

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

**SUBJECT: DUTY MANUAL REVISIONS: USE
OF FORCE**

DATE: August 16, 2022

APPROVED

Memo #2022-040

BACKGROUND

On March 1, 2022, the CNA Corporation presented a report to the City Council entitled, [*Use of Force Assessment of the San José Police Department \(link\)*](#). This report contains numerous recommendations including the following:

Recommendation #6.1 reads: “The SJPd should elevate and emphasize affirmative duty to attempt de-escalation during encounters when time and circumstances permit.” (This will be addressed in section L 2602.6 below.)

Recommendation #6.2 reads: “The SJPd should better define the concept of de-escalation.” Additional information for this recommendation is provided in the California Peace Officer Standards and Training publication [*De-Escalation: Strategies & Techniques for California Law Enforcement \(link\)*](#). (This will be addressed in section L 2602.6 below.)

Recommendation #8 reads: “The SJPd should revise the Duty Manual to require that each application of force be evaluated under the totality of the circumstances independent of other force applications.” (This will be addressed in section L 2601 below.)

Recommendation #11 reads: “The SJPd should categorize all force tools and options in the categories identified in the SJPd Duty Manual.” (This will be addressed in section L 2603 below.)

Recommendation #16 reads: “The SJPd should revise the Duty Manual to require force warnings for all uses of force unless time and circumstances do not allow for a warning.” (This will be addressed in section L 2601.1 below.)

Recommendation #18 reads: “After using lethal force, the involved officer should communicate the force to the communications unit, which would assume responsibility for making notifications.” (This will be addressed in sections L 2633 and L 8512 below.)

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.

L 2601 GENERAL PROVISIONS: *Revised 08-16-22*

Officers may use force to affect a detention, arrest, prevent an escape or overcome resistance, in self-defense or defense of others. The type and degree of force used will be objectively reasonable and based upon the totality of the facts and circumstances known by the officer at the time. Each application of force must be justified and within policy independent of other force used ~~of the situation~~. In any event, the following specific procedures will be adhered to.

L 2601.1 IDENTIFICATION AND VERBAL WARNING: *Added 08-16-22*

When time and circumstances permit, prior to the use of any force, officers shall verbally identify themselves as a peace officer and verbally warn that force may be used, unless any of the following would apply:

- A warning that force may be used would create a clear and immediate danger to the officer, another officer, or to community members; or
- A warning that force may be used would significantly hinder the officer's ability to make an arrest; or
- The officer has objectively reasonable grounds to believe the individual is aware of those facts.

L 2602.1 DEADLY FORCE: *Revised 08-16-22*

NECESSITY: Officers will 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. Before discharging a firearm, officers shall consider their surroundings and potential risks to bystanders to the extent reasonable under the circumstances.

WHEN DEADLY FORCE IS JUSTIFIED: An 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:

- To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

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- 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.

~~WARNINGS: When feasible, officers shall, prior to the use of deadly 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.~~

DEFINITIONS: For purposes of this section, the following definitions shall apply:

- “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.

L 2602.6 **DE-ESCALATION**

Added 08-16-22

De-escalation is the process of using strategies, methods, techniques, and tactics intended to decrease the intensity of the situation.

There is no all-inclusive list identifying all the strategies, methods, techniques, and tactics officers might employ to de-escalate an incident. Duty Manual section L 2602.5 TACTICAL CONDUCT provides some options. In addition, the effectiveness of de-escalation strategies, methods, techniques, and tactics vary between officers, subjects, and situations. When time and circumstances permit, officers shall, prior to the use of any force, make reasonable efforts to de-escalate the situation.

The application of force is not, by definition, a failure to properly de-escalate a situation.

L 2603 **FORCE OPTIONS POLICY:**

Revised 08-16-22

All officers have a number of force options available for use in those situations where force is reasonably necessary. Those situations can include but are not limited to:

- Subduing or arresting a physically threatening or assaultive person.

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- Instances that threaten the safety of an officer or other person.
- Stopping a person who is attempting to flee or escape a lawful detention/arrest.
- When directing, controlling, or escorting resistive or physically uncooperative persons.

There is no requirement that the person actually has to strike or attempt to strike an officer to be considered physically threatening or assaultive, so long as an objectively reasonable officer has sufficient information (verbal threats, verbal defiance, physical stance, etc.) to believe that a person is physically threatening and has the present ability to harm the officer.

