

OFFICE OF ADMINISTRATIVE SERVICES

NOTICE 3.2

April 6, 2017

TO: All Department Personnel

FROM: Director, Office of Administrative Services

SUBJECT: NON-CATEGORICAL USE OF FORCE INCIDENTS - *CLARIFIED*

This notice will serve as a reminder and explanation of the definition of a Non-Categorical use of force; explanation of the criteria for a non-reportable use of force; clarification on passive resistance in relation to Non-Categorical uses of force, and provide established guidelines for immediate and delayed reporting of uses of force.

NON-CATEGORICAL USE OF FORCE INCIDENT - DEFINED

A Non-Categorical use of force incident is defined as an incident in which any on-duty Department employee or off-duty employee whose occupation as a Department employee is a factor, uses a *less-lethal control device* or *physical force* to:

- Compel a person to comply with the employee's direction;
- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance:

REPORTABLE USE OF FORCE

Example 1: An officer conducts a traffic stop and discovers the driver has several outstanding warrants. The officer asks the driver to exit the vehicle so he can be placed under arrest. The driver initially complies but then pulls away from the officer. The officer attempts once again to gain control of the driver's arm to effect an arrest but the driver resists the officer's actions by pulling his arms into his body, swinging his body side to side, and trying to break free. The officer maintains hold of the suspect's wrist, transitions into a joint lock, forces the suspect's arm behind his back, and handcuffs the suspect.

This is a reportable use of force since the officer had to overcome the suspect's active resistance. It is not necessary for the suspect to sustain injury (visible or complained of) for this to be a reportable use of force.

Example 2: During the arrest of a theft suspect, officers use joint locks and firm grips to handcuff the suspect. Afterwards, the suspect complains of shoulder pain from the handcuffing application. The officers request a supervisor who completes a use of force investigation.

This is a reportable use of force due to the suspect's reported injury.

Example 3: Officers A and B take a theft suspect down to the ground and use body weight to control him. As officer A and B handcuff the suspect, he begins to kick his legs. Officer C arrives and controls the suspect's legs as he is kicking, while Officer D applies the hobble restraint over his ankles. The suspect is taken into custody without further incident.

Officer A, B and C would be involved in a reportable use of force, while Officer D would not be as he did not use any force during the hobble application. However, if Officer D had to assist in controlling the suspect's legs while applying the hobble restraint, then Officer D would be involved in a reportable use of force.

NON-REPORTABLE USE OF FORCE INCIDENTS

The following incidents are **not** reportable as a Non-Categorical use of force:

- The use of a C-grip, firm grip, or joint lock to compel a person to comply with an employee's direction, which does not result in an injury or complained of injury.

Example 1: An officer uses a firm grip to overcome a suspect's initial nonconformity (i.e., pulling away) to being handcuffed. The officer quickly gains control and is able to handcuff without any struggle. Since there are no injuries or complained of injuries, this incident is not a reportable use of force. *However, any overt exertion by the officer to maintain control and/or any struggle by the suspect would then become a reportable use of force.*

- The use of force reasonable to overcome passive resistance due to physical disability, mental illness, intoxication, or muscle rigidity of a person (e.g., use of C-grip or firm grip, joint lock, joint lock walk down or body weight) which does not result in an injury or complained of injury;

Note: The term *passive resistance* as mentioned above applies to subjects/suspects who are unable to control their body movement due to the reasons listed. The resistance is not due to any disregard for the officer's commands, but due to the individual's inability to control his/her body movements due to lack of mental awareness, being intoxicated and or, body/muscle restrictions and range of motion limitations.

Example 2: Officers attempt to take an intoxicated suspect into custody. The subject is unable to maintain his balance due to being intoxicated and begins to fall. The officers use a joint lock walk down and bodyweight during the suspect's arrest. Once the suspect is handcuffed and assisted to his feet, the officers walk him to the police vehicle. The officers use physical force to support the suspect's body weight as they walk him to the police vehicle. The suspect's level of resistance is passive and he does not complain of any injury or has visible injuries. This would NOT be a reportable use of force.

Example 3: Officers are attempting to take a suspect into custody. The officers order the large statured suspect to bring his arms behind his back. The suspect attempts to comply with officers' commands; however, he is unable to bring his arms back due to his limited range of motion. The officers apply firm grips and joint locks to the suspect's right arm and bring it behind the suspect's back to complete the arrest. The suspect did not complain of any injuries; therefore, this is NOT a reportable use of force.

- Under any circumstances, the discharge of a less lethal projectile weapon (e.g., beanbag shotgun, TASER, 37mm or 40mm projectile launcher, any chemical control dispenser, or Compressed Air Projectile System) that does not contact a person is not a reportable use of force;

Note: Such incidents shall be reported on an Employee's Report, Form 15.07.00, and submitted to the commanding officer for review and appropriate action. After all risk management, misconduct, or policy issues are identified, the Form 15.07.00 shall be forwarded to Use of Force Review Division for review and Police Sciences and Training Bureau for review and retention.

- Force used by an organized squad in a crowd control situation, or a riotous situation when the crowd exhibits hostile behavior and does not respond to verbal directions from Department employees. Such incidents are documented via an after-action report or Sergeant's Daily Report, Form 15.48.0.

Note: Isolated incidents resulting from a crowd control situation may require a use of force investigation as determined by a supervisor at the scene.

- Any incident investigated by Force Investigation Division (FID).

REPORTING A NON-CATEGORICAL USE OF FORCE INCIDENT

Employee's Responsibility - An employee who becomes involved in a reportable Non-Categorical use of force incident **shall**:

- Notify a supervisor without delay;
- Report the full details of the use of force incident in the related Department arrest or crime report;
- Use an Employee's Report, Form 15.07.00, to report the full details of the use of force incident when a crime or arrest report is not required; and,
- Document the name of the investigating supervisor in the related arrest or crime report, or Form 15.07.00, under the heading "Additional."

Off-duty employees who become involved in a reportable use of force incident in which the employee's occupation as a Department employee is a factor shall notify their supervisor or watch commander without unnecessary delay¹. Notification shall be made to the Department Command Post when the employee's location of assignment is closed.

Note: Off-duty employees completing use of force related reports shall submit a copy to their supervisor no later than their next regularly scheduled tour of duty.

Supervisor's Responsibility - When a Non-Categorical use of force incident occurs, an uninvolved supervisor from the employee's command or from the nearest Area when either the employee's command is closed or the employee's supervisor is not available to respond, shall be assigned to conduct the administrative investigation.

When a non-reportable use of force becomes a reportable Non-Categorical use of force investigation due to a suspect's delay in reporting any physical or complained of injury, a supervisor shall ensure a non-categorical use of force investigation is conducted as soon as practicable.

If you have any questions, please contact Captain John McMahon, Commanding Officer, Use of Force Review Division, at (213) 486-5950.

APPROVED:



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¹ "Occupation as a Department employee is a factor," means any officer who identifies themselves as a police officer to the public or any law enforcement officer.