

OFFICE OF CHIEF OF POLICE
OAKLAND POLICE DEPARTMENT

MEMORANDUM

TO: All Personnel

DATE: 16 Oct 14

SUBJECT: Revised DGO K-3, USE OF FORCE (16 Dec 13)

The purpose of this revision is to update policy for consistency with the revision to DGO K-9, POLICE CANINES and DGO K-4, REPORTING AND INVESTIGATING THE USE OF FORCE.

The following is a summary of the substantive changes to DGO K-3. This summary shall not take the place of the review and understanding of the entire document:

- Part III, C has been revised to the following:

C. Use of Patrol Canines

The use of Police Canines is considered an intermediate force level that may inflict serious injury.

1. The primary purpose of Patrol Canine deployments is to search for, locate and assist in the apprehension of criminal suspects.
2. Canine handlers may deploy their canines to search for or bite a suspected criminal suspect.
3. Additional restrictions and reporting requirements apply to the use of Patrol Canines, as specified in DGO K-9, DEPARTMENT CANINE PROGRAM and DGO K-4, REPORTING AND INVESTIGATING THE USE OF FORCE.
4. An Unintentional Bite is not a use of force however has special reporting requirement. Refer to DGO K-9 for the definition of and reporting requirement for an Unintentional Bite.

- Part II, E, 4 has been added under Lethal Force (incorporated from SO 8977)

4. Intentional use of a vehicle, at any vehicle speed, to strike a suspect.

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

By order of

A handwritten signature in black ink, appearing to read "Sean Whent". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

Sean Whent
Chief of Police

Date Signed: _____



DEPARTMENTAL
GENERAL
ORDER

Effective Date
16 Oct 14

K-3

Evaluation Coordinator:
BFO Commander

Index as:

Evaluation Due Date:
16 Apr 15

Use of Force Policy

Automatic Revision Cycle:
3 Years

USE OF FORCE

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USE OF FORCE

The purpose of this order is to set forth Departmental policy and procedures for the use of force by members.

I. POLICY STATEMENT

- A. The Oakland Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force.
- B. This policy provides guidelines and procedures for using force in order to protect the safety of both themselves and the public in accomplishing the police mission
- C. Members are allowed to **use a reasonable amount of force** based on a totality of the circumstances. Members are required to **de-escalate** the force when the member reasonably believes a lesser level or no further force is appropriate. Members shall **intervene and prevent or stop** the use of unreasonable force by other members.
- D. Members are prohibited from the use of unreasonable force and using force for interrogation or punishment.
- E. Although the use of force is primarily intended for sworn officers, various non-sworn employee job classifications include Departmental training in specific force options normally reserved for sworn officers. Employees are held to the same standard as members for the application of these authorized force options. All employees shall maintain their right to self-defense by any objectively reasonable means.
- F. A member or employee who uses force or directs a use of force shall be considered as "Involved Personnel."

II. FORCE CONSIDERATIONS

A. Reasonable Force

Reasonable force is that amount of force that is objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances.

1. Force must be analyzed under the Fourth Amendment's objective reasonableness test.¹ The application of this test requires an analysis of the totality of circumstances, including these factors to determine if the seizure is reasonable:
 - a. The severity of the crime at issue;
 - b. Whether the suspect poses an immediate threat to the safety of law enforcement officers or others; and
 - c. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The determination of reasonableness is not based on the 20/20 vision of hindsight.

2. Factors when determining if force is reasonable include, but are not limited to:
 - a. Physical differences (e.g., age, size, relative strength, skill level, injuries, exhaustion, number of members/employees verses subjects);
 - b. Influence of drugs or alcohol on the subject;
 - c. Proximity of weapons to the subject;
 - d. Training and experience level of the member or employee; and
 - e. Other exigent circumstances.

B. Immediate Threat

An Immediate Threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat of death or serious bodily injury if not apprehended without delay.

¹ Graham v. Connor, 490 U.S. 386 (1989).

A person is an immediate threat if the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated.

