



USE OF FORCE REVIEW DIVISION



Use of Force Review Board Guide

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PREAMBLE

The Los Angeles Police Department is committed to serving the community while protecting the rights of all persons. Consistent with this commitment, the Department's Vision, Mission, and Core Values, in concert with the Law Enforcement Code of Ethics and the Department's Management Principles, reflect the guiding philosophy of the Los Angeles Police Department.

To meet these goals, the Department has created this guide to the Use of Force Review Board (UOFRB). This guide was written to provide guidance and support to Commanding Officers (CO) in the areas of the Department's Use of Force (UOF) review process, their role during the UOFRB, along with outlining the Peer Selection process and general rules and procedure for the UOFRB.

COMMANDING OFFICERS ROLE AT UOFRB

Prior to the UOFRB, each command with substantially involved employees will receive a complete copy of the Force Investigation Division (FID) investigation with all interview transcripts. The CO of the involved employee is required to attend the UOFRB and present **RECOMMENDED FINDINGS** with **SUPPORTING RATIONALE** for each substantially involved employee for each of the following:

Adjudication Area	Recommended Findings
Tactics	Tactical Debrief
	Administrative Disapproval
Drawing and Exhibiting the Firearm	In policy – No Further Action
	Administrative Disapproval - Out of Policy
Use of Force (<i>Non-cat and Categorical</i>)	In policy – No Further Action
	Administrative Disapproval - Out of Policy

Commanding Officer's Review of the FID Investigation

When CO's are forming their recommendations, they are reminded the standard of proof for the Department is the preponderance of evidence. Commanding Officers are to weigh all available evidence to determine if the Tactics used substantially deviated **without justification** from Department procedure or training; along with a determination whether the Drawing / Exhibiting and the Force applied was In or Out of Policy. To ensure this, the CO's should review and address all applicable circumstances:

Some factors CO's should review, weigh and address along with all the available evidence when determining whether an officer's tactics substantially deviated **without justification** from Department procedure or training along with whether the drawing / exhibiting and force applied were In or Out of Policy are:

- Was DICV/BWV/Surveillance footage reviewed and consistent with statements?
- Was the physical evidence (GSWs, ballistic impacts, GSRs) consistent with statements?
- Were the statements credible, plausible and appropriate?
- Was the investigation thorough in nature? Did it cover all relevant areas?

- Were all conflicts identified and addressed?
- Was all misconduct, procedural and training issues identified and appropriately addressed?
- Did the investigation cover ALL force applications for ALL officers?
- Were the observed injuries consistent with the type/amount of force reported/used?
- Was the arrest report/employee's report consistent with the UOF investigation & statements?
- Did the investigation document sufficient witness/video canvassing efforts?
- Are all supporting documents/attachments consistent with the investigation?

Note: If any issues are identified with the above points, CO's need to contact FID for resolutions to the issues **prior** to the UOFRB.

Training and Tactics

The evaluation of tactics requires that consideration be given to the fact that officers are oftentimes forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Commanding Officers should;

- Address pertinent tactical review considerations including:
- Ensure they are familiar with all relevant training standards (Use of Force-Tactical Directives, tactical bulletins, Special Orders, etc.)
- Address whether the officer's tactical actions consistent with Department training standards?
 - Is there evidence of sufficient tactical planning and discussion (prior to and during the UOF incident)?
 - Were appropriate broadcasts (Code 5/6, back-up, help, foot-pursuit) present and timely?
 - Was supervisory command & control (tactical plan, appropriate direction of the incident prior to, during and post) provided and documented?
 - Were separation & monitoring/PSS mandates adhered to (Categorical)?
- Determine if the officers had all required equipment or were their tactical options limited?
- **Determine if practicable and consistent with officer safety**, was consideration given to UOF alternatives/options?
- Determine if the officer's tactics *substantially deviated* from the Department's tactical training *without justification* an administrative disapproval and training is required.*

**If the deviation is minor in nature, CO's can recommend that the deviations be addressed separately through training or the tactical debrief, and would not necessarily result in an AD finding (IE:*

Officers Code 6 on a foot beat at a mall are flagged down into a store for a 415 person and do not update their location and a UOF occurs while detaining the 415 person).