The degree of force used by an officer is directly related to the facts and circumstances encountered by that officer. Force options currently available to officers include, but are not limited to:

Voice Commands	Chemical Agents
Physical Contact / Control Holds / Takedowns	Impact Weapons (Refer to Section S 1124 and S 1143)
Electronic Control Weapons or Electronic Restraint Transportation Belt (ERTB)	Police Service Dogs (canines)
	Police Vehicles
Projectile Impact Weapons (if available)	Deadly force

- Chemical Agents
- Deadly Force
- Electronic Control Weapons (ECWs)
- Impact Weapons
- Improvised Weapons (e.g. Flashlights, Radios, etc.)
- Physical Contact / Control Holds / Takedowns
- Police Service Dogs (Canines)
- Police Vehicles
- Projectile Impact Weapons
- Voice Commands

NOTE: The above list of force options is displayed in alphabetical order and not as a force continuum.

L 2614

USE OF ELECTRONIC CONTROL WEAPONS AND REPORTING REQUIREMENTS:

Revised 08-16-22

Electronic Control Weapons (ECW) have an important role in effective law enforcement as a de-escalation tool that can defuse dangerous situations from a distance, prevent the need for a higher level of force, and help protect officers, suspects, and bystanders.

Officers may use ECW in the following circumstances:

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- When the subject presents an immediate threat of harm to the officer or any other person and the threat presented by the subject outweighs the pain and risks associated with the use of the ECW.
or
- When necessary to take a subject into custody and the level of resistance presented by the subject is:
 - Likely to cause injury to the officer or subject; and
 - Hands-on control tactics or other force options would likely cause greater injury to the subject than the use of the ECW.

1. Policies and procedures for ECW deployments:

- In addition to the identification and verbal warning requirements of Duty Manual section L 2601.1, an officer shall wait a reasonable period of time after each application of the ECW to discern if compliance has been gained. ~~When feasible, officers should give the subject a warning prior to the use of an ECW and wait a reasonable amount of time to discern if compliance has been gained.~~
- The ECW is to be used for the shortest period reasonably necessary to take a subject safely into custody, generally a 5 second cycle.
- Officers should attempt to secure the subject as soon as practical while affected by ECW power or immediately thereafter.
- Officers shall refrain from using the ECW for more than a total of three (3) five-second cycles, unless the circumstances are such that a reasonable officer would conclude that each subsequent application of the device, analyzed separately, is warranted.
- As with the initial discharge, each subsequent ECW activation must be individually justified based on the specific articulable facts reasonably known to the officer at the time. In this assessment, an officer may also consider whether backup officers are present to assist in controlling a dangerous suspect.
- If the subject does not respond to the ECW deployment in the anticipated manner, officers should, based upon training and experience, consider transitioning to alternative force options.
- If circumstances permit, officers should avoid aiming the ECW at a subject's head, neck, genitalia, or chest.
- The ECW may be used against animals if the animal poses a threat to officers, other persons, or other animals
- ECW and holsters authorized for use by the Chief of Police are listed in DM Section S 1147 (Electronic Control Weapons).

2. The ECW shall not be used under the following circumstances:

- On subjects exhibiting only passive non-compliance absent any other specific articulable threat that would outweigh the subject's passive resistance.
- Against a handcuffed or secured person, absent overtly assaultive, self-destructive, or violently resistive behavior that cannot reasonably be controlled by other readily available means.
- In circumstances where a suspect's fall is likely to cause serious bodily injury or death, unless the circumstances are such that a reasonable officer would conclude that force likely to cause substantial injury or death is warranted.

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- In circumstances where a suspect is located in close proximity to a body of water, unless the circumstances are such that a reasonable officer would conclude that force likely to cause substantial injury or death is warranted.
- Where an officer reasonably believes that a flammable, volatile, or explosive material is on the subject or may be affected by the use of the device.
- On highly agitated individuals whose condition may put those individuals at heightened risk of serious injury or death. There are times, however, when despite such risks, a person's actions make it necessary to take the individual into custody. Use of the ECW may, in some instances, be the preferred method of quickly subduing an agitated and aggressive individual and minimize the subject's physical exertion that may increase the risk of injury or death.
- Against a subject operating or riding any mode of transportation (e.g., vehicle, bus, bicycle, motorcycle, etc.), conveyance (e.g., escalator, skateboard, scooter, rollerblades, etc.), or machinery capable of causing injury unless the circumstances are such that a reasonable officer would conclude that the risk of serious bodily injury or death resulting from subsequent movement of the mode of transportation, conveyance, or machinery is outweighed by the need to capture the subject.
- Against women who are known to be pregnant, very old or very young persons, physically frail persons, and persons with known heart conditions unless reasonable based on the threat the subject possesses to themselves or others. An example of a circumstance in which it would be reasonable to use the ECW would be a situation in which an obviously pregnant woman was in the process of harming herself or another person, and more intrusive force would be necessary if not for the use of an ECW.