1. Intent: The subject's apparent desire, which can be indicated by words, body language or actions.
2. Means: The instrument, mechanical or physical, that may be used to cause injury.
3. Opportunity: The time and/or place which allows the subject to use the means to cause injury.
4. Ability: The subject has the capability to carry out the action or threat.

C. Use of Force

Any physical or mechanical intervention used by a member or employee to defend, control, overpower, restrain or overcome the resistance of an individual.

D. Less-Lethal Force

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

Less-Lethal Force options include, but are not limited to; those specified in Part III, FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS.

E. Lethal Force

Lethal force is any force that creates a substantial risk of causing death or serious bodily injury. A member may use lethal force to protect themselves or others when the member objectively and reasonably believes that his/her life, or the life of another, is in immediate danger of death or serious bodily injury, based upon the totality of the facts known to the member at the time.

Lethal Force includes, but is not limited to:

1. Discharge of a firearm with lethal ammunition;
 - a. Lethal ammunition is ammunition that, by design and application, is intended to cause serious bodily injury or death.

2. Carotid restraint;
3. Intentional impact weapon strike to the head; and
4. Intentional use of a vehicle, at any vehicle speed, to strike a suspect.

F. Serious Bodily Injury

A serious impairment of physical condition, including but not limited to:

1. Loss of consciousness;
2. Concussion;
3. Bone fracture;
4. Protracted loss, impairment, serious disfigurement, or function of any bodily member or organ;
5. Wound requiring extensive suturing; and
6. Serious disfigurement

III. FORCE OPTIONS THAT DO NOT INCLUDE FIREARMS

A. Verbal Persuasion

Verbal commands are the minimum means of halting an offense, gaining compliance or overcoming resistance. A member, announcing his or her identity as a peace officer, presence and intentions, may result in the peaceful resolution of the situation. Verbal commands shall be courteous and clearly relay the police objective.

To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force. Members shall consider the possibility of any language barriers, noise, other distractions, or disabilities which may impair or frustrate the member's effort to courteously and clearly communicate with the person.

B. Use of Physical Force or Defensive Tactics and Techniques

At times it may be necessary for a member to use force or defensive tactics and techniques to accomplish the police objective, such as taking a subject into custody, preventing the commission of a crime or in response to a suspect's resistance.

The defensive tactics and techniques that may be used include, but are not limited to: hand/palm/elbow strikes, kicks, take-downs, leg sweeps, arm-bar takedown and control holds, such as escort (elbow), bent wrist, twist lock and arm-bar hammerlock.

Absent exigent circumstances, all defensive, arrest and control techniques shall be compliant with Oakland Police Department policy and training. Refer to TB III-I.1, WEAPONLESS DEFENSE.

C. Use of Patrol Canines

The use of Police Canines is considered an intermediate force level that may inflict serious injury.

1. The primary purpose of Patrol Canine deployments is to search for, locate and assist in the apprehension of criminal suspects.
2. Canine handlers may deploy their canines to search for or bite a suspected criminal suspect.
3. Additional restrictions and reporting requirements apply to the use of Patrol Canines, as specified in DGO K-9, DEPARTMENT CANINE PROGRAM and DGO K-4, REPORTING AND INVESTIGATING THE USE OF FORCE.
4. An Unintentional Bite is not a use of force however has special reporting requirement. Refer to DGO K-9 for the definition of and reporting requirement for an Unintentional Bite.

D. Batons and Impact Weapons (other than intentional strikes to the head)

The use of an impact weapon is an intermediate use of force.² The following are considered impact weapons:

1. Long baton;
2. Short baton;
3. Crowd control baton;
4. Asp®;
5. Specialty impact munitions (12-gauge Drag Stabilized Flexible Baton munitions, 37/40mm foam munitions, hand deployed SIM); and

² Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

6. Any other object used as an impact weapon other than vehicle.

The use of an impromptu impact weapon or any weapon of necessity is justified when reasonable alternatives have been exhausted, are unavailable or are impractical.