Tactical De-Escalation Techniques¹

Commanding Officers should address whether their employee **attempted and or applied** any **tactical de-escalation techniques** during the CUOF.

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.

Tactical De-Escalation Techniques

Planning

Assessment

Time

Redeployment and/or Containment

Other Resources

Lines of Communication

Note: Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Department Use of Force Policies²

UOF Policy – General

Department personnel may use only that force which is “objectively reasonable” to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance.

¹ Use of Force - Tactics Directive No. 16, October 2016, TACTICAL DE-ESCALATION TECHNIQUES

² Department Manual Section 1/556.10

Deadly Force Policy

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,
- Prevent a crime where the suspect's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

Objectively Reasonable Standard

The Department examines reasonableness using Graham and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject;
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects;
- The risk or apparent attempt by the subject to escape;
- The conduct of the subject being confronted (as reasonably perceived by the officer at the time);
- The time available to an officer to make a decision;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the subject;
- Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,
- The environmental factors and/or other exigent circumstances.

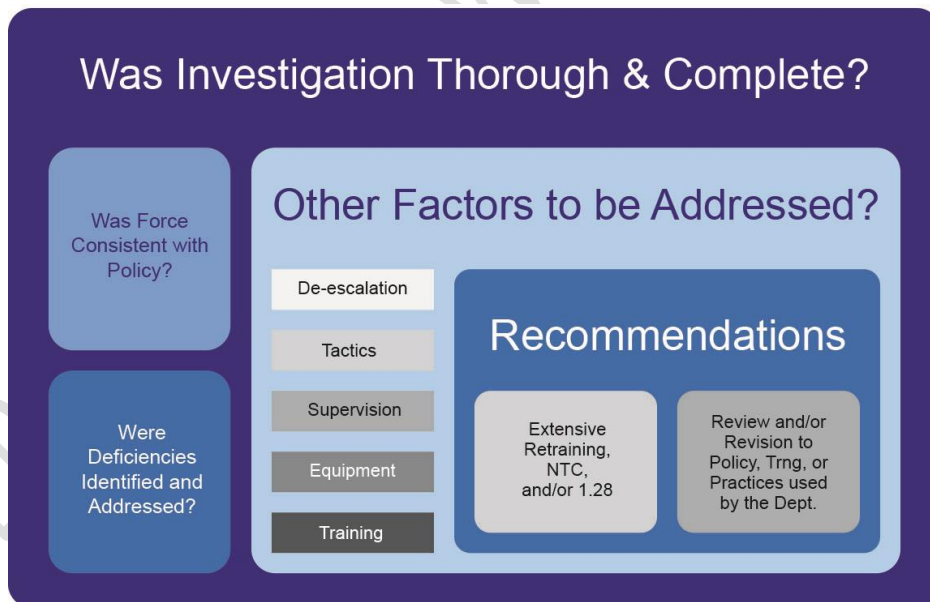
Tactical Conduct

The reasonableness of an officer's use of deadly force includes considerations of the officer's tactical conduct and decisions leading up to the use of deadly force. In all categorical use of force incidents involving deadly force, the CO should consider, as part of the totality of the circumstances, the officer's pre-force conduct in evaluating the reasonableness of the officer's ultimate use of deadly force. Pre-Force conduct may render a use of deadly force unreasonable in those instances where the tactical conduct and decisions leading up to the use of force are directly connected with the use of force and unreasonably created the need for the use of force.

