

From: Rick Brown, PhD, Chair, on behalf of the IOLERO Community Advisory Council

Subject: Sonoma County Sheriff's Office Use of Force Policy Recommendations

Date: November 15, 2019

Background:

For almost three years, the IOLERO Community Advisory Council (CAC) has worked to educate ourselves about the Sonoma County Sheriff Department through attending sessions on recruitment, training, organizational structure and participating in virtual reality training on use of force (UoF). In addition, members studied and considered research on crime prevention and law enforcement, best practices and standards in modern law enforcement, and emerging law on use of force. Members (partially or entirely at their own expense) attended national and regional conferences of the National Association of Civilian Oversight of Law Enforcement (NACOLE).

At CAC meetings, experts were invited to discuss some of the most pressing problems facing law enforcement, including immigration, homelessness, and mental health. Experts came to the CAC meetings to discuss their experience in collaborating with law enforcement, the role of unions representing law enforcement, and earning back the trust of the community after violence. At each of these meetings, representatives from the Sheriff's Department made presentations, answered questions and engaged in respectful and productive conversations with community members and the CAC. Additionally, CAC topic specific Task Forces (Immigration, Homelessness, Body Cameras, Use of Force, etc.) met with community members and Sheriff's Office representatives to craft consensus on policy recommendations.

The CAC also closely followed the efforts of the Legislature to craft legislation governing Use of Force. With passage of AB 392, the California Act to Save Laws, a number of the policy recommendations under consideration by the CAC are now codified in statute, amending Penal Code 835a and 196. While this law goes into effect as of January 1, 2020, we encourage the Sheriff's Office to implement these recommendations as soon as possible as one way of demonstrating to the public its intent and strong interest in addressing long needed policy changes.

Based on the research, expert testimony and community input, the CAC has developed the following set of guiding principles to guide the Sheriff's Office policy on the use of Force:

Guiding Principles*

The Sonoma County Sheriff's Use of Force Policy should include:

1. Policy should be founded on a "Strong Sanctity of Life Statement" affirming the value of all human life and officers' duty to uphold citizens' civil and constitutional rights, with an emphasis not only on the welfare of the public, but also on the physical and emotional well-being of the deputies who serve them.
2. Clear definition of principles and practices of de-escalation, including the use of time and distance and tone of voice to de-escalate a potentially volatile interaction, and a requirement to use de-escalation techniques whenever feasible.
3. Force used must be proportional to the level of resistance and the totality of the circumstances.
4. Force used should be reasonable and should be the minimal amount necessary, using the more restrictive standard for use of force outlined in the Graham v. Connor (1989) 490 US 386.
5. Fair and unbiased policing with regards to the interpretation and application of all policies.
6. Deputies shall give a verbal warning whenever feasible before using force.

7. Deputies shall continually re-assess the changing situation to evaluate the necessity of force or continued need for force.
8. Special considerations must be given in policy and training for vulnerable populations including those suspected of mental health challenges, those under the influence of drugs or alcohol, pregnant women, and the young.
9. Emphasis on Crisis Intervention Training and calling for Mental Health support whenever possible.
10. Increased reliance on good communication skills minimizing the need for use of force.
11. Restrictions should be adopted on firing into moving vehicles unless necessary to prevent imminent death or serious bodily injury. Shooting at fleeing felons unless necessary to prevent imminent death or serious bodily injury should be prohibited.
12. Carotid restraints and other dangerous chokeholds and maximum restraints are banned.
13. Greater restrictions on the use of Tasers on vulnerable populations.
14. Deputies should be required through policy and training to intervene and to report uses of excessive force.
15. Evaluation of use of force Incidents should include whether the deputy exhausted all other alternatives before resorting to force.
16. Review and Improve the Use of Force form to better track such incidents as well as reflect the values of the department. Developing metrics for improved tracking of use of force incidents, including reporting the un-holstering of a firearm as use of force.
17. The Sheriff's Office should increase and implement the training necessary to support these principles, including but not limited to: de-escalation training, annual implicit bias training, communications training, reality based training.
18. The Sheriff's Office should monitor and analyze use of force incidents and establish an early intervention program to target deputies at risk of using excessive force. The Sheriff's Office should cooperate with its community oversight partner, the IOLERO, in analyzing use of force data, looking for relevant trends in order to decrease incidents of excessive force
19. The Sheriff's Office should emphasize Officer health and wellness, increasing psychological support for deputies so that they can better deal with high stress situations.
20. At the scene of use of force, deputies shall administer first aid as soon as possible, when needed.

