



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

Wednesday, June 12, 2019
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL

2. APPROVAL OF AGENDA

3. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)

4. APPROVAL OF MINUTES

Regular Meeting of May 22, 2019

5. CHAIR'S REPORT

6. PRC OFFICER'S REPORT

Status of complaints, other items.

7. CHIEF OF POLICE'S REPORT

Crime, budget, staffing, training updates, other items.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. Lexipol Policies Subcommittee - update from June 12 meeting.

b. MOU Compendium Subcommittee

c. Standard of Proof Subcommittee

d. Probation & Parole Questioning Subcommittee – update from June 10 meeting.

9. OLD BUSINESS (discussion & action)

a. Lexipol Policies for review and approval.
From: Lexipol Subcommittee

Lexipol #	G.O.	Title
316	M-01	Missing Persons
321	P-26	Standards of Conduct
325	C-62	Subpoenas and Court Appearances
418	Council Res. 51,408-N.S.	Obtaining Air Support

(For all except Lexipol 316, see materials distributed with May 22, 2019 agenda.)

b. Review these Surveillance Use Policies from the Berkeley Police Department:
1300 -- Body Worn Cameras
1301 – Automatic License Plate Readers
1302 -- GPS Trackers.
From: PRC Officer
(See materials distributed at May 22, 2019 meeting.)

10. NEW BUSINESS (discussion & action)

- a. Use of spit hoods/spit masks by BPD and other law enforcement in Berkeley.
i.) Presentation by BPD and others.
ii.) Consider and approve Lexipol Policy #302, Handcuffing and Restraints, and communicate the PRC's recommendation on the use of spit hoods/spit masks to the City Council.
From: Commission
- b. Presentation by BPD regarding its budget proposal for FYs 2020 and 2021.
From: Commission
- c. Report from Commissioner Mikiten on the Mental Health Commission meeting of May 23, 2019, and possible joint request to the City Council for increased funding for the mobile crisis unit or other mental health services.
- d. Consider establishing a subcommittee to review the BPD's Use of Force policy.
From: Commissioner Perezvelez

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached

12. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

13. ADJOURNMENT

Communications Disclaimer

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Communication Access Information (A.R.1.12)

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SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

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PRC REGULAR MEETING ATTACHMENTS

June 12, 2019

MINUTES

May 22, 2019 Regular Meeting Draft Minutes Page 7

AGENDA-RELATED

Item 6.a. –PRC Complaint Statistics for 2018. Page 13

Item 9.b. – BPD Policy 316: Missing Persons. Page 15

Item 10.a. – June 11, 2019 Action Calendar Item from Berkeley/Albany Mental Health Commission: Law Enforcement Use of Restraint Devices in the City of Berkeley. (Postponed until July 9, 2019) Page 21

Item 10.a. – Companion report from City Manager: Mental Health Commission Recommendation Regarding Law Enforcement Use of Restraint Devices in the City of Berkeley. TBD*

Item 10. a. – Oct. 10, 2018 PRC minutes re spit hoods and Lexipol Policy 302. Page 29

Item 10.a. – BPD Policy 302: Handcuffing and Restraints. Page 31

Item 10.a. – Article from East Bay Express dated 12-27-18: *Should Berkeley Police Be Using 'Spit Hoods?'* Page 37

Item 10.b. – Excerpt from City of Berkeley FY2020 & 2021 Proposed Biennial Budget: Police Department. Page 39

Item 10.b. – BPD PowerPoint presentation to Council, Budget, & Finance Policy Committee. Page 51

Item 10.d. – 12-21-17 Memo to the Mayor and Council Members from the City Manager: Update; Use of Force Policy Development. Page 61

Item 10.d. – 10-31-17 Council Action Items, Item #26, Annotated Agenda, page 12: Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy. Page 63

Item 10.d. – 10-31-17 Revised Agenda Material, Item #26: Direct the City Manager and the Berkeley Police Department's Use of Force Policy. Page 65

Item 10.d. – 5-24-19 email to the PRC Officer from the Chief of Police: Use of Force Legislation; Amendments and attaching announcements from Cal Chiefs. Page 85

Item 10.d. – Assembly No. 392: an Act to amend Sections 196 and 835a of the Penal Code, relating to peace officers. Page 91

Item 10.d. – Legislative analysis of AB 392, as amended May 23, 2019. Page 97

COMMUNICATION(S)

5-24-19 email to the PRC Officer from the Chief of Police: IACP 2019 invitation. Page 101

5-31-19 email to the PRC Officer from the Chief of Police: Social Media "Reach." Page 103

**To Be delivered*



Police Review Commission (PRC)

DRAFT

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)**

**Wednesday, May 22, 2019
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:07 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Gwen Allamby (Vice Chair)
Commissioner Kitty Calavita
Commissioner LaMonte Earnest (left 9:50 p.m.)
Commissioner Elisa Mikiten
Commissioner Ismail Ramsey
Commissioner Terry Roberts

Absent: Commissioner Sahana Matthews

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andrew Greenwood, Capt. Rico Rolleri (left 9:25 p.m.), Lt. Dave Lindenau, Sgt. Cesar Melero

2. APPROVAL OF AGENDA

Motion to approve the agenda with the postponement of Item #9.a. to the next meeting.

Moved/Second (Calavita/Allamby) Motion Carried

Ayes: Allamby, Calavita, Earnest, Mikiten, Perezvelez, Ramsey, and Roberts.

Noes: None

Abstain: None

Absent: Matthews

3. PUBLIC COMMENT

There were 6 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes Draft of May 8, 2019

Moved/Second (Mikiten/Calavita) Motion Carried

Ayes: Allamby, Calavita, Earnest, Mikiten, Perezvelez, Ramsey, and Roberts.

Noes: None

Abstain: None

Absent: Matthews

5. CHAIR'S REPORT

None

6. PRC OFFICER'S REPORT

Status of complaints; other items.

-- David White was introduced; he is the newly-hired Deputy City Manager. He said a few words about himself, his professional background, and current responsibilities.

-- No new complaints filed since January. A BOI was held on May 14 in which Commissioners Perezvelez, Calavita, and Ramsey served. PRC staff have completed compiling the administrative record, one step in the Caloca appeal.

-- Confirming that in the meet-and-confer between the City and the BPA over the Charter amendment, the issues of changing the current "clear and convincing" standard, and the 120-day limit on discipline, are being discussed.

-- PRC Officer will coordinate hours of staffing the Juneteenth Festival table among the 5 commissioners who volunteered; aiming for 1-1/2 to 2-hour shifts.

-- Three weeks to the next PRC meeting, June 12.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

-- Noted with sadness the passing of William Caldeira.

-- While off-duty, Sgt. Mel Turner saved a small child she noticed face-down at the bottom of a community swimming pool.

-- Currently 161 sworn officers. 2 laterals pending background checks; 5 in academy. 2 graduated from academy May 6, one was a police aide. That program a very reliable source of officer candidates.

-- Spoke at recent graduation of "Inner Perspectives," a multi-county leadership program for officers to consider internal work. Lt. Dan Montgomery administering; Sgt. Rodrigues and Ofc. Kleppe are facilitators.

-- Spent a day in Sacramento at Cal Chief's legislative day. Primary issue is use of force; currently 2 competing measures. One bill includes "necessary" UOF as a standard; that's challenging because it's very much a judgment call in moment of dynamic situation.

-- Epic Recruiting, marketing firm, was on-site last week. Talking to staff; developing themes for website and recruiting videos. Two teams will come film in June. Doing online advertising.

-- Budget process ongoing; did presentation to Council Committee along with all City Depts. One or two more work sessions with Council before adoption. Will increase Community Service Officers by 4; pay for by reduction of OT. CSOs will work in ID unit, property room, and jail. Now tied into Sheriff's decision to close Glenn Dyer jail in North Oakland. Several agencies have contacted BPD about housing their prisoners, to avoid driving to Santa Rita.

-- Command staffs of BPD and Berkeley Fire Dept. met to start on a wildfire evacuation drill to occur late summer. In 1923 fire, wind pushed fire from canyon over hill, to Shattuck/Hearst. Risk huge when humidity drops and very windy. Example: recent fire on Ajax at crest of hill; was same day Tubbs fire began. Berkeley didn't suffer due to vegetation management and because high fire danger, had lots of resources to ready to release right away.

-- Recent incident of sickle-wielding man was initially responded to by patrol officers and then by SRT.

-- Community engagement: Had a table at the Berkeley Book Festival and will have one at Juneteenth. Coffee w/ a cop tomorrow at Peet's on 4th St.

-- UOF policy work group continues to work productively. Working on substantial redraft that will contain all elements PRC has discussed, and meet or exceed referral from Councilmember Harrison. Will account for current legislation as well.

-- On June 3, Council's Public Safety Committee will discuss the referrals re stop data collection & analysis.

-- On Council's June 11 agenda is Mental Health Commission item to ban use of spit masks by police and fire. BPD does not support.

-- Also on June 11 Council agenda, an amendment to the Surveillance Technology Ordinance to ban the use of facial recognition technology. Chief's view: as the Ordinance explicitly disallows anything not expressly allowed, facial recognition IS banned unless and until Council approves it, following a proposal to justify its use. Concern that technology bans cut off all potential use of a tool that might become more accurate in the future.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Lexipol Policies Subcommittee – Renew Subcommittee (formed May 23, 2018); update from May 22 meeting. Went through 15 more policies at today's meeting.

Motion to renew the Lexipol Subcommittee
Moved/Second (Mikiten/Calavita) Motion Carried

12. PUBLIC COMMENT

There were 4 speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. PRESENTATION FOR ADMINISTRATIVE CLOSURE IN CASE #2429

Motion to accept the PRC's staff recommendation to administratively close Complaint #2429.

Moved/Second (Allamby/Roberts) Motion Carried

Ayes: Allamby, Calavita, Mikiten, Perezvelez, Ramsey, and Roberts.

Noes: None

Abstain: None

Absent: Earnest, Matthews

End of Closed Session

14. ANNOUNCEMENT OF CLOSED SESSION ACTION

The vote to administratively close Case #2429 was announced.

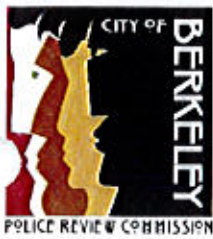
15. ADJOURNMENT

By general consent, the meeting was adjourned at 9:55 p.m.

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Complaints Received			
TYPE	2018	2017	5-YR AVG
Individual	13	22	18.8
Policy	0	3	2
Totals	13	25	20.8

Complainant Demographics					
Ethnicity					
GROUP	2018		2017		5-YR AVG
Asian	1	8%	0	0%	4%
Black	4	31%	10	46%	42%
Caucasian	7	53%	8	36%	36%
Hispanic	0	0%	2	9%	9%
Other	1	8%	2	9%	9%
Totals	13	100%	22	100%	100%
Age					
RANGE	2018		2017		5-YR AVG
18-29	1	8%	2	10%	8%
30-39	3	23%	7	35%	25%
40-49	2	15%	2	10%	11%
50-59	3	23%	2	10%	24%
60-69	3	23%	5	25%	22%
70 +	1	8%	2	10%	10%
Totals	13	100%	20	100%	100%
Gender					
GENDER	2018		2017		5-YR AVG
Male	7	54%	11	55%	61%
Female	6	46%	9	45%	39%
Totals	13	100%	20	100%	100%

PRC
Complaint
Statistics

Allegations Heard at Boards of Inquiry					
ALLEGATION	2018		2017		5-YR AVG
Excessive Force	4	10%	10	32%	17%
Discourtesy	8	20%	5	16%	14%
Detention, Search, Arrest	5	12%	4	13%	19%
Detention Procedure	2	5%	2	7%	5%
Discrimination	9	23%	5	16%	15%
Harassment	0	0%	0	0%	0%
Police Procedures	10	25%	4	13%	22%
Citation or Tow	0	0%	0	0%	1%
Investigation	2	5%	1	3%	5%
Other	0	0%	0	0%	2%
Totals	40	100%	31	100%	100%

PRC
Complaint
Statistics

Findings of Boards of Inquiry					
FINDING	2018		2017		5-YR AVG
Sustained	2	5%	0	0%	4%
Not Sustained	23	58%	15	48%	45%
Exonerated	0	0%	3	10%	8%
Unfounded	13	32%	11	36%	38%
Dismissed	2	5%	2	6%	3%
No Majority	0	0%	0	0%	2%
Totals	40	100%	31	100%	100%

Complaints Closed			
TYPE	2018	2017	5-YR AVG
BOI Hearing	5	8	6.8
No BOI Hearing (admin. closure, mediation, etc.)	8	10	12.6
Policy	1	4	1.8
Totals	14	22	21.2

Missing Persons

316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations.

316.1.1 DEFINITIONS

At risk - Includes, but is not limited to (Penal Code § 14215):

- A victim of a crime or foul play.
- A person missing and in need of medical attention.
- A missing person is age 11 or younger.
- A missing person with no pattern of running away or disappearing.
- A missing person who may be the victim of parental abduction.
- A mentally impaired missing person, including cognitively impaired or developmentally disabled.

Missing person - Any person who is reported missing to law enforcement when the person's location is unknown. This includes a child who has been taken, detained, concealed, enticed away or kept by a parent in violation of the law (Penal Code § 277 et seq.). It also includes any child who is missing voluntarily, involuntarily or under circumstances that do not conform to his/her ordinary habits or behavior, and who may be in need of assistance (Penal Code § 14215).

Missing person networks - Databases or computer networks available to law enforcement and that are suitable for information related to missing persons investigations. These include the National Crime Information Center (NCIC), the California Law Enforcement Telecommunications System (CLETS), and the Missing and Unidentified Person System (MUPS).

316.2 POLICY

The Berkeley Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. The Berkeley Police Department gives missing person cases priority over property-related cases and will not require any time frame to pass before beginning a missing person investigation (Penal Code § 14211).

316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Detective Bureau Lieutenant, or their designee, should ensure that forms and kits are developed and available in accordance with this policy, state law, federal law and the California Peace Officer Standards and Training (POST) Missing Persons Investigations guidelines, including:

- Department report form for use in missing person cases
- Missing person investigation checklist that provides investigation guidelines and resources

that could be helpful in the early hours of a missing person investigation (Penal Code § 13519.07)

- Missing person school notification form
- Medical records release form
- California DOJ missing person forms as appropriate
- Biological sample collection kits

316.4 ACCEPTANCE OF REPORTS

Any member encountering a person who wishes to report a missing person or runaway shall render assistance without delay (Penal Code § 14211). This can be accomplished by accepting the report via telephone or in-person and initiating the investigation. Those members who are unable to render immediate assistance shall promptly dispatch or alert a member who can take the report.

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any other question of jurisdiction (Penal Code § 14211).

316.5 INITIAL INVESTIGATION

Officers or other members conducting the initial investigation of a missing person ~~should~~ shall take the following investigative actions, as applicable:

- (a) Respond to a dispatched call for service as soon as practicable.
- (b) Interview the reporting party and any witnesses to determine whether the person qualifies as a missing person and, if so, whether the person may be at risk.
- (c) Notify a supervisor immediately if there is evidence that a missing person is either at risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (d) Broadcast a "Be on the Look-Out" (BOLO) bulletin if the person is under 21 years of age or there is evidence that the missing person is at risk. The BOLO should be broadcast as soon as practicable but in no event more than one hour after determining the missing person is under 21 years of age or may be at risk (Penal Code § 14211).
- (e) Ensure that entries are made into the appropriate missing person networks as follows:
 1. Within 2 hours of the initial report, when the missing person is under 21 years old or is considered at risk.
 2. In all other cases, as soon as practicable, but not later than four hours from the time of the officer's contact with the reporting party.
- (f) Complete the appropriate report forms accurately and completely and initiate a search as applicable under the facts.
- (g) Collect and/or review:
 1. A photograph of the missing person, if available.
 2. Any documents that may assist in the investigation, such as court orders regarding custody.

