

FACT SHEET

ENHANCEMENT OF THE FORCE POLICY

June 23, 2009

PURPOSE

The Chief of Police convened a Use of Force Best Practices Committee (Committee) to review and recommend enhancements to the Department's use of force tools, policies and procedures where appropriate. Concurrently, the Board of Police Commissioners convened a Use of Force Sub-committee to oversee the development of use of force initiatives, which include this policy enhancement as well as other use of force initiatives undertaken by the Department. The recommended policy reflects the combined work efforts of those two entities.

The Committee reviewed the current Department use of force policy and determined that it was in need of revision. This fact sheet discusses the reasons supporting the enhancement of a new use of force policy and the research undertaken by the Committee to develop a revised policy.

GOALS OF THE COMMITTEE

The goals of the Committee were to develop a use of force policy that adheres to industry best practices, conforms to the recommendations of the International Association of Chiefs of Police (IACP), provides clear and concise direction to Department personnel, provides the community with an easily understood policy upon which to judge use of force incidents, uses terms defined in law, and communicates to all that use of force by officers of the Department requires a delicate balance between reverence for human life and safety for the involved employee and the public. In a word, the Committee sought to develop a policy that was elegant. We believe that has been achieved.

The use of force policy submitted for your approval (Attachment No. 1) is compliant with the law, consistent with industry best practices, understandable, and easily applied. Further, the policy provides clear direction to employees as to the Department's expectations for articulation as well as a standard of review for adjudicators and reviewers. Finally, the policy provides a clear standard which will help the community understand and judge use of force incidents.

The Use of Force Best Practices Committee recommended enhancing the use of force policy for the following reasons:

- The current policy is codified in twelve sections throughout the Department Manual rather than in a single section.
- The revised policy complies with recommendations by the IACP.
- The revised policy will encourage cognitive decision making during police operations.
- The enhanced policy is consistent with existing law and industry best practices.

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- The policy is consistent with the educational concepts contained in the Use of Force instruction provided by the Commission on Peace Officer Standards and Training (POST).¹

ABOUT CURRENT DEPARTMENT POLICY

The Department's policy is codified in 14 sections spread throughout the Department Manual (Attachment No. 3). The policy uses numerous undefined terms not codified in law, is wordy, and not easily understood. The current organization of the use of force policy is in direct conflict with the recommendation of the IACP that policies should "be organized in a manner that enhances policy usefulness for the officer. Policies that are not interrelated may not be cross-referenced, or may appear separately under different topical areas....Under such conditions policies and procedures can proved hard to digest, integrate and implement."² Conflicting terms used in the existing policy include:

- Reasonable amount of force that is necessary (1/115.30)
- Most serious act (1/556.10)
- Degree of force necessary (1/556.10)
- Substantial immediate threat (1/556.30)
- Minimum force that is necessary (1/556.35)
- Reasonably appears necessary (1/556.40)
- All reasonable alternatives have been exhausted (1/556.40)

IACP AND BEST PRACTICES

The Department's organization and communication of its use of force policy is not consistent with the recommendations of the IACP. The IACP published a Concept and Issues Paper entitled, *Use of Force*, February 2006. In summary, the concept paper recommended the following which were incorporated into the enhanced LAPD policy:

- Must provide "officers ...with a clear and concise departmental policy that establishes guidelines and limitations on use of force generally and the use of deadly force in particular."
- Be kept "as short and simple as possible."
- Give officers a "complete understanding and recall knowledge of their agency policy on this critical issue."
- Use the objective reasonableness standard.
- Incorporate the principles set forth in *Tennessee v. Garner*.
- Avoid "Minimum" use of force terminology.

¹ Commission on Peace Officer Standards and Training, Basic Course Workbook Series, Learning Domain 20, Use of Force, Version Three.

² IACP National Law Enforcement Policy Center, *Use of Force*, Concepts and Issues Paper, February 2006, pg. 4.

- Avoid using terms such as “exhaust all means before resorting to the use of deadly force” which present ... obstacles to defense of justifiable uses of force.
- Use properly constructed preambles and avoid impossible standards of care.
- Recognize that a considerable portion of officer guidance and direction is established during training.
- Be organized for ease of understanding.
- Generally prohibit warning shots.
- Discuss shooting at moving vehicles including the potential for missed shots, etc.

COGNITIVE LEARNING AND APPLICATION

Enhancing the policy is part of reengineering process being undertaken by the Department. Recruit training has been substantially enhanced to encourage and embed cognitive learning. In 2003, a RAND Corporation report suggested the implementation and use of the CAPRA (client, acquiring and analyzing, partnerships, response, assessment) problem-solving model.³ (This model is considered a values-infused problem-solving model and is grounded in the core value of service to our community.) As a result, recruits are now engaged with scenario based training coupled with debriefs. Instead of relying on rote adherence to rules, the Department focuses on three key issues during the debrief: Mission, Vision, and Values; CAPRA as a problem-solving model; and Tactical Concepts. By infusing key concepts and values into the debrief process, police officers will have a stronger values-based foundation upon which to provide service to the community.