Given these principles, the CAC recommends the following Sheriff's Office Use of Force Policy:

Policy 300: USE OF FORCE

300.1 Purpose and Scope

The Sonoma County Sheriff's Office holds the highest regard for the dignity, liberty, civil and constitutional rights of all persons. It recognizes that even at its lowest level, the use of force is a serious responsibility with ramifications for individual members of the public, the sense of public trust in law enforcement, and for the wellbeing of deputies involved.

This policy provides the core principles and guidelines relating to the use of force. Every deputy of the Sonoma County Sheriff's Office is expected to apply these principles and guidelines to make decisions in a professional, compassionate, impartial, unbiased, and reasonable manner. This Office recognizes that officers will face unique and challenging circumstances not specifically addressed in this policy.

The Sonoma County Sheriff's Office recognizes the need for constant use of force training, monitoring and review, therefore this policy further addresses use of force reporting and evaluation.

300.2 Policy

It is the Sonoma County Sheriff's Office's highest priority to safeguard the life, dignity and liberty of all persons without prejudice to anyone. Deputies shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. This Office is committed to accomplishing this mission with respect and minimal reliance on the use of force by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force, whenever feasible.

The use of force by law enforcement is a matter of critical concern, both to the public and the law enforcement community. This office recognizes the impact the use of force can have not only on public welfare and trust, but also on the safety and well-being of the deputies.

Vesting deputies with the authority to use reasonable force, and to protect the public welfare requires consistent monitoring, and careful evaluation.

SAFEGUARDING HUMAN LIFE AND DIGNITY. 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 all human rights, dignity and life.

ESTABLISH COMMUNICATION. Communication with non-compliant subjects is often most effective when officers establish rapport, use the proper voice intonation, ask questions and provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

DE-ESCALATION. Officers shall, when feasible or possible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest, or to protect the officer, other officers, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options. Officers shall perform their work in a manner that avoids unduly jeopardizing their safety or the safety of others through poor tactical decisions.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potentially violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of de-escalation tactics and ensure that officers under their supervision perform to a standard. As a good practice, supervisors will acknowledge and respond to incidents in a timely manner where law enforcement use of force is probable.

PROPORTIONALITY. When determining the appropriate level of force, officers shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of the circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm.

CRISIS INTERVENTION. When feasible, Crisis Intervention Team (CIT) trained officers shall respond to calls for service involving individuals in a mental or behavioral health crisis pursuant to the CIT Department General Order 2016 version, or as amended. It shall be a priority of the Sheriff's Office that all appropriate patrol or detention personnel receive Crisis Intervention Training.

DUTY TO INTERVENE. When in a position to do so, officers shall intervene when they know or have reason to know, that another officer is about to use, or is using, unnecessary force. Officers shall promptly report any use of unnecessary force and the efforts made to intervene to a supervisor.

FAIR AND UNBIASED POLICING. Members shall carry out their duties, including the use of force, in a manner that is fair and unbiased. The Sheriff's Office shall ensure that inherent bias trainings will be given annually.

VULNERABLE POPULATIONS. The use of force against vulnerable populations – including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency - can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted.

300.3 DEFINITIONS

FEASIBLE. Capable of being done or carried out to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

IMMEDIATE THREAT. An immediate threat is considered to exist if a suspect has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat if not apprehended without delay. A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has been initiated.

MINIMAL AMOUNT OF FORCE NECESSARY. The lowest level of force within the range of objectively reasonable force that is necessary to effect an arrest or achieve a lawful objective without increasing the risk to others.

PERSONAL BODY WEAPONS. A deputy's use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of high velocity kinetic energy transfer (impact) to gain control of a subject.

REASONABLE FORCE. An objective standard of force viewed from the perspective of a reasonable deputy, without the benefit of 20/20 hindsight, and based on the totality of the circumstances known to or perceived by the officer at the time.

REPORTABLE FORCE. Any use of force which is required to overcome subject resistance to gain compliance that results in death, injury, complaint of injury in the presence of a deputy, or complaint of pain that persists beyond the use of a physical control hold. Any use of force involving the use of personal body weapons, chemical agents, impact weapons, extended range impact weapons, vehicle interventions, and firearms. Any intentional pointing of a firearm at a subject. Any situation involving the drawing of a firearm shall be require reporting on an incident report.

SERIOUS BODILY INJURY. A serious impairment of physical condition, including but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

VITAL AREAS OF THE BODY. The head, neck, face, throat, spine, groin and kidney.

