

# Independent Review of the Pasadena Police Department's Use of Force Policy



NATIONAL  
POLICE  
FOUNDATION

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## INTRODUCTION

The National Police Foundation (NPF) is committed to critical, unbiased assessment and evaluation, along with continual improvement of law enforcement and policing. Our technical assistance includes comprehensive and data-driven reviews of departmental policies, tactics, equipment, and training as compared to contemporary law enforcement standards. These reviews result in the identification of best practices in policy that are intended to enhance the safety of the community and officers.

## EXECUTIVE SUMMARY

At the request of the Pasadena Police Department (PPD) the NPF reviewed selected department policies related to the use of force and offers 33 recommendations intended to enhance department policy, improve public access to department policies, and bring policies in compliance with changes prescribed in California Assembly Bill (AB) 392<sup>1</sup> which was approved by Governor Gavin Newsom on August 19, 2019.

## METHODOLOGY

The NPF reviewed and analyzed policy and orders related to use of force provided by PPD. These policies were then compared to model policies developed by the International Association of Chiefs of Police (IACP)<sup>2</sup> and best practices in policing. This review did not access department training related to the use of force, nor did it address grammar or spelling errors within each of the policies. This review is not a legal opinion. The department is encouraged to have all recommendations reviewed by legal counsel prior to issuing updated policies.

### Policy Review

The PPD requested a review of the following policies related to the use of force.

- *Policy 300*                      *Use of Force*
- *Policy 302*                      *Use of Force Review Boards*
- *Policy 306*                      *Handcuffing and Restraints*
- *Policy 308*                      *Control Devices and Techniques*
- *Policy 309*                      *Conducted Electrical Weapon (CEW)*
- *Policy 310*                      *Officer Involved Shootings*
- *Policy 312*                      *Firearms*
- *Policy 313*                      *Bimonthly Firearms Training/Range Regulations*
- *Policy 318*                      *Canines*

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<sup>1</sup> Law effective January 1, 2020.

<sup>2</sup> International Association of Chiefs of Police. (n.d.). *IACP Law Enforcement Policy Center*.  
<https://www.theiacp.org/policycenter>

## USE OF FORCE POLICY ASSESSMENT

### Legal Background

*Note: The following brief background of court decisions and recent legislation is provided as reference only and is not intended as legal opinion.*

#### Federal Standard

Two landmark decisions by the United States Supreme Court guide law enforcement use of force: *Tennessee v. Garner* (1985)<sup>3</sup> and *Graham v. Connor* (1989).<sup>4</sup> While *Tennessee v. Garner* pertains to the use of deadly force, the court ruled in *Graham v. Connor* that use of force must be analyzed using an objective reasonableness standard.

*“The Fourth Amendment ‘reasonableness’ inquiry is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.”<sup>5</sup>*

The court specified that the reasonableness inquiry is whether the officers’ actions are objectively reasonable in light of the factors and circumstances confronting them, without regard to their underlying intent or motivation. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer, understanding that officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. The court recognized that officers do not need to use the minimum amount of force, rather a force option that is reasonable based upon the totality of the circumstances known at the time force was used.

#### California AB 392

California AB 392 was approved by Governor Gavin Newsom on August 19, 2019, and took effect on January 1, 2020. The bill redefined the circumstances under which the use of deadly force by a peace officer is considered justifiable. The law is intended to encourage law enforcement to increasingly rely on alternative methods such as less-lethal force or de-escalation techniques.

Under the changes in Sections 196 and 835a of the Penal Code, lethal force by a peace officer is only justifiable “when necessary in defense of human life.” Specifically, the bill redefines the circumstances when deadly force is deemed justifiable to include when the officer reasonably believes, based on the totality of the circumstances, that the use of 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

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<sup>3</sup> *Tennessee v. Garner*, 471 U.S. 1 (1985).

<sup>4</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>5</sup> *Graham*, 490 U. S. 396-397.

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.<sup>6</sup>

The change in law also affirmatively prescribes the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

Specifically, the revised Penal Code Section 835a describes that the use of physical force 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.<sup>7</sup> The legislation requires that “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.”<sup>8</sup> The revisions in the Penal Code also acknowledge and reference that individuals with physical, mental health, developmental, or intellectual disabilities are involved in more physical force involving law enforcement.

The following definitions are contained within AB 392 for inclusion in the Penal Code:

- “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.
- 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.
- “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

#### California SB 230

California SB 230 was approved by Governor Newsom on September 12, 2019 and was contingent upon enactment of AB 392. The legislation declares: “The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.”<sup>9</sup> The legislation further states that “no later than January 1, 2021, require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing deescalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents.”

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<sup>6</sup> Assembly Bill 392 provided in Appendix A.

<sup>7</sup> CA Penal Code 835a (a) revised by AB 392 (See Appendix A).

<sup>8</sup> CA Penal Code 835a (a)(2) revised by AB 392 (See Appendix A).

<sup>9</sup> SB-230 Law enforcement: use of deadly force: training: policies.

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200SB230](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB230)

The legislation adds Government Code section 7286, which requires law enforcement agencies to have, no later than January 1, 2021, a policy that provides a minimum standard on the use of force and each agency's policy shall include all of the following 20 items:<sup>10</sup>

- (1) A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
- (2) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- (3) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- (4) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- (5) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- (6) Procedures for disclosing public records in accordance with Section 832.7.
- (7) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- (8) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- (9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- (10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- (11) Comprehensive and specific guidelines for the application of deadly force.
- (12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- (13) The role of supervisors in the review of use of force applications.