In simpler terms, officers face a nearly infinite number of circumstances in field operations. Having a solid values and conceptual understanding of police work and use of force will give them the skills to effectively handle unfamiliar complicated situations. The enhanced policy will provide officers with a use of force policy that is values and concepts based, easily remembered and requires articulation of the reasons for using force.

Current Department policy does not encourage cognitive reasoning like the enhanced policy does. For example, imagine that an elderly person attempted to strike an officer. Relying on rote rules that define the subject as aggressive and / or combative, that officer could use an impact weapon to control the subject. However, it would not have been reasonable to do so. The subject was literally incapable of injuring the officer who could have easily controlled the assailant.

Similarly, a very large, unclothed, non-responsive subject standing in the street would be considered non-compliant. Department rules say that using a TASER on such a subject is generally not allowable. Following rote reliance on rules, officers approach the subject and attempt firm grips to obtain compliance. The subject instantly becomes violent resulting in a lengthy altercation. This scenario is commonly associated with Sudden Death In-custody

³ Training the 21st Century Police Officer, Redefining Police Professionalism for the Los Angeles Police Department, Rand Corporation, 2003.

(Excited Delirium) situations. A more cognitive (reasonable) response would have been for the officers to recognize the symptoms of drug abuse and the very high probability of an extended altercation with a very large subject. The officers would have garnered additional resources and taken the subject into custody using a TASER. This scenario would not only be reasonable, it could prevent injury to officers and the subject.

RESEARCH

To develop the revised policy, the Committee:

- Collected and examined policies from agencies across the United States and Canada.
- Examined the uniform use of deadly force policies established by the Departments of Treasury and Justice in October 1995.
- Consulted experts in the field.
- Reviewed significant case law and California Penal Code Sections. Including:
 - *Graham v. Connor*, 490 U.S. 386 (1989) (Attachment No. 4)
 - *Tennessee v. Garner*, 471 U.S. 1 (1985)
 - California Penal Code Sections (Attachment No. 5)
 - 835 P.C.
 - 835a P.C.
 - 196 P.C.

OBJECTIVE REASONABLENESS AND *GRAHAM V. CONNOR*

In 1989, the United States Supreme Court published the landmark decision of *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* established the “*Objective Reasonableness Standard*” as it related to the Fourth Amendment. The court showed keen understanding and insight into the dynamics of police use of force incidents. Due to the uncertain nature of most incidents, the court opined that use of force must be “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain and rapidly evolving - about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case.”

Graham recognized that human performance limitations coupled with the high stress and rapidly evolving nature of the incident make the precise, perfect use of force nearly impossible. The Court opined that force must be reasonable under the circumstances known to the officer at the time the force was used.

Further, *Graham* is used as one of the Standards of Review for the Department’s Categorical Use of Force (CUOF) incidents. Because of its elegance in capturing and promoting a philosophy

and methodology to understand and judge use of force and its relative ease of understanding, the *Graham* decision is at the center of any debate during adjudication about the appropriateness of CUOF incidents.

OTHER AGENCIES

The Committee reached out to agencies from throughout North America to review and evaluate their use of force policies.

Among the many agencies that have adopted use of force policies that specifically invoke verbiage from *Graham* are:

- Atlanta (Georgia) Police Department
- Baltimore Police Department
- Cincinnati (Ohio) Police Department
- Charlotte – Mecklenburg (North Carolina) Police Department
- Denver (Colorado) Police Department
- Detroit (Michigan) Police Department
- Las Vegas (Nevada) Metropolitan Police Department.
- **Los Angeles County Sheriff's Department. (Strict invocation of *Graham* and Penal Code Section 835a P.C.)**
- Olympia (Washington) Police Department
- San Diego (California) Police Department
- San Jose (California) Police Department
- Ventura County (California) Sheriff's Department

Among the agencies that have adopted use of force policies that are generally consistent with *Graham*, involving language such as “reasonable belief” or “reasonably necessary” are:

- Chicago (Illinois) Police Department
- Columbus (Ohio) Police Department
- Fairfax (Virginia) County Police Department
- Honolulu (Hawaii) Police Department
- Houston (Texas) Police Department
- Kansas City (Missouri) Police Department
- Miami – Dade (Florida) Police Department
- Nashville (Tennessee) Police Department
- New Orleans (Louisiana) Police Department
- Oklahoma City (Oklahoma) Police Department
- Philadelphia (Pennsylvania) Police Department
- Phoenix (Arizona) Police Department
- Portland (Oregon) Police Department
- San Antonio (Texas) Police Department
- Tucson (Arizona) Police Department

- Virginia Beach (Virginia) Police Department

CALIFORNIA LAW

The Committee relied heavily on existing law to provide a compass for the policy. California Penal Code Section 835a is incorporated into the recommended policy because it provides clear and concise direction to officers as to when they may use force. Penal Code Section 835a is used as a standard of review for CUOF incidents. Penal Code Section 835a states:

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reasons of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

COMMITTEE AND EXPERT REVIEW

The Committee held a conference with eight use of force experts from across the county, all of whom generally agreed that the Department’s existing policy is problematic in the ways previously enumerated. For the development of the proposed policy, the Committee comprised of Department experts, representatives of the Los Angeles City Attorney, the Los Angeles Police Protective League’s legal staff and several outside experts who worked for more than a year to develop the content of the policy. Additionally, the recommended policy has been reviewed and approved by the Public Safety General Counsel Division, Office of the City Attorney.