Objectively Reasonable. The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S.386 (1989). Graham states in part, "The reasonableness of a particular 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." The force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

In addition, the CO should consider P.A.T.R.O.L. and depending on the type of force applied, address specific key points for different use of force tools:

- **Beanbag Shotgun/40mm**-Area targeted, assessment between rounds, warning provided, not at fleeing suspect³
- **TASER**-Area targeted, assessment between activations, warning provided, circumstances to avoid when using (e.g., was the subject in danger of a fall which would likely result in a fall that would cause death or serious bodily injury)⁴
- **OC Spray**-Area targeted⁵
- **Baton**-Area targeted, warning provided⁶



³ Use of Force – Tactics Directive No. 6.2, March 2013 and Police Science and Training Bureau – 40 mm Less Lethal Launcher Pilot Program, January 2017, BEANBAG SHOTGUN

⁴ Use of Force – Tactics Directive No. 4.4, December 2015, ELECTRONIC CONTROL DEVICE TASER

⁵ Use of Force – Tactics Directive No. 5.1, October 2013, OLEORESIN CAPSICUM

⁶ Use of Force – Tactics Directive No. 8.1, September 2013, BATON

Common Do's and Don'ts for CO's when providing Presentations for UOFRB

Do's:

Be prepared and anticipate questions from the Board

Review all documents and reports including diagrams

Conduct a comprehensive walk-through with involved employees

Note: *Reading the FID Investigation prior to conducting the walk through with the involved employee will provide the CO with insight and help identify issues that may need clarification during the walk through.*

Contact UOFRD for assistance and insight

Contact FID to view the presentation

Discuss any discrepancies with FID before the Board

Discuss recommendations with the involved Bureau Commanding Officer or his/her designee

Identify training, equipment or other issues that are relevant to the incident and be prepared to discuss

Be objective

Encourage employees to attend their Boards

Follow through with the recommendations

Tell the Board when you do not know the answer

Be POSITIVE and commend your employees, when appropriate

Don'ts:

Delegate the walk-through or the responsibilities involved in preparation

Advocate for the employees or the Department (do be objective)

Recite or rehash the facts of the entire case

Provide personal (subjective) opinion

Insert bias into the process

Be late to the Board

Assure employees of a particular outcome

Focus only on the negative

REMINDER: While CO's must assess the force **ACTUALLY** used and whether it was objectively reasonable or not, they also must review the additional options that were available to the involved employees. Commanding Officers are reminded that when reviewing these additional options, they are expected to objectively opine whether the employee's actions could have been different or, if they could have used a different force option. **The availability of alternative options does not necessarily render the option chosen as unreasonable.**

In addition, CO's are expected to impartially review the facts of the case and follow the Department's policies and procedures to make a recommendation based on the facts and evidence presented.

PEER SELECTION FOR UOFRB USE OF FORCE REVIEW BOARD

Peer member. A peer member of the same classification as the involved employee shall be selected from a different bureau of assignment than the involved employee. The role of the peer member is to provide the Board with insight at a level of expertise equal to the rank and tenure of the involved employee. Prior to that selection, UOFRD shall ensure that the peer member selected has a clear understanding of the role. In addition, the chair shall ensure that the member receives training in UOFRB responsibilities and functions.

In order to provide the UOFRB with a pool of Peer Members, UOFRD maintains a list of Peer Members who have been selected by their CO to serve on a UOFRB. Once selected, the decision of the CO shall be final and the Peer Member will be added to the pool based on their bureau, assignment and rank.

Upon scheduling of a UOFRB, UOFRD will work off a list of Peer Members, going in order of the *first available* peer. In the event that peer member is not available, the next peer on the list shall be selected. The list shall be exhausted in sequential order until an available peer is selected.

Note: In the event the Peer list is exhausted, UOFRD will select a peer of appropriate rank and assignment.

A current list of active peers, **in the order of their selection**, will be provided to the Los Angeles Police Protective League (LAPPL) by UOFRD.

To ensure a robust pool of peers, UOFRD will reach out, Department wide, twice a year, requesting new peers. The new peers will be given an orientation and provided related Department literature needed to participate in the board.

In the event that a **voluntary** pool cannot be established, peer members shall be appointed to the pool as follows:

- Six members of the classification of Police Officer shall be designated by each Operations Bureau commanding officer, the Director, Office of Administrative Services, and the Director, Office of Operations;
- One member each of the classifications of Detective and Sergeant shall be designated by each Operations Bureau commanding officer, and the Office of Administrative Services;
- One member of the classification of Lieutenant shall be designated by the Director, Office of Administrative Services, and the Director, Office of Operations; and,
- One peer member from other classes shall be designated by the Chair as necessary.