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3. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).
- (h) When circumstances permit and if appropriate, attempt to determine the missing person's location through his/her telecommunications carrier. Contact the appropriate agency if the report relates to a previously made missing person report and another agency is actively investigating that report. When this is not practical, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to an at-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.

316.6 REPORT PROCEDURES AND ROUTING

Employees should complete all missing person reports and forms promptly and submit them for supervisor approval.

316.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
- (b) Ensuring resources are deployed as appropriate.
- (c) Initiating a command post as needed.
- (d) Ensuring applicable notifications and public alerts are made and documented (Nixle, AMBER, etc., see Public Alerts Policy).
- (e) Ensuring that records have been entered into the appropriate missing persons networks.
- (f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.

If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.

316.7 RECORDS MANAGEMENT RESPONSIBILITIES

The receiving member shall:

- (a) As soon as reasonable under the circumstances, notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's residence in cases where the missing person is a resident of another jurisdiction (Penal Code § 14211).
- (b) Notify and forward a copy of the report to the law enforcement agency in whose jurisdiction the missing person was last seen (Penal Code § 14211).
- (c) Notify and forward a copy of the report to the law enforcement agency having jurisdiction over the missing person's intended or possible destination, if known.
- (d) Forward a copy of the report to the Detective Bureau.
- (e) Coordinate with the NCIC Terminal Contractor for California to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (42 USC § 5780).

316.8 FOLLOW UP TIMELINE

- (a) **Adult Missing Person Cases:** The initial assigned investigator handles the 24 hour and one week follow ups, then forwards the case to the Homicide Detail for follow up.
- (b) **Juvenile Missing Person/Runaway Cases:** The initial assigned investigator handles the 24 hour follow up, then forwards the case to the Youth Services Detail for follow up.

316.9 DETECTIVE FOLLOW UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Shall ensure that the missing person's school is notified within 10 days if the missing person is a juvenile.
 - 1. The notice shall be in writing and should also include a photograph (Education Code § 49068.6).
 - 2. The investigator should meet with school officials regarding the notice as appropriate to stress the importance of including the notice in the juvenile's student file, along with contact information if the school receives a call requesting the transfer of the missing child's files to another school.
- (b) Should recontact the reporting person and/or other witnesses within 30 days of the initial report and within 30 days thereafter to determine if any additional information has become available via the reporting party.
- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update CLETS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (42 USC § 5780).
- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children® (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (42 USC § 5780).
- (g) Should make appropriate inquiry with the Coroner.
- (h) Should obtain and forward medical and dental records, photos, X-rays and biological samples pursuant to Penal Code § 14212 and Penal Code § 14250.
- (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not previously been obtained and forward the photograph to California DOJ (Penal Code § 14210) and enter the photograph into applicable missing person networks (42 USC § 5780).
- (j) Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (MUPS).

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- (k) In the case of an at-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 586).

316.10 WHEN A MISSING PERSON IS FOUND

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted.

The assigned investigator shall ensure that, upon receipt of information that a missing person has been located, the following occurs (Penal Code § 14213):

- (a) The person's name is removed from MUPS.
- (b) The missing person's school is notified, if applicable.
- (c) Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation within 24 hours.

316.8.1 UNIDENTIFIED PERSONS

Department members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying him/herself should:

- (a) Obtain a complete description of the person.
- (b) Enter the unidentified person's description into the NCIC Unidentified Person File.
- (c) Use available resources, such as those related to missing persons, to identify the person.

316.11 CASE CLOSURE

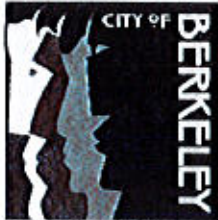
The Detective Bureau Lieutenant or his/her designee, may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence has matched an unidentified person or body.
- (b) If the missing person is a resident of Berkeley or this department is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.
- (c) If this department is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks as appropriate.
- (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

316.12 TRAINING

Subject to available resources, the Personnel and Training Sergeant should ensure that members of this department whose duties include missing person investigations and reports receive regular training that includes:

- (a) The initial investigation:
 - 1. Assessments and interviews
 - 2. Use of current resources, such as Mobile Audio Video (MAV)
 - 3. Confirming missing status and custody status of minors
 - 4. Evaluating the need for a heightened response
- (b) Briefing of department members at the scene.
- (c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).
- (d) Verifying the accuracy of all descriptive information.
- (e) Initiating a neighborhood investigation.
- (f) Investigating any relevant recent family dynamics.
- (g) Addressing conflicting information.
- (h) Key investigative and coordination steps.
- (i) Managing a missing person case.
- (j) Additional resources and specialized services.
- (k) Update procedures for case information and descriptions.
- (l) Preserving scenes.
- (m) Internet and technology issues (e.g., Internet use, cell phone use).
- (n) Media relations.



Mental Health Commission

From City Council Agenda & Rules Committee meeting May 28, 2019
committee rescheduled to July 9, 2019 Council meeting
2a.37

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council
From: Berkeley/Albany Mental Health Commission
Submitted by: boona cheema, Mental Health Commission Chair
Subject: Law Enforcement Use of Restraint Devices in the City of Berkeley

RECOMMENDATION:

Adopt a resolution directing the Berkeley Police Department, and any other law enforcement providing mutual aid in Berkeley, to cease use of restraint devices (spit hoods, spit masks) and replace them with non-restraining safety equipment like N95 masks or an equivalent substitute. The use of spit hoods is traumatizing and escalating, risks asphyxiation and can be a violation of constitutional civil rights, particularly free speech. Stopping their use contributes to humanitarian and compassionate approach to those living with mental illness.

FISCAL IMPACTS OF RECOMMENDATION:

None.

CURRENT SITUATION AND ITS EFFECTS

Currently the Berkeley Police Department uses spit hoods when detaining or arresting someone who they are concerned may transfer or transmit fluids (saliva and mucous) to others. According to BPD guidelines, "Spit masks may be placed upon persons in custody when the officer reasonably believes the person will spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport."¹

Often these are applied in situations in which someone is having a mental health crisis and/or an interaction with a police officer escalates into a mental health episode. The experience of police covering the head of those suffering a mental health crisis or episode and/or drug reaction with a restraint device which is both traumatizing and devastating. It almost always creates alarming fear, distress, panic and humiliation. There is also risk of serious injuries or death (such as asphyxiation), particularly as there is limited visual ability to observe individual's face and head while in crisis.

¹ Berkeley Police Department Law Enforcement Services Manual, Policy 302.5, Page 3.

As such, Amnesty International has publicly commented on how use of spit hoods can be "a cruel and dangerous form of restraint."² The use of spit hoods may result in a wrongful death action, as well as constitute cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. In addition, its use may violate the United Nations Convention on Torture and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT), as well as the UN Convention on the Rights of People with Disabilities.

In Berkeley, the number of police calls for people having a mental health crisis is 35 percent or more (Dinkelspiel, Berkeleyside; 2015).³ Over the past 5 years, police have seen a 43 percent increase in calls for 5150s or people who are a danger to themselves or others (Dinkelspiel, Berkeleyside, 2015).⁴ Given that the Berkeley Police Department is often and increasingly called as a first responders to individuals who are experiencing severe mental illness and/or substance use disorder crises, it's important that we not allow this cruel and dangerous practice to continue.

BACKGROUND

Historically, spit hoods device have been used in perpetuating extreme human brutality, systemic oppression and monstrous human atrocities. Its use today can immediately traumatize individuals, as well as perpetuate and reinforce intergenerational trauma and horrifying symbolism, especially considering its use against minorities to degrade, torture and execute.

As documented in the UK, using restraint devices such as spit hoods can have a disproportionate and discriminatory impact on minorities.⁵ Their use may violate the exercise of civil rights, particularly free speech, and/or result in discriminatory treatment towards them under civil rights law. Furthermore, human and civil rights have been violated when police use restraint devices in these types of crises to control or coerce people into police custody.

Police claim there is a need to protect their health from individuals who spit and the use of restraint devices like spit hoods will keep them safe. However, such a drastic overriding of human or civil rights violations and application of psychological and physical harms requires justification based on evidence and lack of alternatives. The evidence suggests that no real risk exists. A systematic review of studies concluded that

² The Independent. (2018). Police could get 'a good kicking' if spit guards extended, Met chief says. [online] Available at: <https://www.independent.co.uk/news/uk/home-news/police-good-kickingspitguards-scotland-yard-cressida-dick-a8524176.html> [Accessed 2 Mar. 2019].

³ Dinkelspiel, F. (2015). Mental health calls #1 drain on Berkeley police resources. [online] Berkeleyside. Available at: <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-onberkeleypolice-resources> [Accessed 2 Mar. 2019].

⁴ Ibid

⁵ Gayle, D. (2017). Concern over Met police use of spit hoods on black detainees. [online] the Guardian. Available at: <https://www.theguardian.com/uk-news/2017/sep/02/concern-over-met-police-use-of-spithoods-on-black-detainees> [Accessed 2 Mar. 2019].

the risk of transmitting HIV through spitting as no risk, and further concluded that even the risk of transmission through biting to be negligible.⁶ In addition, a systematic literature review of Hepatitis C and B transmission concluded the risk of acquiring Hepatitis C (HCV) through spitting as negligible and as very low for Hepatitis B (HBV), and also showed the risk as low for acquiring HBV and HCV through biting.⁷

Not only is the violation of civil and human rights and brutality of spit masks not justified by the evidence, well-documented and easily accessible alternatives exist including N95 masks, eye guards, and, when absolutely necessary, mouth guards.

At the February 28, 2019 Commission meeting, the Mental Health Commission passed the following motion:

M/S/C (Fine, Posey) Motion to pass the spithood resolution and to submit the resolution to the City Council for approval

Ayes: Castro, cheema, Fine, Heda, Ludke, Posey; Noes: None; Abstentions: None; Absent: Davila (attended City Council Work Session).

At the April 25, 2019 Commission meeting the Mental Health Commission passed the following motion:

M/S/C (Davila, Castro) Withdraw the resolution that was previously passed regarding spithoods and replace it with the Council Item including a new resolution that is before us today.

Ayes: Castro, cheema, Davila, Fine, Heda, Kealoha-Blake, Ludke, Posey; Noes: None; Abstentions: None; Absent: None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable

RATIONALE FOR RECOMMENDATION

The harm, cruelty and potential violation of civil and human rights, as well as the likelihood of intensifying a mental health or substance use intervention rather than de-escalating one, suggests an immediate end to the use of spit hoods and the substitution of them for least harmful and equally effective substitutes.

⁶ Cresswell, F., Ellis, J., Hartley, J., Sabin, C., Orkin, C. and Churchill, D. (2018). A systematic review of risk of HIV transmission through biting or spitting: implications for policy. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/hiv.12625> [Accessed 2 Mar. 2019].

⁷ Pintilie, H. and Brook, G. (2018). Commentary: A review of risk of hepatitis B and C transmission through biting or spitting. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jvh.12976> [Accessed 2 Mar. 2019].

ALTERNATIVE ACTIONS CONSIDERED

The alternatives actions considered are the recommended less harmful, more humane use of N95 masks, eye guards and when absolutely necessary, mouth guards.

CITY MANAGER

See Companion Report

CONTACT PERSON

Karen Klatt, Mental Health Commission Secretary, HHCS, (510) 981-7644

ATTACHMENT

Resolution

Exhibit A: Background Information on Restraint Devices

RESOLUTION NO. ##,### N.S.

LAW ENFORCEMENT USE OF RESTRAINT DEVICES IN THE CITY OF BERKELEY

WHEREAS, the use of restraint devices such as spit hoods may violate the United Nations Treaty on Torture, and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT); and

WHEREAS, Amnesty International has publicly commented on how use of spit hoods can be a cruel and dangerous form of restraint; and

WHEREAS, human and civil rights can be violated by law enforcement who use restraint devices such as spit hoods to arrest, detain, question, take into custody and/or incarcerate individuals; and

WHEREAS, law enforcement using restraint devices can have a disproportionate and discriminatory impact on minorities; and

WHEREAS, individuals can be traumatized by a devastating experience of law enforcement using restraint devices such as spit hoods and risk serious injury or death; and

WHEREAS, law enforcement is specially trained to use crisis intervention responses to assist individuals who are experiencing severe mental illness in public spaces; and

WHEREAS, law enforcement and Berkeley Mental Health are intended to work collaboratively to respond to mental health crises in the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED, be it resolved that law enforcement shall not use restraint devices such as spit hoods in the line of duty.

BE IT FURTHER RESOLVED, be it resolved that law enforcement shall only use their own N95 masks or an equivalent substitute in the line of duty.

Proposed 2-Page Memo re: Police Use of Restraint Device, Spit Hoods, to Submit to the Berkeley City Council if Approved by Mental Health Commission¹

Police Use of Restraint Devices—Spit Hoods—to Respond to People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

The Berkeley Police Department is often called as a first responder to individuals who are experiencing severe mental illness and/or substance use disorder crises in the community. In Berkeley, the number of police calls for people having a mental health crisis is 35 percent or more (Dinkelspiel, Berkeleyside; 2015).² Over the past 5 years, police have seen a 43 percent increase in calls for 5150s or people who are a danger to themselves or others (Dinkelspiel, Berkeleyside, 2015). As a result, the Berkeley Police Department has committed resources to address those individuals as first responders with crisis interventions and not force, coercion and punishment in the line of duty.

Specifically, the Berkeley Police Department (BPD) specially trains police officers to use crisis intervention responses; the Department has a Crisis Intervention Team. Further, the BPD has a formal partnership with the Division of Mental Health for the Cities of Berkeley and Albany to serve these individuals who need first responders to assist them during crises. Both the Police Department and this Division provide multiple details for coordinated crisis intervention response on their websites, as well as listing other resources.

It is evident the BPD and the Division of Mental Health are designed to work in tandem to respond in these types of crises. Overall BPD serves adults with severe mental illness and substance use disorder who are served by the Adult Clinic of the Division of Mental Health for the Cities of Berkeley and Albany—the public mental health system (“Berkeley Mental Health”).

Currently, however, the BPD is reconsidering the use of restraint devices—spit hoods—as an option to address people who engage in spitting and biting during a police encounter. For people needing crisis intervention services in the community, the use of this restraint device can create psychological and physical harms. Consequently, it may result in human and civil rights violations, especially if a crisis escalates. Additionally, some individuals living with severe mental illness and substance use disorder may also live primarily in public spaces so they are more exposed to policing than people who can afford to partly or entirely live in private.

¹ The sole purpose of this memo is submission to the Mental Health Commission and the public in order for the Commission to consider passing a motion to submit it to the Berkeley City Council with the Resolution.

² Dinkelspiel, F. (2015). Mental health calls #1 drain on Berkeley police resources. [online] Berkeleyside. Available at: <https://www.berkeleyside.com/2015/04/16/mental-health-calls-are-1-drain-onberkeleypolice-resources> [Accessed 2 Mar. 2019].

Police Use of Restraint Devices—Spit Hoods—to Respond to
People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

Most important, human and civil rights can be violated when police use restraint devices in these types of crises to control or coerce people into police custody. It may violate the United Nations Convention on Torture, and Other Inhuman, Cruel and Degrading Treatment or Punishment (UNCAT). Amnesty International has publicly commented on how use of spit hoods can be “a cruel and dangerous form of restraint.”³ The use of spit hoods may further violate the United Nations Convention on the Rights of People with Disabilities.

Using restraint devices such as spit hoods can have a disproportionate and discriminatory impact on minorities.⁴ Their use can possibly violate the exercise of civil rights and/or result in discriminatory treatment towards them under civil rights law. It is also notable that mental illness and substance use disorder can both manifest as psychosis to where the diagnoses are indistinguishable and thus, may invoke disability rights protections.