300.4 CONSIDERATIONS GOVERNING ALL USES OF FORCE

A. USE OF FORCE MUST BE FOR A LAWFUL PURPOSE. Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. To effect a lawful arrest, detention, or search.
2. To overcome resistance or to prevent escape.
3. To prevent the commission of a public offense.
4. In defense of others or in self-defense.
5. To gain compliance with a lawful order.
6. To prevent a person from injuring himself/herself. However, a deputy is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.

300.5 USE OF FORCE AUTHORITY

This Policy builds upon the Constitutional principles governing use of force by adding other important factors on which an officer's use of force shall be evaluated.

This policy recognizes that 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 the sanctity of human life. Essential to the Constitutional application of force by law enforcement officers and the principles of this policy is the principle of de-escalation. Deputies shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force and

increase the likelihood of voluntary compliance. De-escalation techniques stress establishing rapport with non-compliant subject through using proper body language, voice intonation, and asking and providing information. Use of force is not binary. Use of force under this policy requires officers, when possible, to balance the severity of the offense committed and the level of resistance presented based on the totality of the circumstances known to or perceived by the officer at the time. The use of force against vulnerable populations, including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency, can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted.

This policy depends on officers carrying out their duties in a fair and unbiased manner. Such conduct is the foundation for building trust and sustaining the support of different communities when unanticipated and tragic circumstances arise. Integral to maintaining this trust is the deputy's duty to intervene when they know or have reason to know that another officer is about to use or is using unnecessary force and promptly report to a supervisor any such use of unnecessary force and the efforts made to intervene.

300.5.1 LEGAL AUTHORITY FOR THE USE OF FORCE

Note: The California Act to Save Lives (AB 392) amends PC 835(a) and PC 196 to revise the legal standard for use of force and justifiable homicide (PC 197). The use of force standard in AB 392 is stricter than in the 1989 US Supreme Court Decision in Graham v. Connor, 490 US 386. The California Act to Save Lives will become California law on January 1, 2020

The principles established by the United State Supreme Court in Graham v. Connor (1989) 490 US 386 constitute the legal foundation for the use of force by law enforcement officers. The Supreme Court held that an officer's use of force must be objectively reasonable under the totality of the circumstances known to the officer at the time.

California Penal Code Section 835 defines when an arrest occurs: An arrest is made by an actual restraint of the person or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable in the circumstances of the detention and/or arrest.

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.

Despite the ability to use objectively reasonable force, 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 (i.e., meaning 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) 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, peace officers 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.

Peace officers 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.

Peace officers 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, otherwise in compliance with the provisions of this bill 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.

"Deadly force" is defined by this policy to mean 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.

300.5.2 FACTORS TO BE USED IN DETERMINING THE REASONABLENESS OF FORCE

Note: The following is also based on language included in AB 392, amending the Penal Code

- a) The authority to use physical force, conferred on peace officers, 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. Every person has a right to be free from excessive use of force by officers acting under color of law.
- b) Officers are authorized to 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.
- c) The decision by an 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.
- d) The decision by an 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.
- e) Given 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.
- f) Officers shall be required to give a verbal warning, when possible, before using deadly force.

300.6 DE-ESCALATION TACTICS

When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, deputies shall, when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force:

1. Attempt to isolate and contain the subject;
2. Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force;
3. Request additional resources, such as Crisis Intervention Team (CIT) trained officers, Crisis/Hostage Negotiation Team, or Extended Range Impact Weapon;
4. Designate a deputy to establish rapport and engage in communication with the subject;
5. Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety; and
6. Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible. Other options, not listed above, may be available to assist in de-escalating the situation. Supervisors who become aware of a situation where an officer is using de-escalation techniques shall monitor the radio communications and evaluate the need to respond to the scene.

300.6.1 SUBJECT ARMED WITH A WEAPON - NOTIFICATION AND COMMAND.

In situations where a subject is armed with a weapon, officers and supervisors shall comply with the following:

1. DEPUTY'S RESPONSIBILITY. Upon being dispatched to or on-viewing a subject with a weapon, an officer shall call a supervisor as soon as feasible.
2. SUPERVISORS' RESPONSIBILITIES. When notified that officers are dispatched to or on-view a subject armed with a weapon, a supervisor shall as soon as feasible, assume command, and ensure appropriate resources are on-scene or are responding.