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<sup>10</sup> Government Code Section 7286(b). See Appendix B.

(14) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

(15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.

(16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

(17) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(18) Factors for evaluating and reviewing all use of force incidents.

(19) Minimum training and course titles required to meet the objectives in the use of force policy.

(20) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

The legislation also requires agencies to make their use of force policies accessible to the public.

#### [Commission on Peace Officers Standards and Training \(POST\) – Carotid Constriction](#)

Pursuant to Governor Newsom's Order, effective June 5, 2020, the California Commission on Peace Officers Standards and Training (POST) advised presenters that the Carotid Restraint Control Hold would no longer be certified in courses beyond the basic course, and to immediately discontinue teaching the technique in all other POST courses. On June 18, 2020, the POST Commission voted to remove the Carotid Restraint Control Hold training from the basic courses and will become effective immediately upon filing with the Secretary of State. These two actions eliminated all POST approved carotid training in the state.

#### [Policy Review](#)

The sensitivity and importance of law enforcement agency use of force policies require special consideration and attention to detail. Policies and procedures are the primary means by which the PPD communicates its values, protocols, and standards to its employees. Policies should also educate the community by providing information that generally predicts and explains officer conduct. Policies need to clearly spell out what officers can and cannot do, aid officers in meeting performance objectives, create a system of internal fairness and consistency, and help the community to better understand what to expect from interactions with police.

The policies related to use of force must be clear and comprehensive to enable officers to follow the law. In addition, they should convey the importance placed on use of force and the sanctity

of life by the department. This importance is conveyed in several ways in the development of policy, including where the policy is included, how it is structured, and the language used to discuss it.

At the request of the PPD, a review was conducted of PPD policies related to the use of force. The policies identified by the department were provided to the NPF. This review identified several areas for improvement in PPD policies related to use of force. The recommendations offered are designed to enhance PPD policies, create consistency between policies, and bring PPD use of force policies in-line with changes created by AB 392. When comparing the most recent revisions to the policy manual dated 2020/06/19, available on the public website, the NPF found that PPD has made several of the recommended changes herein prior to release of the report and should continue to consider the impact of AB 392, SB 230, and anticipated future use of force legislation on department policy, training, and practice.

### General Policy Considerations

Policies reviewed by the NPF Assessment Team lack consistency in format and at times are not comprehensive, inhibiting a clear understanding of expectations. Like many other agencies, some of PPD policies identify the legal standards as to what officers can do without providing adequate guidance on what they should do. The modifications to use of force policy resulting from AB 392 will help to remedy the void between what officers can legally do versus what officers should do.

Additionally, the format of PPD policies lacks consistency in structure. Most policies have a policy statement, but some do not. Similarly, some policies contain definitions and others do not but should. Department policies should have the general framework that should minimally include:

- Purpose – The purpose statement is the first declaration of intent to employees. An example like, *“The purpose of this policy is to provide guidance and direction on the use of ...”* can help to clarify purpose.
- Policy – A course or line of action adopted and pursued by an agency that provides general guidance on the department’s philosophy on identified issues.<sup>11</sup> For example, this line of action may read, *“It is the policy of PPD to use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer, subject, and others. This includes the use of ...”*
- Definitions – Any terms, devices, persons, etc. that need a degree of distinctiveness to assist in understanding policy or procedures.
- Procedures – A detailed description of how a policy is to be accomplished. It describes the steps to be taken, the frequency of the task, and the persons responsible for completing the tasks.<sup>12</sup>

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<sup>11</sup> Orrick, W. Dwayne. (2018). Developing a Police Department Policy-Procedure Manual. *International Association of Chiefs of Police*. <https://www.theiacp.org/sites/default/files/2018-08/BP-PolicyProcedures.pdf>

<sup>12</sup> Ibid.

The PPD utilizes a vendor, Lexipol, to produce policies and provide updates that can be customized by the department. Except for Policy 300 Use of Force (modified 4/18), the assessment team found no modification date associated with each of the reviewed policies. The copyright date associated with each policy does not clearly define when the policy was originally adopted and if or when the department accepted, rejected, or customized revisions suggested by Lexipol.

The department makes policies available to the public through the department web site. However, not all use of force polices are available on the department web site, and of those that are available, the versions are not the most current. Specifically, polices 306 Handcuffing and Restraints, 312 Firearms, and 313 Bimonthly Firearms Training/Range Regulations are not included on the department web site. There does not appear to be confidential information in the policies that is of a sensitive nature precluding release. Additionally, the policies provided to the NPF possess a copyright date of 2019/01/23 while the same policies on the web site have copyright dates of 2018/6/28. The NPF has subsequently reviewed the policies posted on the website with copyright dates of 2020/06/19.

Several different polices have a use of force component but are separate from Policy 300 Use of Force. Figure 1 illustrates the separation in these policies.

*Figure 1 Policy Force Matrix*

<i>Policy</i>	<i>Type of Force or Control</i>
300 Use of Force	Pain Compliance Carotid Control Hold Shooting at/from moving vehicles Deadly Force
306 Handcuffing and Restraints	Handcuffs or plastic cuffs Spit hoods, mask, or socks Transport belts, waist chains, transport chains, leg, or similar devices. Leg restraints
308 Control Devices	Baton Tear gas OC spray OC projectile Kinetic energy projectiles
309 Conducted Electronic Weapon	CEW/Taser
318 Canines	Canine bites

All applications of force, regardless of type, are governed by the same legal principles. To better emphasize the importance, magnitude, and consequences of using force, the assessment team suggests that PPD combine and separate policies in the following format:

- Policies that address the physical application of force and reporting requirements.