Note: During the time the Use of Force Review Board is convened, the selected peer member shall be assigned to the Use of Force Review Board as his/her primary duty assignment. An employee's Use of Force Review Board peer member pool standing shall only be terminated 1) at the officer's request; 2) for cause due to failure or inability to satisfactorily perform their duties, as reasonably determined by the officer's commanding officer, Bureau commanding officer, or commanding officer of UOFRD; or 3) his/her transfer from the bureau from which he/she was designated.

OVERVIEW OF THE USE OF FORCE REVIEW BOARD

The UOFRB shall convene at the direction of the Chair of the Board and shall:

- Avail itself of any facilities of the Department necessary to conduct a complete examination of the circumstances involved in the incident under investigation;
- Report its findings and recommendations to the Chief of Police

The UOFRB works as a body, as such any information, documentation or evidence provided to one board member, **MUST** be given to all other board members, with sufficient time to review, prior to the board.

UOFRB Membership:

The Use of Force Review Board shall be composed of the following:

- The Director, Office of Administrative Services, Chair;
- The involved employee's bureau commanding officer, as an ex-officio member;
- Peer member;
- Staff officer selected by the Director, Office of Administrative Services, Chair; and,
- The Commanding Officer, Police Sciences and Training Bureau.

Note: The Director, Office of Administrative Services will select an alternate member when a conflict arises.

All board members MUST come to the UOFRB prepared, well versed in the case and Department policy and procedures.

Exception: When the involved employee is assigned to an organizational entity not subordinate to a bureau commanding officer, the Director, Office of Administrative Services shall appoint a staff officer as an ad hoc member to fill the otherwise vacant position of the involved employee's bureau commanding officer.

Advisory Committee. The committee shall be comprised of the following ad hoc members for technical expertise.

- Officer in Charge (OIC), Self Defense Unit, Training Division;
- The Commanding Officer, Use of Force Review Division;
- The Commanding Officer, Police Sciences and Training Bureau's;
- The Commanding Officer, Force Investigation Division (FID);
- The OIC, Tactics Unit, Training Division; and,
- The FID investigative team.

Special Duties-Chair. The Chair of the UOFRB shall, upon receipt, review all investigation reports and convene the Board when the investigation involves:

- All cases where there is a death of any arrestee or detainee in the custodial care of the Department;

Note: The ICD investigation shall progress towards completion unless **all** of the conditions listed in Special Order No. 10, 2011 are met. If the conditions are met the case can be reclassified and closed out on the Death Investigation Report,

- Death or serious injury resulting from police action except those reportable only as traffic collisions;

Note: An injury shall be considered serious when the injury is substantial or requires hospitalization.

- A use of force incident resulting in an injury requiring hospitalization, commonly referred to as a law enforcement related injury or LERI;
- All intentional head strikes with an impact weapon;
- All upper body control hold use of force incidents;
- Discharge of a firearm by sworn and/or security personnel;
- Any other incident involving the discharge of a firearm by a Department employee which, in the judgment of the Chair, warrants review; and,

Exception: The Chair, UOFRB, may, at his or her discretion, choose not to convene the Board in the following instances:

- Discharge of firearm incidents involving only the destruction of animals;
- Accidental discharge of firearm incidents not resulting in injuries AND occurring in the presence of Department employees only AND not involving law enforcement action; and,
- In custody deaths where the cause of death is due to natural causes and there is no use of force or procedural violation by a Department employee.

In addition, the Chair, at their discretion, may review ALL available evidence for the UOFRB.

Office of the Inspector General. A representative from the Office of the Inspector General may attend any UOFRB hearing and interview any hearing participant.

Involved Employee Representation. An employee involved in a reviewable use of force incident, may elect to have a representative present as an observer, on their behalf at the UOFRB. The representative maybe a Department employee from the rank of Lieutenant or below, or legal counsel (at the employee's expense), or both.