300.6.2 CAROTID CONTROL HOLD

Officers shall be prohibited from using restrictive choke holds and strangle holds including the carotid restraints.

300.6.3 SHOOTING AT OR FROM MOVING VEHICLES

Officers shall be prohibited from shooting at people in moving vehicles unless the person poses a deadly threat by means other than the vehicle.

300.6.4 RENDERING OR REQUESTING MEDICAL AID AND MANDATORY FIRST AID.

At the scene of use of force or as soon as possible, officers shall administer first aid if needed. Following the use of deadly force, officers shall render or request medical aid if needed or requested by anyone as soon as reasonably possible.

Any subject who has been injured, complains of an injury in the presence of officers, or complains of pain that persists beyond the use of the physical control hold shall be medically assessed by emergency medical personnel.

300.7 REPORTING THE USE OF FORCE

Any use of physical force, or *threat of use of deadly force, including the drawing of a firearm*, by a member of this Sheriff's Office shall be documented. Any reportable use of force shall be documented in

detail in an incident report, supplemental incident report, or statement form. Descriptions shall be in clear, precise and plain language and shall be as specific as possible.

300 .7.1 FACTORS FOR EVALUATING USE OF FORCE

Factors for evaluating the use of force include but are not limited to:

1. The severity of the crime at issue; force should be proportional
2. Whether the suspect posed an immediate threat to the safety of the officers or others;
3. C. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;
4. Whether the use of force is proportional to the threat;
5. The availability of other feasible, less intrusive force options;
6. The officer's tactical conduct and decisions preceding the use of force;
7. Whether the officer has reason to believe that the subject is mentally ill, has a physical, developmental or cognitive disability, is emotionally disturbed or is under the influence of alcohol or drugs;
8. Whether there was an opportunity to warn about the use of force prior to force being used, and if so, was such a warning given;
9. Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;
10. Specialized knowledge, skills, or abilities of subjects;
11. Prior contact;
12. Whether the deputy exhausted all other options before resorting to force
13. Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and in. Whether the subject's escape could pose a future safety risk.

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

300.7.2 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force.

SUPERVISOR'S RESPONSIBILITY.

When notified of the use of force, the supervisor shall conduct a supervisory evaluation to determine whether the force used appears reasonable and within the provisions of this order.

The supervisor shall:

- a. Immediately respond to the scene unless a response is impractical, poses a danger, or where deputies' continued presence creates a risk. When more than one supervisor responds, the responsibility shall fall on the senior supervisor;
- b. Ensure the scene is secure and observe injured subjects or officers;
- c. Ensure that witnesses (including deputies) are identified and interviewed, and that this information is included in the incident report. The number of witnesses may preclude identification and interview of all witnesses; however supervisors shall ensure identification to the best of their ability;
- d. Ensure photographs of injuries are taken and all other evidence is booked;
- e. Remain available to review the deputy's incident report, supplemental incident report and written statement at the direction of the superior officer.
- f. If applicable, ensure the supervisor's reason for not responding to the scene is included in the incident report.

- g. Complete and submit a Supervisory Use of Force Evaluation form, indicating whether the force used appears reasonable, by the end of watch; if a supervisor determines that a member's use of force is unnecessary or that an officer has applied force that results in serious bodily injury or death, the supervisor shall notify his/her superior officer.

300.8 USE OF FORCE ANALYSIS

The Department will collect and analyze its use of force data. The Use of Force statistics and analysis will include at a minimum:

- a. The type of force
- b. The types and degree of injury to suspect and officer
- c. Date and time
- d. Location of the incident
- e. Where the use of force occurred
- f. Number of officers using force in the incident
- g. Officer's activity when force was used (ex. Handcuffing, search warrant, pursuit)
- h. Subject's activity requiring the officer to use force
- i. Deputy's demographics (age, gender, race/ethnicity, rank, number of years with Sonoma County Sheriff's Office, number of years in law enforcement)
- j. Suspect demographics including race/ethnicity, age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, developmental disability, drug and alcohol use/addiction and homeless.

At least quarterly, the Law Enforcement Division Administration Captain and the Detention Division Captain, or their designee, should prepare a report on use of force, and threats of use of deadly force, incidents. The reports shall be submitted to the Sheriff. At least annually, the Sheriff will submit a report to the Board of Supervisors and share such report at a public meeting of the IOLERO CAC and Board of Supervisors.

The Sonoma County Sheriff's Office shall use this data to establish an early intervention system to evaluate individual deputies at risk for excessive use of force. The system should include retraining and performance management consequences.