3. Discharge reporting requirements:

- A discharge of an ECW occurs when probes are deployed at a subject or used in a drive stun manner. If the probes or drive stun do not contact a subject the usage still requires reporting.
- All ECW usage will be reported to the officer's immediate supervisor or next higher rank in the chain of command as soon as safe and reasonable. If the officer's immediate supervisor is unavailable, the officer will report the usage to any other available supervisor or next higher rank in the chain of command.
- The supervisor of an officer who has deployed an ECW will personally respond to evaluate and actively participate in the investigation of the ECW discharge.
- The supervisor will review the ECW download information.
- The discharge of an ECW will require documentation in a General Offense Report (Form 200-2-AFR) and/or on a Narrative/Supplemental Report (Form 200-3A-AFR) and an Automated Use of Force Template.
- Officers will obtain and submit a copy of the ECW download information for the event with a Case Number noted in the upper right-hand corner.
- An officer who only displays a de-escalation warning arc is not required to notify his/her supervisor or complete an Automated Use of Force Template. An arc display should be documented in a General Offense Report or Supplemental. If a General Offense report is not required, the officer will note the display in the CAD event.
- Any accidental discharge, not at a subject, shall be reported to the officer's immediate supervisor. See DM section L2617 (Accidental Discharge of an Electronic Control Weapon)

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4. Medical Care

- Whenever a person has been subjected to an ECW discharge, an official hospital clearance is obtained prior to the suspect's booking.
- Once a subject is under control, officers will place the subject in an appropriate recovery position.
- Officers shall monitor subjects who have sustained an ECW application while they are in custody.
- If the suspect exhibits the need for medical attention at the scene of the arrest, the officer shall summon emergency medical assistance immediately. See DM section L 2616 (Providing First Aid).

L 2633

RESPONSIBILITY WHEN A FIREARM IS DISCHARGED:

Revised 08-16-22

An officer who discharges a firearm either accidentally or in the performance of a police duty, except at an approved range, will protect the scene consistent with the safety of officers and members of the public and evidence and will ensure that an on-duty officer of the officer's subdivision with the rank of lieutenant or higher is notified as soon as time and circumstances permit. When on duty, this may be accomplished by notifying Communications. If an officer of the required rank is not on duty in the officer's subdivision at the time of discharge, the officer will ensure that the watch commander on duty, or any on-duty officer with the rank of lieutenant or higher, is notified.

EXCEPTION: When it is necessary to discharge a firearm for the humane destruction (euthanasia) of a seriously injured animal, and no person was injured or killed and no property was damaged, the officer who discharges the firearm will ensure that the on-duty sergeant responsible for that area is notified and responds to the scene.

L 8512

SAN JOSE UNIFIED POLICE OFFICER FIREARMS DISCHARGE:

Revised 08-16-22

When a San Jose Unified police officer discharges a firearm, either accidentally or in the performance of a police duty, except at an approved range, ~~the officer will protect the scene and evidence and will ensure that an on-duty command officer of the San Jose Police Department with the rank of lieutenant or higher is notified immediately~~ incident is handled in accordance with DM section L 2633 (Responsibility When a Firearm Is Discharged). The San Jose Police Department is in charge of the investigation, assisted as necessary by officers from the San Jose Unified Police Department

- Not Resulting in Injury or Death: When a firearm is discharged but does not result in injury or death, the incident is handled according to DM section L 2601 (Use of Force, General Provisions).
- Resulting in Injury or Death: When a firearm is discharged resulting in injury or death to any person, the incident is handled according to DM section L 4700 (Officer Involved Shootings).

ORDER

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

A handwritten signature in black ink, appearing to read 'A. Mata', is positioned above the printed name and title.

Anthony Mata
Chief of Police

AM:SD:CM