FEDERAL UNIFORM USE OF FORCE POLICY

In October 1995, the Attorney General of the United States approved a use of deadly force policy for all law enforcement agencies within the United States Department of Justice. Since that time, the Department of Treasury adopted a similar policy.⁴

The common thread that ran through the policy was the establishment of an “imminent danger” standard. Because of that, the Federal government allows the use of deadly force when an officer has a reason to believe that a subject poses an **imminent** danger of death or serious injury to the officer or another person.⁵

⁴ FBI Law Enforcement Bulletin, April 1996, John C. Hall.

⁵ Ibid.

Current Department policy allows the use of deadly force by an officer to protect against the threat of **immediate** threat of death. While the differences are subtle, use of the term “imminent” is preferable. Black’s Law Dictionary defines **immediate** as “Present; at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time.”

Black’s Law Dictionary defines **imminent** as, “Near at hand; impending; on the point of happening.” Usage of the term “imminent” recognizes that use of force situations often unfold rapidly and that officers should be afforded the authority to stop a deadly threat that is about to occur.

SHOOTING AT / FROM MOVING VEHICLES

On February 16, 2005, the Department published Special Order 1, 2005 (Attachment No. 7), enacting a revised use of force policy for situations involving shooting at or from a moving vehicle. That order is repeated in its entirety in the revised policy and has not been altered.

SHOOTING AT FLEEING FELONS

Existing Department policy is currently in line with case law, *Tennessee v. Garner*, 471 U. S. 1 (1985). The policy for shooting at fleeing felons has not changed as a result of this policy. Current policy allows use of deadly force to effect the arrest of a fleeing felon. But firing under such circumstances shall not be done if it poses a risk to innocent bystanders or hostages unless the suspect is posing a threat of death or serious bodily injury. Redundant Manual Sections, such as shooting at misdemeanants, have been removed.

WARNING SHOTS

The existing policy relative to firing warning shots is “Generally, warning shots should not be fired.” While that may be true, the policy statement offers no guidance to officers who may be confronted with a situation where a warning shot may be reasonable. Recent adjudications of incidents involving warning shots, in fact, indicate that they are often reasonable and deemed to be in policy.

The Committee determined that the policy should provide guidance to officers considering firing warning shots. The revised policy provides officers with clear direction. It states: “Warning shots shall only be used in exceptional circumstances where it might reasonably be expected that their use will avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.”

TRAINING

The IACP strongly recommends that training accompany any use of force policy. Training defines the policy implementation.

Training Group developed a training implementation plan for this proposed policy. It is Training Group's intention to identify Department experts in use of force to teach the transition to the enhanced policy. Because the enhanced policy is based on objective reasonableness, Training Group is confident that training Department personnel will be easily accomplished.

CONCLUSION

The revised use of force policy relies heavily on existing law, and the objective reasonableness standard which is clearly articulated and defined in the *Graham v. Connor* decision.

The Committee is confident that the emphasis on objective reasonableness will enable Department personnel who use force to better articulate their actions and the reasons for those actions. Reliance on the objective reasonableness standard will enable force investigators to make better inquiries and will result in more thorough investigations. Finally, reliance on the objective reasonableness standard will provide adjudicators with a common ground to evaluate use of force incidents.

It is in the Department's and the public's best interest to enhance and refine the use of force policy. The enhanced policy will provide clear guidance to officers as to when force may be used and clearly articulates the Department's expectations. The Committee is confident that the enhanced policy and the implementation training that accompanies it will dramatically enhance officers' understanding of the use of force policy and improve their ability to articulate their use of force actions and decisions. Most importantly, the enhanced use of force policy will provide the public with an easily understandable measure of how to judge use of force situations for added transparency and accountability.

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Attachments

1. Proposed Special Order
2. Fact Sheet
3. Department Manual Sections
 - 1/115.30 1/556.10
 - 1/556.25 1/556.30
 - 1/556.35 1/556.40
 - 1/556.50 1/556.55
 - 1/556.60 1/556.70
 - 1/572 1/573
4. *Graham v. Connor*, 490 U.S. 386 (1989)
(Note: For purposes of brevity, only portions of *Graham* are included in this attachment. For complete reference, refer to the case.)
5. California Penal Code Sections
 - 835 P. C.
 - 835a P. C.
 - 196 P. C.
6. Special Order 1, 2005