Third, there is the likelihood individuals will be traumatized by a devastating experience of police covering their head with a restraint device; it can create alarming fear, distress, panic and humiliation. There is also risk of serious injuries or death (such as asphyxiation), particularly as there is limited visual ability to observe individual’s face and head while in crisis. Using both restraint devices—spit hoods and hand cuffs—can further injure an individual.

Historically, this restraint device has been used in perpetuating extreme human brutality, systemic oppression and monstrous human atrocities. Its use today can immediately traumatize individuals, as well as perpetuate and reinforce generational trauma and horrifying symbolism, especially considering its use against minorities to degrade, torture and execute.

Police claim there is a need to protect their health from individuals who spit and bite and the use of restraint devices like spit hoods will keep them safe. In this regard, there must be an evidence-based approach by city government to justify overriding any human or civil rights violations and likely psychological and physical harms. People living with severe mental illness and substance use disorder are likely more vulnerable than others without disabilities.

³The Independent. (2018). Police could get 'a good kicking' if spit guards extended, Met chief says. [online] Available at: <https://www.independent.co.uk/news/uk/home-news/police-good-kickingspitguards-scotland-yard-cressida-dick-a8524176.html> [Accessed 2 Mar. 2019].

⁴Gayle, D. (2017). Concern over Met police use of spit hoods on black detainees. [online] the Guardian. Available at: <https://www.theguardian.com/uk-news/2017/sep/02/concern-over-met-police-use-ofspithoods-on-black-detainees> [Accessed 2 Mar. 2019].

Police Use of Restraint Devices—Spit Hoods—to Respond to
People Experiencing Severe Mental Illness and/or Substance Use Disorder Crises

The systematic literature review of scientific studies addressing transmission of HIV and Hepatitis B and C from spitting and biting can serve as an evidenced-based approach to determining the level of risk, if any, from these types of behaviors. First, a systematic review of studies concluded the risk of transmitting HIV through spitting as no risk, and further concluded the risk through biting as negligible (Cresswell, et al; 2018; 1).⁵

In addition, a systematic literature review of Hepatitis C and B transmission concluded the risk of acquiring Hepatitis C (HCV) through spitting as negligible and as very low for Hepatitis B (HBV)(Pintillie & Brooks, 2018; 1).⁶ This review also showed the risk as low for acquiring HBV and HCV through biting (Pintillie & Brooks, 2018; 1). It is notable that the former study on HIV focused on police, while the later study addressed emergency workers.

Overall it is considerably more important to preserve human and civil rights when an evidence-based approach shows this result and there is likely an alternative to using these restraint devices against people experiencing severe mental illness and substance use disorder crises. There are face guards that police can choose to use. Emergency medical and mental health workers may use them in assisting people experiencing these crises and in other roles.

In some localities, mental health clinicians are first responders who accompany police to assist individuals experiencing a severe mental health and substance use disorder crises in the community. The aim again is not to use force, coercion and/or punishment. If anything, the use of restraint devices like spit hoods may result in more severe harms.

For these reasons, the Berkeley Police Department should not use restraint devices like spit hoods in the line of duty. Thank you for your time.

⁵Cresswell, F., Ellis, J., Hartley, J., Sabin, C., Orkin, C. and Churchill, D. (2018). A systematic review of risk of HIV transmission through biting or spitting: Implications for policy. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/hiv.12625> [Accessed 2 Mar. 2019].

⁶Pintillie, H. and Brook, G. (2018). Commentary: A review of risk of hepatitis B and C transmission through biting or spitting. Available at: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jvh.12976> [Accessed 2 Mar. 2019].

**Motion to constitute a subcommittee to review the four areas of disagreement with the BPD on the BWC policy, and the iPhone issue. Friendly amendment: and any other new provisions that have been added. Moved/Seconded (Ramsey/Prichett)
Motion withdrawn by Ramsey.**

Motion to ask the PRC Officer to prepare an analysis comparing the BWC policy that the PRC developed in 2016 with the current proposed Lexipol policy, calling out the main policy choices and areas of disagreement; and agendaizing the analysis for a full Commission meeting for its consideration.

Moved/Seconded (Yampolsky/Perezvelez) Motion Carried
Ayes: Allamby, Matthews, Perezvelez, Ramsey, Roberts, and Yampolsky.
Noes: Prichett Abstain: None Absent: Calavita, Sherman

b. Lexipol Policies for review and approval:

Lexipol #	G.O.	Title
100	A-1	Law Enforcement Authority
103	P-18	Policy Manual
200	D-2, D-6, R-4, U-3	Organizational Structure and Responsibility
201	S-4	Special Orders
202	D-9	Emergency Management Plan
203	T-7	Training Policy
204	E-12	Electronic Mail
302	H-6, T&IB 247	Handcuffing
308	Council Res. 51,408-N.S.	Canines
310	D-5	Domestic Violence
311	S-6	Search and Seizure

Motion to prohibit the use of spit hoods.
Moved (Prichett) Motion failed for lack of a second.

Motion to hold off on approval of Lexipol Policy #302 until the Police Department makes a presentation on the issue of the spit hoods.
Moved/Seconded (Ramsey/Yampolsky)

Friendly amendment: and have a health care or medical care provider make a presentation as well.

Moved by Yampolsky; accepted by Ramsey

Motion, as amended, Carried

Ayes: Allamby, Matthews, Prichett, Roberts, and Yampolsky.

Handcuffing and Restraints

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of handcuffs and other restraints during detentions and arrests.

302.2 POLICY

The Berkeley Police Department authorizes the use of restraint devices in accordance with this policy, the Use of Force policy and department training. Restraint devices shall not be used to punish, to display authority or as a show of force.

302.3 ALTERNATIVE MEANS OF RESTRAINT

Alternative Means of Restraint include but are not limited to:

- (a) Handcuffing the person with their hands in front of their body
- (b) Handcuffing the person with multiple sets of linked handcuffs
- (c) Use of the entire WRAP system
- (d) Use of the WRAP's ankle strap
- (e) Use of plastic handcuffs "flex-cuffs"
- (a)(f) An ambulance gurney with five point straps

302.4 USE OF RESTRAINTS

Only members who have successfully completed Berkeley Police Department -approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use any restraint, officers should carefully balance officer safety concerns with factors that include, but are not limited to:

- (a) The circumstances or crime leading to the arrest.
- (b) The demeanor and behavior of the arrested person.
- (c) The age and health of the person.
- (d) Whether the person ~~may be~~ is known to be pregnant.
- (e) Whether the person has a hearing or speaking disability. In such cases, consideration should be given, safety permitting, to handcuffing to the front in order to allow the person to sign or write notes.
- (f) Whether the person has any other apparent disability.

302.4.1 RESTRAINT OF DETAINEES

Situations may arise where it may be reasonable to restrain an individual who may, after brief investigation, be released without arrest. Unless arrested, the use of restraints on detainees should continue only for as long as is reasonably necessary to assure the safety of officers and others. When deciding whether to remove restraints from a detainee, officers should continuously weigh the safety interests at hand against the continuing intrusion upon the detainee.

302.4.2 RESTRAINT OF PREGNANT PERSONS

~~Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and in no event shall these persons be restrained by the use of leg irons, waist chains or handcuffs behind the body. If a person's hands cannot be restrained behind their back because of pregnancy, officers will attempt to accommodate their condition by using alternative means of restraint.~~

No person who is in labor, delivery or recovery after delivery shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, officers or others (Penal Code § 3407; Penal Code § 6030).

302.4.3 RESTRAINT OF JUVENILES

A juvenile under 14 years of age should not be restrained unless he/she is suspected of a dangerous felony or when the officer has a reasonable suspicion that the juvenile may resist, attempt escape, injure him/herself, injure the officer or damage property.

302.4.4 NOTIFICATIONS

Whenever an officer transports a person with the use of restraints other than handcuffs, the officer shall inform the jail staff upon arrival at the jail that restraints were used. This notification should include information regarding any other circumstances the officer reasonably believes would be potential safety concerns or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration) that may have occurred prior to, or during transportation to the jail.

302.5 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety.

Although recommended for most arrest situations, handcuffing is ~~discretionary and~~ not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that regardless of the circumstances, in order to avoid risk every person should be handcuffed. ~~regardless of the circumstances~~

In most situations handcuffs should be applied with the hands behind the person's back. When feasible, handcuffs should be applied between the base of the palm and the ulna bone of the wrist. When feasible, handcuffs should be double-locked to prevent tightening, which may cause undue discomfort or injury to the hands or wrists.

In situations where one pair of handcuffs does not appear sufficient to restrain the individual or may cause unreasonable discomfort due to the person's size, officers should consider Alternative Means of Restraint, alternatives, such as using an additional set of handcuffs or multiple plastic cuffs

Handcuffs should be removed as soon as it is reasonable or after the person has been searched and is safely confined within a detention facility.

302.6 APPLICATION OF SPIT HOODS/MASKS SOCKS

Spit hoods/masks/socks are temporary protective devices designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others.

Spit hoods-masks may be placed upon persons in custody when the officer reasonably believes the person will bite or spit, either on a person or in an inappropriate place. They are generally used during application of a physical restraint, while the person is restrained, or during or after transport.

Officers utilizing spit hoods-masks should-shall ensure that the spit hood-mask is fastened properly to allow for adequate ventilation and that the restrained person can breathe normally. Officers should-shall provide assistance during the movement of restrained individuals due to the potential for impaired or distorted vision on the part of the individual. Officers should avoid comingling individuals wearing spit hoods-masks with other detainees.

Spit hoods-masks should-shall not be used in situations where the restrained person is bleeding profusely from the area around the mouth or nose, or if there are indications that the person has a medical condition, such as difficulty breathing or vomiting. In such cases, prompt medical care should-shall be obtained. If the person vomits while wearing a spit hood-mask, the spit-hood should-mask should-shall be promptly removed and discarded. Persons who have been sprayed with oleoresin capsicum (OC) spray should-shall be thoroughly decontaminated including hair, head and clothing prior to application of a spit hood-mask.

Those who have been placed in a spit hood-mask should be continually monitored and shall not be left unattended until the spit hood is removed. Spit hoods-masks shall be discarded after each use.

302.7 APPLICATION OF AUXILIARY RESTRAINT DEVICES

Auxiliary restraint devices include transport belts, waist or belly chains, transportation chains, leg irons and other similar devices. Auxiliary restraint devices are intended for use during long-term restraint or transportation. They provide additional security and safety without impeding breathing, while permitting adequate movement, comfort and mobility.

Only department-authorized devices may be used. Any person in auxiliary restraints should be monitored as reasonably appears necessary.

302.6.1 USE OF THE WRAP

The WRAP may be used:

- (a) To restrain a combative person
- (b) To prevent potential violent/combative behavior
- (c) To inhibit a violent subject's effort to injure themselves
- (d) To prevent a violent subject from causing property damage
- (e) To facilitate safe physical transportation of violent/combative subjects
- (f) When conventional methods of restraint are not effective

As with any restraint device, do not assume the WRAP is escape-proof. Once applied, the subject should not be left unattended.

A person restrained by The WRAP can be placed on their side or in a sitting position. This will increase the person's oxygen recovery rate and reduce the potential for respiratory fatigue or positional asphyxia.

Only qualified personnel who have received training in the use of the WRAP should use this restraining device. Throughout the application of the WRAP, the subject must be physically controlled. Notwithstanding the subject's restraint, officers should remain aware of the person's ability to bite, spit and/or use head strikes against them.

302.6.2 TRANSPORTATION

Movement of the subject can be accomplished in three ways, depending on the level of their cooperation. The subject can either be carried, allowed to stand and shuffle walk, or be transported in a vehicle.

302.6.3 DEVICE REMOVAL

To remove the WRAP restraint, reverse the application procedure. Based on the prisoner's combativeness or level of aggression, officers should employ appropriate subject control techniques and tactics when removing restraint devices.

302.6.4 SAFETY PRECAUTIONS

Officers who use the WRAP should always be mindful of the following safety issues:

- (a) The subject should not be left unattended.
- (b) The WRAP is a temporary restraint device and is not escape-proof.
- (c) The WRAP should only be used by personnel trained in its function and application.
- (d) All device restraint straps should be checked frequently for tightness, and adjusted, as necessary, until The WRAP is removed.
- (e) The torso harness restraint straps should never be tightened to the point they interfere with the subject's ability to breathe.

(f) As soon as possible after being restrained in The WRAP, a prisoner should be placed in an upright sitting position or on their side to allow for respiratory recovery and to mitigate the potential for positional asphyxia.

(g) If a restrained subject complains of, or exhibits any of the following physiological conditions, immediate medical attention may be required:

1. Respiratory distress
2. Sudden quiet or inactivity
3. Chest pains, shooting pains down the arm
4. Change in facial color
5. Elevated temperature ("I'm burning up!")
6. Vomiting

302.8 APPLICATION OF THE WRAP's ANKLE LEG RESTRAINT STRAP DEVICES

The WRAP's ankle strap Leg restraints may be used to restrain the legs of a violent or potentially violent person when it is reasonable to do so during the course of detention, arrest or transportation. Only restraint devices approved by the Department shall be used.

In determining whether to use the leg restraintankle strap, officers should consider:

- (a) Whether the officer or others could be exposed to injury due to the assaultive or resistant behavior of a suspect.
- (b) Whether it is reasonably necessary to protect the suspect from his/her own actions (e.g., hitting his/her head against the interior of the patrol unit, running away from the arresting officer while handcuffed, kicking at objects or officers).
- (c) Whether it is reasonably necessary to avoid damage to property (e.g., kicking at windows of the patrol unit).

302.7.1 GUIDELINES FOR USE OF THE ANKLE STRAP LEG RESTRAINTS

When applying leg the ankle strap, restraints the following guidelines should be followed:

- (a) If practicable, officers should notify a supervisor of the intent to apply the ankle strap device. In all cases, a supervisor shall be notified as soon as practicable after the application of the ankle strap device.
- (b) Once applied, absent a medical or other emergency, restraints should remain in place until the officer arrives at the jail or other facility or the person no longer reasonably appears to pose a threat.
- (c) Once secured, the person should be placed in a seated or upright position, secured with a seat belt, and shall not be placed on his/her stomach for an extended period, as this could reduce the person's ability to breathe.

-
- (d) The restrained person should be continually monitored by an officer while the ankle strap is in use. The officer should ensure that the person does not roll onto and remain on his/her stomach.
 - (e) The officer should look for signs of labored breathing and take appropriate steps to relieve and minimize any obvious factors contributing to this condition.
 - (f) If in custody and transported by ambulance/paramedic unit, the restrained person should be accompanied by an officer when requested by medical personnel. The transporting officer should describe to medical personnel any unusual behaviors or other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

302.8 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the officer shall document the details of the detention and the need for handcuffs or other restraints.

If an individual is arrested, the use of restraints other than handcuffs shall be documented in the related report. The officer should include, as appropriate:

- ~~(a)~~—The amount of time the suspect was restrained.
- ~~(b)~~(a) How the suspect was transported and the position of the suspect.
- ~~(c)~~(b) Observations of the suspect's behavior and any signs of physiological problems.
- ~~(d)~~(c) Any known or suspected drug use or other medical problems.

EAST BAY EXPRESS

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NEWS & OPINION • NEWS DECEMBER 27, 2018

Should Berkeley Police Be Using 'Spit Hoods?'

Police have been placing sack-like hoods over detainees to prevent them from spitting on officers, but critics say the practice can be traumatizing and should be banned.

By Max Brimelow

Email Push Share Print



Photo by Tracie DeAngelis

Berkeley police controlling a detainee with a spit hood on March 13, 2013.

Four observers from a police reform group gathered around a screen at Grassroots House in downtown Berkeley in November. They watched footage of three officers detaining a suspect at Telegraph Avenue and Dwight Way. The footage shows police have the man on the ground, his arms bent up behind his back with an officer's knees pinning the suspect's calves to the floor. An officer has already placed a mesh "spit hood" on the suspect who is subdued and limp.