- Polices that address the investigation of uses of force.
- Polices that address the monitoring, auditing, and reviewing of use of force.
- Polices addressing the issuing, training, and maintenance of use of force tools/equipment provided to officers.

As the orders are currently structured, the importance of how force is used, the options available, and appropriateness are diluted between multiple different policies. By consolidating policies into areas of use and function verses type of device or application, the department can improve clarity of values, protocols, and direction. This recommendation is consistent with the *National Consensus Policy and Discussion Paper on Use of Force* which states: “But perhaps most importantly, integrating both deadly and less-lethal force guidelines into one policy serves to illustrate and reinforce for the officer the concept of the use of force as an integrated, or response, model. By placing both sets of guidelines under one heading, an officer consulting policy is encouraged to view force on a broader, more integrated conceptual basis.”<sup>13</sup> However, if the department chooses not to restructure their policies to incorporate all decisions and applications of use of force into one policy, the department should ensure relevant and consistent use of force language, as noted in AB392 and SB230, is included in each of the policies that incorporates legal requirements, decision making, and values of the department and community.

#### *Recommendations*

1. The PPD should consider restructuring use of force policies into categories of application, investigation, monitoring, and training/maintenance as described above. If the department chooses not to restructure their policies to incorporate all decisions and applications of use of force into one policy, the department should ensure relevant and consistent use of force language is included in each of the policies that incorporates legal requirements, decision making, and values of the department and community.
2. The department should adopt a standardized framework for all use of force policies that includes consistent terms, definitions, and procedural detail.
3. The department should clearly identify adopted and revised dates on each policy.
4. The department should make available to the public, through its web site, all policies related to use of force. The policies should be the current versions approved by the department.

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<sup>13</sup> The National Consensus Policy on Use of Force was a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States including: Association of State Criminal Investigation Agencies, Commission on Accreditation for Law Enforcement Agencies, Fraternal Order of Police, Federal Law Enforcement Officers Association, International Association of Chiefs of Police, Hispanic American Police Command Officers Association, International Association of Directors of Law Enforcement Standards and Training, National Association of Police Organizations, National Association of Women Law Enforcement Executives, National Organization of Black Law Enforcement Executives, and National Tactical Officers Association. See: International Association of Chiefs of Police. (2017). National Consensus Discussion Paper on Use of Force and Consensus Policy. <https://www.theiacp.org/resources/document/national-consensus-discussion-paper-on-use-of-force-and-consensus-policy>

5. The PPD should implement a process or system for regularly reviewing and updating all departmental policy, as well as for ensuring that updated policies are shared on the department's website.

#### Policy 300 Use of Force

PPD Policy 300 provides guidelines on the use of force. "Every member of the department is expected to use these guidelines to make decisions in a professional, impartial and reasonable manner."

#### *Policy Review Analysis*

Policy 300 contains an affirmative statement that the department recognizes and respects the value of all human life and dignity without prejudice. The policy also gives officers the authority to use reasonable force and explains that force requires monitoring and evaluation. The policy also requires an officer to intercede when they observe another officer using unreasonable force.

As discussed previously, AB 392 requires changes to several policies particularly Policy 300.

#### *Recommendations*

6. The definitions section (300.1.1) should be revised to include and directly quote the definitions used in the legislative changes outlined in AB 392. It should also include the definition of great bodily injury used in Government Code 12525.2.<sup>14</sup>
7. Section 300.2.1, "duty to Intercede," currently requires "an officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor." While the intent appears to require all employees to report observed excessive force, the language only requires that officers report and not other members of the department. The requirement should require all employees to report.
8. Section 300.2.1 "duty to Intercede," only requires reporting of violations of law and does not require reporting of violations of policy. This policy should require employees to also report violations of policy related to the use of unreasonable force.
9. Section 300.3 and the subsequent subsections should be revised to ensure that language and intent of AB 392 is adequately and appropriately incorporated into policy including:
  - a. The continued reference and expansion of the commitment to respecting human rights and dignity.
  - b. The use of other available resources, tools, and techniques as alternatives to the use of force, if reasonably safe and feasible.
  - c. Use of force shall be evaluated from the perspective of a reasonable officer in the same situation.

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<sup>14</sup> Government Code section 12525.2(d) defines serious bodily injury as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ." For more, see:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12525.2&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12525.2&lawCode=GOV)

