

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISION:
C 1402 – GENERAL
RESPONSIBILITIES**

DATE: December 23, 2021

APPROVED

Memo# 2021-047

BACKGROUND

On September 30, 2021, [California Assembly Bill 26 \(link\)](#) was approved by Governor Gavin Newsom. This bill amended Government Code section 7286 relating to a peace officer's use of force.

The current law requires each law enforcement agency maintain a policy that provides a minimum standard on the use of force. Among other things, the policy must require officers to report potential excessive force to a superior officer when present and observing another officer using force the officer believes to be unnecessary. It also requires officers intercede when present and observing another officer using force that is clearly beyond that which is necessary.

The amended Government Code section requires officers *immediately* report potential excessive force. It also provides a definition of what "intercede" means. The following Duty Manual changes comport with this law.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

C 1402 GENERAL RESPONSIBILITIES:

Revised 12-23-21

All ~~D~~epartment members will become thoroughly familiar with these rules and regulations and will abide by them. They will observe and obey all:

- Federal, state, and local laws.
- General, Special and Members Orders of the Department and of the Bureau to which they are assigned.
- Provisions of the San Jose Police Department Duty Manual.
- Other lawful orders of their superiors.

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Upon observing or otherwise becoming aware of a violation of the rules, procedures or policies as set forth in this manual, each department member is obligated to immediately report such violation to a superior officer.

Additionally, sworn personnel shall:

- Immediately ~~R~~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.
- 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.

Government Code section 7286 provides the following definitions:

- "Excessive force" means a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.
- "Intercede" includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer's excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer's name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual section.



Anthony Mata
Chief of Police

AM:SD:GB