"This is hard to watch," said Jathan Gurr of Berkeley Copwatch, an activist watchdog group, referring to the footage from the 2009 incident.

Spit hoods are one of the Berkeley Police Department's least known, but most controversial tools. They're sack-like hoods that police place over the heads of non-compliant suspects to prevent them from spitting at officers. Spit hoods are intended to protect against the spread of communicable diseases and have long been used in Berkeley and are now widely used in other police departments around the country.

Berkeley PD is in the process of updating its policies on spit hoods, and the city's Police Review Commission is reviewing their use and whether PD should discontinue them. The department's Policy 302, which governs handcuffs and restraints — and includes spit hoods — is under

scrutiny, but BPD does not keep data on how frequently its officers deploy spit hoods.

"I think most people walking around in Berkeley have no idea there are spit hoods in use," Gurr said.

Spit hoods are one of several tactics being reviewed as the Berkeley Police Department transitions to using Lexipol, a centralized framework that offers departments a list of best practices guidelines that BPD can then "review and tweak" to meet its needs, said BPD spokesperson Byron White.

Other policies under review include the use of canines, but some say spit hoods may be the most controversial.

Police say spit hoods are an essential de-escalation tool, particularly for officers. "It's a real threat ... the reaction of any person who has someone spit in their face is to retaliate or react in some way," said Sgt. Spencer Fomby, a use-of-force instructor for the department and proponent of tactical de-escalation. "Officers clearly cannot use force, so to manage that we use the hood."

Police do not consider the hood to be a use of force. "Putting a mesh hood over somebody has a very low risk of injury," Fomby said. "It's not a forceful act."

However, BPD doesn't track its use of spit hoods, so it's difficult to know if officers have been misusing the tactic, especially on detainees who have mental or psychological issues.

BPD has narrow criteria for when to use the hoods — when a suspect is noncompliant, combative, resistant, and starting to spit, then the hood can justifiably be used, Fomby said. However, some witness evidence suggests officers sometimes overstep the mark.

Tracie DeAngelis is a former copwatcher, who on a coffee break on March 13, 2013, witnessed a detainee being controlled with a spit hood outside Berkeley Public Library. "I remember hearing some loud screaming," she said. "So, I walked across the street ... [the suspect] was apologetic, pleading, begging — you could tell he was scared."

Her footage shows six officers applying "the wrap" — a full-body restrictive tie. "I'm sorry! I'm sorry," the suspect cries through the hood as he is held face-down on the road surface.

"They don't see that as a use of force?" said DeAngelis, who now works in human resources for the East Bay Regional Park District. "To me it is — it's an act against someone's dignity, which to me is an act of violence."

DeAngelis would like to see an outright ban on the use of spit hoods. And she said that police should be responsible for protecting themselves.

Gurr conceded that police sometimes may need to use a spit hood — but only in rare circumstances. "There's probably an occasion to use something like that," he said. "I just don't trust Berkeley Police to know when that occasion is."

Fomby said detainees who are spit hooded often receive medical attention, and so, he argued, the masks are an important protection for paramedics, nurses, and other people with whom the suspects come into contact. "I want to emphasize it's not just officer safety," he added.

Spit hoods are not new. Fomby said he has seen them in use throughout his 18-year career. They are not just used by police — other agencies use them, and they are commonly issued to medical services. On Oct. 24, the Berkeley Fire Department used a spit hood on a detainee at Civic Center Park before he was taken for psychological evaluation, Fomby said.

"The main argument is about optics — the way it looks," Fomby added. "But the balance of public safety outweighs the optics in this situation."

Fomby also asserted that BPD's use of spit hoods is "very rare." He said he remembers them being used "a couple times" in the past few months, though did not want to speculate on how often they are used by the force at large.

"Very rarely" might mean twice a week," Gurr countered. Without statistics available, the issue is a matter of one person's word versus another.

For its part, the Berkeley Police Commission plans to compare the new Lexipol policies to the general orders that BPD has used. Sahana Matthews, chair of the commission, said the group has not yet taken a specific stance on spit hoods. "The PRC will be reviewing this policy and deciding whether or not to recommend to the BPD to ban or change the use of spit hoods," she said.

Some on the nine-member commission have already made up their minds, including Andrea Prichett, who is also the co-founder of Copwatch. "I'm alarmed they use them at all," she said. She believes the hoods can make it harder to monitor vital signs. For suspects who are affected by mental health issues, she said, the process can be especially traumatizing.

But George Perezvelez, chair of the Lexipol subcommittee within the Police Review Commission, believes police should have the power to use spit hoods. "No police officer in Berkeley should be subject to being bitten or spat on," he said.

However, Perezvelez said he wants to see "a clear dictate" given to local police on the exact parameters around using spit hoods. "Let's be clear on how they can be used, why they can be used, and when they can be used," he said.

"But at the same time, I understand the concern about how often they are used, what triggers their use, and if there's a possibility to track how often they're used," Perezvelez added. He would like to see more concrete data. "It would be a good idea for the department to supply statistics," he said. "It's accountability — right? And it's transparency."

Although the commission will turn over its recommendations to the police department, it has only an advisory role in the city. Matthews said BPD is working with the PRC on Lexipol, but she conceded that police have no obligation to listen.

Prichett is exasperated with the dynamic. "What would be really awesome would be if PRC could change the policy itself," she said. "They can change the policy, but the police don't have to listen to that."

Ultimately, with no available quantitative data and reliance on anecdotal accounts from a handful of sources, taking informed action is difficult.

Fomby said he would like to see a metric created to monitor the use of restraining equipment, including spit hoods. "We should know how many times we put people ... in the hoods," he said. "I would like to see more data."D

Contact the author of this piece, send a letter to the editor, like us on Facebook, or follow us on Twitter.

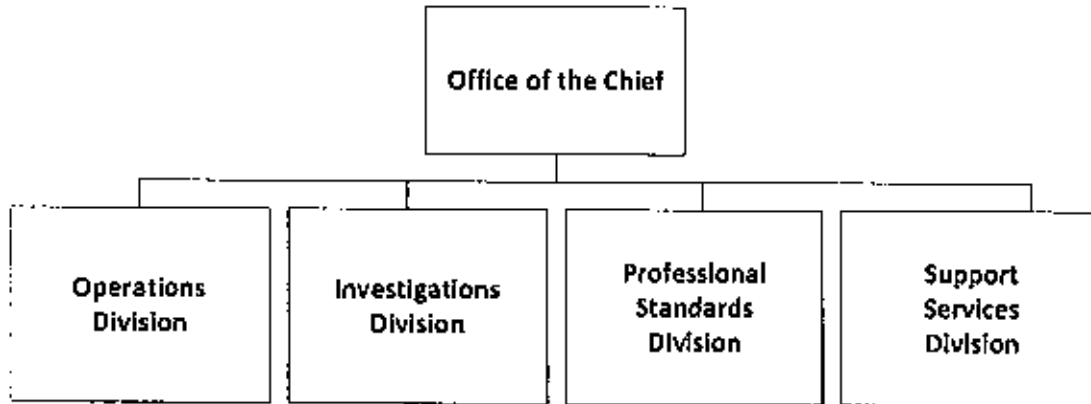
• Letters of the Week: Our Reads... From Berkeley's Streets to Oak... •

POLICE DEPARTMENT

MISSION STATEMENT

United in service, our mission is to safeguard our diverse community through proactive law enforcement and problem solving, treating all people with dignity and respect.

ORGANIZATION CHART



POLICE DEPARTMENT

DEPARTMENT OVERVIEW

The Police Department is authorized 280.2 positions organized under five divisions which are: Office of the Chief, Operations Division, Investigations Division, Professional Services Division, and Support Services Division. The additional budget resources requested for the FY 2020 and 2021 are related to five additional staff in the Support Services Division.

Office of the Chief

The Office of the Chief provides overall leadership and administrative oversight for the Police Department. The Office includes the Chief of Police, the Internal Affairs Bureau and the Fiscal Services Unit.

Operations Division

The Operations Division supports the BPD mission by responding to calls for service, conducting initial criminal investigations, making arrests, issuing citations, providing crime prevention services and proactive problem solving efforts, all focused on safeguarding our community. The Operations Division includes Patrol Teams, Community Services Bureau (the Area Coordinators, Public Information Officer, Police Reserve Program, and Special Events Coordinator); the Special Response Team, and the Explosive Ordinance Disposal Team. Once staffing allows, BPD anticipates restarting the Bicycle detail.

Investigations Division

The Investigations Division supports the BPD mission through the work of several Bureaus and Units. The Detective Bureau conducts follow-up felony investigations, including homicides, felony assaults, robberies, sexual assaults, domestic violence assaults, sexual assaults on children and minors, residential and commercial burglaries, identity theft, fraud, forgery, and elder abuse, among other offenses. The Traffic and Parking Enforcement Bureau consists of two Units: The Traffic Unit's Motorcycle Officers focus on community safety through traffic law enforcement, investigation of serious injury traffic collisions including fatalities; driving under the influence (DUI) enforcement, and coordinating grant-funded focused enforcement efforts. The Parking Unit's Parking Enforcement Officers enforce applicable State and Local codes which regulate parking in the City of Berkeley, and further provide traffic control and support as needed for other Department divisions e.g. through working on planned Special Events, or in assisting with major incident scene management. The Crime Analysis Unit provides BPD personnel with relevant data and analysis to inform enforcement and problem solving efforts. The Crime Scene Unit is responsible for properly identifying, seizing and documenting forensic crime scene evidence. Once

POLICE DEPARTMENT

staffing allows, BPD anticipates the restarting of the Special Investigations Bureau, which will focus on serial crime investigations, including narcotics dealing, weapons violations and support for other police related investigations. Additionally, as staffing allows, BPD anticipates increasing the number of officers focused on traffic enforcement.

Professional Standards Division

The Professional Standards Division supports the BPD mission through the administration of the Department's hiring and training efforts, policy review and maintenance, and systems review, auditing, and project coordination. The Division includes Personnel and Training Bureau, Policy Sergeant, and Audit Sergeant, the Recruitment and Retention Team, as well as professional administrative staff.

Support Services Division

The Support Services Division supports the BPD mission through a variety of essential operational and administrative activities. The Support Services Division is comprised of the Public Safety Communications Center (which receives and dispatches calls for Police, Fire, and Medical services), the Berkeley City Jail, Records and Front Counter Units, the Police Property Room, Public Safety Technology System Unit, Warrant Unit and Court Liaison Officer. The Division provides fundamental structural support across all BPD Divisions.

POLICE DEPARTMENT

STRATEGIC PLAN PRIORITIES: PROPOSED FY 2020 & FY 2021 PROJECTS & PROGRAMS

Goal	Supporting Department(s)	Title	Description	Planned Start/End	New or Carryover?
Create a resilient, safe, connected, and prepared city	City Manager's Office, Information Technology	Revise use-of-force policy and implement software	Implement software enhancements used to report and review department commendations and uses of force, in conjunction with a revised use of force policy. This will enable the BPD ability to report aggregate information internally and externally.	4/19 - 12/19	New
Champion and demonstrate racial and social equity	Information Technology	Capture stop data through the implementation of software, which will comply with the Racial Identity and Profiling Act.	Implement a software solution for the gathering of stop data. The solution will take into account currently required data, as well as data collection to be required in the coming years by Assembly Bill 953, the Racial Identity and Profiling Act (RIPA). Goals for this solution will be to capture data which is easier to work with than current data collection, continue to publicly post data on the City's Open Data Portal, and to develop our reporting capacity ahead of SB 953 mandates.	7/19 - 6/20	New
Champion and demonstrate racial and social equity	City Manager's Office	BPD Community Engagement Strategy	Develop strategies to engage and inform community members. Work with stakeholders, including community members, the Police Review Commission, community	7/19 - 6/21	Carryover

POLICE DEPARTMENT

Goal	Supporting Department(s)	Title	Description	Planned Start/End	New or Carryover?
			organizations and experts to strengthen relationships and trust, share and consider data collected by BPD, and address real or perceived racial disparities in policing, with an overall goal to reduce disparities and increase community trust and dialogue. Engage the community to understand the community's perceptions around what makes their community feel safer, and what their expectations are of police, and what actions the police can take to increase and enhance neighborhood safety.		
Create a resilient, safe, connected, and prepared city		Develop a Bike-trained patrol resource	Create a bike-trained cadre of officers, who can deploy on bikes to protect and facilitate free speech and first amendment expression, and who can use bikes while working other assigned duties, such as special events, focused patrols, and community engagement efforts.	7/19 - 6/20	New
Attract and retain a talented and diverse City government workforce	Human Resources, Information Technology	Expand and enhance targeted recruitment efforts	BPD's Recruitment & Retention Team will work with a marketing firm to drive strategic online advertising, create a video- and content-rich hiring website, bringing consistent branding and	9/18 - 6/21	New

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Goal	Supporting Department(s)	Title	Description	Planned Start/End	New or Carryover?
Attract and retain a talented and diverse City government workforce		Develop resources and programs for employee resiliency	design across all materials, including social media accounts, to serve on-going recruitment goals.		
Attract and retain a talented and diverse City government workforce		Hire, Train, and Retain excellent employees	Expand Police employee wellness and resiliency programs, including mental health, fitness, and nutrition resources.	7/19 - 6/21	New
Attract and retain a talented and diverse City government workforce	Human Resources	Hire, Train, and Retain excellent employees	Hire, train, and retain excellent police personnel by expediently filling vacancies. Staffing remains a top priority for the BPD in order to maintain excellent service to the community	7/19 - 6/21	Carryover
Create a resilient, safe, connected, and prepared city	City Manager's Office	Reducing deaths and injuries resulting from traffic collisions	Increase and enhance Traffic enforcement, with a focus on reducing deaths and injuries, through education and enforcement. Apply for annual California Office of Traffic Safety Grants for enhanced enforcement in addition to implementation of Vision Zero efforts with City resources to increase public safety and awareness.	7/19 - 6/21	Carryover
Provide an efficient and financially-healthy City government	Parks Recreation & Waterfront, Public Works	Substation relocation project	Relocation of the BPD Traffic Substation to a City of Berkeley-owned facility.	7/19 - 6/21	New

POLICE DEPARTMENT

CHALLENGES

Current

Staffing & Recruitment: BPD continues to face challenges in its efforts to recruit and fill vacancies within the department. Staffing shortages negatively impact all police operations, from baseline services to developing new projects and initiatives. In September of 2018, the Department developed a team of five staff dedicated to all facets of recruitment, retention, and expediting processing of hiring, while maintaining quality standards. BPD initiated or increased the Department's online Social Media presence via Twitter, Facebook, Instagram, LinkedIn, and YouTube. BPD significantly expanded participation at community outreach and recruiting events including career fairs, panel discussions, outreach to local colleges, and is now using Handshake, a recruiting mobile application, which is a college-to-career network for more than 14 million students and young alumni at 700 universities nationwide. BPD increased presence at police academies to check-in more frequently with our Police Recruits and to also contact self-sponsored police recruits to encourage them to apply with BPD. Additionally, BPD expanded and enhanced follow-up with candidates, expedited application reviews, performed expedited background investigations, and developed contracts for outside resources as a force multiplier to assist with recruitment. The BPD increased opportunities for ride-a-longs for prospective officers interested in applying to the Department, as well as Berkeley High School students enrolled in the Law & Social Justice Program, and sit-a-longs for potential Public Safety Dispatcher candidates. BPD facilitated Information day, physical agility tests and oral board interviews, all to streamline the hiring process and strengthen our connections with potential applicants. Team members are developing additional resources to support our efforts, including retaining a marketing firm, obtaining the services of additional background investigators, and preparing a hiring incentive and bonus program for Council's consideration.