- d. Recognition that individuals with physical, mental health, developmental, or intellectual disabilities are more likely to experience greater levels of force during police interactions.
10. 300.3.4 relates to the use of the carotid control hold to restrain a violent or combative individual. In response to recent events across the country, the Governor provided direction and POST eliminated all approved basic and continuing training related to the carotid constriction. While agencies may elect to continue training outside of POST guidelines, the public scrutiny and possible exposure to litigation makes it wise to discontinue the use of the carotid constriction unless there is risk of great bodily injury or death to the public or officers and no other reasonable alternatives are available to the officer. On June 7, 2020, the PPD notified the community that the department suspended the use of the carotid restraint would explore alternative techniques and options for encounter involving dangerous and violent individuals.<sup>15</sup> To stay consistent with the direction of the chief of police and POST, the department should remove the use of carotid control hold in policy except when there is a risk of great bodily injury or death and no other reasonable alternatives exist.
  11. Section 300.4 defines the use of deadly force and should be revised to mirror the language in AB 392 to include the requirement for officers to make reasonable efforts to identify themselves as peace officers and to warn if deadly force may be used unless the officers believe the person is aware of those facts.
  12. Section 300.4.1 states, “Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.” The policy should allow this if there is a tactical need and approved by a supervisor.
  13. Section 300.5.2 defines when a use of force report is to be completed by a supervisor. The use of force circumstance requiring reporting should be inclusive of all categorical use of force options available to officers.
  14. The policy should clearly state the affirmative requirement to attempt de-escalation tactics when safe and feasible. With de-escalation a necessary function of several other policies, the department may wish to consider creating a separate policy for de-escalation.
  15. The policy should describe and affirm the importance of force appropriateness. Examples include statements such as: officer use force that is appropriate to the threat or resistance of the subject; the level of force used must reflect the totality of the circumstance surrounding the situation; and officers use only the minimum force necessary.
  16. The PPD should document when officers point their firearms at individuals. As noted in the NPF report on the “Analysis of 2018 Use of Deadly Force by the Phoenix Police Department,”<sup>16</sup> agencies that require officers to document when they point their guns at individuals, but do

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<sup>15</sup>Twitter. (2020, June 7). Pasadena Police. <https://twitter.com/PasadenaPD/status/1269770398771449856?s=20>

<sup>16</sup> Rojek, J., J. Nix, S. Wolfe, G. Alpert, J. Burch, J. Grieco, and T. Robbins. (2019, April). Analysis of the 2018 Use of Deadly Force by the Phoenix Police Department. Washington, DC: National Police Foundation. <https://www.policefoundation.org/publication/analysis-of-2018-use-of-deadly-force-by-the-phoenix-police-department/>

not shoot, have significantly lower rates of fatal OIS.<sup>17</sup> Further, knowing the “universe” of incidents in which officers point their guns is necessary in order to make sense of observed racial disparities in OIS.<sup>18</sup> Many agencies require their officers to document when they point their guns at subjects, and the NPF can assist PPD with sample policies if necessary.

#### Policy 302 Use of Force Review Boards

PPD Policy 302 establishes a process to review the use of force by its employees. This review process is in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or evaluation of the use of force. The use of force review is expected to objectively review and evaluate uses of force to ensure that it is lawful, appropriate, and consistent with training and policy.

##### *Policy Review Analysis*

The use of force review board is an effective review process to evaluate reported uses of force by members of PPD.

##### *Recommendation*

17. The PPD should include in the policy that it will publish use of force review board findings while complying with the confidentiality requirements mandated in law.

#### Policy 306 Handcuffing and Restraints

The policy provides general guidelines for the use of restraints during detentions and arrests.

##### *Policy Review Analysis*

The policy conforms to the standard of practice in the profession. It adequately references the requirement that only members of the department who have successfully completed department approved training may use restraint devices. As noted previously, this policy is not available to the public through the department’s web site.

##### *Recommendations*

18. The department should make this policy available to the public on the department’s web site.

#### Policy 308 Control Devices and Techniques

The policy provides guidelines for the use, responsibility, and maintenance of batons, tear gas, OC spray, OC projectiles, and kinetic energy projectiles.

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<sup>17</sup> Jennings, J.T., and M.E. Rubado. (2017). Preventing the use of deadly force: The relationship between police agency policies and rates of officer-involved gun deaths. *Public Administration Review*, 77(2), 217-226.

<sup>18</sup> Tregle, B., J. Nix, and G.P. Alpert. (2019). Disparity does not mean bias: Making sense of observed racial disparities in fatal officer-involved shootings with multiple benchmarks. *Journal of Crime and Justice*, 42(1), 18-31. See also: Wheeler, A.P., S.W. Philips, J.L. Worrall, S.A. Bishopp. What factors influence an officer’s decision to shoot? The promise and limitations of using public data. *Justice Research and Policy*, 18(1), 48-76. Worrall, J.L., S.A. Bishopp, S.C. Zinser, A.P. Wheeler, and S. W. Philips. (2018). Exploring bias in police shooting decisions with real shoot/don’t shoot cases. *Crime & Delinquency*, 64(9), 1171-1192.

### *Policy Review Analysis*

This policy is a use of force policy and if left as a stand-alone order, the language in the policy and procedure sections should mirror the final language in Policy 300 specifically related to de-escalation, warnings, and other language in AB 392.

### *Recommendations*

19. The application and reporting requirements in this policy should be incorporated into Policy 300 Use of Force. If the department chooses to keep the policies separate, this policy should be revised to mirror the language and intent of Policy 300.

### Policy 309 Conducted Electrical Weapon (CEW)

The policy provides guidelines, including verbal and visual warnings, medical treatments and supervisor responsibilities related to the deployment of the CEW.

### *Policy Review Analysis*

The department policy describes that the intent of the CEW is to control violent or potentially violent individuals and its use should reduce injuries to officers and suspects. The policy continues with detailing that training is required to carry the device, how to carry the device, verbal and visual warning requirements, post deployment medical treatment, and supervisor responsibilities.

The policy does not define 'potentially violent' for purposes of the CEW deployment. The policy does not provide guidelines for use on elevated risk groups such as the elderly, medically infirmed, pregnant, children, those with internal medical devices, those contaminated with combustible material, and those restrained.