Absent exigent circumstances, members shall only utilize Oakland Police Department authorized impact weapons and munitions.

Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.2, HAND-HELD IMPACT WEAPONS and TB III-H, SPECIALTY IMPACT WEAPONS

- E. Electronic Control Weapon (ECW)

The ECW is an intermediate use of force.³ ECW's provide a force option that may be used to control dangerous and violent subjects. The goal of every ECW deployment is a safe restraint of the subject using the minimum amount of electrical stimulation that is reasonable to obtain control. When used properly, members can stay beyond the reach and immediate striking distance of a subject who may attack them, thereby reducing the risk of injury to the member and the subject.

Using the ECW may greatly reduce the need for other types of physical force by members, which could otherwise result in serious injuries or death to the member and/or offender. Absent exigent circumstances, members shall only utilize Oakland Police Department authorized ECW's. Use shall be compliant with Oakland Police Department policies and training. Refer to TB III-H.1, USE OF AN ELECTRONIC CONTROL WEAPON.

- F. Chemical Agents and Oleoresin Capsicum (OC)

The use of OC and Chemical Agents are an intermediate use of force.⁴ Refer to TB V-F.2, CHEMICAL AGENTS and DGO C-8, OLEORESIN CAPSICUM

IV. USE OF FIREARMS AND OTHER LETHAL FORCE

- A. Drawing, Exhibiting and Pointing Firearms

1. The intentional pointing of a firearm at another person is a use of force.⁵

³ Bryan v. MacPherson, 630 F. 3d 805 (9th Cir. 2010)

⁴ Young v. LA County, 655 F.3d 1156 (9th Cir. 2011)

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

2. The drawing, exhibiting and intentionally pointing of a firearm at another person is threatening and intimidating and when unwarranted may cast a negative impression on members. A member may intentionally point a firearm only when the member has reasonable cause to believe it may be reasonable for his/her safety or for the safety of others.
3. The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practicable, firearms shall be secured or holstered.

B. Firearms Discharge

The act of discharging a firearm loaded with lethal ammunition. Firearm discharges are classified as follows:

1. Lethal – An intentional firearm discharge at a person, regardless of injury.
2. Discharge at an Animal – A firearm discharge for the purpose of dispatching an injured or vicious animal.
3. Unintentional – A firearm discharge that occurred as a result of an unintentional trigger pull or other unexpected external cause.

The discharge of firearms as a warning is prohibited at any time on or off-duty.

C. Other Firearm Discharges

No use of force investigation is required for any of the following:

1. An intentional discharge for purposes related to training, demonstration, practice, certification or testing while at an authorized range facility, unless the discharge results in injury or death;
2. A discharge while engaged in a lawful and policy-compliant recreational activity, such as hunting or target practice;
3. A discharge by Criminalistics Division personnel for the purpose of scientific examination; and
4. A discharge at an object (e.g., street light, alarm box, door lock or vehicle tire) to accomplish a tactical police purpose that does not result in injury.

D. Discharging a Firearm at a Person

The discharge of a firearm at a person constitutes lethal force and is authorized only when there is reasonable cause to believe there is an immediate threat of death or serious bodily harm.⁶

A member is authorized to discharge his or her firearm only in the following circumstances:

1. In self-defense when the member has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury.
2. In defense of another person when the member has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury.
3. To apprehend or arrest a person when the following three conditions are met:
 - a. The member has reasonable cause to believe that the person is involved in the commission of a violent felony that includes the use or threatened use of deadly force; and
 - b. The member has reasonable cause to believe that the person poses an immediate threat of death or serious bodily injury to the member or a third person if not immediately apprehended; and
 - c. Other reasonably known and available means of apprehending the person have failed, are inadequate or are immediately unavailable.

E. Moving Vehicles

The use of lethal force against the occupant of a motor vehicle is only authorized when it is reasonably necessary to:

1. Defend the member or another person against the vehicle occupant's immediate threat of death or serious bodily injury, by means other than the vehicle; or
2. Defend the member or another person against the vehicle operator's use of the vehicle to cause death or serious bodily injury and the member or other person has no reasonable avenue of protection or escape.