Future

Department Rebuild: BPD continues to face operational challenges in providing baseline services due to the temporary suspension or downsizing of several units within the department. Sustained vacancies experienced over the past two years forced the department to temporarily suspend the Special Investigations Bureau and Bike Patrol assignments, and reduce the number of Traffic enforcement officers. In FY20-21, in alignment with efforts to restore staffing, the department will incrementally rebuild these units as staffing allows. The Special Investigations Bureau will investigate narcotics cases, and provide support to other Bureaus, such as Homicide, Robbery, et al. The Bike Patrol will provide proactive patrols in the downtown and south campus, and support problem-solving efforts associated with those areas. The Traffic Bureau motorcycle

POLICE DEPARTMENT

officers will provide for greater general traffic enforcement, as well as focus on problem issues as identified by the community and internal analyses.

Recruitment & Staffing: BPD anticipates recruitment challenges to continue into FY20-21, as anticipated retirements will result in a need to sustain the above described recruitment and retention efforts into the future.

Creation of an augmented Bicycle-Response Capability: BPD is planning to create a cadre of bike-trained officers who can be utilized to support planned events and any additional needs. A Bicycle Response team would be able to deploy to facilitate and protect 1st amendment activities, and maintain community safety when demonstrations occur. The bike-trained cadre will become a resource to be deployed to work on problem solving efforts in neighborhoods, occasionally supplement the full-time Bike Patrol staff in their work, and increase community engagement through their contacts with community members. The Department will acquire two dozen bicycles, and train and equip a like number of officers selected for their interest in these ancillary duties.

Required Release of Body Worn Camera footage: BPD anticipates future resource impacts surrounding the release of Body Worn Camera footage, whether in the course of Police Review Commission investigations, or in response to impending unfunded mandates provided by legislation requiring the release of Body Worn Camera footage in certain circumstances. Release of Body Worn Camera footage is subject to particular requirements in law and policy, and adherence to those requirements will result in an increase in staff time. In particular, redaction work is likely to be time-consuming, from both the review- and release-processes. Needed resource levels may be impacted by circumstances beyond the department's control (e.g. critical incidents involving the discharge of a firearm at a person, or the use of force resulting in great bodily injury, and the number of officers and videos recorded during such incidents).

Wellness and Resiliency: BPD has identified staff wellness and resiliency as priorities for the department. Personnel are exposed to trauma and stress during the course of their duties. The department intends to establish programs and resources to enhance employees' wellness (both sworn and professional staff) and resiliency. The department seeks to educate staff regarding the importance of physical fitness and psychological well-being, and to explore resources including nutrition, fitness, equipment, counseling resources and wellness practices that will benefit our staff, reduce injuries, and support lengthy careers of service within the department.

POLICE DEPARTMENT

ACCOMPLISHMENTS

- Implemented the Department-wide Body Worn Camera Program
- Issued smartphones featuring custom law enforcement apps to enhance officer efficiency and effectiveness
- Completed a major upgrade of the Computer Aided Dispatch System
- Implemented the Recruitment and Retention Team dedicated to increasing staffing and developing required resources necessary to hire and retain staff in a highly competitive employment market
- Implemented a NARCAN Program to enhance life-saving efforts and protect Department staff and the community

SIGNIFICANT CHANGES FROM PRIOR YEAR'S BUDGET

The Police Department requests the following additions to their department budget:

- Add 1.0 FTE Office Specialist III position in the Records Unit to assist with Public Records Act requests that are anticipated to increase based on two new state laws (SB1421 and AB 748) focused on transparency in law enforcement which has significantly increased the parameters, sensitivity and complexity of what documents and records are legally required to be released.
- \$120,000 per year for increased cell phone costs and \$60,000 every other year starting in FY 2021 for iPhone equipment upgrades as a result of deploying body worn cameras and iPhones to all uniform personnel.
- \$200,000 per year for vehicle replacement costs due to higher costs from shift from Ford Crown Victoria Police Interceptor to Ford Explorer SUV Police Interceptor.

POLICE DEPARTMENT FINANCIAL SUMMARY

	FY 2017 Actual	FY 2018 Actual	FY 2019 Adopted	FY 2020 Proposed	FY 2021 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	61,151,543	60,449,828	61,864,143	67,033,836	69,277,244
Services and Materials	2,695,604	2,867,289	2,980,043	2,960,043	2,960,043
Capital Outlay	279,004	587,707	194,817	444,817	444,817
Internal Services	2,302,379	2,446,712	2,258,588	4,541,138	4,541,138
Indirect Cost Transfer					
	66,428,530	66,351,534	67,277,591	74,979,834	77,223,242
By Division:					
Office of the Chief	1,322,386	1,437,690	857,176	3,158,968	3,184,223
Professional Standards	6,156,324	5,845,197	5,685,462	6,011,845	6,172,503
Support Services	4,699,091	5,667,255	5,425,827	5,977,207	6,080,218
Operations	39,867,224	39,673,087	39,345,182	43,376,141	44,854,216
Investigations	14,383,506	13,728,263	15,969,944	16,455,675	16,932,082
	66,428,530	66,351,492	67,283,591	74,979,834	77,223,242
By Fund:					
General Fund	62,156,096	62,628,518	62,219,080	70,622,557	72,774,334
Asset Forfeiture	46,285	129,973	201,000	201,000	201,000
Federal Grants	256,425	206,782	173,500	182,000	182,000
State/County Grants	1,221,459	453,194	1,800,554	774,206	791,242
Parking Funds	2,748,265	2,928,995	3,083,457	3,200,071	3,274,666
Other Funds		4,072			
	66,428,530	66,351,534	67,277,591	74,979,834	77,223,242
General Fund FTE					
	252.00	249.00	249.00	248.00	248.00
Total FTE					
	280.20	280.20	280.20	280.20	280.20

POLICE DEPARTMENT FINANCIAL SUMMARY

	FY 2017 Actual	FY 2018 Actual	FY 2019 Adopted	FY 2020 Proposed	FY 2021 Proposed
DIVISION/ACTIVITY SUMMARY					
Office of the Chief					
Police Administration	627,014	742,880	120,283	2,360,044	2,357,538
Public Information	89,258	294,905	309,976	337,629	350,480
Internal Affairs	606,114	399,905	426,917	461,293	476,205
Division Total	1,322,386	1,437,690	857,176	3,158,966	3,184,223
FTE Total	6.00	5.00	5.00	5.00	5.00
Professional Standards					
Policy & Accreditation	1,079,496	694,266	751,887	819,202	847,041
Personnel and Training	2,539,085	2,604,776	2,610,582	3,064,407	3,141,557
Jail Unit	2,537,743	2,546,155	2,323,213	2,128,236	2,183,905
Division Total	6,156,324	5,845,197	5,685,462	6,011,845	6,172,503
FTE Total	26.00	25.00	25.00	25.00	25.00
Police Support Services					
Administration	3,190,267	4,326,558	3,852,569	4,285,588	4,339,121
City Jail Operations					
Central Communications			138,741	146,665	150,275
Police Services	1,508,824	1,340,697	1,434,517	1,544,954	1,590,822
Division Total	4,699,091	5,667,255	5,425,827	5,977,207	6,080,218
FTE Total	12.00	12.00	16.00	12.00	12.00
Operations					
Patrol	34,158,652	33,658,532	33,789,307	37,639,891	38,974,320
Police Reserves	396,374	379,236	213,398	224,021	224,021
Special Enforcement			228,248		
Central Communications	5,312,198	5,636,319	5,114,229	5,512,229	5,655,875
Division Total	39,867,224	39,673,087	39,345,182	43,376,141	44,854,216
FTE Total	163.00	171.00	166.00	171.00	171.00
Investigations					
Detectives Bureau	5,775,866	5,366,898	6,079,133	7,225,934	7,484,319
Traffic Bureau	2,612,542	2,611,637	2,618,666	2,793,795	2,878,023
Parking Enforcement	3,674,732	3,845,914	4,341,074	4,486,273	4,578,659
Special Enforcement Unit	1,311,768	945,457	1,723,748	662,552	671,062
Crime Analysis	179,804	183,536	413,102	445,568	460,363
Community Service/Field Support	86,013	20,837	50,554	52,804	52,804
Crime Scene Unit	742,780	753,984	743,667	788,749	806,852
Division Total	14,383,505	13,728,263	15,969,944	16,455,675	16,932,082
FTE Total	73.20	67.20	68.20	67.20	67.20
Department Total	66,428,530	66,351,492	67,283,591	74,979,834	77,223,242
FTE Total	280.20	280.20	280.20	280.20	280.20



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BUDGET

Fiscal Years 2020 – 2021

POLICE

POLICE

OVERVIEW

- Office of the Chief
- Operations Division
- Investigations Division
- Professional Standards Division
- Support Services Division

POLICE

STAFFING

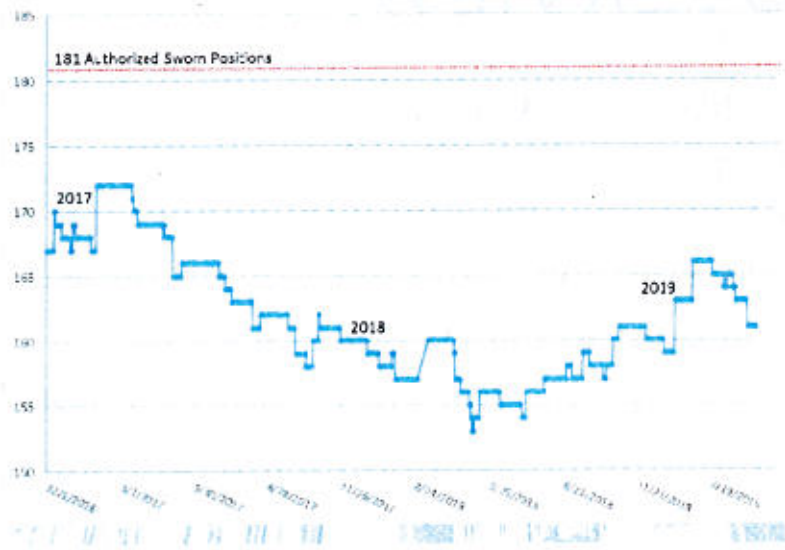
280 FTE



POLICE

STAFFING

Sworn Staff 2017-Current



POLICE

KEY PROJECTS/PROGRAMS

- Maintain Focus on Hiring Sworn and Professional Staff
- Re-staff Investigations, Bikes, and Traffic positions
- Recruitment & Retention Program
- Implement RIPA-Compliant Stop Data Collection Tool
- Revise Use of Force Policy and Reporting
- Develop Community Engagement Strategies

POLICE

OUTCOMES/RESULTS

In 2018: **74,088** Calls

Violent Crime **down 11.9%**

Property Crime **down 10.4%**

2060 Arrests

3189 Cites



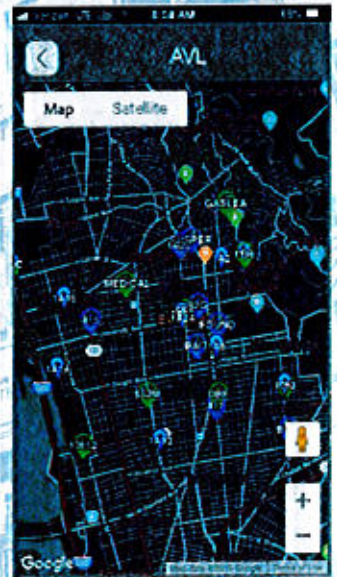
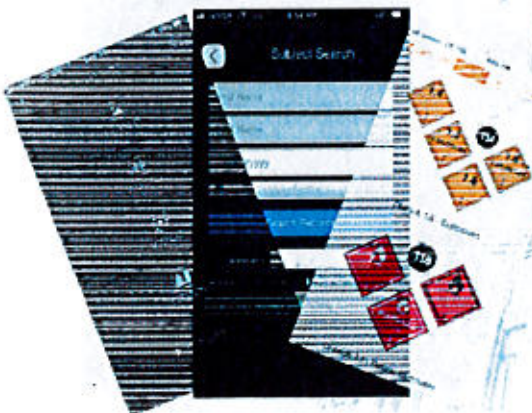
POLICE
ACCOMPLISHMENTS

✓ BodyWorn Camera Program



POLICE
ACCOMPLISHMENTS

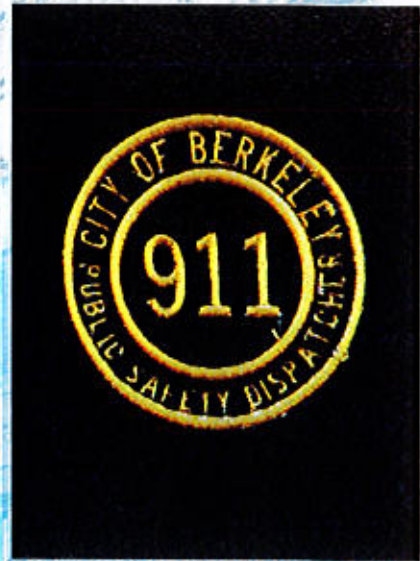
✓ Smartphones



POLICE

ACCOMPLISHMENTS

- ✓ Computer Aided Dispatch System Upgrade



POLICE

ACCOMPLISHMENTS

- ✓ Active Shooter Survival Training



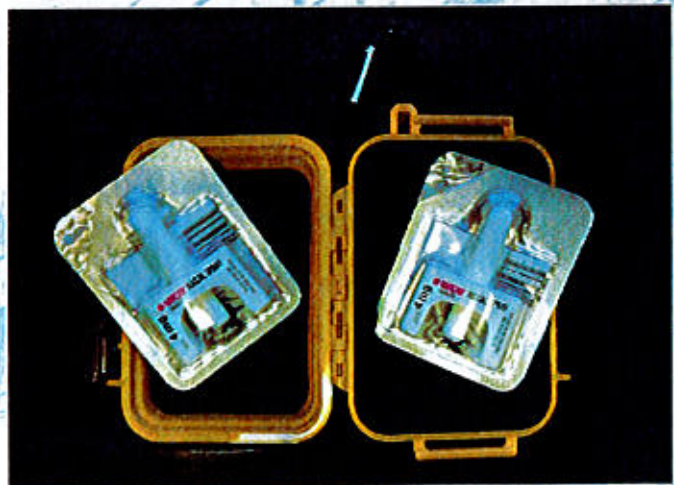
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ACCOMPLISHMENTS

✓ Recruitment and Retention Team



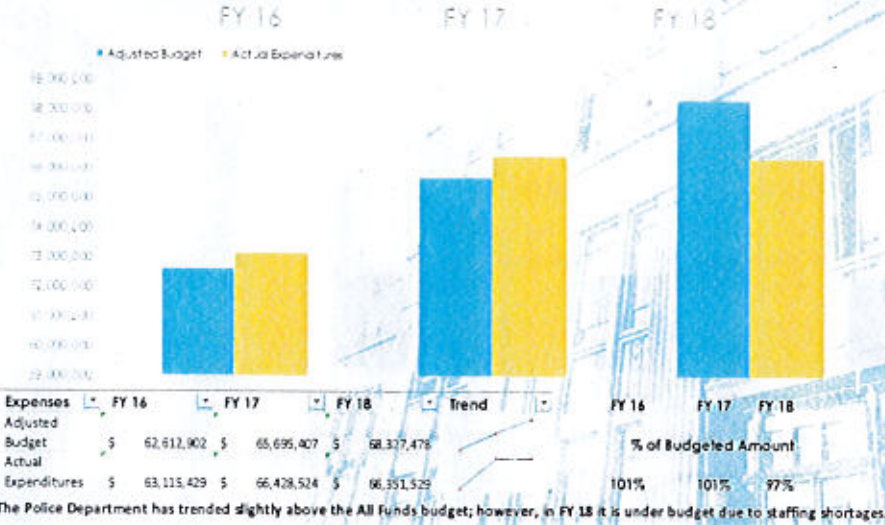
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ACCOMPLISHMENTS

✓ NARCAN Program



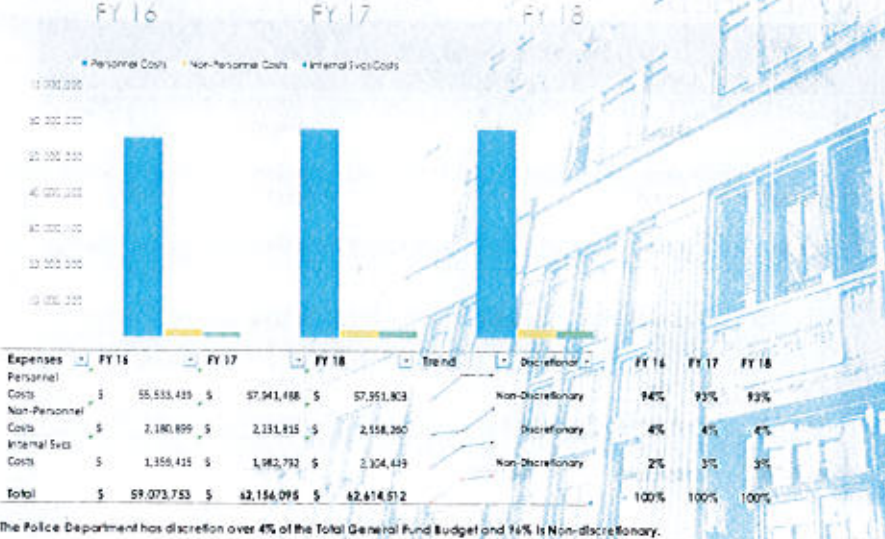
POLICE

ADJUSTED BUDGET VS ACTUALS



POLICE

GENERAL FUND EXPENSE TRENDS



POLICE

OVERTIME

FY 16

FY 17

FY 18

■ Budgeted Overtime ■ Actual Overtime



Expenses	FY 16	FY 17	FY 18	Trend	FY 16	FY 17	FY 18
Budgeted Overtime	\$ 2,252,065	\$ 2,252,065	\$ 2,252,065				
Actual Overtime	\$ 5,567,530	\$ 5,496,974	\$ 6,410,266		247%	244%	285%

% over Budgeted Amount

The Police Department General fund Overtime budget has remained \$2,252,065 over the past 10 years.