### *Recommendations*

20. The policy statement should be revised to discuss how the use of a CEW fits into less lethal options in effectively bringing an incident under control while protecting the officer, subject, and community.
21. The policy should include a definitions section that clearly defines the CEW, passive resistance, active resistance, violent, and potentially violent persons.
22. The policy should define and describe elevated risk groups, their increased risk potential, and discuss the deployment of a CEW involving individuals in these groups. Offices should not be prohibited from using a CEW on such persons but should limit use to exceptional circumstances.
23. The department should require by policy periodic downloading of CEW data. Regular downloading consistent with the manufacturer's recommendations will ensure the CEW's have updated firmware, synced time clocks, and provide the department with the ability to reconcile any discrepancies with use of force reports.

## Policy 310 Officer Involved Shooting

This policy establishes procedures for the investigation when officers discharge their firearm other than in training or for recreational purposes.

### *Policy Review Analysis*

This policy has no policy statement and the title “Officer-Involved Shooting” does not explicitly describe that the policy is related to the investigation of officer involved shootings or deaths involving officers.

### *Recommendations*

24. The policy title, purpose, and policy statement should clearly identify that this policy sets guidelines and procedures for the investigation of an incident that includes the use of deadly force and/or the serious injury or death of a person that involved department employee(s) and not just officer involved shootings. The definition of deadly force should mirror the revised definition in Policy 300 Use of Force.
25. The policy should include a policy statement that is consistent in format and language with all other use of force policies.
26. The policy states that the administrative review should include an evaluation of department policies and procedures. The department should include in the administrative investigation, an evaluation of training, equipment, and supervision so that the requirements of Policy 302 Use of Force Review Boards are met.

## Policy 312 Firearms

This policy establishes procedures for the acquisition, authorized types, training documentation, maintenance, and discharge of a firearm.

### *Policy Review Analysis*

This policy does not have a policy statement and is not available to the public on the department’s web site. The policy describes the on-duty and off-duty weapons authorized to sworn members of the department. The policy also discusses the safe handling of weapons, weapons storage, TSA requirements for flying armed, and the restriction of alcohol or narcotics. Included in the policy are rangemaster duties, and maintenance and repair of firearms.

Section 312.6 Reporting of Firearm Discharge is a one paragraph section requiring employees to report any discharge of a firearm that is not during training or recreational use. If the discharge results in injury or death, the officer involved shooting policy is to be followed. If the firearm discharge does not result in injury or death, the use of force policy reporting policy is to be followed. This requirement is better placed in the use of force policy which would then allow this policy to focus on non-use issues.

### *Recommendations*

27. The policy should include a policy statement that is consistent in format and language with all other use of force policies.
28. Section 312.6 Report of Firearm Discharge should be moved to Policy 300 Use of Force.

29. Section 312.3.1(c) allows an officer to use an automatic weapon, heavy caliber rifle, gas, or other types of chemical weapon with supervisor approval. Subsection C should include a requirement that officers either must have completed training prior to use or may use with approval from a supervisor. While other sections within policy require officers to complete training prior to using weapons, this section does not reinforce the training requirement.
30. Section 312.3.2 Storage of Firearms at Home should be retitled to Storage of Firearms away from Police Facilities to be more inclusive and reinforce the importance of always securing firearms.
31. Section 312.3.3 Alcohol and Drugs restrict officers from carrying a weapon if they have “consumed alcohol or taken any narcotics or any other substance that would tend to adversely affect the officer’s senses or judgment.” To reduce any confusion related to the definition of narcotic and to the policy, the PPD should remove the term “narcotic” and replace with “any substance.”

#### Policy 313 Bimonthly Firearms Training/Range Regulations

The policy describes and sets requirements for firearms training, range use, and firearms qualification failures and missing range assignments.

##### *Policy Review Analysis*

This policy does not have a policy statement and is not available to the public on the department’s web site.

##### *Recommendations*

32. The policy should include a policy statement that is consistent in format and language with all other use of force policies. The policy should state the importance of weapons safety and proficiency to the safety of officers and the public.

#### Policy 318 Canines

This policy describes the guidelines for the deployment of police canines, handler and supervisor responsibilities, requests from other agencies, canine training, appropriate housing requirements, and detection training, aid, storage, and accountability.

##### *Policy Review Analysis*

This policy is comprehensive and includes many aspects of law enforcement canine use, with a significant portion of the policy related to the training and care of the canine. The sections related to deployments when a canine may bite a suspect and the prohibited uses of a dog are not given the emphasis the department intends in the policy. As previously discussed, including policies related to canine use of force in a single, focused use of force policy will add clarity and demonstrate the importance of understanding the significance of police use of force.

##### *Recommendations*

33. Section 318.1.1 Prohibited Uses and section 318.6 et al Apprehension Guidelines, should be removed from this policy and included in the revised Policy 300.

34. Section 318.1.1 Prohibited Use should include the use of canines for crowd control. The use of canines for crowd control is not consistent with best practices in policing.
35. Section 318.6(d) Apprehension Guidelines, states “The individual(s) are suspected of a felony crime and or attempting to flee the scene **of** are suspected of concealing themselves so as to elude capture.” The word “of” above, after the word “scene,” should be changed to “or” to clarify policy meaning.