⁶ Tennessee v. Garner, 471 U.S. 1 (1985)

- a. Members are prohibited from intentionally positioning themselves in a location vulnerable to vehicular attack;
 - b. Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator;
 - c. Members shall not discharge a firearm at the operator of the vehicle when the vehicle has passed and is attempting to escape.
3. Members shall consider whether the threat to the member or other persons (including all occupants of the vehicle) is increased by incapacitating the operator with lethal force, considering that if the operator is incapacitated, the vehicle may still be a threat to anyone in the vehicle's path. This threat shall be weighed against the threat posed by the suspect continuing in control of the vehicle.
 4. Members shall also consider what risk the use of lethal force would pose to other vehicle occupants when weighed against the threat.
 5. Absent exigent circumstances, the discharge of firearms from a moving vehicle is prohibited.

F. Other Lethal Force

Any force that poses a substantial risk of causing death or serious bodily injury is considered lethal force. This includes the use of the carotid restraint, an intentional strike to the head with an impact weapon or an impromptu impact weapon. Lethal force, regardless of the weapon used, is justified only in life-threatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person.

Lethal force is prohibited when its sole purpose is to affect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury.

V. OTHER REQUIREMENTS

A. Use and Care of Equipment, Control Devices and Firearms

1. While on-duty members shall carry only firearms, safety equipment and control devices that are approved in an official Departmental Order and on which they have successfully completed training. For care of safety equipment, refer to DGO C-4, SAFETY EQUIPMENT.

2. Members shall handle and manipulate a firearm in accordance with Department approved firearms training.

B. Administrative Leave

Members involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that a member acted improperly. While on administrative leave, members shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

C. Counseling Services

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

D. Providing First Aid or Medical Treatment

To the extent possible and without ever compromising safety, members shall ensure that they, when necessary or upon complaint of injury, provide medical first aid and/or emergency medical treatment as soon as practical congruent with their available equipment, resources and first aid training and certification.

In addition, if necessary, professional medical assistance shall be summoned as soon as practical. Refer to TB III-K, FIRST AID.

1. First Aid

First aid includes, but is not limited to, the mere cleaning of a scrape or cut, applying a bandage, flushing of the eyes with water or providing an ice pack. First aid shall be administered by OPD personnel when practical and safe to do so. First aid may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

2. Emergency Medical Treatment

Any treatment beyond first aid, including Cardio-Pulmonary Resuscitation (CPR) and rescue breathing, shall be administered by OPD personnel when practical and safe to do so. Emergency medical treatment may be administered by a medical professional including the following: physicians, physician assistants, nurses (RN and LVN), paramedics, emergency medical technicians (EMT) and Fire Department Personnel.

3. Hospital Admittance

Admittance to a hospital for the treatment of injuries as a result of any use of force. For the purposes of this order, evaluation or treatment by a medical professional not beyond first aid, as a result of any use of force, shall not be considered hospital admittance.

VI. USE OF SPECIALTY IMPACT MUNITIONS (SIM) DURING CROWD CONTROL

The Department places additional restrictions on the use of SIM during incidents involving Crowd Control and Crowd Management as specified in TB III-G, CROWD CONTROL AND CROWD MANAGEMENT and TB III-H, SPECIALTY IMPACT MUNITIONS.

A. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) **are prohibited.**

1. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
2. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also **prohibited** for all crowd control use.

B. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to Drag Stabilized Flexible Batons (DSFB), often referred to as "bean bags", and **shall not be used** for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

1. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, members or the general public, or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.

2. The use of Direct Fired SIM shall cease when the violent or destructive actions cease. These weapons shall not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
3. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
4. When circumstances permit, the supervisor on the incident scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
5. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
6. No member shall use Direct Fired SIM without formal training and certification.
7. Direct Fired SIM shall not be used against a person who is under restraint.
8. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

By Order of



Sean Whent
Chief of Police

Date Signed: _____