POLICE

TECHNOLOGICAL NEEDS

Project	FY20 One-Time Unfunded	FY20 Ongoing	FY21 One-Time Unfunded	FY21 Ongoing
Time keeping software	\$40,000	\$18,000		\$18,900
New World Systems Upgrade		\$350,000		\$350,000
Crime Forum (KenFors)		\$3,200		\$3,200
Brazos e-ticketing for Officers	\$160,000	\$2,632		\$2,632
Mobile Shield Force	\$20,840	\$6,524		\$6,850
Convert RMS to Digital	\$70,000			
Upgrade iPhones for all officers and increased service costs		\$162,000	\$60,000	\$162,000
Mobile CAD	\$5,000	\$1,500		\$1,575
Taboron/Crims Data Conversion	\$50,000	\$15,000		\$15,750
Totals	\$345,840	\$558,856	\$60,000	\$560,907



POLICE

NEW MANDATES

POLICE ACCOUNTABILITY

- Senate Bill 1421 Records
- Assembly Bill 748 BWC Video Release
- Assembly Bill 953 RIPA Data Collection
- Upcoming Legislation: Use of Force



POLICE

STRATEGIC PLAN

6 New Priorities, 3 Carryover Priorities

- Attract and retain a talented and diverse City government workforce
- Support Internal and External Police Accountability and Transparency
- Create a resilient, safe, connected, and prepared city



POLICE

FUNDING REQUESTS

Staffing Increase

- 4 Community Service Officer Positions at \$461,364
- 1 Office Specialist III Position at \$105,000

Service Cost Increases

- \$120,000 for additional Cellular Service Costs
- \$200,000 for Increased Vehicle Replacement Costs



POLICE

NEXT STEPS/ACTION

- Force Policy Revisions
- Data Collection – RIPA
- Recruitment & Hiring



Office of the City Manager

December 21, 2017

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Update; Use of Force Policy Development

This memorandum provides an update on the progress of the Berkeley Police Department's work on the revision of General Order U-2, Use of Force, as requested by Council on October 31, 2017.

The working group has drafted new and revised language to U-2, including:

- Formal language regarding the value of human life and dignity, without prejudice to anyone;
- Formal language regarding using de-escalation tactics and techniques which seek to minimize the need to use force and increase the likelihood of voluntary compliance;
- Re-draft definition of force;
- Expand the threshold of reporting force, including sub-categories of physical force;
- Consider approaches to categorization of force levels; using plain language to increase transparency;
- Posting of use of force statistics on the City's Open Data Portal.

Additionally, staff is drafting a model report to serve as a template for an annual use of force report.

External factors which could affect implementation of the completed policy include: necessary review from the City Attorney's office, and the need to meet and confer with the Berkeley Police Association. Once finalized, the policy will be provided to the Police Review Commission.

We look forward to completing work on this item. In the meantime, it may be helpful to note that the Department's overall use of force use appears quite small, proportional to the number of incidents to which the Department responds. The Chief has commented on this in the past, and provided the following information for your information.

Page 2 of 2
December 21, 2017
Re: Update, Use of Force Policy Development

Use of Force data against calls for service data: In the past three years, 2015,-2017, approximately 105 of the 223,878 incidents BPD responded to resulted in a Use of Force report. In other words, .047% (*forty-seven thousandths of a percent*) of the incidents BPD responded to resulted in a documented Use of Force report. The majority of force used is physical force.

Use of Force Complaints data against calls for service data: In the same period, approximately 34 of the 223,878 incidents BPD responded to resulted in a Use of Force complaint: about one out of every 6,500, or .015%, *fifteen-thousandths of a percent*.

If you have any questions, please let me know.

cc: Jovan Grogan, Deputy City Manager
Ann Marie Hogan, City Auditor
Mark Numainville, City Clerk
Matthai Chakko, Assistant to the City Manager / Public Information Officer

Council Action Items

26. **Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy**
From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington

Recommendation: 1. Direct the City Manager and the Berkeley Police Department ("BPD" or "the Department") to amend General Order U-2: Use of Force ("General Order U-2") to: a. Enhance BPD's use of force policy statement; and, b. Create a definition of use of force; and c. Require that all uses of force be reported; and d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and e. Require Use of Force Reports to be captured in a manner that allows for analysis; and f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.

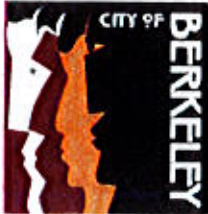
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date.

Financial Implications: Staff time

Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action: Moved to Consent Calendar. Approved recommendation as revised in Supplemental Reports Packet #1.

1. *Direct the City Manager to amend Berkeley Police Department ("BPD" or "the Department") General Order U-2: Use of Force ("General Order U-2") to:*
 - a. *Enhance BPD's use of force policy statement; and*
 - b. *Create a definition of use of force; and*
 - c. *Require that all uses of force be reported; and*
 - d. *Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and*
 - e. *Require Use of Force Reports to be captured in a manner that allows for analysis; and*
 - f. *Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission ("PRC") and Council.*
2. *Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.*
3. *Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).*



Kate Harrison
Councilmember District 4

REVISED AGENDA MATERIAL

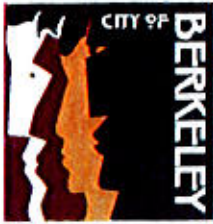
Meeting Date: October 31, 2017

Item Number: 26

Item Description: Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy

Submitted by: Councilmember Kate Harrison

1. Clarified that the item directs the City Manager and not the Berkeley Police Department.
2. Clarified that the City Manager shall present to the Council by February 27, 2018 a final version of General Order U-2.
3. Specified that prior to implementation, the revised General Order U-2 shall be submitted to the PRC.
4. Clarified that the item does not require adoption of the proposed amendments to General Order U-2 included in Attachment 1.
5. Simplified Attachment 1.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 31, 2017

To: Honorable Mayor and Members of the City Council
From: Councilmember Harrison, Mayor Arreguin, and Councilmembers Bartlett and Worthington
Subject: Direct the City Manager and the Berkeley Police Department Regarding the Berkeley Police Department's Use of Force Policy

RECOMMENDATION

1. Direct the City Manager and the Berkeley Police Department ("BPD" or "the Department") to amend Berkeley Police Department ("BPD" or "the Department") General Order U-2: Use of Force ("General Order U-2") to:
 - a. Enhance BPD's use of force policy statement; and
 - b. Create a definition of use of force; and
 - c. Require that all uses of force be reported; and
 - d. Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements; and
 - e. Require Use of Force Reports to be captured in a manner that allows for analysis; and
 - f. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission ("PRC") and Council.
2. Direct that the City Manager report to the Council by December 12, 2017 on the progress to date and present to the Council by February 27, 2018 a final version of General Order U-2.
- 2.3. Prior to implementation, the revised General Order U-2 shall be submitted to the PRC in accordance with BMC 3.32.090(B).

BACKGROUND

The BPD has a long record of embracing modern policing policies. A further enhancement would be to clarify the Department's use of force policies.

Specifically, the June 27, 2017 draft report commissioned by BPD and authored by CPE—an independent, non-profit, grant-funded organization—advised that BPD policy is not comprehensive in tracking use of force by BPD officers:

"BPD departmental policy does not require the comprehensive tracking of use of force incidents. In particular, BPD policy does not require that an officer's use of physical force be reported unless the officer used a weapon, the subject was injured, or the subject complains. As a result, incidents of physical force not involving a weapon are not comprehensively reported or tracked by BPD, and are not reflected."

That same report confirmed that Hispanic and Black people in Berkeley are more likely to be subjected to the use of force by BPD. With respect to the latter group, the report noted that "Black residents of Berkeley were about six times more likely than White residents to be subjected to reported use of force." This part of the report is not planned for revision in the final report.

Berkeley is not immune to the broader history of racial and ethnic disparities in the United States. It is incumbent upon the City to continue its efforts towards addressing and remedying ongoing instances of inequity. These issues are of particular urgency given that the City has endowed the police with the responsibility to enforce the law and keep the peace. Most critically, the police are empowered to reasonably employ lethal, less-than-lethal and non-lethal force for the purpose of achieving these ends when justified by law and city protocols and procedures. In short, the City has the means and power to dramatically affect the lives and liberties of the people within its jurisdiction. Therefore, to ensure the public's safety and liberty, the utmost prudence must be demonstrated in internal policies governing the use of force. Officers must strive to use the minimal amount of force necessary and use de-escalation techniques whenever feasible and appropriate.

Current BPD policy requires officers to submit an oral report to their supervisor in five situations relating to the use of force:

- (1) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer.
- (2) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16).
- (3) When an officer or employee uses a non-lethal weapon (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained.
- (4) When an officer or employee uses a force during a crowd situation.

- (5) When any officer or employee observes a potentially unauthorized use of force

Department supervisors are not required to report when other types of force are used.

It is necessary to ensure that the Department and City have a clear understanding of its use of force policies and how force is being used in practice. Current reporting policies are in some cases ambiguous and incomplete. Further review of BPD General Order U-2 has indicated that it could be improved with substantive and organizational amendments relating to use of force. The Council, deferring to the expertise of the BPD, is not requiring that the Department adopt the proposed amendments to General Order U-2 included in Attachment 1 of this item. Instead, Attachment 1 should serve as a template for accomplishing the broader goals of the Council and the recommendations outlined in item 1.

First, the BPD and the community would benefit from an updated policy statement regarding use of force in General Order U-2. The proposed policy statement attached to this item draws from the statements of the Bay Area Rapid Transit Police Department ("BART PD") and the Oakland Police Department ("OPD"). It also seeks to highlight BPD's commitment to valuing the protection and sanctity of human life, striving to use the minimal amount of force necessary, a requirement to de-escalate force when a lesser level of force is reasonable, increased attention to applying force to vulnerable populations and the necessity of transparency, accountability through rigorous reporting and review of all instances of the use of force, and not using 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. While the policy statement references the importance of de-escalation, a more detailed section relating to de-escalation techniques is beyond the scope of this referral. BPD might consider referring to Section 300.2.2, De-Escalation Techniques, in BART PD's Use of Force policy.

Second, the proposed update adds a foundational definition of "Use of Force" to the definitions section of General Order U-2. The definition of force proposed here explicitly includes physical techniques and tactics, meaning force stemming from the utilization of an officer's body. While complaints about the improper use of officer hands and feet is referenced in General Order P-26 and a checkbox relating to physical force is included in the exemplar Use of Force Report attached to General Order U-2, there is no explicit reference in General Order U-2 to reportable use of an officer's body.

Third, the proposed update reorganizes and enhances the use of force reporting section. Similar to the general orders of BART PD and OPD, the proposed update requires all uses of force to be reported, and categorizes uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review, and for illustrating the force continuum. Physical force and the intentional

pointing of a weapon are explicitly referenced as a reportable uses of force. Body cameras are also referenced with the expectation that the body camera implementation will be finalized soon. If the program is not finalized by the time General Order U-2 is updated, the body camera language should be added upon implementation.

Fourth, the proposed update requires that the Use of Force Reports should be digitized and made available internally in a text-searchable format. The purpose of this provision is to encourage Department leadership to have use of force data readily available to them for analysis purposes. Analysis can rapidly inform the implementation of new policies to address disparities and other issues. In addition, the proposed update requires the Department to prepare an annual anonymized analysis report relating to use of force to be submitted to the Chief of Police, [Police Review Commission](#) and Council.

BART PD and OPD have both categorized and organized use of force into levels of intensity, clarified physical uses of force and enhanced reporting policies for the purpose of analysis. These departments have clear policies about the force continuum available to officers and the responsibility for reporting, investigating, documenting and reviewing uses of force across their respective continua. In addition, the San Francisco Police Department ("SFPD") has begun implementing more than 200 recommendations made by the Department of Justice, including those related to use of force policies. SFPD has reported in 2017 an 11% decrease in use of force incidents and an 8.6% decrease in complaints to the San Francisco Department of Police Accountability as compared to the first six months of 2016. The Council, the City Manager and the BPD would benefit from the examples of neighboring departments in seeking to improve community policing and accountability. By implementing the proposed use of force amendments, the BPD would be furthering existing internal and national efforts to update its use of force policies, and would be acting to enhance safety of the public and the officers sworn to protect them. Officers would face less confusion about the force continuum and police leadership would enjoy improved understanding of how their officers are employing force. By acting now to further update its use of force policies, the City can empower both the BPD and the community to understand how to best address use of force disparities disproportionately affecting certain racial and ethnic groups.

FINANCIAL IMPLICATIONS

Staff time is necessary for amending General Order U-2, and additional training will be needed to comply with these updates. The City stands to potentially benefit from fewer instances of costly litigation and personnel investigations due to the increased clarity of General Order U-2.

ENVIRONMENTAL SUSTAINABILITY

No Ecological Impact

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, 510-981-7140

ATTACHMENTS

- 1. Proposed amendments to General Order U-2**
- 2. Use of Force policies of the BART PD and OPD**

BERKELEY POLICE DEPARTMENT

DATE ISSUED: **September 20, 2017**

GENERAL ORDER U-2

SUBJECT: USE OF FORCE

PURPOSE

- 1 - The purpose of this General Order is to provide Departmental standards on the reporting and use of force. This General Order supersedes all other Orders, Regulations, and training information to the extent that they are inconsistent with this Order.