## CONCLUSION

The PPD policies assessed indicate that policies related to use of force require review and updating to improve clarity and comply with California state law scheduled to take effect January 1, 2020. Additionally, while some use of force types are included in Policy 300 Use of Force, others such as use of batons, tear gas, pepper spray, kinetic energy projectiles, Tasers, and canines have a separate policy. The department should strive to include all applications of force into one policy.

The recommendations included in this NPF review provide tangible steps that will contribute to continued evaluation and improvement of policing practices at the PPD.

## APPENDIX A Assembly Bill No. 392

### CHAPTER 170

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

[Approved by Governor August 19, 2019. Filed with Secretary of State August 19, 2019.]

Legislative Counsel's Digest

AB 392, 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 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.

*The people of the State of California do enact as follows:*

SECTION 1. Section 196 of the Penal Code is amended to read:

196. Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

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

(b) When the homicide results from a peace officer's use of force that follows Section 835a.

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.

(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.

(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.

(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 to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) 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 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, 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.

(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 de-escalation 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) “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

## APPENDIX B Senate Bill No. 230

### CHAPTER 285

An act to add Chapter 17.4 (commencing with Section 7286) to Division 7 of Title 1 of the Government Code, and to add Section 13519.10 to the Penal Code, relating to law enforcement.

[Approved by Governor September 12, 2019. Filed with Secretary of State September 12, 2019.]

### LEGISLATIVE COUNSEL'S DIGEST

SB 230, Caballero. Law enforcement: use of deadly force: training: policies.

(1) Existing law requires each law enforcement agency to annually furnish specified information to the Department of Justice regarding the use of force by a peace officer. Existing law requires the Department of Justice, once per year, to update a summary of information contained in the reports received on its internet website. Existing law requires a department or agency that employs peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against those officers.

This bill would, by no later than January 1, 2021, require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing deescalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

(2) Existing law establishes the Commission on Peace Officer Standards and Training in the Department of Justice and requires the commission to adopt rules establishing minimum standards regarding the recruitment of peace officers. Existing law requires the commission to develop guidelines and implement courses of instruction regarding racial profiling, domestic violence, hate crimes, vehicle pursuits, and human trafficking, among others.

This bill would require the commission to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force. The bill would require the commission to develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for the use of force, as specified. The bill would require law enforcement agencies to adopt and promulgate a use of force policy and would state the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with the agency's policy that complies with the guidelines developed under this bill.

This bill would make findings and declarations regarding the intent of the bill, as it pertains to law enforcement agencies' use of force policies, including that those policies may be introduced in

legal proceedings and may be considered as a factor in determining the reasonableness of an officer's actions, but do not impose a legal duty on an officer to act in accordance with the policy.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would also make its provisions operative contingent on the enactment of Assembly Bill 392 of the 2019–20 Regular Session.

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

#### **SECTION 1.**

The Legislature finds and declares:

(a) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.

(b) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely.

(c) Vesting officers with the authority to use necessary force as determined by an objectively reasonable officer and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

(d) The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity, and life.

(e) The intent of this act is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies' use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control.

(f) No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decisionmaking when using force options.

(g) A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.

(h) Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

## **SEC. 2.**

Chapter 17.4 (commencing with Section 7286) is added to Division 7 of Title 1 of the Government Code, to read:

### **CHAPTER 17.4. Law Enforcement Use of Force Policies**

#### **7286.**

(a) For the purposes of this section:

(1) "Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.

(2) "Feasible" means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

(3) "Law enforcement agency" means any police department, sheriff's department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.

(b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:

(1) A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

- (2) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- (3) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- (4) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- (5) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- (6) Procedures for disclosing public records in accordance with Section 832.7.
- (7) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- (8) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- (9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- (10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- (11) Comprehensive and specific guidelines for the application of deadly force.
- (12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.
- (13) The role of supervisors in the review of use of force applications.
- (14) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- (15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.

(16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

(17) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(18) Factors for evaluating and reviewing all use of force incidents.

(19) Minimum training and course titles required to meet the objectives in the use of force policy.

(20) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section accessible to the public.

(d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).

### **SEC. 3.**

Section 13519.10 is added to the Penal Code, immediately following Section 13519.9, to read:

#### **13519.10.**

(a) (1) The commission shall implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of the use of force policy that the agency is required to adopt and promulgate pursuant to Section 7286 of the Government Code, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

(2) As used in this section, "law enforcement officer" includes any peace officer of a local police or sheriff's department or the California Highway Patrol, or of any other law enforcement agency authorized by law to use force to effectuate an arrest.

(b) The course or courses of the regular basic course for law enforcement officers and the guidelines shall include all of the following:

- (1) Legal standards for use of force.
  - (2) Duty to intercede.
  - (3) The use of objectively reasonable force.
  - (4) Supervisory responsibilities.
  - (5) Use of force review and analysis.
  - (6) Guidelines for the use of deadly force.
  - (7) State required reporting.
  - (8) Deescalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.
  - (9) Implicit and explicit bias and cultural competency.
  - (10) Skills including deescalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.
  - (11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decisionmaking.
  - (12) Alternatives to the use of deadly force and physical force, so that deescalation tactics and less lethal alternatives are, where reasonably feasible, part of the decisionmaking process leading up to the consideration of deadly force.
  - (13) Mental health and policing, including bias and stigma.
  - (14) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.
- (c) Law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on use of force. The commission shall assist where possible.
- (d) (1) The course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field on use of force. The groups and individuals shall include, but not be limited to, law enforcement agencies, police academy instructors, subject matter experts, and members of the public.
- (2) The commission, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which use of force training may be included as part of ongoing programs.

