EFRB Chairperson has received the Use of Force Report packet and information necessary to conduct the EFRB.



Contact the IAD Commander and ascertain the delay if not received **within 76 calendar days of the incident** and notify the COP of the delay.

C. Level 2 and 3 Force Review Responsibilities

1. Reviewing Commanders shall:

- a. Review and forward all approved Use of Force Report packets through the Division Commander to BFO Administration Unit.

**NOTE:** BFO Administration Unit shall receive and track **ALL** Use of Force Report packets, regardless of originating unit.

- b. If a training issue arises from a Level 3 incident, the Division Commander shall ensure training is conducted and a Training Memorandum is completed and forwarded to the Training Division for input into the Training Management System (TMS).

**AND/OR**

- c. Training is requested from the Training Division, through a Training Memorandum, when it cannot be accomplished at the division level. Training Division personnel shall input completed training in the TMS.
- d. If a Department-related service recommendation (e.g., policy revision, equipment evaluation, new Department publication) arises from a Level 3 incident, the Division Commander shall prepare and forward a recommendation memorandum through the chain-of-command to the Chief of Police.

2. BFO Administrative Unit shall:

- a. Notify the appropriate commander if the Use of Force Report packet has not been received **within 16 calendar days of the incident**.
- b. Review the Use of Force Report;
- c. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, by the BFO Administrative Supervisor and documented in the Chronological Activity Log.

- d. Forward completed Use of Force Report packet to the FBC, **within four (4) calendar days of receipt of a completed packet.**
- D. Level 4 Force Review Responsibilities
1. Reviewing supervisor:
    - a. Conduct a thorough review of all documents to ensure completeness, accuracy, and quality. This includes ensuring the time of notification of the use of force on the force reporting form.
    - b. Ensure the appropriate Offense, Supplemental, or Use of Force Report contains the following minimum information regarding the use of force incident:
      - 1) The original reason for police presence on the scene;
      - 2) The circumstances that resulted in the use of force; and
      - 3) A detailed description of the force used.
    - c. Incomplete or inadequate reports shall be returned for additional details or clarification.
    - d. Ensure the Use of Force Report has an Incident number. Advise the Communications Division Shift Supervisor to enter the use of force into the Daily IAD Incident Log.
    - e. Ensure the **original** Offense Report **and** ancillary documents are deposited in the Report Writing Receptacle in an In-Custody or Case Envelope.
    - f. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and
    - g. Ensure the Use of Force Report packet contains:
      - 1) The **original** Use of Force Report (No Chronological Activity Log or Use of Force Checklist is required);

- 2) A **copy** of the appropriate report (e.g., Offense/Supplemental Report or field contact card); and
  - 3) **Copies** of statements (if any).
- h. Forward the **original** Use of Force Report packet to the first-level commander for review by the end of the next scheduled shift not to exceed five (5) calendar days from the date of the incident.
2. The first-level commander shall:
- a. Review the **original** Use of Force Report packet. If the Use of Force Report is returned for additional follow-up or clarification, the due date may be extended, as needed, and documented in the Chronological Activity Log.
  - b. Upon approval, sign the appropriate Level 4 Reviewer box on the Use of Force Report; and
  - c. Forward approved Use of Force packet to the BFO Administrative Unit **within four (4) calendar days of approval**.

In the event the Watch Commander prepares a Level 4 Use of Force Report, he/she shall forward the report to the BFO Administrative Unit.

E. FBC

Upon receipt of a Level 2-4 Use of Force Report, the FBC shall assign a Use of Force Tracking Number to and enter the Use of Force Report information into the appropriate database, and scan the file into electronic format. The FBC shall retain a hardcopy and an electronic file of the Use of Force Report packet.

Additionally, FBC shall forward the entire electronic file of Level 2 Use of Force Report packets, via email or appropriate media, to the Training Section Commander within **four (4) calendar days of receipt**.

## **IX. RISK MANAGEMENT**

The purpose of documenting risk management issues is to ensure a proper preliminary investigation is conducted and notification of the incident is made to the IAD (for units outside of the IAD) when any of the incidents enumerated in Part I, B, 2-4 occur.

The supervisor shall:

- A. Respond to the scene;
- B. Ensure the involved member documents the circumstances of the incident in the appropriate report;
- C. Obtain an Incident Number from the Communications Division;
- D. Conduct a preliminary investigation;
  1. If the preliminary investigation reveals corroborating evidence that a use of force occurred, the supervisor or commander shall conduct a Level 2 force investigation<sup>5</sup>, initiate an internal investigation in accordance with the provisions of DGO M-3, and notify the Watch Commander;
  2. The Watch Commander shall contact the IAD to determine if a call-out is warranted;
  3. If the preliminary investigation reveals no corroborating evidence that an alleged use of force occurred, the supervisor or commander shall document the results of the preliminary complaint investigation in the narrative of the Use of Force Narrative Report (Level 2-4) or a Risk Management Memorandum if no Use of Force Report is completed.
- E. Risk management documentation shall include:
  1. A summary of the incident;
  2. Written or recorded statement(s) from the complainant, injured person, and witnesses, if practical;
  3. Indicate complainant was:

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<sup>5</sup> The IAD shall include risk management documentation in a Level 1/In-Custody Death Report.

- a. Advised of their right to file a complaint with CPRB;
- b. Provided with a Complaint Packet (TF-3208); and
- c. Provided with the Incident Number.

This does not apply if the injury occurred unintentionally as a result of an officer's actions or due to the suspect's own actions and the suspect makes no allegation of a use of force or does not indicate they want to file a complaint.

4. Photographs;
  5. Documentation of evidence collected or reason why evidence was not collected.
  6. Offense or Supplemental Report(s) from involved personnel; and
  7. Other pertinent documents (if available).
- F. Contact the Communications Division Shift Supervisor, at the conclusion of the preliminary investigation, and provide the following information:
1. Complainant's name (for verification);
  2. Time contact made with complainant;
  3. Name of Watch Commander/Unit Commander notified; and
  4. Disposition of complaint.
- G. If a Level 2-4 Use of Force Report is being prepared, check the "Risk Management Advisement" box on the Use of Force face sheet.

For Level 4 force incidents only:

1. The officer who used the force shall prepare a Use of Force Report.
2. The notified supervisor shall prepare a Use of Force Narrative Report to include the required elements enumerated in Part IX, A-F.
3. Include in the Use of Force Report packet.

- H. When no Use of Force Report is required, the notified supervisor shall prepare a Risk Management Memorandum to include the required elements enumerated in Part IX, A-F.
- I. Forward the Use of Force Report packet or the Risk Management Memorandum with documentation, through the appropriate chain-of-review to the IAD.

By order of



Sean Whent  
Chief of Police

Date Signed: \_\_\_\_\_