POLICY

- 2 - The Berkeley Police Department values the protection and sanctity of human life. The Department is committed to accomplishing the police objective with respect and minimal reliance on the use of force, and de-escalation tactics before resorting to force, whenever feasible.
- 3 - 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.
- 4 - 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, with limited information and in circumstances that are tense, uncertain and rapidly evolving.
- 5 - 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.
- 6 - Officers are required to de-escalate the force when the officer reasonably believes a lesser level or no further force is appropriate. 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).
- 7 - Officers and employees 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.
- 8 - Use of force against vulnerable populations (such as 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.
- 9 - Officers and employees shall intervene and prevent or stop the use of unreasonable force by other members. Officers and employees are prohibited from the use of unreasonable force and using force for interrogation or

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punishment.

10 - 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.

211 - Police officers may use reasonable force to (1) make an arrest, (2) prevent an escape of a suspect, (3) overcome resistance, or (4) maintain order.

(a) Under the Fourth Amendment of the United States Constitution, an officer can use reasonable force when doing so is reasonable under the totality of the circumstances as they appear through the eyes of the officer. Circumstances to be considered include the immediacy and severity of a threat to the safety of the officer or others, the severity of the crime involved, and whether a suspect is fleeing or resisting.

312 - In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what Departmentally authorized force techniques or weapons will bring the situation under control in a reasonable manner.

(a) The Department uses a "use of force continuum" that refers to the concept that there are reasonable responses for every threat an officer faces in a hostile situation. The "spoked wheel" is one visual concept of the various options that an officer should consider in a threatening situation.

(b) The force utilized need not be sequential (e.g., gradual or preceded by attempts at lower levels of force) if those lower levels are not appropriate to the threat.

DEFINITIONS

13 - Use of Force: The application of physical techniques or tactics, vehicles, chemical agents or weapons to another person.

414 - Lethal Force: Any use of force that creates a substantial risk of causing death or serious bodily injury.

515 - 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.

(a) 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.

616 - Non-Lethal Force: Any use of force other than lethal force or less-than-

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lethal force.

- 717 - Officer (or) Police Officer: Any sworn peace officer.
- 818 - Authorized Employee: Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.
- 919 - Employee: Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."
- 1020 - Deploy:
- (a) With respect to less-than-lethal munitions, removal of a launcher, projectile or other device from its storage container for the purpose of operational use.
 - (b) With respect to chemical agents and smoke, removal of a canister or delivery device from its storage container for the purpose of operational use.
- 1121 - Use:
- (a) With respect to less-than-lethal munitions, to discharge a less-than-lethal munition.
 - (b) With respect to chemical agents and smoke, to discharge the contents of a canister or delivery device.

PROCEDURES

Use of Lethal Force

- 1222 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:
- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
 - (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.
 - (c) During other police duty:

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- (1) In supervised Department training sessions at an approved range, or other site.
- (2) To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured. If possible, supervisory approval should be obtained prior to using lethal force to destroy an animal.

1323 - Officers shall not discharge firearms or use other lethal force in connection with police duty, except in the following circumstances:

Use of Vehicles

1424 - Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except in the following circumstances:

- (a) When the officer reasonably believes that doing so is necessary to protect the officer or others from death or serious bodily injury, and, where feasible, some warning has been given.
- (b) To apprehend a suspected fleeing felon:
 - (1) When necessary to prevent escape, and
 - (2) When the officer has probable cause to believe that the suspected fleeing felon poses a significant threat of death or serious bodily injury to the officer or others, and
 - (3) Where feasible, some warning has been given.

Deployment and Use of Less-Than-Lethal Force

1525 - Less-than-lethal munitions shall only be deployed and used by trained officers authorized by the Chief of Police.

1626 - Except during authorized training programs, less-than-lethal force shall be deployed only at the direction of a sergeant or command officer, or the Incident Commander in a crowd situation.

1727 - Less-than-lethal force shall only be used in the following situations, and, where feasible, after some warning has been given:

- (a) When an act of violence is occurring, or is about to occur;
- (b) To overcome the resistance of a physically combative person, or to gain compliance from a non-compliant person reasonably believed to be armed;

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- (c) To deter a person who is reasonably believed to be armed and is threatening to harm him/herself, another person, or an officer; or,
- (d) To resolve a potentially violent incident not otherwise described above, when deemed reasonable by the authorizing sergeant or commander.

1828 - When practical, approval for the deployment and use of less-than-lethal force will be obtained from the Patrol Division Watch Commander. If there is no Watch Commander on duty, deployment authorization will be requested from the Duty Command Officer (DCO).

- (a) Prior to deployment, efforts should be made to ensure an appropriate medical response is available.
- (b) In the event exigent circumstances preclude prior command approval, the supervisor authorizing less-than-lethal force deployment shall notify the Watch Commander, or in his/her absence the DCO, as soon as practical.

1929 - In crowd situations, less-than-lethal force and/or chemical agents shall not be used without the prior approval of the Chief of Police, or his/her designee, unless exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles are being thrown and immediate crowd dispersal is necessary).

- (a) In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.
- (b) In the event a use of force as described in Section 23 of this Order occurs during an unusual occurrence as described in General Order U-4, the officer shall prepare a supplemental report as soon as practical following the incident.
- (c) Each officer shall include in the report, to the extent possible, specific information regarding each use of force, e.g., the reason for the use of force, location, description of the individual(s) upon whom force was used, type of force used, etc.
- (d) Officers deploying pepper spray in a crowd situation shall attempt to limit collateral exposure to non-involved parties. Where there is probable cause to arrest for a crime, officers shall prioritize where practical the arrest of individuals upon whom pepper spray has been deployed.

Use of Non-Lethal Force

2030 - When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques

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and weapons in the following circumstances:

- (a) To protect themselves or another person from physical injury;
- (b) To restrain or subdue a resistant individual; or
- (c) To bring an unlawful situation safely and effectively under control.

Prohibited Uses of Force

2131 - The following uses of force are prohibited:

- (a) Carotid Restraint Hold: Council Resolution No. 52,605 - N.S., dated February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."
 - (1) The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to *any* use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.
- (b) On Sept. 12, 2017, the Berkeley City Council re-affirmed and further amended the Council's policy regarding the use of pepper spray as such use relates to crowd control, expression of First Amendment speech, and addressing acts of violence by specific individuals within a crowd.
 - (1) Officers shall not use pepper spray as a crowd control technique to disperse or move a crowd. Oleoresin Capsicum (pepper spray) shall not be directed against a person or persons who are engaged in legal speech or other expression that is protected by the First Amendment, nor upon those committing unlawful acts by non-violent or passive resistant means, (e.g. sitting or lying down to block a street or doorway).
- (c) Deployment of less-than-lethal munitions from a shotgun is prohibited.

Provision of Medical Attention

2232 - When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care. (See also General Order

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A-17).

Unauthorized Use of Force / Intervention and Reporting

2333 - When an officer or employee witnesses any other officer or employee of this Department, or of any other law enforcement agency, use force that he or she believes is unauthorized, he or she shall do the following:

- (a) If the witness employee is a sworn officer, he or she shall immediately take reasonable action to attempt to mitigate such use of force. This may include verbal intervention or, if appropriate, physical intervention.
 - (1) A sworn officer's failure to act may potentially expose him/her to criminal charges and/or civil liability.
- (b) Any officer or employee who observes a potentially unauthorized use of force shall make an oral report to an on-duty sergeant or a command officer at the first opportunity.

USE OF FORCE REPORTING, INVESTIGATION, DOCUMENTATION AND REVIEW

Use of Force / Reporting Requirements

- 34 - 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.
- 35 - All uses of force must be documented in a police report and reviewed by an on-duty sergeant or command officer who was not directly involved in the incident. 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, or Level 3. Data on each level of use of force shall be entered into the Use of Force Report and the BPD's database.

Use of Force / Level 1

- 36 - Level 1 Incident Parameters:
 - (a) No suspect injury or complaint of injury due to interaction with officer.
 - (b) No allegation of misconduct against officer, regarding force.
 - (c) Officer body camera was activated in a timely manner, per policy and recorded the use of force.

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(d) Officer used lesser levels of force.¹

37 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report.

Use of Force / Level 2

38 - Level 2 Incident Parameters:

(a) Would have otherwise been classified as a Level 1, except one or more of the following apply:

- (1) Suspect injury or complaint of injury due to interaction with officer.
- (2) Allegation of misconduct against officer, regarding force.
- (3) Officer body camera was not activated during use of force.

(b) The use of force is Level 2 if the officer used more severe force.²

39 - An uninvolved supervisor will respond to the scene and conduct a Use of Force Investigation and Report. Use of Force involving OC will be documented and reviewed additionally in a Use of Pepper Spray Report.

Use of Force / Level 3

40 - Level 3 Incident Parameters:

(a) Use of firearm, officer involved shooting

For example, any of the following force options were used.

- (1) Control holds/pressure point application
- (2) Leverage
- (3) Grab
- (4) Bodyweight
- (5) Physical technique or tactic applied to a vulnerable area, excluding strikes (e.g., hair grab, pressure to mastoid or jaw line, and shoulder muscle grab)
- (6) Vehicle pursuit with no collision
- (7) Firearm drawn/deployed but not fired, suspect contacted

² For example, any of the following force options were used.

- (1) Takedowns, lifts and leg sweeps
- (2) Chemical Agents/Munitions (e.g., Oleoresin Capsicum, CS)
- (3) Impact weapon strikes (e.g., baton)
- (4) Use of body or body parts
- (5) Intentional pointing of a firearm at another person
- (6) Use of any other non-lethal or less-than-lethal weapon

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- (b) Any intentional firearm discharge at a person, regardless of injury
- (c) Any unintentional firearms discharge
- (d) Any intentional impact weapon strike to the head
- (e) Any use of force investigation that is elevated to a Level 3 approved by a Watch Commander
- (f) Any force likely to cause death or serious bodily injury

41 - An uninvolved supervisor will respond to the scene. The incident will be investigated, documented, and reviewed in adherence to General Order P-12 (See also General Order C-16).

2442 - Any officer or employee who uses force shall, as soon as practical, make an oral report to an on-duty sergeant or command officer in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on duty, except during a supervised training session.
- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee uses force that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
- (d) When an officer or employee uses a non-lethal *weapon* (e.g., Oleoresin Capsicum or baton) on a person, whether or not an injury is sustained

2543 - The officer or employee must also complete a police or incident report in any of the above four situations.

2644 - Whenever an officer or employee uses Oleoresin Capsicum (pepper spray), he or she must also complete a "Use of Pepper Spray Report" form. (See Training and Information Bulletin #216 for detailed instructions in completing this form).

Use of Force / Supervisor Responsibilities

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

2746 - A sergeant shall immediately be assigned and shall respond to the scene in the following four situations:

- (a) When an officer discharges a firearm (intentional or unintentional) while on

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duty, except during a supervised training session.

- (b) When an officer discharges a firearm while off-duty pursuant to his or her authority as a law enforcement officer.
- (c) When an officer or employee uses force (including, but not limited to, a non-lethal weapon) that results in death or injury, or when a subject complains that an injury has been inflicted. (See also General Order C-16)
- (d) When an officer or employee reports a use of force by another officer or employee of the Department, or of any other law enforcement agency, that he or she believes is unauthorized.

2847 - A supervisor shall complete a Use of Force Report in any of the above four situations.

- (a) A supervisor shall complete a Use of Force Report whenever an officer or employee uses a non-lethal weapon on a person, even if no injury results.
- (b) The supervisor shall attach copies of all police reports relating to the incident to the Use of Force Report. (See Use of Force Report form at the end of this General Order)

48 - The supervisor who completes the Use of Force Report shall route the Use of Force Report (with attached police reports) and/or Use of Pepper Spray Report forms to the Division Captain through the chain of command.

Use of Force / Administrative Review

2949 - The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings.

- (a) The Chief of Police may convene a Review Board (as outlined in General Order R-3) instead of utilizing Division Captain Review.

3050 - The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

3151 - Any determination concerning the propriety of force used will be based on facts and the information available to the officer at the time the force was employed, and not upon information gained after the fact.

52 - All Use of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or, 3) require

BERKELEY POLICE DEPARTMENT

DATE ISSUED: **September 20, 2017**

GENERAL ORDER U-2

revision or additional training.

- 53 - Use of Force Reports shall be made available internally in a digital format.
- 54 - At least annually, the office of the Chief of Police should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police, the City Council, and the Police Review Commission. The report should not contain the names of officers, suspects or case numbers, and should include:
- (a) An analysis of use of force incidents with details of the race and ethnicity of the individual impacted, location and type of force used.
 - (b) The identification of any trends in the use of force by members.
 - (c) Training needs recommendations.
 - (d) Equipment needs recommendations.
 - (e) Policy revision recommendations.
- 55 - Officers will receive annual (at a minimum) training on the policy outlined in General Order U-2 and demonstrate their knowledge and understanding.
- 3256 - Use of Force Reports will be held in file for five (5) years and then purged, unless needed for additional administrative action.

SPECIAL PROCEDURES / DEATHS AND SERIOUS BODILY INJURY

- 3357 - In addition to the above, the Departmental response to incidents in which an officer uses force that results in death or a serious bodily injury shall be as follows:
- (a) The officer shall be placed on administrative leave as outlined in Police Regulation 325: " ... If any person is seriously injured or killed as a result of an officer's actions, including the discharging of a firearm, such officer shall be placed on administrative leave for a period of time, as determined by the Chief of Police, depending upon the circumstances of the situation. The officer(s) shall not return to regular duties until he/she meets with a mental health professional."
 - (b) The Department shall conduct both an administrative and criminal investigation of the incident as outlined in General Order P-12 (Police-Involved Shootings and Fatal or Serious Injury Incidents); and a Review Board shall be convened as described in General Order R-3.

References: *Tennessee v. Garner* (1986) 471 U.S. 1
Graham v. Connor (1989) 490 U.S. 386

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Doerle v. Rutherford (9th Cir. 2001) 272 F.3d 1272
California Penal Code §§196, 197, 835, 835(a), 836, 836.5, and 843
General Orders A-17, C-16, C-64, F-2, P-12, P-26, R-3 and U-4
Police Regulations 202, 318, 321, 322, 323, 324, 325 and 332
Training and Information Bulletin 216
Lethal and Non-Lethal Force Manual
Uniform and Equipment Manual
City of Berkeley Council Resolution No. 52,605 – N.S. (2/14/85),
“Prohibiting use of ‘chokehold’ for law enforcement
purposes in the City of Berkeley”
National Tactical Officers Association, General Policy Statement
for Less-Than-Lethal Impact Projectiles (11/22/2002)

BERKELEY POLICE DEPARTMENT

DATE ISSUED: **September 20, 2017**

GENERAL ORDER U-2

EXEMPLAR

BERKELEY POLICE DEPARTMENT
USE OF FORCE REPORT

This report is to be completed by an on-duty supervisor per General Order U-2 if: (1) Use of any force results in injury or death to a person; (2) Non-lethal weapons (OC/baton) or less-than-lethal munitions are used on a person; **or** (3) An officer discharges a firearm intentionally or unintentionally on duty (other than during training), or off-duty while acting in the capacity of a police officer; **or (4) Use of any force meeting the parameters of a Level 1, Level 2 or Level 3 use of force.**

Date: _____

To: Chief of Police via Chain of Command

From: _____

Subject: USE OF FORCE REVIEW

Refer to Case Number(s): _____

Date / Time of Incident: _____

Location of Incident: _____

Nature of Incident: _____

Officer(s)/Employee(s) Involved: _____

Type of Force used: Physical Baton O.C.
 Firearm Less-than-lethal Other

Level of Force used: Level 1 Level 2 Level 3

Was Officer or Police Employee injured? Yes No

If yes, nature of injuries: _____

Medical treatment required: BFD Response - Yes No

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Was a citizen(s) injured during this incident? Yes No

If "yes," nature of injuries: _____

Medical treatment required: BFD Response - Yes No

Investigator(s) and Identification Technician who responded, if any:

Were photographs taken? Yes No

Summary of actions of Officer(s) involved: _____

Supervisor's Comments:

Division Captain Recommendation:

Chief of Police (*Signature*)

(*Date*)

Findings:

Within Policy
Referred for Administrative
Action/Investigation

Lee, Katherine

From: Greenwood, Andrew
Sent: Friday, May 24, 2019 1:37 PM
To: Lee, Katherine
Subject: Use of Force Legislation; Amendments
Attachments: AB 392 Amendments_Cal Chiefs PORAC CAHP_Press Release_5.24.19.pdf;
Open Letter to California from Law Enforcement_5.24.19.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Lee,

As I mentioned at the May 23 PRC meeting, pending state legislature bills AB392 and SB230 regarding police use of force were under intense discussion and negotiation over the past few weeks.