(e) It is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific use of force policy that, at a minimum, complies with the guidelines developed under subdivisions (a) and (b).

**SEC. 4.**

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**SEC. 5.**

This act shall take effect only if Assembly Bill 392 of the 2019–20 Regular Session is enacted and becomes operative.

## APPENDIX C List of Recommendations

### *General Policy Considerations*

1. The PPD should consider restructuring use of force policies into categories of application, investigation, monitoring, and training/maintenance as described above. If the department chooses not to restructure their policies to incorporate all decisions and applications of use of force into one policy, the department should ensure relevant and consistent use of force language is included in each of the policies that incorporates legal requirements, decision making, and values of the department and community.
2. The department should adopt a standardized framework for all use of force policies that includes consistent terms, definitions, and procedural detail.
3. The department should clearly identify adopted and revised dates on each policy.
4. The department should make available to the public, through its web site, all policies related to use of force. The policies should be the current versions approved by the department.
5. The PPD should implement a process or system for regularly reviewing and updating all departmental policy, as well as for ensuring that updated policies are shared on the department's website.

### *Policy 300 Use of Force*

6. The definitions section (300.1.1) should be revised to include and directly quote the definitions used in the legislative changes outlined in AB 392. It should also include the definition of great bodily injury used in Government Code 12525.2.<sup>19</sup>
7. Section 300.2.1, "duty to Intercede," currently requires "an officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor." While the intent appears to require all employees to report observed excessive force, the language only requires that officers report and not other members of the department. The requirement should require all employees to report.
8. Section 300.2.1 "duty to Intercede," only requires reporting of violations of law and does not require reporting of violations of policy. This policy should require employees to also report violations of policy related to the use of unreasonable force.
9. Section 300.3 and the subsequent subsections should be revised to ensure that language and intent of AB 392 is adequately and appropriately incorporated into policy including:
  - a. The continued reference and expansion of the commitment to respecting human rights and dignity.
  - b. The use of other available resources, tools, and techniques as alternatives to the use of force, if reasonably safe and feasible.

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<sup>19</sup> Government Code section 12525.2(d) defines serious bodily injury as "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ."

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=12525.2&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12525.2&lawCode=GOV)

- c. Use of force shall be evaluated from the perspective of a reasonable officer in the same situation.
  - d. Recognition that individuals with physical, mental health, developmental, or intellectual disabilities are more likely to experience greater levels of force during police interactions.
10. 300.3.4 relates to the use of the carotid control hold to restrain a violent or combative individual. In response to recent events across the country, the Governor provided direction and POST eliminated all approved basic and continuing training related to the carotid constriction. While agencies may elect to continue training outside of POST guidelines, the public scrutiny and possible exposure to litigation makes it wise to discontinue the use of the carotid constriction unless there is risk of great bodily injury or death to the public or officers and no other reasonable alternatives are available to the officer. On June 7, 2020, the PPD notified the community that the department suspended the use of the carotid restraint would explore alternative techniques and options for encounter involving dangerous and violent individuals.<sup>20</sup> To stay consistent with the direction of the chief of police and POST, the department should remove the use of carotid control hold in policy except when there is a risk of great bodily injury or death and no other reasonable alternatives exist.
  11. Section 300.4 defines the use of deadly force and should be revised to mirror the language in AB 392 to include the requirement for officers to make reasonable efforts to identify themselves as peace officers and to warn if deadly force may be used unless the officers believe the person is aware of those facts.
  12. Section 300.4.1 states, “Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.” The policy should allow this if there is a tactical need and approved by a supervisor.
  13. Section 300.5.2 defines when a use of force report is to be completed by a supervisor. The use of force circumstance requiring reporting should be inclusive of all categorical use of force options available to officers.
  14. The policy should clearly state the affirmative requirement to attempt de-escalation tactics when safe and feasible. With de-escalation a necessary function of several other policies, the department may wish to consider creating a separate policy for de-escalation.
  15. The policy should describe and affirm the importance of force appropriateness. Examples include statements such as: officer use force that is appropriate to the threat or resistance of the subject; the level of force used must reflect the totality of the circumstance surrounding the situation; and officers use only the minimum force necessary.
  16. The PPD should document when officers point their firearms at individuals. As noted in the NPF report on the “Analysis of 2018 Use of Deadly Force by the Phoenix Police Department,”<sup>21</sup>

<sup>20</sup>Twitter. (2020, June 7). Pasadena Police. <https://twitter.com/PasadenaPD/status/1269770398771449856?s=20>

<sup>21</sup> Rojek, J., J. Nix, S. Wolfe, G. Alpert, J. Burch, J. Grieco, and T. Robbins. (2019, April). Analysis of the 2018 Use of Deadly Force by the Phoenix Police Department. Washington, DC: National Police Foundation. <https://www.policefoundation.org/publication/analysis-of-2018-use-of-deadly-force-by-the-phoenix-police-department/>

agencies that require officers to document when they point their guns at individuals, but do not shoot, have significantly lower rates of fatal OIS.<sup>22</sup> Further, knowing the “universe” of incidents in which officers point their guns is necessary in order to make sense of observed racial disparities in OIS.<sup>23</sup> Many agencies require their officers to document when they point their guns at subjects, and the NPF can assist PPD with sample policies if necessary.