Involved Employee. Whenever an employee becomes involved in a reviewable use of force incident, the employee directly involved may attend the UOFRB and observe the presentation of the case.

Command Staff. The Chair, UOFRB, may, at his or her discretion elect to have Department employees attend the UOFRB, on a case by case basis, as observers only.

Reviewing Officer. The Chief of Police is the Reviewing Officer for all matters within the purview of the UOFRB.

***NOTE:** To ensure the confidentiality of the UOFRB, **ONLY** board members, those listed above and UOFRD personnel shall attend the UOFRB. Aides, training coordinators, and others Department employees are not allowed. Exceptions may be made, by the Chair, UOFRB or the Chief of Police, on a case by case basis.*

UOFRD shall maintain a roster of persons in attendance at a UOFRB.

Use of Force Review Board Procedures

The Chair will convene the UOFRB and have the presenting CO('s) introduce any Involved Employee(s). The Chair will then ensure the UOFRB process has been explained to the Involved Employee.

Force Investigation Division will then conduct a PowerPoint presentation including photographs, statements and other evidence obtained during their investigation.

Once the FID PowerPoint presentation is completed by FID and approved by their CO **for presentation to the Board**, no changes shall be made without the approval of the CO of FID.

After the FID presentation, the Involved Employee's CO will present their recommendations and findings for the Tactics, Drawing / Exhibiting and the Use of Force by the employee.

Once the presentation is complete and all questions regarding the investigation are addressed, the room will then be cleared except for the UOFRB members (Director, Office of Administrative Services, involved employee's bureau commanding officer, Peer member, Operations staff officer and Commanding Officer, Police Sciences and Training Bureau), presenting CO(s) and UOFRD sworn personnel. The CO will then go over the Involved Employee's work history.

NOTE: The Involved Employee, whose work history is being reviewed, may remain.

Deliberations

After the room has been cleared of all Advisory Committee members, only staff from UOFRD, OIG, FID, Commanding Officer, and the voting membership of the UOFRB shall remain for deliberations.

The presenting CO will then be excused and the UOFRB will convene into closed session, where the UOFRB members will discuss the case and come to their recommendations to the Chief of Police. During closed session, the Chair may call upon employee(s) in the Advisory Committee, as needed. Once a vote is complete, the UOFRB will advise the CO of the board's recommendations.

Board Recommendations – Administrative Disapproval

If an Administrative Disapproval (AD) finding is recommended to the Chief of Police for an employee, the employee who receives the AD has the option to submit, in writing, a response to the Chief of Police within seven days of the board. To assist the Involved Employee, a representative, who maybe a Department employee from the rank of Lieutenant or below, or legal counsel (at the employee's expense), or both, **may be** present during the UOFRB as an **observer only**. The Involved Employee and their representative will also have an opportunity to review the full FID investigation and PowerPoint presented to the UOFRB. This is to assist the Involved Employee with completing the written response. This written response will be provided to the Chief of Police **with the** UOFRB recommendations. In addition, the officer's written response will be included in the package provided to the BOPC for their ultimate adjudication of the case.

Minority Opinion

In the case of a Minority Opinion vote during the UOFRB, the board member(s) in the minority will author an Interdepartmental Correspondence, "Minority Opinion" that contains a rationale for their recommended outcome(s). The "Minority Opinion" shall be completed and submitted to UOFRD, who will then deliver the "Minority Opinion" to the Chief of Police for his review and consideration.

Presentation to the Chief of Police

If a UOFRB has a "Minority Opinion", a representative of both the minority and majority **HAS THE OPTION** to be present at the presentation of the "Minority Opinion" to the Chief of Police, unless impracticable or extenuating circumstances exist.

In all cases the Chief of Police shall review the written "Minority Opinion" before rendering their findings.

For further information about the UOFRB, Board Member's roles or Commanding Officer's responsibilities, please contact Use of Force Review Division at (213) 486-5950 or refer to the UOFRD page; Guides heading, located on the Department LANS page.