I've been informed today that accord has been reached on AB 392 (the Weber bill) and SB 230 (the bill crafted by several Law Enforcement groups). Thanks to the collaborative work by all involved, AB 392 is being amended in such a way that everyone can support, and these linked bills are now very likely to pass with broad support from the legislature.

Our Use of Force policy revision team will take these into account, and wherever we can, we'll incorporate items so that our policy is in line with the anticipated final legislation.

Attached for your and the Commission's information are two documents from Cal Chiefs.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700



May 24, 2019

Dear California,

When we work together, we can make a difference. And when we listen, really listen, to every voice at the table, we can create a better California for everyone. It's an aspirational vision – one that we set out to achieve just one year ago when we began working on a legislative solution.

For the last year, we've been working together with legislators, the Governor, our Attorney General, the American Civil Liberties Union (ACLU), experts and stakeholders from around the state to develop comprehensive legislation to minimize the use of force in California. And today, we can all stand proud knowing that we've put forward a unified solution that will set a new national precedent on this important issue that impacts families, officers and communities throughout the country.

At the start of this year, Senator Anna Caballero and our state's law enforcement community put forward Senate Bill 230 to minimize the use of force by requiring consistent policies and mandatory training standards for all 500 California law enforcement agencies. Assemblymember Shirley Weber and the ACLU also introduced Assembly Bill 392 to amend California's standard for authorizing the use of force.

At the heart of the national dialogue on this issue lies a lack of trust and understanding that transcend law enforcement and the communities they have sworn to protect – challenges that we cannot begin to address in silos or through divergent paths forward. With much at stake and America watching, all invested stakeholders seized the opportunity to chart a new path forward. It was clear to us that this path needed to be paved together.

We are grateful that Dr. Weber and the ACLU made the same commitment to collaboration. We carefully and intentionally listened to one another – we shared our unique perspectives and considered every proposal to address our shared goal of protecting all Californians. We made the table as big as possible to include everyone who wanted to pull up a seat. As a result, informed and thoughtful amendments were made to both SB 230 and AB 392 to resolve conflicts and create a unified solution that all Californians can champion. Those efforts directly lead to where we are today, with a solution that reflects the diverse voices who make-up our state, and each and every life impacted by this issue.

Collectively, AB 392 and SB 230 create a legislative package that will go further than any other state legislation to minimize the use of force in our communities. We appreciate Governor Gavin Newsom's leadership and support in developing this precedent-setting legislative package. We urge all of our state's elected leaders and all Californians to support this sweeping use of force reform.

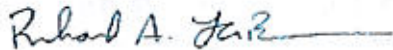
To every Californian, together, we can rise above the national dialogue that makes collaboration seem fundamentally impossible – it's not. Because today in California, we proved that this aspirational vision is very much within reach.

We listened. We worked together. And we will create a better California for everyone because of it.

Sincerely,



Brian R. Marvel
President
Peace Officers Research Association of California



Rick Labeske
President
California Association of Highway Patrolmen



Ron Lawrence
President
California Police Chiefs Association



For Immediate Release:

May 24, 2019

Contacts:

Ian Anderson

landerson@FionaHuttonAssoc.com

818.760.2121

**DR. SHIRLEY WEBER AMENDS AB 392 TO REFLECT COLLABORATION
WITH CALIFORNIA'S LAW ENFORCEMENT COMMUNITY**

*The Newly Amended AB 392 Will Strengthen The State's Current Standard For Authorizing
The Use Of Force*

Sacramento, CA – After nearly a year of discussions and negotiations around proposed legislation to address the use of force, and with Governor Newsom's leadership, Assemblymember Shirley Weber and the supporters of AB 392 put forward amended bill language that reflects a compromise with a statewide coalition of law enforcement organizations.

"We are grateful that Dr. Weber and the ACLU shared our commitment to collaboration," said Brian Marvel, President of the Peace Officers Research Association of California (PORAC). "Together, AB 392 and SB 230 create a legislative package that will do more than any other state legislation to achieve better outcomes and minimize the use of force in our communities.

"The best public policies aren't made in a vacuum," said Ron Lawrence, President of the California Police Chiefs Association (CPCA). "AB 392 now reflects the shared experiences, perspectives and expertise from everyone at the table, from families and communities to the officers who have sworn to serve and protect them."

"For the past year the law enforcement community has been working with Dr. Weber, the ACLU, community leaders, and state legislators to develop a legislative solution that will help to minimize the use of force and keep everyone in our communities safe." said Rick LaBeske, President of the California Association of Highway Patrolmen (CAHP). "As a result, informed and thoughtful amendments were made to both SB 230 and AB 392 to resolve conflicts and create a unified solution that all Californians can champion proudly."

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AMENDED IN ASSEMBLY MAY 23, 2019

AMENDED IN ASSEMBLY MARCH 27, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

No. 392

Introduced by Assembly Members ~~Weber and McCarty~~ *Weber, McCarty, and Rendon* and Senator Atkins

(Principal ~~coauthor: Assembly Member Holden~~ *coauthors: Assembly Members Carrillo and Holden*)

(Principal coauthors: Senators ~~Bradford and Mitchell~~ *Bradford, Mitchell, and Skinner*)

(Coauthors: Assembly Members ~~Medina~~ *Gonzalez, Jones-Sawyer, Medina*, and Mark Stone)

February 06, 2019

An act to amend Sections 196 and 835a of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 392, as amended, Weber. Peace officers: deadly force.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include when ~~the killing is in self-defense or the defense of another, consistent with the existing legal standard for self-defense, or when the killing is necessary to prevent the escape of a fleeing felon whose immediate apprehension is necessary to prevent death or serious injury.~~ The bill would additionally bar the use of this defense if the peace officer acted in a criminally negligent manner that caused the death, including if the officer's criminally negligent actions created the necessity for the use of deadly force. *the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a 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 the person is immediately apprehended.*

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape or to overcome resistance.

DIGEST KEY

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA
DO ENACT AS FOLLOWS:

SECTION 1.

Section 196 of the Penal Code is amended to read:

196.

(a) Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under ~~any~~ *either* of the following circumstances:

(1)

(a) In obedience to any judgment of a competent court.

(2)

(b) When the homicide results from a peace officer's use of ~~force, other than deadly force;~~ *force* that is in compliance with ~~subdivision (b) of~~ Section 835a.

~~(3) When, except as otherwise provided in subdivision (c), the homicide would be justifiable pursuant to Section 197, in self-defense or the defense of another person.~~

~~(4) When, subject to subdivision (c), the officer reasonably believes, based on the totality of the circumstances, that the use of force resulting in a homicide is necessary to prevent the escape of a person, and all of the following are true:~~

~~(A) The peace officer reasonably believes that the person has committed, or has attempted to commit, a felony involving the use or threatened use of deadly force.~~

~~(B) The peace officer reasonably believes that the person will cause death or inflict serious bodily injury to another unless immediately apprehended.~~

~~(C) If feasible, the peace officer has identified themselves as a peace officer and given a warning that deadly force may be used unless the person ceases flight, unless the officer has reasonable ground to believe the person is aware of these facts.~~

~~(b) As used in paragraph (4) of subdivision (a), "necessary" means that, given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person. The totality of the circumstances means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force.~~

~~(c) Neither this section nor Section 197 provide a peace officer with a defense to manslaughter in violation of Section 192, if that person was killed due to the criminally negligent conduct of the officer, including situations in which the victim is a person other than the person that the peace officer was seeking to arrest, retain in custody, or defend against, or if the necessity for the use of deadly force was created by the peace officer's criminal negligence.~~

SEC. 2.

Section 835a of the Penal Code is amended to read:

835a.

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

~~(2)~~

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

~~(3)~~

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

~~(4)~~

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use *objectively* reasonable-~~force~~;

~~other than deadly force,~~*force* to effect the arrest, to prevent ~~escape~~ *escape*, or to overcome resistance.

~~(c) A peace officer who makes or attempts to make an arrest need not abandon or desist from the arrest by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. A peace officer shall, however, attempt to control an incident through sound tactics, including the use of time, distance, communications, tactical repositioning, and available resources, in an effort to reduce or avoid the need to use force whenever it is safe, feasible, and reasonable to do so. This subdivision does not conflict with the limitations on the use of deadly force set forth in this section or Section 196.~~

~~(d)~~

~~(c) (1) A-~~*Notwithstanding subdivision (b), a* peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

~~(A) To defend against a threat of imminent death~~ *an imminent threat of death* or serious bodily injury to the officer or to another person.

~~(B) To prevent the escape of a fleeing suspect consistent with paragraph (4) of subdivision (a) of Section 196.~~

~~(B) 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, a peace 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.~~

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if *an objectively reasonable officer would believe* the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

~~(3) This subdivision does not provide the legal standard and shall not be used in any criminal proceeding against a peace officer relating to the use of force by that peace officer, or to any defenses to criminal charges under Sections 196 or 197 or any other defense asserted by that officer, but may be used in any civil or administrative proceeding.~~

(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics.

(e) For purposes of this section, the following definitions shall apply:

(1) "Deadly force" means 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.

(2) A threat of death or serious bodily injury is "imminent" 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 peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

~~(3) "Necessary" means that, given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person.~~

~~(4)~~

(3) "Totality of the circumstances" means all facts known to the peace officer at the ~~time and includes the tactical conduct and decisions~~ *time, including the conduct* of the officer *and the subject* leading up to the use of deadly force.

ASSEMBLY THIRD READING
AB 392 (Weber, et al.)
As Amended May 23, 2019
Majority vote

SUMMARY:

Limits the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury or death to the officer or to another person, or necessary 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.

Major Provisions

- 1) States that a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:
 - a) To defend against an imminent threat of death or serious bodily injury to the officer or to another person;
 - b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury and if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the peace officer shall make reasonable efforts to identify themselves as peace officer and to warn that deadly force may be used, or the officer has objectively reasonable grounds to believe that the person is aware of those facts;
- 2) Specifies that a peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.
- 3) Defines "deadly force" as "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;"

COMMENTS:

According to the Author:

According to the author, "American political ideals require careful consideration of how government exercises power over its people. Vigilance is especially necessary in policing where, on a daily basis, democratic notions of liberty, security and autonomy are poised against the demands of public safety and the force that may be required to effect it. Because the power to use force is granted by the governed, every effort must be made to ensure that force is exercised with careful attention to preserving the life and dignity of the individual to remain legitimate.

"In 2017, officers killed 172 people in California, only half of whom had guns. Police kill more people in California than in any other state – and at a rate 37% higher than the national average per capita. Of the 15 police departments with the highest per capita rates of police killings in the

nation, five are in California: Bakersfield, Stockton, Long Beach, Santa Ana and San Bernardino. A 2015 report found that police in Kern County killed more people per capita than in any other U.S. county. These tragedies disproportionately impact communities of color as California police kill unarmed young black and Latino men at significantly higher rates than they do white men.

"Community trust in law enforcement is undermined when force is used unnecessarily and disproportionately. Police are less able to do their job when community distrust leads to decreased respect and cooperation, a situation that increases the risks to officers and civilians.

"AB 392 reflects policies that policing experts recognize as effective at better preserving life while also allowing officers the latitude needed to ensure public safety. Under President Obama, the U.S. Department of Justice helped many cities adopt similar policies, including San Francisco and Seattle. Seattle's federal monitor determined that the policy change resulted in a marked reduction in serious uses of force without compromising the safety of officers.

"AB 392 is the necessary step to affirming the sanctity of human life. For nearly a century and a half Californians have witnessed the justification of police homicides due to a standard that says it can be reasonable to use deadly force even if there were other alternatives. Far too many days and far too many deaths have gone by with inaction by those who have the power to enact change. As recent events have made clear, Californians will no longer tolerate these deaths as acceptable collateral damage for preserving the status quo, especially when there are effective best practices that will save both officer and civilian lives."

Arguments in Support:

According to PolicyLink, "California must update its outdated law on deadly use of force. Current law allows police to use deadly force whenever "reasonable", even if there is no threat to life or bodily security, and even if safe alternatives to deadly force are available. California law even authorizes deadly force that is below the standard of the Constitution. This disturbing level of discretion has had dire consequences: Police in California kill community members at a rate 37 percent higher than the national average, per capita, and several of our state's police departments have among the highest rates of killings in the country.

"In line with recommendations from policing and legal experts, including the California Attorney General, AB 392 updates California law so that police can use deadly force only when necessary to prevent death or serious injury, and requires them to use tactics to de-escalate a situation or use alternatives to deadly force when reasonable. Changing this standard will mean that officers will be trained to use deadly force less often and will be held accountable when they shoot and kill unnecessarily."

Arguments in Opposition:

According to Ventura County Sheriff's Office, "The United States Supreme Court has provided a well-reviewed standard (Graham v. Connor) for courts across our nation to evaluate and judge officers' actions. Adopting your bill's language inevitably sets the stage for conflict, confusion, and second-guessing within our courts and in the field when lives are on the line; and creates a new review standard that will be viewed more subjectively than the objective standard adopted by the State, the 9th Circuit, and the U.S. Supreme Court. It is important that force, in law enforcement, whether in California or elsewhere be evaluated under the same stringent standard pronounced by the United States Supreme Court. To do otherwise, could potentially put peace officers in California at greater risk than their counterparts nationwide, as officers hesitate and second guess if an incident crosses the ambiguous 'necessity' line. The reasonableness standard

works in our society because an officer's actions can be judged in the moment using this framework. An evaluation based on necessity is wrought with second guessing and the application of facts not know to the officer at the time the force was used."

FISCAL COMMENTS:

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

Please contact the policy committee for a full discussion of this bill.

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Kamlager-Dove, Quirk, Santiago, Wicks

NO: Lackey, Diep

UPDATED:

VERSION: May 23, 2019

CONSULTANT: David Billingsley / PUB. S. / (916) 319-3744

FN: 0001044

Lee, Katherine

From: Greenwood, Andrew
Sent: Friday, May 24, 2019 2:20 PM
To: Lee, Katherine
Cc: Brewer, Crystal
Subject: IACP 2019 Invitation

Follow Up Flag: Follow up
Flag Status: Flagged

Ms. Lee,

For the fourth year in a row, I'd like to extend an invitation for a PRC Commissioner to attend the annual International Association of Chiefs of Police Conference, October 26-29 this year, in Chicago. <https://www.theiacpconference.org/> We will cover airfare, registration and accommodations.

In the past, we've had Cmsr Bernstein '16, Lippman '17, and Ramsey '18. We've also supported Cmsr PerezVelez and Matthews to the biannual Center for Policing Equity convening in 2016 and 2018, respectively.

Please let me know who might attend, and keep Crystal in the loop as well so she can track...

Thanks,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

Lee, Katherine

From: Greenwood, Andrew
Sent: Friday, May 31, 2019 3:16 PM
To: Lee, Katherine
Subject: Social Media "Reach"

Follow Up Flag: Follow up
Flag Status: Completed

Kathy,

I had a note from the last meeting as to the number of people we reach via social media.

Here are the current numbers:

- i. Nixle: 21,100+
- ii. Twitter: BPD (7000+), Greenwood (1,200+), White (500+), Jung (30+),
- iii. Nextdoor: 34,300+

Please feel free to share this information with the Commission.

Thanks,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