*Policy 302 Use of Force Review Boards*

17. The PPD should include in the policy that it will publish use of force review board findings while complying with the confidentiality requirements mandated in law.

*Policy 306 Handcuffing and Restraints*

18. The department should make this policy available to the public on the department’s web site.

*Policy 308 Control Devices and Techniques*

19. The application and reporting requirements in this policy should be incorporated into Policy 300 Use of Force. If the department chooses to keep the policies separate, this policy should be revised to mirror the language and intent of Policy 300.

*Policy 309 Conducted Electrical Weapon (CEW)*

20. The policy statement should be revised to discuss how the use of a CEW fits into less lethal options in effectively bringing an incident under control while protecting the officer, subject, and community.

21. The policy should include a definitions section that clearly defines the CEW, passive resistance, active resistance, violent, and potentially violent persons.

22. The policy should define and describe elevated risk groups, their increased risk potential, and discuss the deployment of a CEW involving individuals in these groups. Offices should not be prohibited from using a CEW on such persons but should limit use to exceptional circumstances.

23. The department should require by policy periodic downloading of CEW data. Regular downloading consistent with the manufacturer’s recommendations will ensure the CEW’s have updated firmware, synced time clocks, and provide the department with the ability to reconcile any discrepancies with use of force reports.

*Policy 310 Officer Involved Shooting*

24. The policy title, purpose, and policy statement should clearly identify that this policy sets guidelines and procedures for the investigation of an incident that includes the use of deadly

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<sup>22</sup> Jennings, J.T., and M.E. Rubado. (2017). Preventing the use of deadly force: The relationship between police agency policies and rates of officer-involved gun deaths. *Public Administration Review*, 77(2), 217-226.

<sup>23</sup> Tregle, B., J. Nix, and G.P. Alpert. (2019). Disparity does not mean bias: Making sense of observed racial disparities in fatal officer-involved shootings with multiple benchmarks. *Journal of Crime and Justice*, 42(1), 18-31. See also: Wheeler, A.P., S.W. Philips, J.L. Worrall, S.A. Bishopp. What factors influence an officer’s decision to shoot? The promise and limitations of using public data. *Justice Research and Policy*, 18(1), 48-76. Worrall, J.L., S.A. Bishopp, S.C. Zinser, A.P. Wheeler, and S. W. Philips. (2018). Exploring bias in police shooting decisions with real shoot/don’t shoot cases. *Crime & Delinquency*, 64(9), 1171-1192.

force and/or the serious injury or death of a person that involved department employee(s) and not just officer involved shootings. The definition of deadly force should mirror the revised definition in Policy 300 Use of Force.

25. The policy should include a policy statement that is consistent in format and language with all other use of force policies.
26. The policy states that the administrative review should include an evaluation of department policies and procedures. The department should include in the administrative investigation, an evaluation of training, equipment, and supervision so that the requirements of Policy 302 Use of Force Review Boards are met.

#### *Policy 312 Firearms*

27. The policy should include a policy statement that is consistent in format and language with all other use of force policies.
28. Section 312.6 Report of Firearm Discharge should be moved to Policy 300 Use of Force.
29. Section 312.3.1(c) allows an officer to use an automatic weapon, heavy caliber rifle, gas, or other types of chemical weapon with supervisor approval. Subsection C should include a requirement that officers either must have completed training prior to use or may use with approval from a supervisor. While other sections within policy require officers to complete training prior to using weapons, this section does not reinforce the training requirement.
30. Section 312.3.2 Storage of Firearms at Home should be retitled to Storage of Firearms away from Police Facilities to be more inclusive and reinforce the importance of always securing firearms.
31. Section 312.3.3 Alcohol and Drugs restrict officers from carrying a weapon if they have “consumed alcohol or taken any narcotics that would tend to adversely affect the officer’s senses or judgment.” To reduce any confusion related to the definition of narcotic and to the policy, the PPD should remove the term “narcotic” and replace with “any substance.”

#### *Policy 313 Bimonthly Firearms Training/Range Regulations*

32. The policy should include a policy statement that is consistent in format and language with all other use of force policies. The policy should state the importance of weapons safety and proficiency to the safety of officers and the public.

#### *Policy 318 Canines*

33. Section 318.1.1 Prohibited Uses and section 318.6 et al Apprehension Guidelines, should be removed from this policy and included in the revised Policy 300.
34. Section 318.1.1 Prohibited Use should include the use of canines for crowd control. The use of canines for crowd control is not consistent with best practices in policing.
35. Section 318.6(d) Apprehension Guidelines, states “The individual(s) are suspected of a felony crime and or attempting to flee the scene **of** are suspected of concealing themselves so as to elude capture.” The word “of” above, after the word “scene,” should be changed to “or” to clarify policy meaning.

## About the National Police Foundation

The National Police Foundation (NPF) is a non-partisan and non-membership 501(c)(3) organization dedicated to advancing the impact and delivery of police services through reforms and enhancements guided by innovation and science. For the last 50 years, the Foundation has led the development of research on all aspects of policing and leads the way in promoting and sharing evidence-based practices and innovation among law enforcement. The Foundation works with communities across the U.S. and internationally to provide research, training, and technical assistance relating to community engagement and problem solving, promoting safety and healthy organizations and officers, the reduction and prevention of violence, and equitable and fair justice for all. For more information, please visit the National Police Foundation website at [www.policefoundation.org](http://www.policefoundation.org).



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